

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Charles and Gail Ellenbaum  
DOCKET NO.: 05-01077.001-R-1  
PARCEL NO.: 12-10-211-001

The parties of record before the Property Tax Appeal Board are Charles and Gail Ellenbaum, the appellants, and the Kane County Board of Review.

The subject parcel, located on a corner, consists of 12,500 square feet of wooded ground in a special flood hazard area. The parcel has Geneva Creek running through the center and the lot has been improved with a 19-year-old, one and one-half story frame dwelling which was constructed across a ravine with the dwelling straddling the creek with two partial crawl-space foundations on either side of the creek. The dwelling contains 3,167 square feet of living area and features an attached two-car garage of 644 square feet of building area, central air conditioning, and two fireplaces. The property is located in Geneva, Geneva Township, Kane County.

Appellant Charles Ellenbaum appeared before the Property Tax Appeal Board on behalf of both appellants contending unequal treatment in the assessment process as the basis of this appeal with regard to both the land and improvement assessment of the subject property. Appellants indicated the subject property was purchased in September 2001 for \$550,000, at what appellant Charles Ellenbaum characterized as the peak of the market. Furthermore, appellant argued that he and his wife paid too much for the property.<sup>1</sup> He also noted their real estate agent advised the property was worth no more than \$400,000. Additionally appellants indicated that since the purchase, the property has been modified by converting an existing garage of 550 square feet of building area into additional living space and constructing a new two-car garage of 644 square feet of building area.

As part of the data submission, appellants included a multi-page listing from the township assessor indicating the "assessment

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<sup>1</sup> Even though the property had been on the market for several years, according to Ellenbaum there were no real negotiations on the sale price with the previous owner.

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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 Kane County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	\$	46,750
IMPR.:	\$	139,898
TOTAL:	\$	186,648

Subject only to the State multiplier as applicable.

rank" of the properties in the jurisdiction. Appellants contend that the subject's rank of 24 out of 269 properties in 2005 is not appropriate given that the subject is a modest property compared to neighboring properties.

In support of the instant inequity argument for both the land and improvement assessments, appellants presented a grid analysis of six suggested comparable properties, three of which were located in the subject's same neighborhood code as assigned by the township assessor and three of which were located north of the subject in a different neighborhood code, but still in Geneva Township. Appellants indicated the latter three properties were selected as similar contemporary frame constructed dwellings on non-traditional foundations and situated in a wooded ravine setting like the subject with intermittent water running by the properties.

In support of the land inequity argument, the six suggested comparable lots range in size from 9,000 to 41,220 square feet of land area and have land assessments ranging from \$25,342 to \$47,929 or from \$1.16 to \$2.82 per square foot of land area. The subject has a land assessment of \$46,750 or \$3.74 per square foot of land area. Given the topography and issues with flooding and building, appellants felt the parcel should not be characterized as a "normal" lot and the land assessment was excessive. On the basis of these comparisons, the appellants felt that a land assessment of \$20,000 or \$1.60 per square foot of land area was appropriate for the subject lot.

In support of the improvement inequity argument, the six comparables were reported to consist of one and one-half, two-story or three-story style frame or masonry dwellings that ranged in age from 26 to 51 years old. These dwellings ranged in size from 1,392 to 3,492 square feet of living area. Five of the properties were described as having full finished basements ranging in size from 696 to 2,328 square feet of building area; one property was described as having no basement. Five of the comparables included central air conditioning and two-car garages; one comparable featured only a car port. Five of the comparables had from one to three fireplaces. These six properties have improvement assessments ranging from \$80,179 to \$112,274 or from \$31.88 to \$60.04 per square foot of living area. The subject has an improvement assessment of \$139,898 or \$44.17 per square foot of living area. On the basis of these comparisons, the appellants felt that an improvement assessment of \$133,334 or \$42.10 per square foot of living area was appropriate for the subject dwelling.

