



**FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD**

APPELLANT: Brien O'Brien
DOCKET NO.: 17-45174.001-R-2
PARCEL NO.: 14-33-308-062-0000

The parties of record before the Property Tax Appeal Board are Brien O'Brien, the appellant(s), by attorney Abby L. Strauss, of Schiller Law P.C. in Chicago; the Cook County Board of Review; the Chicago B.O.E. intervenor, by attorney Ares G. Dalianis of Franczek P.C. in Chicago.

Based on the facts and exhibits presented in this matter, the Property Tax Appeal Board hereby finds **A Reduction** in the assessment of the property as established by the **Cook** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$100,125
IMPR.: \$309,875
TOTAL: \$410,000

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Cook County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2017 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

The subject property consists of a nine-year old, three-story single-family dwelling of masonry construction with 10,211 square feet of living area. Features of the home include a full basement, central air conditioning, five fireplaces and a three-car garage. The property has an 11,125 square foot site located in Chicago, North Chicago Township, Cook County. The property is a class 2-09 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal that indicated the subject was an owner-occupied dwelling that had a market value of \$4,100,000, or \$401.53 per square foot of living area, including land, as of January 1, 2016. The appellant requested an assessment of 10% of this amount.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$698,169. The subject's assessment reflects a market value of \$6,981,690 or \$665.43 per square foot of living area, including land, when applying the 2017 level of assessment for class 2 property under the Cook County Real Property Assessment Classification Ordinance of 10%. In support of its contention of the correct assessment the board of review submitted descriptions and assessment information on seven equity comparable properties and submitted recent sale information for eight properties.

The Intervenor adopted the board of review's evidence.

In written rebuttal, the appellant submitted a copy of the subject's 2015 Property Tax Appeal Board ("PTAB") decision, docket 15-36099.001-R-3, wherein the subject's assessment was reduced to \$410,000. The appellant asserted that the assessment of the subject property as established by the Property Tax Appeal Board for the 2015 tax year should be carried forward ("rolled over") to the 2017 tax year pursuant to section 16-185 of the Property Tax Code. (35 ILCS 200/16-185).

Prior to the hearing, the appellant emailed the ALJ several hearing exhibits. The ALJ forwarded the email to the board of review and Intervenor.

Less than one hour prior to the scheduled hearing of this matter, the board of review emailed the ALJ, with a copy to the appellant and Intervenor, a written motion to dismiss the appellant's "rollover" request. The motion stated, among other points, that the appellant did not submit evidence that the subject was owner-occupied and that the appellant does not have a homeowner's exemption. The board of review stated it was defaulted for failure to submit evidence in the prior year 2015 PTAB appeal, docket 15-36099.001-R-3, and therefore it is harmed by the application of the rollover statute in the subsequent years that are within the same triennial reassessment period. The board of review argued that its inability to present evidence in the second or third year of a "rollover" appeal is a violation of the 14th amendment of the U.S. Constitution and Article 1, Section 2 of the Illinois Constitution. The PTAB did not rule on the motion prior to the hearing due to the time constraint of less than one hour between receiving the motion and the start of the previously scheduled hearing of this matter.

Hearing

A virtual hearing was held on this matter. None of the parties objected to the hearing being held virtually.

As a preliminary matter, the appellant's attorney stated that the appellant's prior attorney died, and she subsequently substituted as the appellant's attorney of record in this matter.

At hearing, the appellant, Brien O'Brien was called to testify. On direct examination, he stated he has lived in the subject property since 2007 and that the subject has been his primary residence every year since 2007. He stated his place of business is in Chicago and that the tax bill for the subject property is mailed to his place of business. He testified he pays the subject property's tax bill and that the address of the subject property is the same as the address listed on his driver's license. A copy of the appellant's driver's license was admitted into evidence as

Appellant's Hearing Exhibit #1, over the objection of the board of review and Intervenor. The PTAB notes the appellant's driver's license is permissible as rebuttal evidence offered during live testimony, since the board of review and Intervenor raised the issue of whether the subject was owner-occupied.

Mr. O'Brien stated he had pictures taken inside the subject residence during his daughter's engagement party on April 16, 2016. The pictures were accepted into evidence as Appellant's Hearing Exhibit #2, as the pictures are permissible rebuttal evidence offered during live testimony in response to the board of review and Intervenor raising the issue of the subject's owner- occupancy.

On further direct examination, the appellant responded to questions regarding his application for a 2017 Certificate of Error which included an occupancy affidavit that stated the appellant lived in the subject house from 2008 to the present. The board of review and Intervenor objected to this submission. The ALJ accepted the 2017 Certificate of Error application into evidence as Appellant's Hearing Exhibit #3 as permissible rebuttal evidence offered during live testimony in response to the issue of the subject's owner-occupancy raised by the board of review and the Intervenor.

The appellant's attorney then presented a utility bill for 2016 addressed to the appellant at the subject address. The ALJ accepted the utility bill into evidence as Appellant's Hearing Exhibit #4 as permissible rebuttal evidence offered during live testimony in response to the issue of the subject's owner-occupancy raised by the board of review and the Intervenor.

Upon cross-examination by the board of review, Mr. O'Brien stated his tax bill was mailed to his business address or to his accountant. He stated he was represented for 20 years by his prior attorney and assumed that attorney submitted the homeowner's exemption application. In response to additional cross-examination, Mr. O'Brien stated he owns other real estate, mostly comprised of multi-family housing, and he does not own other real estate within 500 miles of the subject property. He stated that he sometimes spends a night or two in other properties, specifically one located in Massachusetts.

