FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Jill & Peter Theis
DOCKET NO.: 04-01279.001-R-1, 04-01280.001-R-1, 04-01281.001-R-1, 04-01282.001-R-1, 04-01283.001-R-2, 05-01516.001-R-1, 05-01517.001-R-2, 05-01518.001-R-1, 05-01519.001-R-1 and 05-01520.001-R-1
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Jill and Peter Theis, the appellants; the McHenry County Board of Review by Assistant State's Attorney Donald B. Leist; and the McHenry Elementary School District No. 15 and McHenry Community High School District No. 156, intervenors, by attorney Scott E. Nemanich of Hinshaw and Culbertson in Joliet, Illinois.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds the correct assessed valuations are:

Docket No.	Parcel No.	Land	Improv.	Total	
04-01279.001-R-1	10-17-476-014	15,316	0	$15,316	Reduction
04-01280.001-R-1	10-17-476-012	14,251	0	$14,251	No change
04-01281.001-R-1	10-17-476-013	14,251	0	$14,251	No change
04-01282.001-R-1	10-17-476-015	26,288	0	$26,288	Reduction
04-01283.001-R-2	10-17-476-001	193,704	68,489	$262,193	Increase
05-01516.001-R-1	10-17-476-013	15,229	0	$15,229	No change
05-01517.001-R-2	10-17-476-001	206,992	73,188	$280,180	Increase
05-01518.001-R-1	10-17-476-014	16,373	0	$16,373	Reduction
05-01519.001-R-1	10-17-476-012	15,229	0	$15,229	No change
05-01520.001-R-1	10-17-476-015	28,091	0	$28,091	Reduction

Subject only to the State multiplier as applicable.

ANALYSIS

Pursuant to Property Tax Appeal Board rule 1910.78 (86 Ill. Adm. Code 1910.78), Docket Nos. 04-01279.001-R-1, 04-01280.001-R-1, 04-01281.001-R-1, 04-01282.001-R-1, 04-01283.001-R-2, 05-01516.001-R-1, 05-01517.001-R-2, 05-01518.001-R-1, 05-01519.001-R-1 and 05-01520.001-R-1 were consolidated for purposes of oral hearing.

The subject property consists of five parcels located on Pistakee Lake, McHenry Township, in McHenry County. The appellants, Jill and Peter Theis, appeared before the Property Tax Appeal Board claiming unequal treatment in the assessment process and various contentions of law as the bases of the appeals. In support of these claims, the appellants submitted a legal brief, plat surveys, a grid analysis, photographs and various correspondence regarding the subject parcels. Each parcel will be addressed separately in this decision.

Parcel 10-17-476-015

Parcel number 10-17-476-015 (hereinafter "parcel 015") is approximately 0.06 acres± of vacant land encumbered with water. The appellants argued that parcel 015 is, in its entirety, part of Pistakee Lake, a public body of water, and therefore, not subject to property taxes. It was further argued, in the alternative, that this parcel contains no dry land, is open water and unimproved, and therefore, should receive a reduced assessment.

The first witness called by the appellants was Jefferson Brazas, a land surveyor for a civil engineering and land surveying company. He typically does engineering work, septic design, and surveys, including topographic surveys, around waterways in Lake and McHenry Counties. Brazas surveyed the subject property and surrounding area. It was his conclusion that based on the legal metes and bounds description of parcel 015, it was entirely under water and did not contain a building. The appellants argued that parcel 015 is a federal body of water that is not subject to taxation or in the alternative should be taxed at a nominal rate of $1.00 consistent with other parcels similarly situated in McHenry County. In further support of their claims, the appellants introduced a Plat of Survey and a photograph of parcel 015. The photograph depicts a body of water surrounded on three sides by land area. The Plat of Survey supported the photograph. The appellants argued that the assessor incorrectly listed the

existence of a building on parcel 015, when it is actually on adjoining parcel 10-17-476-001.

During cross-examination, it was revealed that a soil boring test was allegedly completed on parcel 015 in December 2004. Brazas testified that soil boring tests are not typically done on property under water. Intervenors, through counsel, argued that this evidence indicated that parcel 015 contained at least some dry land, and was not completely under water.

In response, appellant, Jill Theis, testified that at the time the soil boring tests were requested, the person performing the tests did not have a plat survey and therefore incorrectly identified the area being tested as parcel 015 when actually the tests were performed on an adjoining parcel.

