

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Marcella L. Myers
DOCKET NO.: 05-00330.001-R-1 and 05-00330.002-R-1
PARCEL NO.: 05-13-226-004 and 05-13-226-005

The parties of record before the Property Tax Appeal Board are Marcella L. Myers, the appellant; by attorney Michael T. Mahoney, in Chillicothe, and the Marshall County Board of Review.

The subject property consists of two, adjacent irregularly-shaped lakefront parcels. Parcel 05-13-226-004 is improved with a 784 square foot garage and onto which a portion of the subject dwelling extends. The majority of the dwelling rests on adjacent parcel 05-13-226-005. The subject is located on Lake Wildwood, Hopewell Township, Marshall County.

The appellant appeared before the Property Tax Appeal Board with her attorney claiming the subject was incorrectly assessed. The appellant did not contest the improvement assessments of either parcel. The appellant did appeal the land assessment for parcel 05-13-226-005, but the Property Tax Appeal Board ruled on May 3, 2007 that it did not have jurisdiction in that case, responding to a claim by the board of review that the appellant did not file a complaint with the board of review for parcel 05-13-226-005.

Regarding subject parcel 05-13-226-004, the appellant submitted a legal argument contending the board of review used faulty data in assessing the subject and other lots in the subject's neighborhood. The appellant also argued the subject's assessment increased by more than 25% from the previous year and failed to use at least 25 property transfers upon which to base its increased assessment. Finally, the appellant argued that Restrictive Covenants of the Lake Wildwood Association prohibit the sale of a lot which is encumbered by a dwelling encroaching upon it from an adjacent lot. The appellant situated the subject dwelling such that most of it rests on an adjacent parcel but about two feet of the dwelling extends onto the subject lot, upon

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Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds no change in the assessment of the property as established by the Marshall County Board of Review is warranted. The correct assessed valuation of the property is:

<u>DOCKET NO.</u>	<u>PROPERTY NO.</u>	<u>LAND</u>	<u>IMPR.</u>	<u>TOTAL</u>
05-00330.001-R-2	05-13-226-004	\$ 16,406	\$ 4,120	\$ 20,526
05-00330.002-R-2	05-13-226-005	\$ 16,406	\$ 20,721	\$ 37,127

Subject only to the State multiplier as applicable.

which a garage also rests. The appellant argued that the subject lot cannot be sold separate from the adjacent lot because of the encroaching dwelling and that the lot therefore has no market value.

In support of the various arguments, the appellant submitted 15 exhibits that include lists of property sales, charts, copies of real estate transfer declarations, a map of the Lake Wildwood development and other data. The appellant submitted information on 54 multiple lot transactions in Hopewell and Roberts Townships over a three year period. The appellant claimed the board of review used only 11 multiple lot transactions in its determination of the subject's assessment increase. The appellant's evidence disclosed the average lot sale in Hopewell Township was \$13,566 when including transfers located throughout the township, not just lakefront lots like the subject.

Regarding her second contention, that the board of review used an insufficient number of sales to justify a significant increase in the subject's assessment, the appellant cited Section 16-65 of the Property Tax Code which states in part:

For each assessment district of the county, the board of review shall annually determine the percentage relationship between the valuations at which property other than farm and coal property is listed and the estimated 33 1/3% of the fair cash value of such property. To make this analysis, the board shall use at least 25 property transfers, or a combination of at least 25 property transfers and property appraisals, such information as may be submitted by interested taxing bodies, or any other means as it deems proper and reasonable. If there are not 25 property transfers available, or if these 25 property transfers do not represent a fair sample of the types of properties and their proportional distribution in the assessment district, the board shall select a random sample of properties of a number necessary to provide a combination of at least 25 property transfers and property appraisals as much as possible representative of the entire assessment district, and provide for their appraisal (35 ILCS 200/16-65).

The appellant contends that since the board of review did not use the requisite 25 property transfers, the 113% increase in the subject's land assessment from 2004 to 2005 was illegal.

