



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

APPELLANT: LCW Properties, Inc.
DOCKET NO.: 18-05913.001-R-3
PARCEL NO.: 05-26-209-021

The parties of record before the Property Tax Appeal Board are LCW Properties, Inc., the appellant, by attorney Richard M. Guerard, of Guerard, Kalina & Butkus, in Wheaton, and the DuPage 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 **DuPage** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	\$32,130
IMPR.:	\$0
TOTAL:	\$32,130

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a 2017 final administrative decision of the Property Tax Appeal Board pursuant to section 16-180 of the Property Tax Code (35 ILCS 200/16-180) in order to challenge the assessment for the 2018 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 is improved with a two-story frame single family dwelling of masonry exterior construction where construction began in 2010. The dwelling contains 4,647 square feet of living area and has a basement with 578 square feet of finished area, central air conditioning, three fireplaces and a four-car garage containing 917 square feet of building area. The property is located in Glen Ellyn, Milton Township, DuPage County.

The appellant through legal counsel set forth a contention of law, substantively asserting that the subject property should receive a preferential model home assessment. In support of the contention of law, the appellant submitted affidavits, correspondence and a copy of the subject's September 18, 2017 PTAX-762 Application for Model Home Assessment. The appellant also supplied a copy of the decision issued by the Property Tax Appeal Board in Docket No. 17-05809.001-R-3 reducing the subject's total assessment by agreement of the parties to \$32,130.

As part of the submission, the appellant included a copy of the 2017 tax year decision dated March 21, 2018 issued by the DuPage County Board of Review stating, in pertinent part, "the model home exemption has been denied; property is not being used as a model home for prospective buyers" and establishing a total assessment of \$338,900.

By affidavit dated September 18, 2017, the owner of the property avers that the subject property is under new construction which is unfinished with a cost to complete of approximately \$250,000. Furthermore, the affiant contends that the subject property is vacant and has never been occupied; no occupancy permit has been issued nor can it be issued due to its unfinished condition; and the subject property is not habitable, remains vacant and uninhabitable.

By affidavit executed on April 20, 2018, the agent of the appellant avers that the subject property is vacant, is not occupied as a dwelling and is used as a display for prospective buyers of similar homes to be built on four adjoining lots. Furthermore, in compliance with Section 10-25 of the Property Tax Code (35 ILCS 200/10-25), the affiant asserts that the assessed value of this property shall be the same as the assessed value of the property prior to construction of the dwelling if the structure is used as a display or demonstration model home.

Furthermore, the appellant submitted a copy of the decision issued by the Property Tax Appeal Board on this property for tax year 2019 in Docket No. 19-07160.001-R-2 where the parties stipulated to a total assessment for the subject property of \$258,900.

Based on the foregoing evidence and argument, the appellant requests a total assessment of \$32,130, identical to that issued in Docket No. 17-05809.001-R-3, and in accordance with Section 10-25 of the Property Tax Code.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$351,880 was disclosed consisting of both a land assessment and an improvement assessment.

In support of the subject's assessment, the board of review submitted a memorandum noting that the basis of this appeal is a contention of law along with an "analysis" acknowledging that the subject property for the previous year was granted a preferential assessment as it was a model home. Furthermore, the analysis noted that preferential assessments are not subject to future equalization. In addition, the memorandum reports that the subject property "received a temporary occupancy in 2021 closing out the 14-year-old permit." In light of photographic evidence, original and final permits, the memorandum asserts "since the property was not habitable, . . . it could not be considered owner occupied." Next the analysis recites portions of Section 16-185 concerning assessment decisions of the Property Tax Appeal Board related to "a residence occupied by the owner."

Supporting documentation provided by the board of review includes: (1) a copy of the permit issued May 11, 2007 depicting the intended construction of a single-family residence for a cost of \$588,915 including a note, "Sold to JR for \$575k due to damage and incompleteness"; (2) a copy of a permit issued on February 9, 2021 with a notation of "completion" of the 2007 permit; and (3) a copy of the DuPage County Building & Zoning Department, Certificate of Use and

Occupancy, for the subject property issued on February 16, 2021 with an expiration date of September 1, 2021.

