



**FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD**

APPELLANT: Martin Erlandson
DOCKET NO.: 06-00412.001-R-1
PARCEL NO.: 05-23-402-005

The parties of record before the Property Tax Appeal Board are Martin Erlandson, the appellant, and the Lake County Board of Review.

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:

LAND: \$21,996
IMPR.: \$87,561
TOTAL: \$109,557

Subject only to the State multiplier as applicable.

ANALYSIS

The subject parcel of 23,395 square feet of land area has been improved with a part one-story and part two-story single family dwelling of frame and masonry exterior construction. The dwelling was built in 2004 and contains 2,742 square feet of living area. Features of the home include a full walkout basement of 1,394 square feet of building area, central air conditioning, and an attached 488 square foot garage. The property is located in Ingleside, Grant Township, Lake County.

The appellant appeared before the Property Tax Appeal Board contending the subject parcel was improperly assessed based on Section 9-145(e) of the Property Tax Code (35 ILCS 200/9-145(e)) concerning 11,224 square feet of land that is encumbered by a public easement for wetlands and a wetland buffer for "the protection of natural resources." In addition, the appellant contended that the subject's assessment was excessive on grounds of overvaluation. It was also reported that the subject property was purchased in February 2005, 10 months prior to the assessment

date at issue, for \$344,720. The cited statutory provision states:

§ 9-145. Statutory level of assessment. Except in counties with more than 200,000 inhabitants which classify property for purposes of taxation, property shall be valued as follows:

. . .

(e) In the assessment of property encumbered by public easement, any depreciation occasioned by such easement shall be deducted in the valuation of such property. Any property dedicated as a nature preserve or as a nature preserve buffer under the Illinois Natural Areas Preservation Act, for the purposes of this paragraph, is encumbered by a public easement and shall be depreciated for assessment purposes to a level at which its valuation shall be \$1 per acre or portion thereof.

This Section is subject to and modified by Sections 10-110 through 10-140 and 11-5 through 11-65.

With regard to the statutory provision, appellant testified that the subject's wetland area is not large enough to be dedicated as a nature preserve or nature preserve buffer under the Illinois Natural Areas Preservation Act.

In this appeal, the appellant contends that county records reveal a reduced land assessment was accorded to only 3,792 square feet of land area, not to the entire 11,224 square feet of encumbered land consisting of both wetland and wetland buffer; based on the foregoing evidence, appellant contends the remaining 7,432 square feet of land area is also entitled to a reduced land assessment.

As to the wetlands, appellant submitted photographs of the property and argued that the encumbered 11,224 square foot wetland was under water during winter and the natural vegetation grows waist high during the other three months. Appellant also asserted that a county ordinance provides in pertinent part: "All existing native vegetation within protected Wetland Buffer areas shall be left undisturbed." (Lake County - Uniform Development Ordinance, Article 4.2.4.D.3 (Wetland Buffers)). At hearing, appellant further expounded on this issue contending that land erosion into the wetland buffer is occurring so quickly that the patio on the property already needs serious repair and at this rate, within 5 to 7 years, the erosion will threaten the back corner of the dwelling due to the difference in settling and erosion (see Exhibit A-4). Appellant reported that to walk on the encumbered land, he must either wade through knee-high water or waist-high weeds. Moreover, appellant asserted (Exhibit A-4) that the elevation of almost all of the wetland was the same as the elevation of the remainder of the parcel "proving it is under just as much water." Based on the foregoing, appellant concludes

that identical lands adjacent to the wetland assessed at a value of \$0.15 per square foot cannot be assessed differently at \$4.50 per square foot; to so differently assess these identical lands the appellant asserts is fraud.

To support an overvaluation claim as to the subject land, the appellant also argued that sales of both the subject parcel as vacant, twice the size of a neighboring vacant parcel, sold along with a neighboring parcel in March 2003 for \$105,000 which "further proves that the entire 11,224 square feet of [the subject's] encumbered land has no value." (Exhibits A-2 & A-3). Moreover, Exhibit A-5 concerning the assessment of the vacant parcel adjacent to the subject property which is reported to contain 35,819 square feet of land area had a total 2006 land assessment of \$21,505, less than the subject property despite its substantially greater size (see also Exhibit A-8 - a GIS depiction of this neighboring parcel reflecting a larger wetland area than the subject); this parcel sold in January 2006 for \$30,000 (Exhibits A-5 & A-8) which appellant contends further supports the assertion that the subject encumbered land has no value.

