FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: 117 Church Road Limited Partnership
DOCKET NO.: 18-20685.001-R-1
PARCEL NO.: 05-21-322-036-0000

The parties of record before the Property Tax Appeal Board are 117 Church Road Limited Partnership, the appellant(s), by attorney Martin J. Murphy, Attorney at Law in Chicago; the Cook County Board of Review; the New Trier H.S.D. #203 intervenor, by attorney Scott L. Ginsburg of Robbins Schwartz Nicholas Lifton Taylor in Chicago.

Based on the facts and exhibits presented in this matter, the Property Tax Appeal Board hereby finds ***No Change*** 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:	$21,214
IMPR.:	$97,950
TOTAL:	$119,164

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 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

Subject Property

The subject property was purchased by 117 Church Road Limited Partnership, the appellant herein, on July 7, 2015, for $550,000. The subject property is improved with a one-year-old, two-story building of frame and masonry construction containing 4,128 square feet of gross building area. Features of the subject include a full finished basement, central air conditioning, four fireplaces and a two-car garage. The property is situated on 12,479 square feet of land in the Village of Winnetka (Winnetka), New Trier Township, Cook County. It is a Class 2 property under the Cook County Real Property Assessment Classification Ordinance. At the time of the

purchase, a single-family residential improvement was on the parcel. It was demolished in 2016 to clear the land for construction of a new single-family residence, which began in 2017. Winnetka issued a Residential Certificate of Occupancy for the newly constructed residence to the appellant on June 10, 2019.

Pleadings and Documentary Evidence

The appellant raised a contention of law as the basis of the appeal. The standard of proof for a contention of law is preponderance of the evidence. "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." 5 ILCS 100/10-15.

The appellant submitted a two-page brief, arguing the subject was not completed and could not be legally occupied at any time in the 2018 lien year. It cited the Winnetka Village Code 1999, Section 15.36.010 (MC-1-2012, Amended 3/20/12; MC-3-2005, Amended, 06/21/2005), that provides a Certificate of Occupancy shall be obtained prior to any use or occupancy of a structure. The appellant argued the subject's improvement should not have an assessed valuation for 2018 since the Certificate of Occupancy was not issued until 2019. The appellant requested a total 2018 assessment of $21,214, which amount consists entirely of the land assessment.

In support of its contention of law, the appellant submitted the Certificate of Occupancy and two affidavits. On November 29, 2018, Martin Murphy attested: he was the general partner of the Partnership; he oversaw purchase and construction of the subject property; as of the date of the affidavit Winnetka had not issued a Certificate of Occupancy because restoration of a front driveway was not complete; and the subject property had not been advertised for sale and had not received purchase offers. On the same date, Eugene Fahey attested: he was the general contractor of the subject's construction; he was familiar with the subject's "current status;" Winnetka had not issued a Certificate of Occupancy; and the subject was not used or occupied.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $119,164. The subject property has an improvement assessment of $97,950, or $23.73 per square foot of living area. The subject's assessment reflects a market value of $1,191,640, or $288.67 per square foot of living area including land, when applying the 2018 level of assessment of 10.00% for Class 2 property under the Cook County Real Property Assessment Classification Ordinance.

In support of its contention of the correct assessment, the board of review stated in its Notes on Appeal, "Property appears to be fully constructed in 2018." It submitted: a print-out dated July 24, 2019, entitled Passport, that disclosed a new building construction permit was issued September 14, 2016, for a permit amount of $500,000; a black-and-white photograph from September 2018 of a residential building on the subject's site; and a three-page print-out from Zillow, dated July 24, 2019, disclosing an estimated market value of $1,891,633. This Zillow document also disclosed a price history dating from the July 2015 purchase by the appellant through May 2019. The last history entry disclosed a price change to $1,799,000 and a notation the listing was removed. The board of review also submitted information on four suggested

equity comparable properties and on two suggested sale comparable properties that sold in 2015 and 2016.

New Trier High School District Number 203, the intervenor, intervened as a taxing body with a revenue interest in the subject property. The intervenor averred in its two-page brief the Board's Rules do not include a consideration of vacancy as evidence of market value. The intervenor offered the observation that the Cook County Assessor may grant vacancy reductions, but that there is no basis in law for the Board to do so. The intervenor cited Rule 1910.65(c) in support. 86 Ill.Admin.Code §1910.65(c).

The intervenor also submitted a print-out of the subject's assessment appeal history. It disclosed: the total assessment from the board of review for 2017 was $21,214; an Assessor's proposed assessment of $203,420 for 2018; and an Assessor's final assessment of $119,164 for 2018. The intervenor highlighted these entries with an asterisk and arrow drawn on the document. The intervenor included this submission in its two-page brief, arguing the appellant received a large assessment reduction for 2018 from the Assessor to reflect a partial occupancy of the new residential construction and that there is no basis in fact or law for a further reduction for that lien year.

