FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Mark Pogalz
DOCKET NO.: 17-46079.001-I-1
PARCEL NO.: 02-15-110-004-0000

The parties of record before the Property Tax Appeal Board are Mark Pogalz, the appellant(s); and the Cook County Board of Review.

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:	$19,838
IMPR.:	$0
TOTAL:	$19,838

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 (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 5,459 square foot parcel of land improved with a 40-year-old, two-story, masonry, commercial building. The property is located in Palatine, Palatine Township, Cook County. The omitted property is classified as a 5-92 property under the Cook County Real Property Assessment Classification Ordinance.

Based upon a contention of law, the appellant asserts that the subject property was improperly assessed as omitted property for tax years 2016, 2017, and 2018. The appellant argues that in accordance with the limitations set forth in Section 9-270 of the Property Tax Code (Code) (35 ILCS 200/9-270), the subject was assessed as omitted property for these years incorrectly because the assessor has been aware of the improvement since at least 1998 when the appellant purchased the property. The appellant argues that the subject has been assessed and has received a tax bill every year since he has owned the property. He asserted that because the property was

identified with a property identification number (PIN), assessed, and taxed the county cannot recapture underassessed taxes.

In support of this argument, the appellant submitted: a photograph of the building from the county assessor's website that lists a date of 2007; aerial photographs and sketches from *Cook County CookViewer* dated May 22, 2020 that shows the subject building; a copy of the warranty deed filed in 1998; a copy of an assessment notice showing the property as a class 1-00 in 2017 and 2018 and a class 5-92 in 2019; a copy of afire report referring to a fire at the subject's improvement in December 2018; a copy of an insurance letter in regard to the fire; a 2019 vacancy/occupancy affidavit; a copy of a county assessor income and expense worksheet; copies of data and surveys for the northwest suburban real estate market; a copy of the settlement statement for the sale of the subject in 1998; a copy of a plat of survey showing the improvement; and a copy of an online calculator printout showing square foot calculations.

The appellant also argues that if the omitted assessment is proper, the subject property is inequitably assessed and overvalued. To support this argument, the appellant submitted data on four sale comparables. These properties are described as one or two story, brick or frame or brick and steel, industrial or commercial or mixed-use buildings ranging in size from 2,725 to 3,073 square feet of building area. The comparables have improvement assessments from $3.97 to $5.37 per square foot of building area and sold from February 2019 to April 2020 for prices ranging from $85,000 to $315,000 or $27.67 to $106.06 per square foot of building area.

The board of review submitted its "Board of Review-Notes on Appeal" which lists the subject as a class 1-00 property with a land assessment of $2,746. This is the subject's classification and assessment prior to the omitted assessment filing. The board of review did not submit any other documentation.

In his original filing, the appellant submitted a copy of the Cook County Board of Review Decision dated April 10, 2020, for the 2019 Omitted Assessment Back Tax Year of 2016. This decision lists the subject as a class 5-92 with an assessment of $51,818. The appellant indicated on the petition that the subject property had a land assessment of $19,838 and an improvement assessment of $31,980. The subject's total assessment reflects a market value of $207,272 or $70.24 per square foot of building area, including land, when applying the Cook County Real Property Assessment Classification Ordinance level of assessments for class 5-92 property of 25%. The subject property has an improvement assessment of $10.84 per square foot of building area.

In rebuttal, the appellant submitted a letter asserting that the board of review submitted incorrect classification and assessment data for the subject property and that the board of review failed to address any of the appellant's arguments or submit any evidence.

At hearing the appellant submitted into evidence a previous Property Tax Appeal Board decision issued in May 2018, Docket # 15-06693.001-R-2, addressing an omitted assessment. Mr. Pogalz opined that the facts of this case are similar to the subject in that the board of review had knowledge of the subject's improvement, but never acted on assessing this improvement until 2019 when the county issued omitted assessments for 2016, 2017, and 2018.

Mr. Pogalz testified that the assessor had knowledge of the improvement based on tax maps and plats. He testified that the improvement existed prior to his purchase of the property in 1998; he stated that building permits and occupancy permits were issued at least 20 years prior to his purchase. He argued that the city fire department had inspected the property, that there were utilities running to the property and that business licenses at the address were issued. Mr. Pogalz argued that the county assessor had access to county maps and sales documents of the subject that show the parcel is improved. He stated that the county assessor had a photograph of the subject improvement taken in 2007.

Mr. Pogalz cited Section 9-260 of the Code (35 ILCS 200/9-260) and argued that the facts of this case fall under this section of the law and prohibit the board of review from applying an omitted assessment to the subject. He testified that two transfer declaration sheets for the sale of the subject in 1983 and 1997 show that the subject property was not vacant land, but in fact improved with an industrial building.

