

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Christine J. Deviney
DOCKET NO.: 05-00319.001-R-1 and 06-00422.001-R-1
PARCEL NO.: 09-34-402-039

The parties of record before the Property Tax Appeal Board are Christine J. Deviney, the appellant, by attorney Jay J. Glenn of Bannockburn, Illinois and the Lake County Board of Review by Assistant State's Attorney Karen D. Fox.

The Property Tax Appeal Board conducted a consolidated hearing involving the 2005 and 2006 property tax appeals for the subject property under Docket Nos. 05-00319.001-R-1 and 06-00422.001-R-1. Due to the commonality of the appeals, the Property Tax Appeal Board will issue a consolidated decision for these appeals in accordance with the Official Rules of the Property Tax Appeal Board, Section 1910.78 (86 Ill. Admin. Code, Sec. 1910.78).

The subject lakefront property consists of a 52,272 square foot lot located in Lake Barrington, Wauconda Township, Lake County, Illinois. The lot has been improved with a one and three-quarter-story frame and masonry single-family dwelling constructed in 1986. The dwelling contains 3,448 square feet of living area. Features of the home include central air-conditioning, two fireplaces, a full 3,073 square foot walkout basement of which 2,622 square feet is finished, and a three-car attached garage.

At the start of the hearing, the "Board of Review Notes on Appeal" were orally amended by the Assistant State's Attorney. The 2005 and 2006 improvement assessments of the subject property were reduced to \$173,876 and \$163,086, respectively, with no change in the land assessment; these changes would then result in total assessments of \$209,894 and \$205,522, respectively, for 2005 and 2006.

1 Testimony reflected a recent measurement of the property. Appellant had no data to refute the board of review's evidence of living area square footage.

(Continued on Next Page)

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds a reduction in the assessment of the property as established by the Lake County Board of Review is warranted. The correct assessed valuation of the property is:

Table with 5 columns: Docket No., Parcel No., Land, Impr., Total. It contains two rows of data for the two docket numbers.

Subject only to the State multiplier as applicable.

The appellant appeared with counsel before the Property Tax Appeal Board claiming unequal treatment in the assessment process and overvaluation regarding the subject's land and improvement assessments as the bases of the appeal along with a contention of law argument involving the nearby existence of both a superfund site and wastewater treatment plant. Appellant's evidence in the 2005 appeal will first be addressed followed by new evidence raised by the 2006 appeal filing. Appellant specifically incorporated the entire argument set forth in the 2005 appeal in the 2006 appeal filing. Counsel also indicated that he too is a resident of the subject property; counsel presented argument at the hearing, but called no witnesses for testimony.

In support of the inequity argument for 2005, the appellant submitted assessment information in a grid analysis on seven suggested comparable properties along with applicable computer record printouts for the properties. Six of the properties were described as being on the same street as the subject and all of the comparables were within the Lakeland Estates Subdivision of Lake Barrington, Illinois. Additionally, comparables #1, #3 and #4 were lakefront properties like the subject.

With regard to the land assessment inequity argument, based on both the grid and the underlying property records, the suggested comparable lots ranged in size from 43,560 to 121,275 square feet of land area and have 2005 land assessments ranging from \$26,678 to \$35,034 or from \$0.23 to \$0.68 per square foot of land area. It is noted that comparables #1, #3 and #4 are lakefront lots like the subject and each has a land assessment of \$0.68 per square foot of land area. The subject has a 2005 land assessment of \$36,018 or \$0.69 per square foot of land area.

In support of the improvement inequity argument, the same seven comparables were used for 2005. The comparables were reported to consist of three one-story and four part one-story and part two-story style dwellings that were built between 1958 and 1972. Using the grid data and available property records the suggested comparables range in size from 1,893 to 3,916 square feet of living area. Features of six of the comparables include central air-conditioning, one or two fireplaces, and garages that contain from 264 to 600 square feet of building area. Five of the comparables are said to have basements, three of which include finished area. There is no data if any of the comparable basements are walkout style. These properties have 2005 improvement assessments ranging from \$45,338 to \$93,830 or from \$22.04 to \$28.47 per square foot of living area. The subject has a 2005 improvement assessment of \$173,876 or \$50.43 per square foot of living area.

In support of the overvaluation argument, the appellant set forth the March 1999 purchase price for the subject property of \$460,000 or \$133.41 per square foot of living area including land along with a copy of the settlement statement. In a brief and supported by property record data appellant contended the previous owner had purchased the subject property in 1994 for

\$470,000. Based on these facts, appellant contended the value of the property had declined from 1994 to 1999 and thus should result in a reduced assessment before the Property Tax Appeal Board.

In further support of an overvaluation argument in the 2005 appeal, appellant's grid analysis included sales information for five of the seven comparables used to support the inequity argument. Five of the comparables sold from August 1988 to June 2003 for prices ranging from \$197,783 to \$360,000 or from \$71.50 to \$131.29 per square foot of living area including land. The subject's total 2005 assessment of \$209,894 reflects an estimated market value of \$633,929 or \$183.85 per square foot of living area including land using Lake County's 2005 three-year median level of assessments of 33.11%.