The appellant's rebuttal brief reiterated its argument the subject property could not have been legally occupied until Winnetka issued the Certificate of Occupancy on June 10, 2019. Therefore, the appellant argued, the Assessor erroneously applied an occupancy factor to the 2018 assessment.

Prior to hearing, the intervenor submitted a Motion to Exclude Witnesses not previously disclosed. The Administrative Law Judge took the matter under advisement until hearing.

Hearing

No witnesses were called at hearing. The parties agreed the issues presented were best addressed in oral argument.

The appellant reiterated its argument that occupancy was not legal until the Certificate was issued in 2019. The appellant requested zero improvement assessment for 2018.

The board of review rested its case-in-chief on its documentary evidence previously submitted. It argued for no change to the improvement assessment and observed that since there was a structure on the subject parcel, namely the new residence, it must have some value.

The intervenor argued vacancy was not an issue the Board may consider in determining market value, although the Assessor may consider it by applying a vacancy factor to reduce the assessment. However, when pressed on this position, the intervenor conceded the Board has jurisdiction to consider vacancy when determining whether to reduce the assessment. Instead, the intervenor argued the appellant already received a reduced assessment due to application of a vacancy factor by the Assessor for 2018. The intervenor referenced the attachment to its brief

that disclosed an assessment of $119,164 resulting from "the partial occupancy of your property."

The intervenor cited Sections 9-160 and 9-180 of the Property Tax Code (35 ILCS 200/9-160 and 9-180) at hearing and offered explanations of each statute. Section 160 explains how the Assessor must value new improvements. Section 180 explains the taxpayer (the appellant, herein) is "liable for increased taxes attributable to new buildings when the property is fit for occupancy, but entitled to a reduction when the property is uninhabitable." Section 180, *supra*. The intervenor reconciled these statute sections by citing the Appellate Court's decision in Brazas v. Property Tax Appeal Board, 339 Ill.App.3d 978 (2nd Dist. 2003). The intervenor highlighted the Appellant Court's observation that Section 180 allows the Assessor "'to fully assess the improvement when it is substantially completed or initially occupied or initially used.'" *Id.* at 983, *citing* Section 180, *supra.*

The appellant objected that the intervenor's submission of these statute sections and the Brazas case constituted new evidence. The Administrative Law Judge overruled the objection, citing the Board's Rule 1910.90(i) permitting official notice of matters within the Board's specialized knowledge and expertise.

The Administrative Law Judge asked the parties what evidence was there to suggest the subject property's market value. The appellant responded the improvement assessment should be zero because it could not have been legally occupied in 2018. As an alternative, the appellant referenced the Passport entry of the $500,000 permit amount and the July 2015 $550,000 purchase price as possible values of total market value. The intervenor argued the assessment should not be reduced from the $97,950 improvement assessment issued by the Assessor resulting from application of a partial occupancy factor.

The intervenor withdrew its Motion to Exclude Witnesses not previously disclosed since no witnesses were called to testify for the appellant. The Administrative Law Judge ordered copies of the statute sections and the Brazas case to be made part of the record, with instructions to the intervenor to send copies to all parties. The intervenor submitted them and forwarded copies to the appellant.

Conclusion of Law

The appellant raised a contention of law that the subject property is not accurately reflected in its assessed valuation. The standard of proof for a contention of law is preponderance of the evidence. "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." 5 ILCS 100/10-15. The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The appellant objected at hearing to the intervenor's submission of statutes and case law. The Board takes notice of the statutes and Brazas, as they are directly relevant to the appeal and pertain to the Board's mandate to adjudicate property assessments. Rule 1910.90(i) provides:

"[t]he Property Tax Appeal Board may take official notice of decisions it has rendered, matters within its specialized knowledge and expertise, and all matters of which the Circuit Courts of this State may take judicial notice." 86 Ill.Admin.Code §1910.90(i). Consequently, the appellant's objection was overruled and the statutes and case were properly entered into evidence.

The newly constructed residence was a new or added building as contemplated by Section 160. The documentary evidence disclosed this new building had not been added to the valuation of the subject property prior to the 2018 lien year. Section 180 provides the owner of the new building "shall be liable, on a proportionate basis, for increases in taxes occasioned by the new construction from the date when the occupancy permit was issued or from the date the new or added improvement was inhabitable and fit for occupancy or for intended customary use…" and that the Assessor is allowed to fully assess the improvement when it is "substantially completed…" Section 180, *supra*.