Upon cross-examination by the Intervenor, the appellant stated there was a flood in the subject property in January 2015 which caused the appellant to vacate the subject property for eleven months. Mr. O'Brien stated that during this time he rented a small apartment, but he went to the subject house daily as his household employees and his clothes were there.

The board of review argued that the 2015 PTAB decision may have been based on the premise that the subject was owner-occupied in 2015. The ALJ stated the appeal year in question is not 2015. The board of review stated that allowing a "rollover" of the subject's 2015 assessment for 2017 violates the board of review's and Intervenor's right to due process.

The Intervenor asserted the appellant had ex parte communication with the Administrative Law Judge by submitting additional evidence to the ALJ via email and argued the emailed evidence should not be considered.

In the case in chief for the board of review, its witness, who is an analyst at the board of review, stated the board previously submitted seven comparable properties that are assessed higher than the subject on a price per square foot of living area, and thus support the subject's assessment. Additionally, the witness stated the board of review previously submitted information regarding eight sales of comparable properties that support the subject's market value.

Upon questioning by the appellant's attorney, the board's witness stated the board of review's comparable properties were not adjusted and he had no knowledge of whether the comparable properties received assessment reductions after the board of review's submission of evidence. The appellant's attorney stated some of the board's comparable properties received assessment reductions that are not listed in the board of review's evidence. The ALJ allowed the appellant's attorney one week to submit evidence of the subsequent assessment reductions. The evidence was timely received via an email to the ALJ, board of review, and Intervenor.

Conclusion of Law

The appellant raised a contention of law asserting that the assessment of the subject property as established by the Property Tax Appeal Board for the 2015 tax year should be carried forward to the 2017 tax year pursuant to section 16-185 of the Property Tax Code. (35 ILCS 200/16-185). When a contention of law is raised the burden of proof is a preponderance of the evidence. The PTAB finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The Intervenor asserted the appellant had ex parte communication with the Administrative Law Judge by submitting additional evidence to the ALJ via email and argued the emailed evidence should not be considered. The PTAB is not persuaded by this argument. The PTAB finds that due to the Covid-19 pandemic, it swiftly instituted new policies regarding virtual hearings and the submission of exhibits. The PTAB finds the appellant's attorney's email was likely an attempt to submit hearing exhibits. The ALJ forwarded the email in question to the board of review and Intervenor prior to the hearing. The attachments to the email were offered during live testimony in response to the issue of the subject's owner-occupancy raised by the board of review and the Intervenor.

The PTAB is not persuaded by the board of review's and Intervenor's argument that the appellant did not submit evidence of owner-occupancy. The record indicates the appellant's initial submission of evidence included an appraisal that clearly stated the subject is an owner-occupied dwelling. The PTAB finds there is no language in 35 ILCS 200/16-185 that requires a taxpayer to have a homeowner's exemption prior to the application of this statute.

As to the board of review's and Intervenor's argument that they were deprived of their right to due process, the PTAB finds the board of review and Intervenor were afforded the opportunity to submit evidence in the subject's 2015 PTAB appeal, docket 15-36099.001-R-3, but chose not to submit evidence. The PTAB notes the tax year at issue is 2017 and the board of review and Intervenor were afforded due process as they had an opportunity to address in pleadings and at hearing the substantive issue of whether 35 ILCS 200/16-185 should apply in the case at hand. Additionally, the PTAB finds the board of review's and Intervenor's objections to the appellant's submission of additional evidence, in response to the board of review's and Intervenor's

contention that the subject was not owner-occupied, were made moot by the live testimony of the appellant in response to the owner-occupancy issue raised by the board of review and the Intervenor.

Section 16-185 of the Property Tax Code (35 ILCS 200/16-185) states in part:

If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel on which a residence occupied by the owner is situated, such reduced assessment, subject to equalization, shall remain in effect for the remainder of the general assessment period as provided in Sections 9-215 through 9-225, unless that parcel is subsequently sold in an arm's length transaction establishing a fair cash value for the parcel that is different from the fair cash value on which the Board's assessment is based, or unless the decision of the Property Tax Appeal Board is reversed or modified upon review.

The record disclosed the Property Tax Appeal Board issued a decision reducing the subject's assessment for the 2015 tax year. The record further indicates that the subject property is an owner-occupied dwelling and that 2015 and 2017 are within the same general assessment period. The record contains no evidence indicating the subject property sold after the PTAB's decision or that the decision of the PTAB has been reversed or modified upon review. The PTAB notes that 35 ILCS 200/16-185 states the PTAB's decision lowering the assessment "...**shall** remain in effect for the remainder of the general assessment period..." (emphasis added). The statute's use of the word "shall" indicates to the PTAB that the subject's 2015 assessment reduction shall remain in effect for the 2017 year. For these reasons, the Property Tax Appeal Board finds that a reduction in the subject's assessment is warranted to reflect the assessment as established in the PTAB's 2015 decision plus the application of an equalization factor, if any.

This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code. Pursuant to Section 1910.50(d) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.50(d)) the proceeding before the Property Tax Appeal Board is terminated when the decision is rendered. The Property Tax Appeal Board does not require any motion or request for reconsideration.



Chairman



Member



Member



Member



Member

DISSENTING: _____

CERTIFICATION

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: September 21, 2021



Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

Section 16-185 of the Property Tax Code provides in part:

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the subsequent year or years of the same general assessment period, as provided in Sections 9-125 through 9-225, are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for such subsequent year or years directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR OR YEARS. A separate petition and evidence must be filed for each of the remaining years of the general assessment period.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.

PARTIES OF RECORD

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