In further support of the appellant's contention that the assessment was incorrect, the appellant asserted that the subject is located "across the street" from a designated superfund site and near a wastewater treatment plant discharging wastestream into Fiddle Creek and the Slocum Drainage Ditch which run north and west of the subject's subdivision. Appellant summarily asserts the wastewaters "have adversely affected property values and have the potential of contaminating area wells." In support of these contentions, appellant submitted documents relating to the Tarkowski Superfund Site and the Wauconda Waste Water Treatment Plant Wastestream along with maps depicting the location of the subject in relation to these sites and both ground and aerial photographs. Appellant's Exhibit B within Group D is a parcel map showing the subject property some four or five parcels away from and across the street from the street address of the superfund site (Exhibit C within Group D). The amount of street frontage of the superfund site appears no wider than the street frontage of the subject property; however, the superfund site parcel is irregularly shaped and appears from the aerial photograph submitted to have the majority of its activity some distance from the street entryway. Exhibit F in Group D is part of a Final Report for the Preliminary Evaluation of the Fiddle Creek Watershed prepared by KOT Environmental Consulting, Inc. In the consultant's report that was submitted certain passages are underlined indicating susceptibility to well and/or groundwater contamination. There were no witnesses called to explain these superfund, U.S. Environmental Protection Agency, environmental consulting firm, and/or Illinois Pollution Control Board documents. There also was no witness to provide expert opinion testimony as to the impact, if any, of the existence of this superfund site on the estimated fair market value of the subject property.

In support of the inequity argument for 2006, besides incorporating the data previously submitted, appellant submitted limited data along with assessment information in a grid analysis on three additional suggested comparable properties. However, the 2006 grid setting forth comparable #2 is actually a repeat of the 2005 comparable #1 with new assessment data. Without updated

2006 assessment data for the other six previously submitted comparable properties it is impossible to analyze appellant's 2006 assessment equity claim with regard to those properties.

The two newly identified properties, comparables #1 and #3 for 2006, were described as being on the same street as the subject and the comparables were within the Lakeland Estates Subdivision of Lake Barrington, Illinois. Comparables #2 and #3 were both lakefront properties like the subject.

With regard to the land assessment inequity argument, based on the limited data included in the grid, two of the comparables have lot sizes of 50,400 and 58,370 square feet of land area. Their land assessments were \$34,728 and \$47,387 or \$0.69 and \$0.81 per square foot of land area. The subject has a 2006 land assessment of \$42,436 or \$0.81 per square foot of land area.

In support of the improvement inequity argument for 2006, appellant reported limited information on the two new comparables. The story height was not provided. The comparables were built in 1969 and 1972, respectively, and consist of 2,448 and 4,580 square feet of living area. Features of the comparables include central air-conditioning and one or two fireplaces. No garage data was provided for the comparables. One comparable was said to have a basement of 2,200 square feet of building area of which 264 square feet was finished. The three properties reported have 2006 improvement assessments ranging from \$60,324 to \$107,430 or from \$23.46 to \$32.69 per square foot of living area. The subject has a 2006 improvement assessment of \$163,086 or \$47.30 per square foot of living area.

In further support of an overvaluation argument, appellant's 2006 grid analysis included sales information for the two newly presented comparables used to support the inequity argument. These comparables sold in May 2002 and July 2003 for prices of \$410,000 and \$419,000 or for \$91.48 and \$167.48 per square foot of living area including land. The subject's total 2006 assessment of \$205,522 reflects an estimated market value of \$618,483 or \$179.37 per square foot of living area including land using Lake County's 2005 three-year median level of assessments of 33.23%.

To the legal arguments made previously in the 2006 appeal appellant added documentation of a default judgment on the Tarkowski Superfund Site entered in circuit court in Lake County in favor of the State of Illinois. Appellant's brief further alleges the site has been the subject of law enforcement surveillance, has been sealed and entry restricted to the Illinois Environmental Protection Agency (IEPA) and its contractors. The brief goes on to allege the site has been inspected by the IEPA, tire removal and "mysterious liquid and drum removal" are ongoing. Based on a newspaper article, appellant asserts the site has been sealed with a chain barrier and a sign was posted detailing the IEPA's action. Appellant's brief further reported that on or about September 27, 2006 after

testing water in used tires on the site, the IEPA found larvae from two types of mosquitoes known to carry the West Nile virus. Appellant further alleges from another newspaper article that the IEPA expended funds to spray the area and removed 10,000 used tires from the site. Based upon further newspaper reports in late 2006, the owner of the site was facing contempt of court charges and the IEPA was testing, cataloging and removing drums of liquid from the site, including potentially polychlorinated biphenyls (PCBs). No witnesses were called to establish any of the foregoing alleged facts.

In the brief filed with the 2006 property tax appeal appellant also alleged the subject property lies partially within Zone AE of a FEMA floodplain (see Exhibits I-1 & I-2). Appellant contends that a flood will cause the polluted Fox River, Wauconda sewage and Tarkowski Superfund Site pollution to flood and pollute the subject property. At hearing counsel further argued that these documents address how the subject property could be impacted by such floodwaters. Because of these factors, the appellant contended the subject's assessment should be reduced. The appellant presented no witnesses to substantiate these assertions and submitted no market data to support these opinions.