Appellant at hearing also contended the instant assessment was a "textbook case of constructive fraud" and "willful fraud"; appellant cited DuPage Co. Board of Review v. Property Tax Appeal Board in support of his proposition. Under the hearing "uniformity of assessment" in the brief and in Exhibit B-1, appellant presented evidence concerning a listing of 16 properties in Ingleside that sold for more than the subject property within 10 months either before or after the subject's purchase in February 2005; Exhibit B-1 lists the street address, sale price, assessment, sale date and age of 15 buildings with no other comparative data such as proximity to the subject, land size, building size, design, exterior construction, features or amenities. The sales occurred between May 2004 and December 2005 for prices ranging from \$345,000 to \$403,000 and the properties were reported to have assessments ranging from \$69,012 to \$124,892; the fifteen buildings were reported to have been built between 1927 and 2004. From this data, appellant argued that despite all of these properties having sold for more than the subject, 13 properties had total assessments less than the subject property. From this data, appellant contends that the assessor has failed to achieve practical uniformity when assessed valuations fail to reflect sales prices.

Based on this evidence, the appellant requested a reduction in the land assessment to \$18,154 and a reduction in the improvement assessment to \$77,561 for a total reduced assessment of \$95,715 which would reflect a market value for the subject property of approximately \$287,145.

On cross-examination, appellant acknowledged that the March 2003 sale for \$105,000 consisted of both the subject vacant parcel and the neighboring vacant Lot 9 (Recorder's Document #5224195 for the single sale transaction). Appellant also testified that at

the time he purchased the subject property, he was not even aware that the wetland area was part of the subject parcel.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of the subject totaling \$115,916 was disclosed.

At the hearing and as to the land assessment argument, the board of review representative reported that upon review of the subject's land assessment and in light of a Geographic Information System (GIS) determination (Appellant's Exhibits A-6 & A-7), the board of review now contends that a larger portion, namely, 7,100 square feet of the subject parcel, should be assessed as wetland.¹ Based upon the determination that additional land should be assessed as wetland at the reduced rate, the board of review requested a reduction in the subject's land assessment to \$21,996.² The board of review also requested confirmation of the subject's improvement assessment based upon the evidence submitted. Based on the reduced land assessment request by the board of review, the subject's total assessment of \$109,557 reflects an estimated market value of \$329,693 or \$120.24 per square foot of living area, land included, using the 2006 three-year median level of assessments for Lake County of 33.23%.

In further support of the subject's assessment, the board of review called Lorry Spencer, Senior Deputy Assessor of Grant Township with 17 years of experience, for testimony. Spencer testified that within days of the hearing, the subject property had been visually examined and the assessor's office found no evidence that the patio was sinking into the wetland as asserted by the appellant. Spencer also testified that the assessor's office used the soil analysis (Exhibit 6) to assess 0.0869-acres of Houghton Muck at a reduced rate and in 2006 had a practice of doing so for all similarly situated parcels based on the GIS soil survey data.

In response to the appellant's 16 sales comparables set forth on Exhibit B-1, the board of review summarized that while the sales were within Grant Township, only one was in the subject's neighborhood and the remainder consisted of one commercial property, eight water influenced properties being on a channel or lake, two were rural properties of four or five acres, one was a relocation sale, one was a "flip," and two were of different design than the subject dwelling (Exhibits 45-91). Furthermore, the board of review presented Exhibit 92 consisting of 36 sales

¹ The 7,100 square foot wetland parcel has a market value of \$0.05 per square foot or approximately \$100 of assessed value.

² In the course of the hearing, it was appellant's position that there was more than 7,100 square feet of land entitled to a reduced wetland assessment and therefore the hearing proceeded to its conclusion on the record presented by both parties.

in Grant Township which occurred between April 2004 and December 2005 for prices ranging from \$345,000 to \$545,000.

