



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

APPELLANT: Kenneth & Sharon Heinze  
DOCKET NO.: 06-01064.001-R-1  
PARCEL NO.: 14/294-B

The parties of record before the Property Tax Appeal Board are Kenneth and Sharon Heinze, the appellants, by attorney Jerry J. Pepping, of McGehee, Olson, Pepping & Balk, Ltd. in Silvis, and the Rock Island 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 Rock Island County Board of Review is warranted. The correct assessed valuation of the property is:

**LAND:** \$7,725  
**IMPR.:** \$115,244  
**TOTAL:** \$122,969

Subject only to the State multiplier as applicable.

**ANALYSIS**

The subject parcel of 5.38-acres has been improved with a one and one-half-story frame and masonry constructed single-family dwelling that had an occupancy permit issued on January 17, 2006. The dwelling consists of 3,164 square feet of living area. Features include a walkout basement of 2,594 square feet of building area with minimal finish, two air conditioning units, two fireplaces, a central vacuum system, and an attached three-car garage of 817 square feet of building area. There is also a 3,300 square foot pole building with a gravel floor on the property which is located in Milan, Bowling Township, Rock Island County.

The appellants appeared with counsel before the Property Tax Appeal Board. The appellants filed this 2006 Residential Appeal Petition *pro se* (see notice, Exhibit 3) and claimed both overvaluation based on recent construction and a contention of law with reliance upon Exhibits 1 through 70 arguing, among other things, replacement cost new was the proper measure of value of

the subject dwelling with a downward adjustment for external issues related to neighboring cattle. At hearing, counsel for the appellants argued that the cost approach to value should not be relied upon to determine the value of the subject property and instead that the appraisal submitted by the board of review in this matter reflecting an estimated value of \$387,000 was the best evidence of value on the record. Among the external issues decreasing the value of the property, appellants argued the location of the property should cause a downward adjustment in value and the lack of quality in the interior finish should also cause a downward adjustment. In other respects, appellants acknowledged that they now dispute portions of this appraisal which they previously presented to the board of review at the local hearing.

As set forth in the record, construction on the subject dwelling began on June 3, 2003; appellants testified the building contractor left the project unfinished on May 2, 2005. Thus, the appellants began to finish the dwelling themselves including staining and installing trim among other things; friends and family members also assisted in completing the work (Exhibit 13 for cost of labor calculation). In January 2006 the appellants, at the request of a building inspector, installed some drywall on a ceiling. Appellants further testified that the exterior site improvements are a continuing project to install even as of the date of hearing in July 2009, for example, installing a sidewalk and some landscaping.

As presented in the documentation, the recent construction data included costs associated with the 2001 purchase of the land along with an unrestored farmhouse by buying out two siblings' interest in the property for \$23,332 plus an estimated building cost for the new dwelling of \$263,310 as set forth on the building permit. These costs do not include the pole building on the property. The appellants further reported that they or a member of their family acted as general contractor for an estimated value of \$1,699 plus an unspecified value for uncompensated labor of 30 to 40 hours performed by five or six other persons. In the alternative, in Exhibit 15 appellants itemized actual construction costs totaling \$347,723.32, not including land and not including the pole barn, but urged deductions from this figure for ongoing litigation matters involving the breach of contract when the contractor did not complete the project.

The contention of law also related to the assertion that the presence of cattle on neighboring property should result in a reduction in the market value of the subject dwelling as of January 1, 2006. Specifically, appellants testified that "about a month ago" or roughly in June 2009, the neighboring cattle broke through the fencing and put hoof prints in berms and left feces on the subject property. Appellants also noted the lack of services to the subject property in terms of maintenance of the gravel road to the dwelling and/or lack of snow removal services on the gravel road.

Based on the foregoing evidence, the appellant's requested a reduction in the subject's 2006 total assessment to \$100,746 which would reflect an fair cash value of approximately \$302,238 or \$95.52 per square foot of living area including land.

The board of review submitted its "Board of Review - Notes on Appeal" wherein the subject's final assessment of \$138,263 was disclosed. The subject's assessment reflects an estimated market value of \$417,209 or \$131.86 per square foot of living area including land using the 2006 three-year median level of assessments for Rock Island County of 33.14%. As chairman of the Rock Island County Board of Review, Joan Russell presented the evidence in support of the assessment; the township assessor was not called for the hearing. As an initial matter and in response to the appellants' appeal, the board of review asserted Exhibits 28 and 35 through 70 were irrelevant to the instant appeal.