At hearing appellant's counsel presented a packet of parcel maps and computer printouts concerning the subject and three of the comparables originally provided in appellant's 2005 appeal. Counsel argued lack of uniformity based upon disparities in the improvement assessment of the subject and the three submitted comparables. These computer printouts presented limited descriptions along with 2006 and 2007 assessment information. Analysis of the data results in a conclusion that the printouts describe appellant's 2005 comparables #1, #3 and #4, each of which is lakefront property. The board of review objected to the presentation of this new evidence at hearing. The Hearing Officer reserved ruling.

Based on this evidence, appellant requested reductions in both the land and improvement assessments. In both appeals, appellant requested that the subject's total assessment for 2005 and 2006 each be reduced to \$153,332 or an approximate fair market value of \$460,000 which would reflect its 1999 purchase price.

On cross-examination, the appellant acknowledged that comparables #1 through #5 and #7 are all older and smaller in living area square footage than the subject property. Likewise, to the extent the information is available, counsel acknowledged the comparables all have significantly smaller basement areas and finished basement areas than the subject.

Appellant's counsel reaffirmed on cross-examination his reliance upon a six or seven year old sale price of the subject property in order to challenge the 2005 and 2006 assessments of the property. Admittedly appellant's comparable sales data in the grid analysis presented sales from 1988 to 2003; counsel for

appellant contended that the sales provided from 1988 and 1997 were relevant to the extent that they assist in placing a market value on the properties.

As to the two new comparables presented in appellant's 2006 appeal, counsel for appellant acknowledged these comparables were older than the subject. Comparable #3 was also smaller than the subject in living area square footage and had no basement information. Comparable #1 for the 2006 appeal had a much smaller basement and finished basement area than the subject.

In accordance with the Board's Rules, the board of review submitted its "Board of Review Notes on Appeal" disclosing the 2005 and 2006 assessments of the subject property. At the commencement of hearing, the board of review orally reduced the subject's improvement assessments for 2005 and 2006 as previously set forth.

In each, the 2005 and 2006 appeals, the board of review submitted a letter prepared by the township assessor, property record cards along with a grid analysis of comparable properties all in support of the subject's assessment. For 2005, the assessor's letter was prepared by Doris Weidner. For 2006, the assessor's letter was prepared by Patricia Oakes. In the 2005 appeal, the board of review also submitted a "corrected" grid of appellant's comparables #5, #6 and #7 along with property record cards. The equity and sales data submitted by the board of review varies from 2005 to 2006 and will thus be addressed separately. The board of review presented a legal brief in the 2006 appeal.²

The board of review called the current Wauconda Township Assessor Patricia Oakes for testimony; Oakes became the township assessor in 2006 and had been the deputy assessor for seventeen years prior. Oakes testified the subject property is located in Lakeland Estates Subdivision which consists of approximately 108 parcels of approximately one acre or more. The parcels have been improved with custom built homes of one-story, two-story and split level styles. Oakes testified that land values in this subdivision on the lake versus off the lake were determined by consideration of sales in the neighborhood; she testified that sales data does reflect a difference in value between lakefront and non-lakefront lots. The assessor further testified land assessments are calculated on a square foot basis.

Oakes also testified that a field inspection and re-measurement of the subject property was undertaken with regard to a subsequent appeal by the appellant. The measurement resulted in a reduction in the subject's living area square footage to 3,448 square feet, a reduction in the basement square footage to 3,073

² A copy of the same brief was submitted by the board of review on October 25, 2007 in the 2005 appeal, but the deadline for submission of the board of review's response to the 2005 appeal had expired 30 days after a letter dated April 10, 2007.

square feet of building area, and a reduction in the garage area square footage to 500 square feet of building area.

In support of the subject's assessment for 2005, the board of review submitted assessment information in a grid analysis on four suggested comparable lakefront properties along with applicable property record cards. The properties were described as being on the same street as the subject and all of the comparables were within the Lakeland Estates Subdivision.

These four comparables located in the same assessor's assigned neighborhood code as the subject have lots ranging in size from 43,560 to 52,812 square feet with land assessments ranging from \$30,014 to \$36,389 or \$0.69 per square foot of land area each. The subject likewise has a land assessment of \$0.69 per square foot of land area for 2005.

In support of the subject's improvement assessment, the board of review submitted the same four comparables used to support the subject's land assessment. The comparables have been improved with single family dwellings varying in style from one-story with split level; one-story with one-and-one-half-story; one-story with two-story; and two-story styles. The dwellings were constructed of frame or frame and masonry materials between 1971 and 1988, with the oldest dwelling having a stated effective age of 2001. The dwellings range in size from 2,500 to 4,096 square feet of living area. Features of the comparables include central air-conditioning, one or two fireplaces, and garages that contain from 506 to 624 square feet of building area. Each comparable has a full or partial basement, two of which were noted to be walkout basements like the subject. These properties have improvement assessments ranging from \$147,381 to \$161,906 or from \$38.16 to \$58.95 per square foot of living area. As adjusted the subject has a 2005 improvement assessment of \$173,876 or \$50.43 per square foot of living area. Based on this evidence the board of review requested the subject's assessment be confirmed.