In a grid analysis (Exhibits 13 & 14) the board of review presented descriptions and sales data on seven comparable properties. Since the appellant did not present an inequity argument based on assessments of comparable properties, the Property Tax Appeal Board will examine only the recent sales presented in the grid, namely, comparables #3, #4 and #6. These three comparables consist of part one-story and part two-story frame and masonry dwellings that were built between 1996 and 2004. The dwellings range in size from 2,292 to 2,616 square feet of living area. Features include full basements, one of which includes finished area, central air conditioning, one or two fireplaces, and a garage ranging in size from 440 to 648 square feet of building area. These comparables sold between June 2005 and September 2006 for prices ranging from \$305,000 to \$365,000 or from \$125.00 to \$146.34 per square foot of living area, including land. As to the subject property's fair market value, the board of review submitted a two-page Illinois Real Estate Transfer Declaration (Exhibits 93 and 94) indicating the subject property was purchased in February 2005 after having been on the market and advertised for sale using a real estate agent.

Based on this evidence, the board of review requested confirmation of the subject's improvement assessment and a reduction in the land assessment as previously outlined.

In written rebuttal, the appellant noted that the board of review's evidence failed to address the statutory provision relied upon by appellant and that the cited case law of Apex v. Barrett does not shield the assessing officials in light of the statutory provision at issue.

In the rebuttal submission, appellant also examined the board of review's Exhibit 92 of sold properties and contends that even though 33 properties listed sold for more than the subject, only 14 properties "excluding only homes in Fox Lake" had total assessments higher than the subject. Moreover, at hearing appellant argued that he did not "pick and choose" the 16 properties he presented, because those properties represented "every single home that sold for more than mine."

After hearing the testimony and considering the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds a reduction in the subject's assessment is warranted.

To address the allegation of "constructive fraud" and/or "willful fraud," the Property Tax Appeal Board finds that it has no jurisdiction to consider these contentions of the appellant in light of the statutory authority granted to the Property Tax Appeal Board under Section 16-185 of the Property Tax Code:

The Board shall make a decision in each appeal or case appealed to it, and the decision shall be based upon equity and the weight of the evidence **and not upon constructive fraud**, and shall be binding upon appellant and officials of government.

(35 ILCS 200/16-185) [Emphasis added]. Based on the foregoing statutory authority, the Property Tax Appeal Board is without jurisdiction to make a decision based upon alleged constructive fraud.

The initial issue raised on appeal is the subject's land assessment. Within that context, the parties both agree that a portion of the subject parcel consists of wetland which is to be assessed at a lesser rate than the non-wetland portion which is to be assessed at 1/3 of its fair cash value.³ In this regard, the parties dispute the size of the wetland portion of the subject parcel. The appellant contends that 11,224 square feet of land consisting of wetland and wetland buffer area are entitled to the reduced assessment. The board of review at hearing contended that based upon GIS mapping data 7,100 square feet of the subject parcel are entitled to the reduced land assessment, which was more than the square footage originally assigned by the township assessor as land entitled to a reduced assessment.

Based on the record evidence, the Board finds the appellant has failed to adequately support his contention that "half" of the parcel or 11,224 square feet of land are "encumbered by a public easement" (wetland and/or wetland buffer area as described by the appellant). The Board finds that there was no substantive evidence presented by the appellant to support the contention that 11,224 square feet of the subject parcel are wetland and/or wetland buffer areas. Appellant's Exhibit A-7 confirmed that there was "mapped wetland on parcel" of 0.1630-acres (7,100 square feet) and also stated the following:

| | |
|---|-----------|
| Mapped ADID Wetlands on Parcel: | No |
| Mapped ADID 100 Foot Buffer on Parcel: | No |
| Mapped FEMA 100 Year Floodplain on Parcel: | No |

[Emphasis added]. As such, the appellant failed to establish with substantive evidence that any acreage in excess of 0.1630-acres or 7,100 square feet of land area was entitled to a reduced assessment for wetlands. The Board finds the best evidence of the size of the wetland on the subject parcel was presented by both parties in the form of GIS data (Appellant's Exs. A-6 & A-7 and board of review Ex. 6) that 0.1630-acres or 7,100 square feet of the subject parcel is wetland and subject to a reduced assessment.

³ Property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)).