The appellants also submitted a grid analysis of three comparable vacant properties. The comparables were described as vacant wetland. They ranged in size from 22,651 to 607,662 square feet. Two of the comparables were described as having land assessments of $383 and $10,973, respectively. No other testimony or evidence was offered at hearing regarding these comparables. Based on this evidence, the appellants requested a reduction in the assessment for parcel 015.

The board of review submitted its "Board of Review Notes on Appeal" for parcel 015 wherein its final assessment was disclosed. In 2004, parcel 015 had a land assessment of $26,288 and an improvement assessment of $11,323 for a total assessment of $37,611.[1] In 2005, parcel 015 had a land assessment of $28,091 and an improvement assessment of $12,100 for a total assessment of $40,191. To demonstrate the subject parcel is being equitably assessed, the board of review submitted evidence regarding similar properties, a survey plat map, and a letter from the McHenry Township Assessor.

The board of review, through counsel, called board of review member, Mary Mahady as a witness. It was her understanding that parcel 015 contained a garage.

During cross-examination, Ms. Mahady testified that for the 2004 assessment year all waterfront parcels in McHenry Township were reassessed.

[1] The board of review notes on appeal in Docket No. 04-01282.001-R-1 incorrectly depicts a land assessment of $37,311 and an improvement assessment of $0.

The next witness called by the board of review was Carol Perschke, the McHenry Township Assessor, who has held this title since May 1995. She has a Certified Illinois Assessing Official ("CIAO/I") intermediate designation. Perschke testified that she revalued the subject parcel (parcel 015) in 2004 because it was an open waterway parcel. The subject parcel was valued uniformly with other open waterway parcels using the water front-foot method. She was not allowed by an occupant of the appellants' home to walk parcel 015 to measure the amount of frontage along Lake Pistakee. However, from her view in the driveway, parcel 015 appeared to be improved with a garage. For 2004 the land was valued at $26,288 and the garage improvement was valued at $11,323 utilizing the cost approach. She opined that the garage was located on parcel 015 based on maps supplied by the county. If the garage had been located on an adjoining parcel, its assessment would have been added to that parcel and it would not have been assessed as an improvement to parcel 015. She testified that parcel 015 had a negative 5% influence factor because of the shallow depth versus nearby parcels.

During cross-examination, Perschke testified that she viewed parcel 015 several times during the summer and spring of 2004 and the fall of 2005. During each visit, she believed parcel 015 contained a land mass. In February 2005 her office attempted to visit the property, but was asked to leave before they could update the statistics regarding parcel 015. Based on market derived data, which was not submitted into evidence, she stated that land in this area had a value of $1,600 per front foot. Based on her calculations, parcel 015 had 50 feet of water frontage with an influence of 0.95 based on the shallow depth measuring from the waterline to the rear property line. To the best of her knowledge the characteristics for parcel 015 did not change from 1995. Perschke stated that past records indicate that the garage may have been assessed as part of an adjoining parcel. She added the garage improvement to parcel 015 in 2004 based on her observations.

The next witness called by the board of review was Donna Mayberry, the McHenry County Supervisor of Assessments. Her office staff does the mapping and assignment of parcel numbers. In order to make sure the maps are correct, her office tracks every legal description. She testified that waterfront property presents a problem because it may accumulate soil allowing the property to get bigger or be washed away and get smaller. Mayberry's office overlays the map line drawings with the aerial views. Ms. Mayberry believed the aerial maps, taken in March of 2005, to be true and correct. She also believed parcel 015 contained an improvement.

During rebuttal, Brazas testified that the description shown on the Plat Map did not agree with the legal metes and bounds description.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds that a reduction in the subject's improvement assessment for parcel 015 for the 2004 and 2005 assessment years is warranted. The appellants' argument, in part, was unequal treatment in the assessment process. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellants have met this burden with respect to parcel 015.

The Board finds credible testimony and evidence in the record that the garage, which was added to the assessment for parcel 015 in 2004 should be assessed as part of the adjoining parcel, also owned by the appellants. This is because the aerial photographs depict a majority of the garage is built on an adjoining parcel (parcel number 10-17-476-001). Further, it was the testimony of Carol Perschke during testimony regarding parcel 10-17-476-001 that after taking a closer look at the aerial maps, she was of the opinion that a majority of the garage appears to be located on the adjoining parcel. The garage was added to parcel 015 after a cursory view of the property in 2004 from the driveway. The appellants offered credible testimony that parcel 015 is not improved with a garage. For these reasons the Board finds that parcel 015 (parcel number 10-17-476-015) should receive a reduction in its 2004 and 2005 improvement assessment.

