FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Verandah Retirement Community
DOCKET NO.: 20-36752.001-R-2 through 20-36752.008-R-2
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Verandah Retirement Community, the appellant(s), by attorney Anthony M. Farace, of Amari & Locallo in Chicago; the Cook County Board of Review; the Schaumburg C.C.S.D. # 54 intervenor, by attorney Michael J. Hernandez 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:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
20-36752.001-R-2	07-30-423-007-0000	1	0	$ 1
20-36752.002-R-2	07-30-423-008-0000	1	0	$ 1
20-36752.003-R-2	07-30-423-010-0000	1	0	$ 1
20-36752.004-R-2	07-30-423-011-0000	1	0	$ 1
20-36752.005-R-2	07-30-423-030-0000	77,869	0	$ 77,869
20-36752.006-R-2	07-30-423-031-0000	54,013	0	$ 54,013
20-36752.007-R-2	07-30-423-032-0000	23,036	0	$ 23,036
20-36752.008-R-2	07-30-423-033-0000	7,236	0	$ 7,236

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) after receiving a decision from the Cook County Board of Review. The instant appeal challenges the assessment for tax year 2020. The Property Tax Appeal Board (the "Board") finds that it has jurisdiction over the parties of this appeal.

The appellant requests that the subject's assessment be reduced pursuant to section 10-35 of the Property Tax Code (35 ILCS 200/10-35). Subsection (d) of that section states, "No objection shall be made to the denial of an assessment of $1 under this Section in any court except under Sections 21-175 and 23-5." Id. These two sections state that a tax assessment may be challenged in the circuit court. They do not mention the Board.

At the hearing on the merits, the intervenor argued that the Board lacks subject matter jurisdiction to hear the appeal based on subsection (d), and the appellant disagreed. The Board ordered the parties to file post-hearing legal briefs on the issue. The parties agreed to have the jurisdictional question decided on the briefs submitted and the cursory arguments made at the hearing on the merits.

"Subject matter jurisdiction cannot be waived, stipulated to, or consented to by the parties." Univ. of Ill. Hosp. v. Ill. Workers' Compensation Comm'n, 2012 IL App (1st) 113130WC, ¶ 8. Thus, the Board has an obligation to determine whether it has subject matter jurisdiction over this appeal prior to addressing the merits.

In Lake Point Tower Garage Ass'n v. Property Tax Appeal Board, 346 Ill. App. 3d 389 (1st Dist. 2004), the property owner filed an appeal with the Board alleged that its parking lot was overassessed based on section 10-35 of the Property Tax Code (the same statute relied upon by the appellant in the instant appeal), and the Board issued a decision on the merits. Id. at 391-92. The parties did not raise the issue of subject matter jurisdiction before the appellate court, and the appellate court did not address it *sua sponte*. Id. The appellate court then affirmed the Board's decision on the merits. Id. at 397. Courts, including the appellate court in the Lake Point Tower case, have a duty to *sua sponte* consider whether they have subject matter jurisdiction over an action even if the parties do not raise the issue. Univ. of Ill. Hosp. at ¶ 8. If the Board lacked subject matter jurisdiction to issue its decision on the merits in Lake Point Tower, then the appellate court likewise would lack subject matter jurisdiction over that action. Friendship Manor, Inc. v. Wilson, 2017 IL App (3d) 160391, ¶ 11. However, despite having a duty to *sua sponte* raise the issue of subject matter jurisdiction if it was lacking, the appellate court did not do so in Lake Point Tower; and, instead, the appellate court issued a decision on the merits. Lake Point Tower, 346 Ill. App. 3d at 397. As such, it can be inferred that the Lake Point Tower court had jurisdiction over the property owner's section 10-35 argument. Thus, the Board finds that it has subject matter jurisdiction over such matters, including the appellant's argument in this appeal.

Findings of Fact

The subject consists of one parcel with a minor improvement and seven parcels of vacant land that are all part of the appellant's senior living development. Based on aerial photographs and surveys of the subject submitted by the appellant, the parcel with the minor improvement, which has the PIN ending in -007, contains a street that goes through the development. The parcel with the PIN ending in -030 likewise contains a street going through the development. The parcels with PINs ending in -008, -011, -031, and -033 all contain a combination of vacant land and parking that is adjacent to the residential units. The parcels with the PINs ending in -010 and -032 are both completely vacant land. The property's site is 161,905 square feet, and it is located in Schaumburg Township, Cook County. The parcel with the minor improvement is classified as a class 2-90 property, while the remaining seven properties are classified as class 1-00 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant raises a contention of law as the basis of the appeal. The appellant relies on section 10-35 in requesting that the subject's assessment be reduced. That section requires that certain common areas that are part of a development be assessed at $1 per parcel. In support of

this argument, the appellant submitted the "Declaration of Easement, Covenants, and Restrictions of Verandah Townhomes," (the "Declaration"), the "Master Declaration of Easement, Covenants, and Restrictions of Verandah Townhomes," (the "Master Declaration"), (collectively, the "Declarations"), the "Verandah Townhome Owners' Association Declarations and By-Laws," and the "Verandah Master Owners' Association Declaration and By-Laws."