In support of the subject's 2005 estimated fair market value as reflected in comparable sales, the board of review provided sales data for three of the four comparables used in its equity analysis. The three properties with sales data, #2, #3 and #4, reflect sales that occurred between April 2004 and September 2005 for prices ranging from \$550,000 to \$675,000 or from \$164.79 to \$220.00 per square foot of living area including land. For 2005 with a total assessment of \$209,894 the subject has an estimated market value of \$633,929 or \$183.85 per square foot of living area including land, as reflected by its assessment and Lake County's 2005 three-year median level of assessments of 33.11%.

In addressing the appellant's comparables #5, #6 and #7 in the 2005 appeal, the township assessor noted none of these were lakefront properties. The assessor noted other corrections to age, design and features including living area square footage which was significantly reduced in two of the three comparables. After the assessor's corrections, the range of assessments per

square foot for appellant's comparables #5, #6 and #7 were from \$28.81 to \$56.31 per square foot of living area whereas the subject's 2005 improvement assessment was \$50.43 per square foot of living area.

Next, in support of the subject's assessment for 2006, the board of review submitted assessment information in a grid analysis on five suggested comparable properties along with applicable property record cards. Comparables #1, #2, and #3 were said to be lakefront properties like the subject. Four of the properties were described as being on the same street as the subject and all of the comparables were within the Lakeland Estates Subdivision.

These five comparables located in the same assessor's assigned neighborhood code as the subject have lots ranging in size from 34,413 to 56,160 square feet with land assessments ranging from \$27,588 to \$45,593 or \$0.80 and \$0.81 per square foot of land area each. The subject likewise has a land assessment of \$0.81 per square foot of land area for 2006.

In support of the subject's improvement assessment, the board of review submitted the same five comparables used to support the subject's land assessment. The comparables have been improved with single family dwellings varying in style from two one and one-half-story; one one and three-quarter-story; one part one-story, part two-story; and one two-story style. The dwellings were constructed of frame or masonry materials between 1971 and 1994. The dwellings range in size from 2,959 to 4,096 square feet of living area. Three comparables have central air-conditioning; four have one or two fireplaces; and four have garages that contain from 621 to 736 square feet of building area. Each comparable has a full or partial basement, four of which included finished areas ranging in size from 435 to 1,581 square feet of building area; two were also noted to be walkout basements like the subject. These properties have improvement assessments ranging from \$116,438 to \$151,858 or from \$35.80 to \$44.64 per square foot of living area. As adjusted the subject has a 2006 improvement assessment of \$163,086 or \$47.30 per square foot of living area. Based on this evidence the board of review requested the subject's assessment be confirmed.

In support of the subject's 2006 estimated fair market value as reflected in comparable sales, the board of review provided sales data for all five of the five comparables used in its equity analysis. The sales occurred between April 2004 and July 2006 for prices ranging from \$560,000 to \$675,000 or from \$164.79 to \$209.53 per square foot of living area including land. For 2006 with a total assessment of \$205,522 the subject has an estimated market value of \$618,483 or \$179.37 per square foot of living area including land, as reflected by its assessment and Lake County's 2006 three-year median level of assessments of 33.23%.

In testimony, the township assessor was asked whether there have been any environmental issues which have had an impact on property values in the subject's neighborhood. Oakes testified

that she is aware of environmental issues in the area, but she was not aware of any impact those issues were having on the value of the properties. Oakes has not seen any market data that would support a reduction for environmental factors.

Oakes further testified that she has reviewed the appellant's suggested comparables in both the 2005 and 2006 appeals. Oakes asserted the appellant's suggested comparables were not similar to the subject due to age, living area square footage, and basement finished area differences.

The board of review's six-page legal brief filed through its Assistant State's Attorney asserted in summary that appellant's appeals should be denied as appellant has failed to provide any evidence of the impact(s) of the alleged environmental (superfund site) and locational (flood plain and/or wastewater discharge) issues have had upon the fair market value of the subject and that the 1999 sale of the subject property is not a recent sale supporting a reduction in the assessment. The board further noted that no determination has yet been made regarding the superfund site as to whether there has been any contamination of the soil, surface water or ground water. The board also asserted appellant provided no citation to any authority requiring disclosure of potential contamination of the subject property to potential purchasers.

Appellant's counsel cross-examined Oakes regarding the number of parcels in the subdivision and questioned the size of the lots, particularly contending that the Tarkowski Superfund Site was about 17 acres in size. Appellant's counsel also established through the assessor that the Lake County Board of Review's website provides a grid analysis form which, once the data is inserted regarding the comparable, the form does the assessment per square foot calculation automatically.

Through counsel, appellant filed rebuttal evidence in each pending appeal. Appellant's 2005 rebuttal evidence was filed on August 17, 2007 with the Property Tax Appeal Board along with a request to consolidate the instant appeals. In the 2005 rebuttal, appellant presented a copy of a "Fact Sheet" prepared by the Illinois Environmental Protection Agency dated December 2006 and entitled "Tarkowski Property, Wauconda." The rebuttal further asserted facts such as that as the rebuttal was being prepared law enforcement surveillance helicopters were circling the Tarkowski Property and that various local and state officials have held closed meetings regarding "the status" of the site. The rebuttal further cited newspaper articles about the site and asserted that sellers must disclose the previously referenced fact sheet to potential buyers of the subject and similar parcels.