Based on the testimony and evidence, the Board finds that the land assessment reduction proposed by the board of review during the hearing to \$21,996 to reflect the data from GIS is warranted because 7,100 square feet of the subject parcel are entitled to a reduced land assessment, rather than merely 3,792 square feet previously given a reduced assessment by the township assessor based on a soil survey.

To challenge the subject's total assessment, the appellant also submitted very limited data on 16 properties (Exhibit B-1). In essence the appellant argued that 13 properties which sold relatively close in time to the subject's purchase date, but for more money than the subject, with the exception of three sales, were assessed less than the subject property. Therefore, appellant contends that the assessor has not achieved, based on this sales data, a level of assessment of 33 1/3% as required by law and established both constructive fraud and willful fraud.

When an appeal is based on assessment inequity, the appellant has the burden to show the subject property is inequitably assessed by clear and convincing evidence. Proof of an assessment inequity should consist of more than a simple showing of assessed values of the subject and comparables together with their physical, locational, and jurisdictional similarities. There should also be market value considerations, if such credible evidence exists. The supreme court in Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395, 169 N.E.2d 769, discussed the constitutional requirement of uniformity. The court stated that "[u]niformity in taxation, as required by the constitution, implies equality in the burden of taxation." (Apex Motor Fuel, 20 Ill. 2d at 401) The court in Apex Motor Fuel further stated:

the rule of uniformity ... prohibits the taxation of one kind of property within the taxing district at one value while the same kind of property in the same district for taxation purposes is valued at either a grossly less value or a grossly higher value. [citation.]

Within this constitutional limitation, however, the General Assembly has the power to determine the method by which property may be valued for tax purposes. The constitutional provision for uniformity does [not] call ... for mathematical equality. The requirement is satisfied if the intent is evident to adjust the burden with a reasonable degree of uniformity and if such is the effect of the statute in its general operation. A practical uniformity, rather than an absolute one, is the test.[citation.]

Apex Motor Fuel, 20 Ill. 2d at 401. In this context, the Supreme Court stated in Kankakee County that the cornerstone of uniform assessments is the fair cash value of the property in question. According to the court, uniformity is achieved only when all property with similar fair cash value is assessed at a consistent

level. Kankakee County Board of Review, 131 Ill. 2d at 21. The appellant argued that since the 16 properties sold for more than the subject but only three had total assessments greater than the subject, uniformity in assessments had not been achieved.

The Board finds, however, the fatal flaw in the appellant's argument is multi-faceted. First, there is no descriptive data by which a comparison can be made between the subject property and any of the 16 suggested comparable sales presented in terms of location, design, size, features, amenities or any other characteristics in light of the limited data presented by the appellant. Furthermore, despite the appellant's contentions to the contrary the evidence establishes that the sales were "selected" both within 10 months before and after February 2005 and consisting of only those properties that sold for more than the subject property. All that can be said of the appellant's evidence is that the properties sold for prices ranging from \$345,000 to \$403,000 between May 2004 and December 2005 and had total assessments ranging from \$69,012 to \$124,892. Meanwhile, the subject sold in February 2005 for slightly less or \$344,720 and, prior to the instant hearing, the subject property had a total assessment of \$115,916. Based on this evidence alone, the Board finds the subject's total assessment falls within the range of total of assessments of the 16 comparables presented and no reduction in assessment would be warranted on grounds of lack of uniformity.

Second, approaching appellant's evidence as a purported sales ratio study data, the Board finds the appellant failed to present the proper evidence to calculate the assessment to value ratio for these 16 comparables. The Board finds the proper method to calculate assessment to value ratios for *ad valorem* taxation purposes is by using a property's prior year's assessment divided by its arm's-length sale price. Moreover, the Board finds the appellant's argument from very limited raw sales data and total assessments of 16 selective properties is not useful in determining whether the assessment of the subject property is correct or incorrect. In summary, the Property Tax Appeal Board finds that it can give little credence to the appellant's argument based on a sales ratio argument.

The United States Supreme Court has considered the requirements of equal treatment in the assessment process with respect to the Equal Protection Clause of the federal constitution. In Allegheny Pittsburgh Coal v. Webster County, 109 S.Ct. 633 (1989), the Court held that the "Clause tolerates occasional errors of state law or mistakes in judgment when valuing property for tax purposes [citation omitted]", and "does not require immediate general adjustment on the basis of the latest market developments. In each case, the constitutional requirement is the seasonable attainment of a rough equality in tax treatment of similarly situated property owners." The courts look to the county as a whole in order to determine whether the property at

issue is being assessed in accordance with the constitutional guaranty of equality and uniformity of taxation.