In further support of his inequity argument, while appellants acknowledged the subject property was purchased in September 2001 for \$550,000, appellant Ellenbaum noted the property was originally assessed in 2001 for \$71,007, but the assessment was increased to \$183,315 in 2002. The appellants argued that the subject's assessment increase from 2001 to 2002 was excessive when compared to other dwellings in the area. The subject's

assessment increased to 99.99% of its purchase price and the "error" has been carried forward subsequently through equalization according to appellants. Of the six suggested comparables with sales data in appellants' grid analysis, only two sales occurred within three years of the assessment date at issue, with three other properties having sale prices occurring from 18 to 29 years prior to January 1, 2005. The more recent sales occurred in October 2003 and April 2004 for purchase prices of \$302,000 and \$365,000, respectively. These comparables as of 2005 had assessments of \$108,444 and \$117,525 or, as the appellants explained 108% and 96% of their recent sales prices, respectively.

On cross-examination, while appellant Ellenbaum did not have floodplain maps with him at the hearing, he testified that upon seeking a building permit for the new garage, appellants were informed by at least three governmental entities that the lot was basically floodplain. Appellant Ellenbaum was also asked by the board of review representative if the property flooded in August 2007. Appellant testified there was flooding on the lot and damage to abutments that was easily repaired. Upon further examination, appellant Ellenbaum indicated that he was unaware of the opportunity to file for assessment relief due to that flooding.

The board of review presented its "Board of Review Notes on Appeal" wherein its final assessment of \$186,648 for the subject property was disclosed. This final assessment was a reduction granted by the board of review based upon an appraisal submitted by the appellants. A copy of that appraisal was filed as part of the board of review's evidence in this matter. The appellants' appraiser used the sales comparison approach to value in concluding an estimated market value of \$560,000 for the subject property as of January 18, 2006. The appraiser's report indicates the dwelling consists of 3,238 square feet of living area, the lot was within a FEMA special flood hazard area, the appellants were the clients for the appraisal, and the stated purpose of the appraisal was for use in a mortgage finance transaction. The subject's total assessment as modified by the board of review reflects an estimated market value of \$558,994 using the 2005 three-year median level of assessments for Kane County of 33.39%.

The board of review representative noted that county maps do not indicate the subject lot being within a floodplain.<sup>2</sup> In support of the current assessment as to both the land and improvement assessment pending before the Property Tax Appeal Board, the board of review presented a grid analysis of three suggested comparable properties located "nearby" the subject property.

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<sup>2</sup> In appellants' appeal, appraisal, and rebuttal material, reference was made to the FEMA Special Flood Hazard Area (FEMA Flood Zone AE and FEMA Map #17089C0268F).

As to the land inequity argument, the board of review's suggested comparable parcels ranged in size from 18,200 to 20,000 square feet of land area. These parcels had land assessments ranging from \$39,024 to \$74,799 or from \$2.14 to \$3.74 per square foot of land area. In particular, comparable #1, a corner lot, had a per square foot land assessment of \$3.74, identical to the subject's corner lot per-square-foot land assessment.

In response to the Hearing Officer's question regarding the land assessment methodology utilized in Geneva Township, the board of review's representative had no information as to the methodology utilized as the assessor was not present at the hearing. Likewise, the board of review representative was unable to explain to appellant Ellenbaum what the characterization "normal" concerning parcels on the property record cards of the subject and comparables meant.

As to the improvement inequity argument, the board of review representative noted that due to the unique nature of the subject dwelling, there were really no truly comparable dwellings, but the board of review selected the best comparables they could find. The board of review's suggested comparable properties were improved with either one and one-half or two-story frame constructed dwellings ranging in age from 33 to 36 years old. The comparables ranged in size from 3,058 to 3,798 square feet of living area; two of the comparables featured basements and one had a crawl-space foundation. Features included central air conditioning, two or four fireplaces, and two-car or three-car garages. Their improvement assessments ranged from \$122,926 to \$191,835 or from \$40.20 to \$51.67 per square foot of living area. As noted by the board of review, the subject's per square foot improvement assessment falls within the range of these comparable dwellings. Two of these comparables sold within three years of the assessment date at issue; the third comparable had a sale ten years prior. The two more recent sales occurred in January 2004 and October 2006 for prices of \$575,000 and \$655,000 or for \$163.12 and \$214.19 per square foot of living area including land. As a comparison, the subject's four-year-old purchase price of \$550,000 applied to the new size of the dwelling results in a purchase price of \$173.67 per square foot of living area, including land, not adjusting for the costs of the new garage or conversion of the old garage into living area. Alternatively, the subject's estimated fair market value based upon its assessment of \$558,994 results in an estimated market value of \$176.51 per square foot of living area, including land.