The Winnetka Village Code 1999 requires a Certificate of Occupancy prior to use or occupancy of the newly constructed residence on the subject parcel. Section 15.36.010 provides:

> A. Permit work or construction activity. A certificate of occupancy, indicating completion of the permit work or other construction activity, shall be obtained from the Village, as provided in this section, prior to any use or occupancy of a structure.
> B. Accessory dwelling unit. Except as provided in Section 17.72.020 of this code, a certificate of occupancy shall be obtained from the Village prior to the occupancy of any accessory dwelling unit. No certificate of occupancy or use shall be required for any accessory dwelling unit that is lawfully registered under Section 17.72.030 of this Chapter as of March 20, 2012.
> (MC-1-2012, Amended, 3/20/2012; MC-3-2005, Amended, 06/21/2005).

The threshold issue before the Board is whether the owner shall be liable for increased taxes attributed to the newly constructed residence. If that is so, the next issue is how much shall the new improvement increase taxes.

Various relevant facts are not in dispute. The subject property contained a newly constructed residential improvement in 2018. The property was purchased in July 2015 for $550,000, demolished and improved with a new single-family residence. The appellant did not receive the Certificate of Occupancy until June 19, 2019. The Passport document disclosed the new residence building permit was issued September 14, 2016, for $500,000. The board of review final total assessment for 2017 was $21,214. The Assessor applied a "partial occupancy" factor to the 2018 total assessment to reduce it $119,164; the 2018 land assessment was $21,214; the remainder for the 2018 improvement assessment was $97,950. The residence was not complete as of November 29, 2018, only due to failure to restore the front driveway, but the residence was otherwise completed. At hearing, the appellant confirmed the driveway was not restored for all of 2018. The sale offer was reduced many times throughout 2018 until the listing was removed in 2019.

The Appellant Court reconciled Sections 160 and 180 in Brazas. That case is dispositive of the threshold issue of whether the owner is liable for 2018 taxes for the improvement. Section 160 allows the assessor to value any partially completed improvement to the extent it adds value, regardless of whether it is substantially complete. Section 180 determines when the Assessor may fully assess the improvement. Brazas, *supra* at 983. The Winnetka Village Code is read in context of Sections 160 and 180. It does not address when or whether the Assessor may assess an improvement that is substantially complete. The evidence clearly established the improvement was substantially completed at some time in 2018 since the only feature preventing issuance of the Certificate of Occupancy was completion of the driveway. This comports with the position of the board of review at hearing—that the subject property contained an improvement for which there must have been some value.

Next, the Board must determine to what extent the newly constructed residence increased taxes. At hearing, the parties were invited to address the question of the value of the residence, if any, in 2018. The appellant initially reiterated its position that the improvement assessment should be zero since it could not be legally occupied. The appellant then suggested the permit amount of $500,000 disclosed on the Passport document was relevant. The intervenor stood on its initial position that the subject property already received a partial occupancy factor for 2018 from the Assessor. That net improvement amount was $97,950.

All parties argued in pleadings or at hearing that the powers of the Assessor to apply a partial occupancy factor to reduce an assessment are relevant to the Board's consideration of the case. The Board considers an assessment appeal without reference to any assumptions and conclusions made by another agency. "Under the principles of a de novo proceeding, the Property Tax Appeal Board shall not presume the action of the board of review or the assessment of any local assessing officer to be correct. However, any contesting party shall have the burden of going forward." 86 Ill.Admin.Code §1910.63(a). "Under the scheme created by the PTAB statute, an appeal to the PTAB does not afford taxpayers the right to request that a higher authority rule upon the correctness of a lower authority's findings. Rather, it affords taxpayers and taxing bodies a 'second bite at the apple,' *i.e.*, an opportunity to have assessments recomputed by a reviewing authority whose power is not circumscribed by any previous assessment." LaSalle Partners v. Illinois Property Tax Appeal Board, 269 Ill.App.3d 621, 629 (2nd Dist. 1995).

The Board does not presume the Assessor was correct. But in its *de novo* analysis of the value of the substantially completed improvement in 2018, the Board may look to any available relevant evidence. The print-out of the subject's assessment appeal history contains information of the 2018 assessment. The Assessor reduced its initial proposed total assessment of $203,420 to $119,164 after applying a partial occupancy factor. The land assessment was $21,214, leaving an adjusted improvement assessment of $97,950. The Board finds this to be the best relevant and available evidence of the value of the newly constructed, substantially completed residence in 2018. Based on this evidence, the Board finds a reduction in the subject's assessment is not justified.

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: May 16, 2023

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.

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