In this same context, the Board finds the appellant's data gathering was not performed on a countywide basis, the properties selected were not random, and the appellant did not properly edit the data. Peacock v. Property Tax Appeal Board, 339 Ill.App.3d 1060, (4th Dist. 2003). The Board finds the courts have held that in determining whether to use a township or county sales ratio, considerations of practicality dictate the use of the county ratio. People ex rel. Kohorst v. Gulf, Mobile & Ohio R.R. Co., 22 Ill.2d 104, 174 (1961). The courts look to the county as a whole in order to determine whether the property at issue is being assessed in accordance with the constitutional guaranty of equity and uniformity of taxation. Additionally, the courts have held that "even if the studies show a disparity in the levels of assessment of residential property within the same township, we cannot find that the evidence shows that a township level of assessment, rather than a countywide level, is the proper one." In re App. of County Treasurer (Twin Manors), 175 Ill.App.3d 562, (1st Dist. 1988). Thus, a review of case law indicates that the courts look at the "assessment level for the county as a whole" rather than selective properties in a given area, as the appellant sought to analyze in this appeal.

In the alternative, the appellant was contending the assessment of the subject property was excessive and not reflective of its market value in light of the sale prices and total assessments of other properties. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). The Board finds the evidence in the record does not support a further reduction in the subject's assessment based on alleged overvaluation.

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, 263 Ill. App. 3d at 418, 635 N.E.2d at 1353; 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). A contemporaneous sale of property between parties dealing at arm's-length is a relevant factor in determining the correctness of an assessment and may be practically conclusive on the issue of whether an assessment is reflective of market value. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill. App. 3d 369 (1st Dist. 1983), People ex rel. Munson v. Morningside Heights, Inc., 45 Ill. 2d 338 (1970), People ex rel. Korzen v. Belt Railway Co.

of Chicago, 37 Ill. 2d 158 (1967); and People ex rel. Rhodes v. Turk, 391 Ill. 424 (1945). In light of this holding, the comparable sales submitted by both parties were given less weight.

The Board finds the best evidence of the subject's fair market value in the record is the February 2005 purchase for \$344,720, a mere 10 months prior to the assessment date at issue. The Property Tax Appeal Board finds the sale was not a transfer between family or related parties; the property was advertised for sale and involved a realtor. Furthermore, the Board finds there is no evidence in the record that the sale price was not reflective of the subject's market value. Moreover, the board of review did not contest the arm's-length nature of the subject's sale, thus, based on the foregoing facts, the Property Tax Appeal Board finds the subject's February 2005 sale price of \$344,720 was arm's-length in nature.

The appellant presented 16 purported comparable sales, but there is no data by which the sales can be analyzed by the Property Tax Appeal Board. On the other hand, the three sales presented by the board of review of comparable properties similar in design, size, age, location and/or amenities reflected that the properties sold between June 2005 and September 2006 for prices ranging from \$305,000 to \$365,000 or from \$125.00 to \$146.34 per square foot of living area, including land. The subject's reduced total assessment of \$109,557 reflects an estimated market value of \$329,693 or \$120.24 per square foot of living area, land included, which is below the range of the most similar sales on this record on a per-square-foot basis and the total estimated market value is within the range of the sale prices of the most similar comparables on this record.

Based on the foregoing, the Property Tax Appeal Board finds that with the land assessment reduction proposed by the board of review and which was found to be correct by the Property Tax Appeal Board, the subject property now has a total assessment of \$109,557. This new assessment reflects an estimated market value of \$329,693 or \$120.24 per square foot of living area, land included, using the 2006 three-year median level of assessments for Lake County of 33.23%, which is less than the property's February 2005 arm's-length sale price. Therefore no further reduction on grounds of overvaluation in the subject's assessment is 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.

Ronald R. Cuit

Chairman

K. L. Fern

Member

Frank A. Huff

Member

Mario M. Louie

Member

Shawn R. Lerbis

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 23, 2010

Allen Castrovillari

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.