Based on its analysis of these properties and the appraisal previously filed by the appellants establishing an estimated fair market value of the subject property of \$560,000, the board of review requested confirmation of the subject's assessment.

In questioning the board of review's evidence, appellant was able to establish that board of review comparables #1 and #2 have partially finished basements rather than unfinished basements as set forth on the board of review's grid analysis.

At the hearing in rebuttal appellant objected to the board of review's inference that the subject parcel was not actually in a floodplain given the numerous agencies that have declared it so.

Additionally as written rebuttal evidence in a document entitled Appendix appellants set forth a great deal of data. Among the data, appellants provided a very brief description with assessment data on eight newly suggested comparables in the subject's immediate neighborhood plus another three newly suggested comparables asserted to be similar to the subject property along with a discussion of two comparables not fully described in the board of review's evidence nor relied upon by the board of review in this appeal. Also appellants addressed assessment data on three of the sales comparables set forth in the appraisal filed by the board of review along with a calculation of how the assessment related proportionately to the recent sale price. As to these sold properties, appellants indicated the assessments did not yet reflect one-third of the property's recent purchase price like the subject's assessment that was raised within one year of its purchase to reflect its purchase price. Appellants also contended that board of review comparable dwellings #1 through #3 ranged in size from 3% smaller to 20% larger than the subject dwelling and appellants pointed to additional differences between the subject and the three comparables suggested in the board of review's grid analysis and thereby questioning their similarity to the subject. Finally, in analyzing the dwelling sizes and lots selected by the board of review as comparable to the subject, the appellants noted that board of review comparable #1 is a corner lot.

As to the appraisal appellants filed with the board of review at the local hearing, appellant Ellenbaum testified that the report was presented by the appraiser to the appellants at the time of the local hearing. Had he reviewed it prior to the hearing, appellant Ellenbaum testified that he would not have submitted it for the hearing because he thinks it was too high.

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 appellants submitted written rebuttal evidence in this proceeding which exceeded what by the Official Rules of the Property Tax Appeal Board is suitable rebuttal evidence. "Rebuttal evidence shall not consist of new evidence such as an appraisal or newly discovered comparable properties." (86 Ill.Admin.Code §1910.66(c)). In light of this rule, only those portions of appellants' appendix which addressed the comparables in the appraisal or the three comparables presented by the board of review may be considered in this appeal. No newly suggested comparable properties or reiteration of the appellants' comparables in this appeal may be considered from this rebuttal filing.

The appellants contend unequal treatment in the subject's improvement assessment as the basis of the appeal. 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. The Supreme Court of Illinois in Walsh v. Property Tax Appeal Board, 181 Ill. 2d 228 (1998), set forth the basic tenets of the Illinois Constitution's uniformity clause requirement as it relates to the assessment and taxation of real estate. The court stated that:

The Illinois property tax scheme is grounded in article IX, section 4, of the Illinois Constitution of 1970, which provides in pertinent part that real estate taxes "shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law." Ill.Const.1970, art. IX, §4(a). Uniformity requires equality in the burden of taxation. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d 1, 20 (1989). This, in turn, requires equality of taxation in proportion to the value of property being taxed. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395 (1960). Thus, taxing officials may not value the same kinds of properties within the same taxing boundary at different proportions of their true value. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d at 20 (1989). The party objecting to an assessment on lack of uniformity grounds bears the burden of proving the disparity by clear and convincing evidence . . . Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d at 22 (1989).