The appellants also argued that parcel 015 was not subject to taxation because it was part of a public waterway. The Property Tax Appeal Board gave this argument little weight. The Board finds the appellants failed to submit sufficient documentary evidence of title, exemption status or other legal authority to support this claim.

All property in Illinois is subject to taxation unless specifically exempted. Lake County Board of Review v. Property Tax Appeal Board, 91 Ill.App.3d 117, 414 N.E.2d 173, (2nd Dist. 1980 (citing Board of Education v. City of McHenry, 71 Ill.App.3d 904, 906, 28 Ill.Dec. 384, 386, 390 N.E.2d 551, 553 (2nd Dist,

1979)). The Property Tax Code defines real property as including:

> the land itself, whether laid out in town or city lots, or otherwise, with all things contained therein, but also all buildings, structures and improvements, and other permanent fixtures, of whatsoever kind, thereon, and all rights and privileges belonging or in anywise pertaining thereto, except where the same may be otherwise denominated by this Act . . . ."

(35 ILCS 200/1-130)

"Land" has been defined as meaning "not only the soil or earth but also things of a permanent nature affixed thereto or found thereon, (such) as water . . ." (Black's Law Dictionary 1019 (4th ed. 1968)), and it has been held to include lakes, streams and submerged property. Lake County at 120 (citing Slayton Gun Club v. Town of Shetek, Murray County (1970)). All real property in Illinois is assessed according to its "fair cash value", which has been held to mean "what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced so to do." Lake County at 121 (citing Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428, 430, 256 N.E.2d 334, 336 (1970). The appellants have failed to show the subject parcel (10-17-476-015) is specifically exempt from taxation.

Section 9-145(a) of the Property Tax Code provides that for the purposes of taxation, [e]ach lot or tract of property shall be valued at 33 1/3% of its fair cash value. (35 ILCS 200/9-145(a)).

Based on the aforementioned case law and statutes, the Board finds the dry ground located on the subject parcel and the land that is under water is assessable. Further, the Board finds the appellants failed to show the subject's land assessment is incorrect for this parcel.

With regard to the land under water, the appellants also argued that parcel 015 should be valued at a lesser rate of value than dry ground. The Board finds the appellants submitted no substantive evidence to support this assertion or any evidence that clearly shows that land under water decreases the subject's market value. In Lake County Board of Review v. Property Tax Appeal Board, 91 Ill.App.3d 117, 414 N.E.2d 173 (2nd Dist. 1980) property owners argued underwater property had no value for tax

assessment purposes due to a reverter clause in the deed. The Court held that the reverter clause made it unlikely that anyone would be interested in purchasing the property, at any price; however, it did not sustain a finding that such underwater property had no taxable value. The Court further held that "all property in Illinois is subject to taxation unless specifically exempted." The Board finds the appellants failed to provide substantive documentary evidence or other sufficient legal authority to show the subject parcel is specifically exempt from taxation.

To support that the subject parcel's value, Mary Mahady, a McHenry County Board of Review member, provided credible testimony that waterfront property such as the subject has value based on providing access to a public body of water, Pistakee Lake. She testified that this opinion was based on her 20+ years of real estate experience.

The Board finds the three comparables submitted by the appellants were not similar in size when compared to parcel 015. The comparables ranged in size from 22,651 to 607,662 square feet, while parcel 015 is only approximately 2,614± square feet of vacant land, encumbered with water. In addition, the appellants offered no evidence depicting the comparables were similarly situated on Lake Pistakee as parcel 015 or contained the same salient characteristics as parcel 015. Therefore, the Board gave this evidence little weight in its analysis. The township assessor testified that in 2004, parcel 015 was uniformly reassessed the same as all open waterway property throughout McHenry Township. She further testified that her studies indicated the subject's land had a $1,600 per front foot value with a negative 5% depth adjustment. The appellants offered no evidence to refute this methodology or amount. The assessor, who was denied access to the property to update her records, relied upon aerial photographs and maps to the best of her ability to calculate the subject's correct front footage at 50 feet. Based on the evidence and testimony in this record, the Board finds this is the best evidence of the subject's salient characteristics.

For the above reasons, the Board finds no reduction in the land assessment for parcel 015 (parcel no. 10-17-476-015) is warranted. However, as previously stated, there is a preponderance of the evidence that parcel 015 does not contain a garage and therefore a reduction in the improvement assessment for parcel 015 for the 2004 and 2005 assessment year is warranted.