Regarding her third contention, that the subject lot, which is improved with a garage and onto which approximately two feet of a

dwelling extends, the appellant submitted a copy of the Lake Wildwood Restrictive Covenants and bylaws. As her Exhibit 15, the appellant submitted a copy of an opinion by an attorney that the above covenants do not provide for a variance allowing the separate sale of a lot upon which a dwelling encroaches from a contiguous lot. Based on this evidence, the appellant requested the subject's land assessment be reduced to \$7,700, which was its assessment for 2004.

During the hearing, the appellant questioned the board of review's representative regarding the subject's land assessment. The appellant asked the representative if there had been 25 lot sales in the subject's lakefront neighborhood during the previous three years, to which the representative responded that there had been 21 sales. The appellant asked the representative if the lots sales used by the board of review were vacant, unlike the subject which is encumbered by a dwelling, to which the representative responded that vacant lot sales were used. The appellant then asked the representative to explain the assessment methodology used to value lots in the subject's neighborhood. The representative responded that all lots on the lake, regardless of size, were valued the same and that lots not on the lake were valued differently. The representative testified the appellant refused to allow both lots upon which the subject dwelling and garage are situated, to be combined into a single parcel.

The appellant then testified regarding her own analysis of sales in Hopewell and Roberts Townships. The hearing officer asked the appellant if she had any market evidence to support her contention that the subject lot has no market value because it cannot be sold separate from the contiguous lot, to which the appellant replied it was impossible to determine a value for the subject lot because of its encumbrance by the encroaching dwelling.

Under cross examination, the board of review chairman asked the appellant why she situated the subject dwelling across the boundary between two lots. The appellant responded that she did so to avoid paying additional dues to the Lake Wildwood Association for two lots.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's land assessment of \$16,406 was disclosed. In support of the subject's assessment the board of review submitted information on eight lakefront lots located in the subject's Lake Wildwood development. The land area of the lots was not supplied but the lot dimensions were submitted. All the comparable lots had land assessments of \$16,406 like the subject, regardless of size. The board of review cited Section

1-130 of the Property Tax Code in support of its responsibility to value and assess all real estate in its jurisdiction. Section 1-130 reads in part:

Property; real property; real estate; land; tract; lot. The land itself, with all the things contained therein, and also all buildings, structures and improvements, and other permanent fixtures thereon, including all oil, gas, coal and other minerals in the land and the right to remove oil, gas and other minerals, excluding coal, from the land, and all rights and privileges belonging or pertaining thereto, except where otherwise specified by this Code (35 ILCS 200/1-130).

During the hearing, the chief county assessment officer was called to testify regarding her decision to increase land assessments of all lakefront lots in the Lake Wildwood development to reflect market changes in this assessment neighborhood based on recent sales. The witness testified 10 lakefront lots in Hopewell Township had an average sale price of \$62,000 and that 10 lakefront lots in Roberts Township had an average sale price of \$65,000. Sales prices of the lots ranged from \$17,500 to \$112,500 with a median sale price of \$46,000. Based on these sales, the chief county assessment officer assessed all lakefront lots in the Lake Wildwood development at \$16,406. The witness further testified the Lake Wildwood restrictive covenants are irrelevant to assessment guidelines, that all land has value and that the subject was assessed uniformly with similar lots in the development.

Under cross examination, the appellant asked why only 20 sales in Hopewell and Roberts Townships were used in the board of review study, to which the board of review's representative replied that one sale may have been invalid so it was not used. The appellant asked the representative why land assessments in the subject's development were not increased to reflect the respective \$62,000 and \$65,000 average sales prices in Hopewell and Roberts Townships. The representative responded that a judgment was made not to increase the land assessments too much at one time.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds a reduction in the subject's land assessment is not warranted.