In support of the current assessment of \$138,263 which had been reduced from a total assessment of \$194,899, the board of review presented an appraisal of the subject property performed for the appellants by Roger R. Cheffer of Baecke Appraisers in East Moline. The appraiser did not appear at the hearing and thus was not subject to cross-examination questions as to how the report was prepared and methodology in making adjustments to the comparable property sales and/or the determination of the cost approach to value.<sup>1</sup> The board of review contended that based upon this appraisal which had been presented to the board of review by the appellants at the local appeal hearing and based on the argument of the appellants that the property should be valued based on the cost approach, the board of review adjusted the subject's assessment to reflect a value of \$414,830 as found by Cheffer in the cost approach. The board of review further agreed with the appellants' premise that the sales comparison approach was not appropriate in this matter due to the large adjustments made in the appraisal and a review of the photographs of the sales comparables which did not reveal the complex roof lines found in the subject dwelling.

According to the appraisal, Cheffer at the time the report was prepared was a state certified real estate appraiser. The report indicates Cheffer inspected the property, but does not specify on what date the inspection occurred. While the parties agree the subject has 3,164 square feet of living area, Cheffer reported the subject to have 3,726 square feet of living area. Cheffer also reported that the subject dwelling had no fireplace(s).

In the sales comparison approach, Cheffer analyzed three properties located from 1.32 to 4.82 miles from the subject property which were described as two, one and one-half-story and one, two-story frame or masonry dwellings that ranged in size

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<sup>1</sup> In opening statement, counsel for the appellants noted Cheffer no longer resided in the area and thus was unfortunately unavailable for the hearing.

from 2,417 to 3,471 square feet of living area. The properties sold between April and September 2006 for prices ranging from \$275,000 to \$389,900 or from \$112.33 to \$121.43 per square foot of living area including land. The appraiser made adjustments for site size, exterior construction, room count, living area square footage, basement finish, garage size, fireplaces and outbuildings. In making adjustments, the appraiser noted "the lack of subject property lot landscaping/driveway/house walk finishing" was considered. The appraiser concluded adjusted sale prices for the comparables ranging from \$362,000 to \$392,550 or from \$113.09 to \$149.77 per square foot of living area including land. From this data, Cheffer opined a value for the subject under the sales comparison approach of \$387,000.

In the cost approach, the appraiser opined a site value from market research and analysis of recent and past vacant land sales in both the immediate and wide ranging general market area of \$40,350. The appraiser next estimated the reproduction cost for the improvements using the Marshall and Swift Residential Cost Handbook from June 2005 with a good quality rating along with local contractor's data to opine a total cost new estimate of \$383,056 which includes "appliances and out building." Depreciation of \$9,576 was deducted and a \$1,000 value of as-is site improvements was added to conclude a value estimate under the cost approach of \$414,830.

Using both the sales comparison and cost approaches to value with more reliance on the sales comparison approach, Cheffer concluded an estimated market value for the subject as of October 17, 2006 of \$387,000 or \$122.31 per square foot of living area including land.

The board of review also reported from recorded mortgage documents that the appellants' initial construction loan of \$380,000 from May 20, 2003 was increased to \$530,000 as of August 4, 2004.

Based on the foregoing evidence, the board of review requested confirmation of the subject's assessment as it reflected the opinion of value drawn from the cost approach contained within the appraisal of the subject property.

On cross-examination, the board of review representative maintained that in light of the new construction of the subject dwelling the cost approach set forth in the appraisal was the best evidence of value presented in this matter.

On questioning by the Hearing Officer regarding the property record card notation that the subject dwelling was constructed in 2005, Chairman Joan Russell testified that the county has written documentation from Mr. Heine that the appellants moved into the dwelling on December 24, 2005 and thus the property was deemed

habitable and therefore built in 2005.<sup>2</sup> Russell further testified that the county does not "always" use the date of the occupancy permit for new construction because the occupancy permit is issued at the time that the owner requests an inspection for completion. Russell further contended that usually the determination is made pursuant to Section 9-180 of the Property Tax Code that the "new or added improvement was inhabitable and fit for occupancy or for intended customary use." Based on the foregoing, Russell maintained that the property was properly deemed built in 2005. There was no dispute on the record that an occupancy permit was issued on January 17, 2006 (Exhibit 43).