In the 2006 appeal, appellant also submitted rebuttal evidence which was postmarked on February 29, 2008. Said rebuttal in the 2006 matter was timely submitted in response to a letter from the Property Tax Appeal Board dated January 30, 2008 allowing the

appellant 30 days to file rebuttal evidence in Docket No. 06-00422. The Property Tax Appeal Board rules this latter rebuttal submission, which also included in its caption Docket No. 05-00319, was not timely submitted for the 2005 appeal. In the 2005 appeal, appellant by letter dated July 19, 2007 was afforded 30 days to file rebuttal evidence and did so timely as noted above. The Board finds appellant is not entitled to file two sets of rebuttal in the same proceeding. (Official Rules of the Property Tax Appeal Board, 86 Ill. Admin. Code, Sec. 1910.66(a)).

Appellant's 2006 rebuttal according to the subheadings raises four specific issues: (1) the Tarkowski Superfund Site; (2) duty to disclose; (3) floodplain maps; and (4) Lake County real estate assessment practices. The board of review objected to the rebuttal evidence to the extent that the information submitted did not conform with the Rules of the Property Tax Appeal Board regarding rebuttal evidence and was instead new evidence which should have been filed in the appellant's case-in-chief in support of appellant's original claims.

Pursuant to the Rules of the Property Tax Appeal Board (86 Ill. Admin. Code, Sec. 1910.66(a)):

. . . Rebuttal evidence shall consist of written or documentary evidence submitted to explain, repel, counteract or disprove facts given in evidence by an adverse party and must tend to explain or contradict or disprove evidence offered by an adverse party. . . .

With this rule in mind and the fact that the board of review's evidence in the 2006 appeal was filed on October 25, 2007, the Property Tax Appeal Board will consider what, if any, portions of the appellant's 2006 rebuttal submission are appropriate for consideration as rebuttal evidence.

As to the superfund site issue, appellant in rebuttal re-asserts that the IEPA and Attorney General have notified residents of the subdivision of the status of the property, citing a "Fact Sheet" dated December 2006. The rebuttal claims that on February 27, 2008 IEPA investigators returned to the site for an inspection and on February 28, 2008 the IEPA brought in heavy earth moving equipment to the site beginning further operations. Based upon the dates set forth in the foregoing rebuttal assertions, those latter claims are not appropriate rebuttal to the board of review's evidence. Moreover, the "Fact Sheet" dated December 2006 is not appropriate rebuttal evidence either as it does not explain, repel, counteract or disprove any assertion made by the board of review's evidentiary submission. The Property Tax Appeal Board finds the foregoing assertions and documents regarding the Tarkowski Superfund Site are not appropriate rebuttal and therefore are deemed stricken from this record.

As to the issue of duty to disclose, appellant cites a 1997 Illinois Appellate Court case and three Illinois statutes, one of which is the Illinois Residential Real Property Disclosure

Report. Here the Property Tax Appeal Board finds the appellant is seeking to cure through rebuttal a failure to provide evidentiary support in the initial appeal filing. The foregoing matters cited by appellant in rebuttal could and should have been submitted in the 2006 appeal in support of appellant's claim that appellant must disclose certain matters to potential buyers. As such, the Board finds the rebuttal submission on the issue of the duty to disclose must be stricken as not appropriate matters in rebuttal.

Appellant in rebuttal submitted FEMA floodplain maps identified as Exhibits F-1 and F-2. Other than being color copy maps, both of these documents were submitted in the 2006 appeal as appellant's Exhibits I-1 and I-2. While not truly appropriate rebuttal, the Board will allow the colorized maps to be considered in place of the original black and white submission by the appellant.

The last issue raised by appellant as rebuttal concerns assessment practices. Exhibit G is a 51-page document purportedly prepared by the Citizens' Action Project of Grayslake entitled "A White Paper Inquiry Into the Real Estate Assessment Practices for Fairness, Accountability, Transparency" dated July 2007. This document does not explain, repel, counteract or disprove facts given in evidence by the board of review's submission; the board of review gave no discussion of assessment practices. The only related topic was the board's submission of comparable grid data in support of the subject's assessment. In light of the foregoing discussion, the Board finds Exhibit G is not appropriate rebuttal evidence in accordance with the Rules and therefore the Board finds the document is stricken from the record.

Lastly, appellant attached Exhibit H to the rebuttal and asserted it to be a comparison highlighting the discrepancy in property tax evaluations in Wauconda Township and Lake County. Exhibit H is a computer printout concerning one of appellant's comparable properties which in the 2005 appeal was presented as comparable #1 and which in the 2006 appeal was presented as comparable #2. Appellant reasserts the assessment discrepancy between this comparable and the subject support appellant's reduction request. Again, the Property Tax Appeal Board finds the foregoing is not appropriate rebuttal evidence in that it does not explain, repel, counteract or disprove facts given in evidence by the board of review. The board of review did not specifically address this comparable in its evidence. Appellant here is merely attempting to re-argue the original appeal basis and data which appellant submitted. For these reasons, the Board finds the foregoing assertions and Exhibit H must be stricken from the record as inappropriate rebuttal.