The Board finds the appellant submitted considerable data in support of her various contentions. However, the appellant did not submit an appraisal of the subject property which might have established the subject's market value upon which a different

assessment could be based. The Board finds the appellant's contention that the subject lot has no market value, or that its value cannot be determined because of the restrictive covenant in the Lake Wildwood Association, is unconvincing. Using the appellant's logic, if the subject lot has no market value in that it cannot be sold separate from the contiguous lot on which most of the subject dwelling is situated because of the restrictive covenant, its assessment should be \$0. However, the appellant requested the subject's 2004 land assessment of \$7,700 be carried forward to 2005. The Board finds the appellant's requested assessment acknowledges the subject lot has significant value.

The Board finds the appellant's sales analysis included sales of lots throughout Hopewell and Roberts Townships, while the board of review used only sales of lakefront lots in these two townships that were all situated on Lake Wildwood like the subject. The Board finds the board of review assessed the subject and all lakefront lots uniformly at \$16,406. Even though 25 sales were not available for the board of review to consider, the board used all available valid lakefront sales in the Lake Wildwood development over three years in its determination to assess the subject and every other lakefront lot at \$16,406.

The Property Tax Appeal Board finds the appellant also claimed the 113% increase in the subject's land 2005 assessment was illegal because fewer than 25 sales had been used by the supervisor of assessments in her determination to increase assessments in the subject's lakefront neighborhood. The appellant relied on Section 16-65 of the Property Tax Code (35 ILCS 200/16/65) in support of this argument. The Board finds the appellant has misconstrued the meaning of this statute. Section 16-65 of the Property Tax Code, in its first paragraph, reads:

Equalization process. ***The board of review shall act as an equalizing authority***, if after equalization by the supervisor of assessments the equalized assessed value of property in the county is not 33 1/3% of the total fair cash value. The board shall, after notice and hearing as required by Section 12-40, ***lower or raise the total assessed value of property in any assessment district within the county*** so that the property, other than farm and coal property assessed under Sections 10-110 through 10-140 and Sections 10-170 through 10-200, will be assessed at 33 1/3% of its fair cash value (35 ILCS 200/16/65) (emphasis added).

Later in Section 16-65 of the Code, language appears which states in part:

However, in determining the amount to be added to the aggregate assessment on property subject to local jurisdiction in order to produce a ratio of assessed value to 33 1/3% of the fair cash value equivalent to 100%, the board shall not, in any one year, **increase or decrease the aggregate assessment of any assessment district by more than 25% of the equalized valuation of the district for the previous year**, except that additions, deletions or depletions to the taxable property shall be excluded in computing the 25% limitation. The board shall complete the equalization by the date prescribed in Section 16-35 for the board's adjournment, and, within 10 days thereafter, shall report the results of its work under this Section to **the Department** (35 ILCS 200/16-65) (emphasis added).

The Property Tax Appeal Board finds this statute refers to the board of review's function as an equalizing authority when modifying all property within an assessment jurisdiction, specifically when such function involves sales ratio analyses to be considered by the Illinois Department of Revenue in its calculation of the State multiplier. The Board finds Section 16-65 does not preclude adjustments to assessments within a particular neighborhood by a township assessor or chief county assessment officer if market conditions appear to justify such adjustments. Section 9-75 of the Property Tax Code provides:

The chief county assessment officer of any county with less than 3,000,000 inhabitants, or the township or multi-township assessor of any township in that county, may in any year revise and correct an assessment as appears to be just. Notice of the revision shall be given in the manner provided in Sections 12-10 and 12-30 to the taxpayer whose assessment has been changed. (35 ILCS 200/9-75).

The Board finds Section 9-75 of the Property Tax Code clearly grants power to the chief county assessment officer to revise and correct individual assessments as appears to be just. The Board finds the assessment official properly utilized the authority to revise and correct the subject's assessment in compliance with the Property Tax Code. Therefore, the Board finds the board of review has demonstrated that the subject lot was uniformly assessed.

In conclusion, the Property Tax Appeal Board finds the subject's assessment as determined by the board of review is correct and a reduction is not warranted.

This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.



Chairman



Member



Member

Member

Member

DISSENTING: _____

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: December 21, 2007



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.