The Board recognizes the appellants' lack of uniformity premise. However, the constitutional provision for uniformity of taxation and valuation does not require mathematical equality. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). Although the comparables presented by the parties disclosed that properties located in the same geographic area and assessment jurisdiction are not assessed at identical levels, all that the constitution requires is a practical uniformity, which appears to exist based on the evidence submitted. Therefore, the Board finds the appellants failed to demonstrate that the land assessment for parcel 015 was inequitable by clear and convincing evidence.

Parcel 10-17-476-001

Parcel number 10-17-476-001 (hereinafter "parcel 001") is a 1.55 acre parcel of waterfront property containing approximately 250 feet of shoreline frontage along Lake Pistakee. Parcel 001 is improved with a one-story frame dwelling built in 1910. Features include a crawl space foundation and a detached garage containing 708 square feet of building area. The appellants were not disputing the improvement's assessed value.

The appellants argued that parcel 001 was inequitably assessed pursuant to Section 10-153 of the Property Tax Code (35 ILCS 200/10-153). In addition, the appellants disputed the size of parcel 001 as depicted by the McHenry County Assessment officials.[2]

The appellants argued that pursuant to Section 10-153 of the Property Tax Code, parcel 001 should receive a preferential assessment. It was argued that Section 10-153 of the Code prevents building improvements right up to the shoreline and removing trees to avoid erosion. It was argued that the enabling statute (Public Act 91-0907, HB3093) makes it applicable to residential properties.

It was further argued that, because the tree canopy extends at least 50% on the property, Section 10-153 is applicable.[3] The appellants argued that parcel 001 is not a buildable parcel because a survey was conducted depicting it did not pass a septic test. The improvement on parcel 001 has a preexisting septic field on the property, but the rest of the parcel is unbuildable.

[2] Evidence and arguments for Parcel 015 submitted by all parties are incorporated as if fully set forth for Parcel 001.

[3] All parties were given 14 days to submit supplemental argument regarding the applicability of Section 10-153.

It was argued that the McHenry County Stormwater Management Ordinance does not allow the appellants to build a road, add improvements or install utility lines because parcel 001 is all wetland. The appellants further argued that the assessor's methodology used to assess parcel 001 was flawed.

In further support of the appellants' inequity claim for parcel 001 the appellants submitted five comparable properties. Three of the properties were located either adjacent to parcel 001 or along the road east of the island on which parcel 001 is situated. Two of the comparables are situated at the south end of the lake. The appellants explained that all of the comparables were wetland property similarly situated like the subject. The appellants testified that the comparables were subject to flooding and each had an improvement on or nearby each comparable. The comparables ranged in size from 0.52 acres to 16.64 acres with 2004 assessments ranging from $365 to $10,973 or from $23 to $787 per acre.[4] The subject is depicted as containing approximately 1.6 acres and as having a 2004 land assessment of $193,704 or $121,065 per acre.

During cross-examination, Mr. Theis, co-appellant, agreed that parcel 001 contains a residence and a garage (incorrectly listed as being on parcel 015) with the majority of parcel 001 being a wetland.

Regarding the appellants' claim that the size of parcel 001 was incorrectly documented by the assessor's office, the appellants recalled Jefferson Brazas as a witness who surveyed parcel 015 and parcel 001. Brazas was able to locate the corner stakes for parcel 001. The metes and bounds description accurately described parcel 001.

On cross-examination, Brazas stated that he surveyed parcel 001 in March 2006. He used the high water mark as indicated by the debris marks on the trees. His measurements depicted parcel 001 was smaller than what was shown on the assessor's maps. The assessor had the land at 2 acres and he determined the subject contained 1.558 acres. Brazas admitted that he was unable to find one of the pins for parcel 001 which was located in the water. Based on this evidence, the appellants requested a reduction in the assessment for parcel 001.

The board of review submitted its "Board of Review Notes on Appeal" for parcel 001 wherein its final assessment was disclosed. In 2004 this subject parcel had a land assessment of

[4] Comparable one is depicted as having a $0.0 assessment and as being gifted to the County.

$193,704 and a building assessment of $57,166 for a total assessment of $250,870. In 2005 this subject parcel had a land assessment of $206,992 and a building assessment of $61,088 for a total assessment of $268,080. To demonstrate the subject parcel is being equitably assessed the board of review submitted evidence regarding similar properties, a survey plat map, and a letter from the McHenry Township Assessor.