In closing argument, appellant's counsel contended that the Property Tax Appeal Board must take judicial notice of the Tarkowski property, the "formal notice that was served," and the legal requirement that sellers notify potential purchasers of the

situation. Counsel further raised non-record issues involving mortgage rates and the ability of properties near superfund sites to obtain traditional mortgages. Counsel further contended the Property Tax Appeal Board was obligated to take judicial notice that the subject property with well and septic systems is subject to potential contamination through percolation of polluted water based on data from the Attorney General and engineering reports. Counsel asserted the 'gold standard' of analysis is assessment equity - improvement assessments compared on a square foot basis. Given the data presented, counsel contended that appellant established inequity in the assessment of the subject property.

On behalf of the board of review in closing the Assistant State's Attorney argued that appellant failed to meet her burdens of proof to either establish inequity or overvaluation of the subject property or to provide a legal argument establishing that the assessment was incorrect in either 2005 or 2006. Besides differences in the suggested equity comparables from the subject property, counsel pointed out the market evidence in the form of comparable sales data submitted by the appellant was outdated information and not supportive of a reduction in the subject's assessed value for 2005 or 2006. The board of review noted that it does not contest that there are certain environmental issues in the Tarkowski site, however, the appellant failed to submit market data or evidence to support an assertion that any such issues have had a detrimental impact upon the subject's fair market value.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

As a preliminary matter, the Board will address the reserved ruling on appellant's documentary submission made at hearing and discussed above. Having closely examined the data submitted, the Board finds the evidence presented on the day of hearing is not "new" in the sense that the three properties cited in the computer printouts were appellant's comparables #1, #3 and #4 from the 2005 appeal. However, the argument made at hearing upon the presentation of the documents regarding assessment compared to the subject was redundant as to comparable #1 for 2006 and "new" as to comparables #3 and #4. Appellant had not updated his assessment data presented for his 2006 appeal and thus incorporation of the previous comparison grids from the 2005 appeal for the 2006 appeal was meaningless. Presentation at the time of hearing of 2006 assessments for comparables #3 and #4 would be new evidence which had not previously been presented in the appellant's appeal. In light of the Official Rules of the Property Tax Appeal Board, the Board sustains objection to the presentation of new facts at the time of hearing (86 Ill. Admin. Code, Sec. 1910.30(h) & 1910.67(k)). The Board will not further consider appellant's newly presented evidence of the assessments of the cited comparable properties.

The appellant's initial argument 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.

First, the question of similarity of comparables must be addressed. Counsel for appellant argued in essence that so long as the comparable properties were in nearby locations (same subdivision), the only consideration for assessment equity purposes would be to the assessed value per square foot of the subject and the comparables; what he referred to in closing argument as the 'gold standard.' He also acknowledged in his argument that lakefront location would be an important factor. Appellant's counsel, however, has ignored a substantial portion of the concept of assessment equity which involves much more than merely location of comparables and then improvement assessment per square foot of living area. In particular, although pointing to the grid analysis forms made available by the Property Tax Appeal Board and the Lake County board of review, appellant's counsel wholly disregarded the following notation above the grid on the Property Tax Appeal Board's residential appeal form:

(Note: The assessment comparables should be similar to the subject property in **size, design, age, amenities, and** location.)

(Residential Appeal Form, page 3; emphasis added).

As the courts have found, the uniformity requirement prohibits taxing officials from valuating one kind of property within a taxing district at a certain proportion of its true value while valuating the same kind of property in the same district at a substantially lesser or greater proportion of its true value. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395 (1960); People ex rel. Hawthorne v. Bartlow, 111 Ill. App. 3d 513, 520 (4th Dist. 1983). A uniformity violation can be established through evidence regarding the assessed valuations of a small number of properties. Du Page County Board of Review v. Property Tax Appeal Board, 284 Ill. App. 3d 649, 655 (1996). The properties selected for comparison must be similar in kind and character and must be similarly situated to the subject property. Id. at 654. With the concepts of similarity "in kind and character" in mind, the Board will now examine the assessment equity data presented by both parties in this proceeding.

In the 2005 appeal, the parties presented eleven suggested comparables for comparison on the land inequity contention. The subject property is located on a lake. The Board finds the appellant's comparables #2, #5, #6 and #7 are not similarly situated lakefront lots. The Board finds the most similar land

comparables in the record are the three lakefront lots, #1, #3 and #4, from appellant and the board of review's comparables. These land comparables had land assessments of \$0.68 or \$0.69 per square foot of land area. The subject's 2005 land assessment of \$0.69 per square foot falls within this range. Therefore, the Board finds the evidence in the record supports the subject's 2005 land assessment and no reduction is warranted.

In the 2006 appeal, the parties presented seven suggested comparables for comparison on the land inequity contention. As noted previously, the appellant's reiteration of the 2005 grid for the 2006 appeal was meaningless without 2006 assessment data provided. To the extent that appellant appeared at hearing with 2006 assessment data on three comparables that data was not timely provided. Therefore, the Board finds that the appellant only provided comparable data for three properties in the 2006 appeal. An examination of the appellant's 2006 data grid reveals no land size for comparable #1. Absent data upon which an analysis can be made, the Board finds the appellant only provided two land comparables in the 2006 appeal.