In further support of the subject's assessment, the board of review submitted a grid analysis of three comparable properties along with a map depicting the locations of the subject and comparables. The properties are improved with two-story dwellings located within .66 of a mile from the subject property. The properties sold from June 2015 to November 2018 for prices ranging from \$852,500 to \$1,150,000, including land.

Based on the foregoing data and argument, the board of review requested confirmation of the subject's assessment.

Conclusion of Law

The appellant's argument is based on a contention of law regarding the interpretation and application of section 10-25 of the Property Tax Code (35 ILCS 200/10-25). The standard of proof on a contention of law is a preponderance of the evidence. (See 5 ILCS 100/10-15). Section 10-25 of the Property Tax Code provides in part that:

If the construction of a single family dwelling is completed after December 29, 1986 . . . and that dwelling, townhome, or condominium unit is not occupied as a dwelling but is used as a display or demonstration model home, townhome or condominium unit for prospective buyers of the dwelling or of similar homes, townhomes, or condominium units to be built on other property, the assessed value of the property on which the dwelling, townhome, or condominium was constructed shall be the same as the assessed value of the property prior to construction and prior to any change in the zoning classification of the property prior to construction of the dwelling, townhome or condominium unit. The application of this Section shall not be affected if the display or demonstration model home, townhome or condominium unit contains home furnishings, appliances, offices, and office equipment to further sales activities. This Section shall not be applicable if the dwelling, townhome, or condominium unit is occupied as a dwelling or the property on which the dwelling, townhome, or condominium unit is situated is sold or leased for use other than as a display or demonstration model home, townhome, or condominium unit. No property shall be eligible for calculation of its assessed value under this Section for more than a 10-year period. If the dwelling, townhome, or condominium unit becomes ineligible for the alternate valuation, the owner shall within 60 days file with the chief county assessment officer a certificate giving notice of such ineligibility.

In discussing statutory interpretation the court in Onwentsia Club v. Illinois Property Tax Appeal Board, 2011 IL App (2d) 100388, stated in part that:

In ascertaining the meaning of a statute, a court must first look to its plain language, as that is usually the best indication of the legislature's intent. (Citation omitted.) Our primary goal is . . . to give effect to the intent of the legislature.

(Citation omitted.) Where a statute is unambiguous, we must apply it as written.
(Citation omitted.) A statute must be read as a whole, giving effect to all its parts.

Onwentsia Club v. Illinois Property Tax Appeal Board, 2011 IL App (2d) 100388, ¶9. In the context of construing exemptions the court in Lake County Board of Review v. Illinois Property Tax Appeal Board, 2013 IL App (2d) 120429, stated that:

[I]t is axiomatic that we are to construe tax exemptions "narrowly and strictly in favor of taxation" (citation omitted) and the burden to prove a tax exemption lies with the taxpayer. (Citation omitted.)

Lake County Board of Review v. Illinois Property Tax Appeal Board, 2013 IL App (2d) 120429, ¶10.

With these precepts the Property Tax Appeal Board will consider this appeal. The Property Tax Appeal Board finds that the model home exemption is applicable to the subject property and therefore a reduction in the subject's assessment is warranted.

The appellant claimed through documentation that the subject property was entitled to receive the preferential model home exemption for assessment year 2018 as set forth in Section 10-25 of the Property Tax Code (35 ILCS 200/10-25). There is no factual dispute that the subject dwelling was completed after December 29, 1986 as required by the Code. There also is no assertion by the board of review that the dwelling was occupied prior to the February 16, 2021 issuance of the Certificate of Occupancy, which would negate the applicability of the exemption.

Based on the evidence, the Property Tax Appeal Board finds the record indicates that the appellant "used" the subject dwelling as a "display or demonstration model home" in accordance with Section 10-25 of the Property Tax Code as set forth above. Furthermore, as set forth in the Code provision, the subject was demonstrated "for prospective buyers of the dwelling" and meets the requirements of the Code. There is no evidence in the record that the use of the subject dwelling changed as of January 1, 2018. Therefore, the Property Tax Appeal Board finds the subject property is entitled to the model home exemption and consequently a change in the subject's assessed value is warranted.

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:

February 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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