The board of review, through counsel, recalled Carol Perschke as a witness. Ms. Perschke explained that parcel 001 was uniformly assessed the same as all other waterfront parcels in McHenry Township. For parcel 001, she used the front-foot method. She explained that parcel 001 is unique because it is on a corner, therefore, she did not use the entire extreme easterly corner of the property and wrap around to the southerly corner, because that would have produced a false value. In order to be consistent with other corner parcels within the township, she went along the straight line of the main body of water. She calculated that parcel 001 had 250 feet of waterfront with an influence factor of 1.4 to compensate for its size and depth. She used the measurements shown on the county maps. Her assessment for parcel 001 did not include the garage on parcel 015 previously discussed.

Perschke stated that she examined the appellants' comparables and found that comparable one was assessed in the same waterfront manner as the subject, however, it is not as deep as the subject and has a 1.35 influence factor applied to it. It has a small garage on it, but no residence. The owner of this comparable provided information to her office depicting the land was unbuildable, and therefore it received a 75% reduction. Perschke further testified that parcel 001 would not qualify for the 75% reduction because it has a residence on it. The appellants' comparable two has 160 feet of waterfront and an influence factor of 1.75. It is not receiving any reductions because it has a house on it. Perschke testified that appellants' comparable two does not have the waterfront or size that parcel 001 has. Appellants' comparable two only has 160 feet of waterfront compared to the subject's 250 feet of waterfront. Comparable three, used by the appellants, was also owned by the appellants, and was receiving a 75% reduction because it was vacant and not suitable for building.

During cross-examination, Perschke explained that she misspoke regarding appellants' comparable two wherein she was looking at a different parcel number. Perschke then testified that appellants' comparable two is a vacant tract of land consisting of 13.95 acres. Perschke then acknowledged that appellants' comparable two was not revalued in 2004 because she concentrated

on residential and commercial waterfront properties, and not vacant land. Based on the records, Perschke testified that appellants' comparable two was assessed as wetland.

Perschke testified that there are many properties within McHenry Township similarly situated as parcel 001 in that the existence of any improvement is grandfathered into existing ordinances and regulations. If the improvement were completely destroyed, a new improvement could not be built because it is wetland. She has not applied a reduced assessment for this condition. However, Perschke testified that she does allow for a 50% reduction, if the unimproved land is an adjoining parcel to an already improved lot; and a 75% reduction if the single parcel is unbuildable. Perschke testified that she applied this methodology uniformly throughout McHenry Township. Looking at a satellite photo, with a majority of the garage structure being depicted on parcel 001 instead of 015, she testified that she would place the garage on parcel 001. The assessment for the garage would not change, just which parcel it was applied to.

Perschke then presented a sales ratio spreadsheet depicting 26 comparable sales of waterfront property. The comparables had water frontage ranging from 50 to 129.32 feet and sold from January 2005 through June 2005 for prices ranging from $160,000 to $613,300. All but two of the comparables were improved parcels. The spreadsheet depicts the comparables had 2004 land assessments ranging from $18,679 to $121,756 with total assessments ranging from $36,185 to $242,692 or a full market value ranging from $137,516 to $426,532. The spreadsheet further depicted sales ratios ranging from 0.1700 to 0.5695. The subject is depicted as having 250 feet of water frontage, a land assessment of $193,704 and a total assessed value of $250,870 with a full market value of $752,685. It was argued that most of the sales of waterfront property in 2005 were still below a sales ratio of 33.33%, after the 2004 revaluation.

The board of review next called John Butzow, a real estate appraiser. It was later determined that he could not extrapolate his opinion of value for parcel 015 from parcel 001 and therefore it was determined that his opinion of value for parcel 001 alone was not available.

Mary Mahady, McHenry County Board of Review member, was recalled as a witness. Mahady stated that land still has value even if it is not buildable. She stated that this is especially true if it is waterfront property. Many times, these type of parcels allow access to the waterway. The value is not for the buildability, but for the access to the water. She testified that based on her 20+ years of real estate experience, Pistakee Bay is the most

prestigious area and commands the highest price in the market. Mahady stated that Pistakee Lake is commonly referred to as Pistakee Bay in the real estate market by real estate practitioners.

During cross examination, Mahady acknowledged that property on Pistakee Bay generally has a higher value than property on Pistakee Lake. She would consider parcel 001 to be on Pistakee Bay. Intervenors' counsel pointed out that the address of parcel 001 is Bay View Lane, not Lake View Lane. Based on this evidence, the board of review requested confirmation of the assessment applied to parcel 001.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds that a reduction in the subject's assessment for parcel 001 is not warranted. The appellants' argument, in part, was unequal treatment in the assessment process. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellants have not overcome this burden with respect to parcel 001.