Appellant's comparables #2 and #3 were lakefront properties with land assessments of \$0.69 and \$0.81 per square foot of land area respectively. The board of review presented five suggested comparables, but only comparables #1, #2 and #3 were lakefront properties; these comparables had land assessments of \$0.81 per square foot of land area. The Board finds there are five lakefront land comparables in the record with land assessments of either \$0.69 or \$0.89 per square foot of land area. The subject's 2006 land assessment of \$0.81 per square foot falls within this range. Therefore, the Board finds the evidence in the record supports the subject's 2006 land assessment and no reduction is warranted.

As to the 2005 improvement inequity argument, the Board finds the parties submitted a total of eleven comparables. All of the comparables differed from the subject in design (story height) and age from the subject. In considering the differences, the Board gave less weight to all of the appellant's comparables because once their correct living area square footage was provided, each dwelling was significantly smaller in living area than the subject's 3,448 square feet. Likewise, the Board has given less weight to the board of review's comparable #4 due to its significantly smaller size than the subject. The Board finds the remaining comparables submitted by the board of review were the most similar to the subject in terms of location, size and other characteristics. These properties had improvement assessments ranging from \$38.16 to \$47.59 per square foot of living area. The subject's improvement assessment of \$50.43 per square foot of living area is above this range. The subject's superior qualities including basement area, finished basement area, and additional fireplace, tends to support its slightly higher improvement assessment per square foot. After considering adjustments and the differences in both parties' comparables when compared to the subject, the Board finds the subject's per square

foot improvement assessment as amended by the board of review at hearing is equitable. A reduction in the subject's 2005 improvement assessment will issue by the Property Tax Appeal Board in order to reflect the board of review's oral amendment of the subject's 2005 improvement assessment which was presented at hearing.

As to the 2006 improvement inequity argument, the Board finds the parties submitted a total of eight comparables for consideration. Many of the comparables differed from the subject in design (story height) and age from the subject. In considering the differences, the Board gave less weight to all of the appellant's comparables which were either 1,000 square feet larger or smaller than the subject in living area square footage. The Board finds the comparables submitted by the board of review were most similar to the subject in terms of location, size and other characteristics. These properties had improvement assessments ranging from \$35.80 to \$44.64 per square foot of living area. The subject's improvement assessment of \$47.30 per square foot of living area is slightly above this range. But for age and a few other features, the subject is most similar to board of review comparable #3 which was assessed at \$44.64 per square foot of living area; the subject's superior age being 15 years newer and other qualities including basement area, finished basement area, and additional fireplace, tends to support its slightly higher improvement assessment per square foot. After considering adjustments and the differences in both parties' comparables when compared to the subject, the Board finds the subject's per square foot improvement assessment is equitable and a further reduction in the subject's 2006 improvement assessment as amended at hearing by the board of review is not warranted. A reduction in the subject's 2006 improvement assessment will issue by the Property Tax Appeal Board in order to reflect the board of review's oral amendment of the subject's 2006 improvement assessment which was presented at hearing.

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 area are not assessed at identical levels, all that the constitution requires is a practical uniformity, which appears to exist on the basis of the evidence.

For the foregoing reasons, the Board finds that the appellant has not proven by clear and convincing evidence that the subject property is inequitably assessed. Therefore, the Property Tax Appeal Board finds that the subject's assessment as amended by the board of review for the years 2005 and 2006 are correct and no further reductions are warranted beyond the board of review's own requested reduction after re-examination.

The appellant also argued overvaluation as a basis of the appeal. When market value is the basis of the appeal, the value must be

proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2d 1256 (2nd Dist. 2000). After analyzing the market evidence submitted, the Board finds the appellant has failed to overcome this burden.

Ordinarily property is valued based on its fair cash value (also referred to as fair market value), "meaning the amount the property would bring at a voluntary sale where the owner is ready, willing, and able to sell; the buyer is ready, willing, and able to buy; and neither is under a compulsion to do so." Illini Country Club v. Property Tax Appeal Board, 263 Ill. App. 3d 410, 635 N.E.2d 1347 (4th Dist. 1994); see also 35 ILCS 200/9-145(a). The Illinois Supreme Court has held that a contemporaneous sale of the subject property between parties dealing at arm's length is relevant to the question of fair market value. People ex rel. Korzen v. Belt Ry. Co. of Chicago, 37 Ill. 2d 158, 161, 226 N.E.2d 265, 267 (1967).

In this matter, the sale of the subject property upon which appellant relies occurred in 1999, some six or seven years prior to the assessment dates at issue in this matter of January 1, 2005 and January 1, 2006. There was no evidence in this record that property values since 1999 have been stagnant in the subject's market. The Board finds that on this record there is simply no evidence upon which to rely upon the 1999 sale of the subject property as an indication in 2005 or 2006 of the subject's current fair market value.