Walsh v. Property Tax Appeal Board, 181 Ill. 2d at 234 (1998). The uniform assessment requirement mandates that property not be assessed at substantially greater proportion of its value when compared to similar properties located within the taxing district. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d at 21 (1989). Having considered the evidence presented, the Board concludes that the appellants have failed to meet this burden and thus finds a reduction is not warranted.

As to the assessment rank data supplied by the appellants, no weight has been placed on this evidence by the Property Tax Appeal Board. A listing in assessment value order from highest total assessment to lowest total assessment of every residential property in the township is not evidence of a lack of uniformity of assessment without individual data on the similarities and differences in age, size, design, exterior construction, features and amenities of these properties.

Likewise, no weight has been placed on the appellants' argument that the subject's assessment increased substantially from 2001 to 2002. The jurisdiction of the Property Tax Appeal Board is

strictly limited by law. (35 ILCS 200/16-160) Any dispute that appellants had with their 2002 assessment should have been timely raised with the Kane County Board of Review upon notice of the new assessment with further potential appeal to the Property Tax Appeal Board as was done for this 2005 assessment appeal.

For purposes of the inequity argument, the parties submitted a total of nine comparable properties for consideration by the Property Tax Appeal Board. The land assessments of the nine suggested comparables ranged from \$25,342 to \$74,799 or from \$1.16 to \$3.74 per square foot of land area. The subject's land assessment of \$46,750 or \$3.74 per square foot of land area falls within the range of these comparables. Moreover, the subject is a corner lot and the only other corner lot provided in evidence, board of review comparable #1, had an identical per square foot land assessment as the subject property. As to the land assessment, the appellants have failed to establish inequitable treatment by clear and convincing evidence.

As noted by both parties, none of the suggested comparable dwellings is truly similar to the subject property given its unique design over the creek. However, appellants' comparables #4 through #6 were the most similar in their woodland setting and non-traditional foundations despite being significantly smaller in square foot living area than the subject.<sup>3</sup> The board of review's comparables were more similar to the subject in size, but still differed significantly in age. Despite the differences in size and age of both parties comparables, the data presented by the parties demonstrates that the subject property is being assessed in an equitable manner as provided by the courts. The subject property's assessment is within the range established by all the comparables. The comparables had improvement assessments ranging from \$80,179 to \$191,835 or from \$31.88 to \$60.04 per square foot of living area. The subject's improvement assessment of \$139,898 or \$44.17 per square foot of living area is within this range. In light of the evidence, the Board finds the subject's improvement assessment is supported and a reduction in the subject's assessment is not warranted.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. The requirement is satisfied if the intent is evident to adjust the taxation burden with a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly establishing the method of assessing real property in its general operation. 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 appellant disclosed that properties located in the same area are not assessed at identical levels, all that the constitution requires

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<sup>3</sup> While appellant criticized the size differences in the board of review's suggested comparables, the appellants' comparables #4 through #6, despite their similarity in setting, are from 48% to 57% smaller than the subject property in terms of square foot living area.

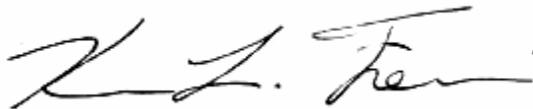
is a practical uniformity which appears to exist on the basis of the evidence. For the foregoing reasons, the Board finds that the appellants have not proven by clear and convincing evidence that the subject property is inequitably assessed. Therefore, the Property Tax Appeal Board finds that the subject's assessment as established by the board of review is correct and no reduction is warranted.

As a final point, the parties submitted sales data on several comparables which occurred within three years of the assessment date at issue; those sales ranged from \$302,000 to \$655,000. The subject property has an assessment that reflects an estimated market value of \$558,994 using the 2005 three-year median level of assessments for Kane County of 33.39%. The subject property's 2005 assessment is not only supported by this sales data, but also by the 2001 purchase price of the property for \$550,000 before the modification of an existing garage into additional living area and the addition of a new, larger two-car garage. Furthermore, this assessment is supported by the 2006 estimated fair market value of \$560,000 for the subject property as set forth in an appraisal. Therefore, no reduction in the subject's assessment is justified.

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



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: August 29, 2008



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.