The appellants argued in part that Section 10-153 of the Property Tax Code (35 ILCS 200/10-153) applies to parcel 001. The Property Tax Appeal Board finds that Section 10-153 requires that land that has not been clear cut of trees as defined in Section 29a of the Rivers, Lakes, and Streams Act, shall be valued at 1/12th of its productivity index . . . . (35 ILCS 200/10-153) The Board finds the appellants have not shown that Section 10-153 of the Property Tax Code is applicable to the subject parcel because the appellants have failed to show with sufficient documentary evidence or other credible testimony that the subject parcel has not been clear cut as defined in Section 29a of the Rivers, Lakes, and Streams Act. (615 ILCS 5/29a).

In addition, the Board further finds that Section 10-153 of the Property Tax Code applies to farmland, open space, and forestry management plans. The evidence in this record supports the subject's classification as residential property. The appellants have failed to show that Section 10-153 of the Code is applicable to the subject. Nothing in Section 10-153 of the Code suggests it is applicable to residential property like the subject in this

appeal. Based on a failure of the appellants to show the subject parcel has not been clear cut of trees as defined in Section 29a of the Rivers, Lakes, and Streams Act (615 ILCS 5/29a), and Section 10-153 of the Property Code being only applicable to farmland, open space or property subject to a forestry management plan, the Board finds the appellants' reliance on this Section of the Code is misplaced. The Code is clear and unambiguous; farmland is assessed based on its productivity, whereas residential property is assessed based on 33 1/3% of its fair market value. Further, the appellants offered no evidence to indicate the subject parcel qualifies as open space or is maintained under a forestry management plan. The Board finds the appellants have failed to show that parcel 001 should receive a valuation procedure applied to special properties pursuant to Title 1, Article 10, Division 6 of the Property Tax Code. Therefore, the Board finds that any preferential assessment contained in Section 10-153 of the Code is not applicable to parcel 001 based on the evidence and testimony in this record.

The Board finds the board of review presented credible testimony regarding the uniformity and methodology of assessments for residential waterfront property in McHenry Township. Perschke testified that all residential waterfront property, revalued in 2004 received a 50% reduction in value if the property was unbuildable and was contiguous with buildable property having the same owner. Perschke further testified that unbuildable property received a 75% reduction in value if the owner provided documentation that the tract of land was unbuildable, was unimproved, and was not contiguous with buildable property of the same owner. Perschke further testified that the salient characteristics of parcel 001 regarding water frontage, depth and size were taken into account and applied uniformly with all other residential waterfront properties within the township. The Board finds the appellants' comparables were not similar to the subject in that they varied significantly in size from the subject, were vacant and/or had less water frontage than the subject. Therefore, the Board gave these comparables less weight in its analysis. The Board finds the assessor used the best method available to her, the county maps, aerial photographs and satellite photos to determine the subject's size, because her office was refused entry to validate her measurements. The Board finds this is the best evidence in this record of the subject's size. The Board gave little weight to Brazas' testimony because his measurements were based on subjective high water marks from leftover debris. Nothing in this record depicts when the high water marks occurred. Brazas further testified that he was unable to find all of the pins for parcel 001.

Further, the Board finds that based on the photographs and testimony, the garage included in the assessed value of parcel 015, is more appropriately a part of parcel 001 and should be assessed accordingly. The appellants did not refute the improvement assessment attributed to the garage.

In summary, the Board finds the appellants failed to show by clear and convincing evidence that parcel 001 was not uniformly assessed. The Board finds Section 10-153 is not applicable to the subject parcel because the subject parcel is not classified or used as farmland, open space or subject to a forestry management plan. The Board further finds that the assessment for parcel 001 should be increased to include the garage mistakenly removed from parcel 001 and added to parcel 015 for the 2004 and 2005 assessment years.

Based on the testimony and evidence presented, the Board finds that the assessment for parcel 001 is correct with the addition of the improvement assessment for the garage from parcel 015 for the 2004 and 2005 assessment years.

Parcels 10-17-476-012, 10-17-476-013 and 10-17-476-014

Parcel number 10-17-476-012 (hereinafter "parcel 012") is approximately 0.60 acres± of vacant land; parcel number 10-17-476-013 (hereinafter "parcel 013") is approximately 0.57 acres± of vacant land; and parcel number 10-17-476-014 (hereinafter "parcel 014") is approximately 0.55 acres± of vacant land. These three parcels are adjacent to one another and contain similar characteristics. The parcels are bordered on one side by Pistakee Lake and on another side by property owned by the McHenry County Department of Conservation.