As to the appellant's comparable sales data in the 2005 appeal, the Board finds the appellant submitted five comparable sales. The Board has given less weight to all of the appellant's comparable sales due to the date of sale for #3 and #6 and due to the size of the comparable dwellings which were all significantly smaller than the subject. The board of review presented three comparable sales. The Board has given less weight to the board of review's comparable sale #4 due to its significantly smaller size than the subject dwelling. The Board finds the remaining two comparable sales submitted by the board of review occurred in April 2004 and September 2005 and resulted in sales of \$164.79 and \$176.37 per square foot of living area including land. The subject has an estimated market value of \$633,929 or \$183.85 per square foot of living area including land, as reflected by its assessment and Lake County's 2005 three-year median level of assessments of 33.11%. The Board finds the subject's estimated per square foot value, as reflected by its assessment, while slightly above the range established by these most similar comparable sales, is justified by its different features including substantial finished basement area. The Board finds the best evidence of the subject property's 2005 market value is the assessed value assigned by the board of review as amended at hearing.

As to the appellant's comparable sales data in the 2006 appeal, the Board finds the appellant submitted the same five comparable

sales from the 2005 appeal plus two more. As noted above, the Board has given less weight to all of the appellant's 2005 comparable sales due to date of sale and size of comparable dwellings. Similarly, the Board has given less weight to the two comparable sales appellant submitted in the 2006 appeal due to the size of the living areas of the comparables. The board of review submitted five comparable sales for the Board's consideration. The Board finds the five comparable sales submitted by the board of review occurred between April 2004 and July 2006 and resulted in sales ranging from \$164.79 to \$209.53 per square foot of living area including land. The subject has an estimated market value of \$618,483 or \$179.37 per square foot of living area including land, as reflected by its assessment and Lake County's 2006 three-year median level of assessments of 33.23%. The Board finds the subject's estimated per square foot value, as reflected by its adjusted assessment, falls within the range established by these most similar comparable sales. Namely, the subject's estimated market value of \$179.37 per square foot of building area including land based upon its 2006 adjusted assessed value falls within the range of values established by the similar comparable sales in this record. Thus, the Board finds the best evidence of the subject property's 2006 market value is the assessed value assigned by the board of review as adjusted at hearing.

The final market value consideration to be addressed on this record concerns the appellant's claims regarding the Tarkowski Superfund site, wastewater and potential flooding issues. Appellant claimed the subject property's market value is diminished because of its location near both a superfund site and wastewater discharge. Even if true, the existence of the superfund site, nearby wastewater and/or potential for flooding of the subject property does not show the assessment is excessive. The Property Tax Appeal Board finds the appellant failed to submit any market value evidence showing the subject property's market value had been diminished because of these external conditions. The only valid evidence of market value in the record are the sales comparables previously discussed in the subject's subdivision. The sales comparables had similar locations to the subject near the superfund site and/or wastewater discharge. The subject was not overvalued based upon those sales comparables.

The appellant's counsel's argument that the Board can take "judicial notice" of the superfund site is misapplied. There is no factual dispute that the Tarkowski property exists and has had environmental issues; the board of review's representative conceded that point in closing. Moreover, there was no claim by the board of review that wastewater discharge did not perhaps flow around the subdivision.

The township assessor testified that she has seen no evidence that such external adverse conditions have affected the marketability of the subject or its neighbors. Appellant submitted no empirical data demonstrating an adverse impact on

the value of the subject property due to these neighboring properties. The appellant simply failed to establish that either contamination or potential contamination of the subject property has affected the fair market value of the subject property as a residential dwelling as of the assessment dates at issue.

In summary, there was no evidence presented to support appellant's arguments and show that the assessment does not reflect the subject's external factors in its estimated market value as reflected in the assessment or to show the assessment as made is incorrect in light of these or any other factors. The appellant did not produce experts to give testimony about either actual or potential environmental contamination of the subject property from the superfund site or the wastewater treatment discharge, the source of contamination, the nature of such contamination, or cleanup procedures if contamination has or may occur, or even who would be responsible for clean up.

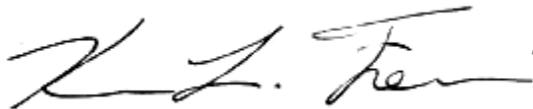
The Board finds that the existence of potential contamination of the subject property in the future, by itself, is insufficient to support a reduction for the purposes of estimating the fair market value of the subject property. There was a lack of evidence that the subject property itself was contaminated either by the superfund site or the wastewater discharge. The appellant offered no evidence that the subject property is being cleaned up or that it will ever need to be cleaned up. Based on this record, the Board finds the subject's unencumbered market value estimate should not be reduced further than already adjusted by the board of review in order to account for any potential future environmental contamination which may never occur.

In conclusion, the Board finds the appellant has failed to prove unequal treatment in the assessment process by clear and convincing evidence, or overvaluation by a preponderance of the evidence, and that the subject's assessments for 2005 and 2006 as established through amendment by the board of review are correct. Based upon the request of the board of review at hearing, the improvement assessments of the subject will be reduced for 2005 to \$173, 876 and for 2006 to \$163,086. No further reductions are warranted on this record.

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.



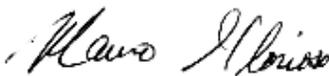
Chairman



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: March 20, 2009



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.