The Declaration states that Outlots 1 and 3 are community property, and that Outlots 2, 4, and 5 are townhome common property. The Master Declaration reiterates that Outlot 1 is community property. In identifying the outlots, the Declarations reference the "Unit 1 Final Plat," which the appellant submitted. The Unit 1 Final Plat shows the western side of the appellant's development, and that the outlots designated in the Declarations correspond to the PINs as follows: Outlot 1 has the subject PIN ending in -007; Outlot 2 has the subject PIN ending in -008; Outlot 3 has the PIN ending in 07-30-423-034, which is not part of the instant appeal; Outlot 4 has the subject PIN ending in -010; and Outlot 5 has the subject PIN ending in -011. The appellant also submitted a "Unit 2 Final Plat" depicting the eastern side of the appellant's development, including the subject units with the PINs ending in -030, -031, -032, and -032. The Declarations and other documents submitted by the appellant do not reference the Unit 2 Final Plat.

The appellant also submitted several black and white photographs of the subject parcels, depicting a street and open space outside of various residential improvements. Based on this evidence, the appellant requested a reduction in the subject's assessment to $8.

The board of review submitted its "Board of Review Notes on Appeal" disclosing that the total assessment for the subject is $188,582.

In support of its contention of the correct assessment, the board of review submitted information on six sale comparables of vacant land from the CoStar comps service. These sale comparables sold from March 2018 to October 2020 for $420,000 to $5,925,000, or $2.43 to $14.64 per square foot of land.

In support of its contention of the correct assessment, the intervenor submitted information on three sale comparables of vacant land from the CoStar comps service. These sale comparables sold from February 2017 to October 2017 for $2,372,500 to $6,675,000, or $20.69 to $46.07 per square foot of land.

At hearing, the appellant reaffirmed the evidence previously submitted. The parties also briefly argued their positions regarding the aforementioned jurisdictional issue.

Conclusion of Law

The appellant makes a contention of law as the basis for the appeal. When a contention of law is the basis of the appeal, the argument must be proven by a preponderance of the evidence. 5 ILCS 100/10-15. The Board finds the appellant did meet this burden of proof, and that a reduction in the subject's assessment is warranted.

Section 10-35 states, in relevant part:

> Residential property which is part of a development, but which is individually owned and ownership of which includes the right, by easement, covenant, deed or other interest in property, to the use of any common area for recreational or similar residential purposes shall be assessed at a value which includes the proportional share of the value of that common area or areas.
>
> Property is used as a "common area or areas" under this Section if it is a lot, parcel, or area, the beneficial use and enjoyment of which is reserved in whole as an appurtenance to the separately owned lots, parcels, or areas within the planned development.
>
> The common area or areas which are used for recreational or similar residential purposes and which are assessed to a separate owner and are located on separately identified parcels, shall be listed for assessment purposes at $1 per year.

35 ILCS 200/10-35(a).

The Board finds that the subject PINs ending in -007, -008, -010, and -011 are common areas used for recreation or residential purposes. These PINs include either open space or paved areas for light vehicular traffic or parking for the ingress or egress to the residential improvements within the appellant's development. Both of these uses constitute either recreational or residential purposes. Additionally, the Declarations state unequivocally that these PINs (as designated by their corresponding outlots), are common areas as defined in section 10-35. Therefore, the Board finds that the appellant has proven, by a preponderance of the evidence, that the subject PINs ending in -007, -008, -010, and -011 are entitled to the preferential assessment provided for in section 10-35 of the Property Tax Code, and that a reduction in these PINs' assessments is warranted.

While the subject PINs ending in -030, -031, -032, and -033 are also used for either recreational or residential purposes, there is no evidence in the record to show that these PINs are common areas. The Declarations and other documentary evidence submitted by the appellant do not state who is entitled to use these parcels. As such, the Board finds that the appellant has not proven, by a preponderance of the evidence, that the subject PINs ending in -030, -031, -032, and -033 are entitled to the special assessment provided for in section 10-35 of the Property Tax Code, and that a reduction in these PINs' assessments is not 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:

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: December 17, 2024

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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