The appellants argued that Section 10-153 of the Code applies to these three parcels because the parcels are along a recognized Illinois navigable waterway, Pistakee Lake and the Fox River. Appellant, Peter Theis, argued that these three parcels are zoned agricultural A-2 and are not in a residential area. It was argued that the McHenry County Stormwater Management Ordinance of 2002 recognized these three parcels as being forested wetland including wooded seeps, shrub swamps and floodplain forests dominated by shrubs or trees growing on soils that are inundated or saturated much of the year. It was claimed the parcels have special protection provisions and cannot be used for any purpose. The appellants argued that the three parcels are not subject to tax because they are part of navigable waters owned by the Federal Government.

The appellants called Jefferson Brazas as a witness. Brazas testified that in March 2005 parcel 012 contained 0.53 acres of dry land, parcel 013 contained 0.47 acres of dry land, and parcel 014 contained 0.42 acres of dry land. Brazas further stated the three parcels are adjacent to other wet and low-lying areas.

During cross-examination, Brazas admitted he did not have training in order to determine whether a property site was wetland or not. Further, he could not differentiate the boundaries of the wetlands. However, he assumed the parcels were wetlands based on the water and plant life in the area. He inspected the parcels in March 2005. Brazas admitted he had a difficult time finding the corner mark because of debris, heavily grassed areas and woodland debris. In addition, Brazas admitted that in March 2005, Pistakee Bay might have been a little higher due to the snow melt at that time of year. Brazas stated that based on his observations of the floodplain maps, the maps included the three parcels. However, he could not say if the three parcels were certified as wetland by the Army Corps of Engineers.

During re-direct examination, Brazas acknowledged that he could not determine the high water mark on these parcels because of all the debris and deadwood.

Appellant, Jill Theis testified that she obtained a map prepared by the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers, used by the Northeastern Illinois Planning Commission. After reviewing the map, it was her opinion that the three parcels were pretty much lake as opposed to wetland.

The appellants' written evidence depicts a total of four comparable properties.[5] The comparables ranged in size from 22,651 to 699,138 square feet and are located from being adjacent to the subject to ¾ of a mile away. They had land assessments ranging from $0.0 to $15,934. The appellants offered no additional evidence at hearing regarding the four comparables utilized in their original petitions for each parcel. Based on this evidence, the appellants requested a reduction in the assessments for parcels 012, 013 and 014.

The board of review submitted its "Board of Review Notes on Appeal" for parcels 012, 013 and 014 wherein its final assessment for each parcel was disclosed. In 2004, parcel 012 and 013 each had a land assessment of $14,251 and in 2005 each had a land

[5] The same three parcels were used for comparison purposes for each appeal with the exception of Docket No. 05-01516.001-R-1 which depicted a different parcel for comparable #3.

assessment of $15,229. In 2004 parcel 014 had a land assessment of $17,503 and a 2005 land assessment of $18,704. To demonstrate the subject parcels were being equitably assessed the board of review submitted evidence regarding similar properties, a survey plat map, and a letter from the McHenry Township Assessor.

The board of review, through counsel, recalled Carol Perschke as a witness. Ms. Perschke explained that parcels 012, 013 and 014 were uniformly reassessed in 2004, the same as all other waterfront parcels in McHenry Township. Utilizing a front foot method, she applied a value of $1,600 per front foot. Parcels 012 and 013 had equal assessments. For 2004, their assessed values were each $57,004. This amount was reduced by 75% to $14,251 because of their unbuildable status. For parcel 014 she discovered an error in the front footage based on the maps. The actual front footage should have been changed to 130.26 from 346.5. Based on this error, the correct assessment for parcel 014 should be $14,760 for 2004 and 2005, subject to equalization.[6] Perschke also reassessed adjoining parcels 009, 010 and 011 using the same methodology for the subject parcels. Each of the adjoining parcels (009, 010, 011) and the subject parcels received a 75% reduction based on their unbuildable characteristics. Perschke relied on the county maps to calculate each parcel's front footage.

During cross-examination, Perschke admitted she did not physically measure the subject parcels. She did verify her front foot numbers with the survey maps presented by the appellants. The front foot numbers matched parcels 012, 013 and 014 after the errors for parcel 014 were corrected.