The appellant asserted that the county assessor had active and/or constructive knowledge of the improvement that was ignored by the assessor for assessing purposes. Mr. Pogalz testified that he did receive a tax bill for the subject property prior to 2016 and that he paid all taxes in a timely manner.

As to the market value argument, the appellant testified that the comparables are located near the subject, similar in size, and are used for similar commercial or industrial uses. He testified that they are located within three miles of the subject and are within Palatine. Mr. Pogalz testified that the comparables are located on much larger lots and opined that they are superior to the subject in land size. He argued that comparable #3 has the most similar lot conditions as the subject. He acknowledged that this comparable is had a different level of assessment, but he included this comparable because of the similar land conditions as the subject. He opined that comparable #3 has a lower assessment because the lot is no longer buildable which is similar to the subject. He testified that if the subject improvement was destroyed for some reason, he could not rebuild on the lot.

When questioned by the Board as to what taxes Mr. Pogalz paid prior to 2016, he became evasive in his answers and testified that he did not know what taxes he was paying. He testified that he did not know if he was only paying taxes on the subject's land. He became an "unknowledgeable taxpayer" when describing how his taxes have been paid over the years and what the tax bill covered.

Mr. Pogalz testified that the subject had a fire in late 2018 which damaged the improvement. He testified that there was significant damage to one unit and smoke damage to the whole building. He testified he lost all but one tenant after the fire.

On cross-examination, the appellant acknowledged that comparables listed in grid form on his petition may show the distance is over three miles. He testified that the information on his grid should be reliable. He acknowledged that the comparables maybe within four miles of the subject. He testified that he had to look farther out to find comparable properties that have sold and are similar to the subject.

In its case-in-chief, the board of review rested on the evidence previously submitted. Under cross-examination, the board of review's representative testified that he could not answer what the definition of "subsequent improvements" as listed in Section 9-260 of the Code (35 ILCS 200/9-260) as he was an analyst for the board of review and not involved in the legislative process.

In closing arguments, the appellant argued that "subsequent" can be defined as an event that happens after another event. He argued that the county was given notice that the subject was improved back in 1979 when the building permit was issued and again in 1983, 1997, and 1998 when the transfer declaration forms were submitted to the assessor after each sale. He argued that there have been no subsequent improvements since he purchased the property in 1998 and therefore, an omitted assessment does not apply to the subject. He testified that he does have the building permit issued by the Village of Palatine from a FOIA request but did not receive this document until July 2020 because of Covid-19 shutdowns and that the evidentiary period was over at that time.

Following the hearing, the record was left open for the appellant to submit the transfer declaration forms and the property tax documents for the subject and for the board of review to submit the property characteristic card or printouts for the subject property prior to 2019. The Board requested that the appellant submit the building permit for the subject that he received in July 2020 and that a ruling on its admissibility would be made in the Board's decision; the board of review was requested to comment on the admissibility of this document. Mr. Pogalz submitted all requested documents. The board of review did not submit any requested documents nor address any of the documents submitted by the appellant.

The Board accepts all the appellant's documents into evidence which are marked as *Appellant's Group Exhibit #1*. The submission included a copy of a Cook County Real Estate Transfer Declaration filed stamped February 14, 1983, describing the property usage as industrial and a copy of a Cook County Real Estate Transfer Declaration filed stamped April 17, 1997, describing the subject property type as commercial. Neither transfer declaration described the property as vacant land. The appellant's exhibit also had various pages for Cook County Property Tax Information for years 2001, 2002, and 2017 stating the property had a classification of 1-00, vacant land, under the Cook County Real Property Assessment Classification Ordinance. A copy of the 2018 second installment property tax bill submitted with the exhibit also disclosed a property classification for the subject property of 1-00. Copies of the 2019 and 2020 second installment property tax bills included in the exhibit disclosed a property classification for the subject property of 5-92, which is a two or three-story building containing part or all retail and/or commercial space under the assessment classification ordinance.

Conclusion of Law

The appellant has disputed the assessment of the subject property in part based upon a contention of law. Section 10-15 of the Illinois Administrative Procedure Act (5- ILCS 100/10-15) provides:

> Standard of proof. Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence.

The rules of the Property Tax Appeal Board are silent with respect to the burden of proof associated with an argument founded on a contention of law. See 86 Ill.Admin.Code §1910.63.