In rebuttal at hearing and in response to the board of review's reliance upon the appraisal of the subject property, the appellants argued that the appraiser failed to adequately consider the rural setting of the subject property and how that impacts its fair market value or what could be termed the lack of curb appeal to the property. Namely, the appellants contended through the testimony of their legal counsel that the subject dwelling is located down a long, narrow winding gravel drive where you pass by dilapidated farm dwellings and buildings which reduces this property's fair market value as compared to other properties considered by the appraiser. Moreover, there is only a gravel drive approach to the dwelling, no concrete stoop to the back door but rather a concrete block is situated to gain entry to the dwelling, no sidewalk has been constructed, cable lines are not buried, and no landscaping has been installed even as of the date of hearing in 2009. Thus, counsel for appellants further argued that the appraiser did not adjust his opinion of value for the lack of these exterior site improvements. It was also noted that the property, due to its rural setting, has no garbage pickup, no municipal water or sewer service, no street lighting, and no storm sewers.<sup>3</sup>

Counsel for appellants further stated that the cherry wood flooring and trim have drips of varnish "all over" and nail holes which were in some cases filled in with white putty on dark wood. He also described some old barn, oak wood, around a fireplace which he described as not suitable with the cherry wood elsewhere in the dwelling. He noted there were blisters in the wood finish; major cracks in the basement in need of repair; and that some of the trim work was not professionally aligned. From these things, counsel argued the appraiser failed to adequately adjust for obsolescence and/or quality of construction.

On cross-examination, Attorney Pepping acknowledged that he is not a licensed appraiser and is not qualified to provide an

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<sup>2</sup> At hearing and in response to Russell's testimony, appellant Ken Heinze blurted out "that's not true." No documentation was submitted by the board of review to support a December 24, 2005 occupancy date.

<sup>3</sup> The appraisal report noted the property has a shared well and private septic system with a gravel street.

opinion of value; he did describe a great deal of work done in real estate transactions as a licensed attorney and noted that he is also a certified public accountant and regularly represents clients in property tax appeal matters.

In closing argument, counsel for the appellants argued the best evidence of value in the record was the appraisal with a reduction for the external factors and quality of workmanship raised in the course of the hearing along with a pro-rated value to reflect the occupancy permit date of January 17, 2006.

After considering 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. The Board further finds that a reduction in the assessment of the subject property is warranted.

With regard to the presentation of evidence by the appellants, the Board takes notice of Section 1910.70(f) of its rules (86 Ill. Admin. Code, Sec. 1910.70(f)) which provide in pertinent part:

An attorney shall avoid appearing before the Board on behalf of his or her client in the capacity of both an advocate and a witness. When an attorney is a witness for the client, except as to merely formal matters, the attorney should leave the hearing of the appeal to other counsel. Except when essential to the ends of justice, an attorney shall avoid testifying before the Board on behalf of a client.

Id. In this regard, the Board does not encourage counsel to testify to matters regarding the property, particularly where the clients were present at hearing and could have described the same conditions testified to by counsel for the appellants. In the absence of an objection to the testimony and given the lack of any evidence to refute the factual assertions regarding the subject property as of the date of hearing, the Board will reluctantly consider counsel's testimony. However, the testimony has been given reduced weight in the Board's consideration for several reasons, the most substantial of which is that the testimony was derived from a view of the property on the date of hearing in July 2009, not on or before January 1, 2006 which is the relevant date for assessment purposes.

In summary, appellants argued that various issues related to the workmanship of the dwelling and issues external to the subject property including its location and neighboring cattle make it less valuable. The Property Tax Appeal Board has given these arguments little merit. Appellants presented no evidence as to what effect the quality of workmanship and/or the location of the subject property have upon its market value. For instance, with regard to Exhibit 20, appellants at hearing indicated that the cattle are located in close proximity to the subject new dwelling, however, the photographic evidence in Exhibit 20

clearly does not depict any portions of the new dwelling.<sup>4</sup> The Board finds that the photographs depict cattle in close proximity to the "old farmhouse" which is on a neighboring parcel. The Property Tax Appeal Board further recognizes that as of the date of hearing, the cattle may have "recently" broken through the fence and trampled on the parcel under appeal, but again there is no evidence this had occurred by January 1, 2006 and, more importantly, there is no empirical evidence to establish the impact any such occurrence(s) has on the fair market value of the subject property. The Board recognizes the appellants' premise that the subject's value may be affected due to its location and/or the quality of workmanship, but without credible market evidence showing an adjustment is warranted for these factors, the appellants have failed to show the subject property's market value should be further reduced for these cited reasons.