In the board of review's written submission of evidence, a letter from the township assessor, Carol Perschke, depicted appellants' comparable one was donated to the County for the rebuilding of Bay View Lane Bridge. Appellants' comparable two was vacant documented wetland, unlike the subject. Further, comparable three was not on the waterfront.

Mary Mahady was next called as a witness. She stated that the 50% and 75% reductions were uniformly applied throughout McHenry Township. She further stated that the sales supported the reductions for 2004 and 2005. Based on this evidence, the board of review requested confirmation of the subject parcels' assessments commensurate with the corrected measurements.

[6] The evidence depicts an equalization factor of 1.0377 was applied in 2004 and an equalization factor of 1.0690 was applied in 2005 by the McHenry County Board of Review.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds that a reduction in the subject's assessment for parcels 012 and 013 is not warranted. The appellants' argument, in part, was unequal treatment in the assessment process. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellants have not met this burden with respect to two of the parcels, 012 and 013. The evidence at hearing depicts the assessment for parcel 014 should be reduced based on a measurement error.

The appellants argued in part that Section 10-153 of the Property Tax Code (35 ILCS 200/10-153) applies to parcels 012, 013 and 014. The Property Tax Appeal Board finds that Section 10-153 requires that land that has not been clear cut of trees as defined in Section 29a of the Rivers, Lakes, and Streams Act, shall be valued at 1/12th of its productivity index . . . . (35 ILCS 200/10-153) However, the Board finds that this Section of the Code applies to farmland, open space, and forestry management plans. The appellants' reliance on this Section of the Code is misplaced. The appellants have failed to show that parcels 012, 013 and 014 are used as farmland, open space or subject to a forestry management plan. Therefore, the Board finds that any preferential assessment contained in Section 10-153 of the Code is not applicable to parcels 012, 013 and 014. The testimony of the appellants further revealed that the subject parcels were at one time (possibly in the 1920's or 1930's) used for grazing sheep and moving cattle across the channel to the island across the way. There was no evidence in this record however that the subject parcels are currently being used for agricultural purposes, even though they are zoned for agricultural use. The Board is not convinced that clear cutting did not occur on the subject parcels based on the appellants' testimony regarding the movement of cattle across the channel and the grazing of sheep on the subject parcels. For these reasons the Board finds Section 10-153 is not applicable to parcels 012, 013 or 014.

The Board finds the board of review presented credible testimony regarding the uniformity and methodology of assessments for residential waterfront property in McHenry Township. Perschke testified that all residential waterfront property, revalued in

2004 received a 50% reduction in value if the property was unbuildable and was contiguous with buildable property having the same owner. Perschke further testified that unbuildable property received a 75% reduction in value if the owner provided documentation that the tract of land was unbuildable, unimproved and not contiguous with buildable property of the same owner. The Board finds the subject three parcels were assessed uniformly with other residential waterfront property in McHenry Township. The Board further finds the appellants' comparables were not similar to the subject in that they varied in significant size from the subject and/or had less water frontage than the subject. The testimony of the township assessor was that appellants' comparable one was donated to the County for the rebuilding of a bridge; comparable two was vacant land, documented as wetland; and comparable three contained no water frontage. Therefore, the Board gave these comparables little weight in its analysis. The appellants provided no substantive documentation to support their argument that the subject parcels were lake area or certified documented wetlands. The Board finds the assessor used the best method available to her, the county maps, aerial photographs and satellite photos to determine the size of each subject parcel. The evidence further depicts the assessor's measurement corresponded with the survey maps presented by the appellants after correction. The Board finds this is the best evidence in this record of the subject parcels' size.

Mary Mahady testified that sales of waterfront properties indicated that the 50% and 75% reductions afforded the subject parcels were uniformly applied throughout McHenry Township and that the sales of waterfront properties supported the methodology used by the assessor.

The Board finds the appellants have not adequately demonstrated that parcels 012 and 013 were inequitably assessed in 2004 and 2005 by clear and convincing evidence and a reduction is not warranted. The evidence further depicts that the assessment for parcel 014 for assessment years 2004 and 2005 were incorrect and should be reduced accordingly.

Docket Nos. 04-01279.001-R-1, 04-01280.001-R-1, 04-01281.001-R-1, 04-01282.001-R-1, 04-01283.001-R-2, 05-01516.001-R-1, 05-01517.001-R-2, 05-01518.001-R-1, 05-01519.001-R-1 and 05-01520.001-R-1

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.

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: January 26, 2010

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 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 the subsequent year 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.

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.