From the record it appears that the subject property was assessed as vacant land prior to 2019 and that a fire at the building brought the lack of assessment on the improvement to the attention of the county assessing officials. The assessor or board of review then assessed the improvement moving forward and as omitted property for the 2016, 2017, and 2018 tax years. The issue before the Board is these omitted assessments on the improvement and the argument by the appellant that the assessor had notice of the improvement since 1979 and no charge for previous years taxes can be made provided by Section 9-270 of the Code (35 ILCS 200/9-270). Based on the facts elicited in this record and in Section 9-270, the Property Tax Appeal Board finds that the board of review did not have the authority to assess the subject improvements as omitted property for the assessment year at issue and therefore, a reduction in the subject's improvement assessment is warranted.

The appellant's argument is essentially that the board of review should be deemed prohibited from assessing the improvement on the subject property as "omitted property" under the Code due to the failures of the assessing officials. The appellant asserts that he should not be liable for the improvement assessment of the subject property because the assessor was made aware of the improvement starting in 1979 when a building permit was filed for the property and notice continued to be received every time the property was sold and a Real Estate Transfer Declaration form was submitted to the county. The appellant further argues that the county assessor took a photograph of the subject improvement in 2007 and placed this photograph on its website. The appellant argues that the county assessment officials had ample notice of the improvement and many opportunities to add it to the tax rolls.

The Property Tax Appeal Board finds the argument made by the appellant has merit. The statutory provision, Section 9-270, which the appellant has argued provides as follows in Section 9-270 of the Code (35 ILCS 200/9-270):

> Omitted property; limitations on assessment. A charge for tax and interest for previous years, as provided in Sections 9-265 or 14-40, shall not be made against any property for years prior to the date of ownership of the person owning the property at the time the liability for the omitted tax was first ascertained. Ownership as used in this section shall be held to refer to bona fide legal and equitable titles or interests acquired for value and without notice of the tax, as may appear by deed, deed of trust, mortgage, certificate of purchase or sale, or other form of contract. No charge for tax of previous years, as provided in Section 9-265, shall be made against any property if (1) the assessor failed to notify the board of review of an omitted assessment in accordance with subsection (a-1) of Section 9-260; (2) the property was last assessed as unimproved, the owner of the property gave notice of subsequent improvements and requested a reassessment as required by Section 9-180, and reassessment of

> the property was not made within the 16 month period immediately following the receipt of that notice; (3) the owner of the property gave notice as required by Section 9-265; (4) the assessor received a building permit for the property evidencing that new construction had occurred or was occurring on the property but failed to list the improvement on the tax rolls; (5) the assessor received a plat map, plat of survey, ALTA survey, mortgage survey, or other similar document containing the omitted property but failed to list the improvement on the tax rolls; (6) the assessor received a real estate transfer declaration indicating a sale from an exempt property owner to a non-exempt property owner but failed to list the property on the tax rolls; or (7) the property was the subject of an assessment appeal before the assessor or the board of review that had included the intended omitted property as part of the assessment appeal and provided evidence of its market value. The owner of property, if known, assessed under this and the preceding section shall be notified by the county assessor, board of review or Department, as the case may require.
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> (Source: P.A. 96-1553, eff. 3-10-11.) [Emphasis added.]

Pursuant to Section 9-270 of the Code, of the seven subparts there are several exceptions or limitations to the authority of a board of review to assess omitted property and many instances in which the board of review received notice, constructive or actual, of the improvement. The county assessment officials first received notice of the improvement in 1979 when the building permit was issued. At that time, the assessor failed to add the improvement to the rolls and the exception under subpart (4) applies. In addition, the appellant submitted copies of the plat of survey showing the improvement and a photograph of the subject obtained from the assessor's website which would apply to the subpart (5) exception. Finally, the evidence shows the assessor also received notice of the improvement at least two other times when Real Estate Transfer Declaration forms were submitted to the county at the time of sale. The exception under subpart (6) applies for each of these sales.

The board of review failed to submit, as requested by this Board, the property characteristic card which would show conclusive evidence for the county's knowledge of the improvement. The board of review did not submit any documentation to show that the county assessment officials were not aware of the improvement prior to the 2019 fire at the subject property nor did it challenge the validity of the appellant's documentation. Therefore, the Property Tax Appeal Board finds the appellant established that in accordance with Section 9-270 of the Code, the board of review was prohibited from assessing the subject improvement as omitted property for the assessment year at issue and finds that removal of the subject's improvement assessment is justified based upon subpart (4), (5), and (6) of Section 9-270 of the Property Tax Code as shown in this record. Thus, the Board finds removal of the subject's improvement assessment is warranted and a further review of the subject's assessment for inequity or overvaluation is unnecessary.

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:

C E R T I F I C A T I O N

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: March 15, 2022

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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