The Property Tax Appeal Board finds in response to the board of review's objection that appellants' Exhibits 24 through 35, 38 through 42, 47 and 48, 51 through 66, and 68 through 70 are inadmissible hearsay and/or irrelevant to the merits of this 2006 property tax appeal and have not been further considered by the Board in its analysis to determine the correct assessment of the subject property. In addition to the specific objections posed by the board of review, upon reviewing the data submitted by appellants after the hearing, the Property Tax Appeal Board further finds Exhibits 6 through 11, 16, 18, and 21 through 23 are inadmissible and/or irrelevant due to lack of foundation and/or their hearsay nature.

Due to the extensive submission made by the appellants, it is also worthwhile to note that the jurisdiction of the Property Tax Appeal Board is limited to determining the correct assessment of the property which is the subject of an appeal. (35 ILCS 200/16-180). The appellants postmarked their initial appeal with a request for an extension of time within 30 days of the final decision of the Rock Island County Board of Review (Exhibit 3); only the 2006 assessment on parcel 14/294-B is at issue in this proceeding. Moreover, all proceedings before the Property Tax Appeal Board shall be considered *de novo* meaning the Board will consider only the evidence, exhibits and briefs submitted to it, and will not give any weight or consideration to any prior actions by a local board of review. (86 Ill. Admin. Code Sec. 1910.50(a)). Thus, to the extent that appellants complain of actions and/or inactions of the Rock Island County Board of Review with regard to the local hearing procedures (Exhibits 26 through 33) and other such matters, the Property Tax Appeal Board lacks jurisdiction to address any such issues and will not consider such arguments any further.

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<sup>4</sup> At hearing, appellants acknowledged that Exhibit 22 relates to an appraisal performed of the "old farmhouse" and mentions nearby cattle having an impact on marketability of that property.

As to the merits, the appellants contend the assessment of the subject property is excessive and not reflective of its market value. 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 (3<sup>rd</sup> Dist. 2002). The Board finds the evidence in the record does support a reduction in the subject's assessment.

Appellants have presented two alternative views of the fair cash value of the subject property, both of which were by and large derived from recent costs of construction (Exhibits 12a, 12b, 12c, 13, 14 and 15). The appellants expended at least \$23,332 in purchasing the land interests of two relatives; the record fails to reflect if appellants also already had a one-third interest in the real estate through either inheritance or purchase. The Illinois Supreme Court has held that a contemporaneous sale of a 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). Related buyers and sellers are not by definition parties dealing at arm's length. In any event, the record evidence indicates that at a minimum the land has an investment value of no less than \$23,332, without addressing whether the purchase price, between related parties, actually reflects the land's fair cash value.

As to the construction cost estimates, the appellants first contend the building permit plus some miscellaneous expenses should set the upper limit of value. There was no testimony as to the manner in which the building permit figure of \$263,310 was derived. Moreover, the additional costs of \$1,699 for the value of the appellants' services acting as the general contractor and the unspecified value of volunteered labor for 30 to 40 hours simply is found by the Board to be far too vague to make a reasoned determination as to the recent costs of construction for the subject dwelling on this basis. In the alternative, in Exhibit 15 the appellants outlined actual expenditures totaling \$347,723.32. There is no indication that this calculated cost includes the cost of the large pole building located on the property. At a minimum, the Board finds to the costs set forth in Exhibit 15, the land investment must be added for a total cost of at least \$371,055.32.

In support of the assessment the board of review presented an appraisal report prepared for the appellants and upon which the board of review relied on the cost approach contained within that report to reduce the subject's total assessment to \$138,263.

The Property Tax Appeal Board finds that, despite some of the stark differences between the subject property and the comparables utilized, the appraiser adjusted the comparables for differences such as age, size and other amenities in order to arrive at a value conclusion. The appraisal submitted by the board of review with a final opinion of value estimating the

subject's market value at \$387,000 is the best evidence of the subject's market value in the record. Furthermore, the Board finds this value conclusion is support by the appellants' actual cost data from Exhibit 15 with an addition for the land value and further increased by the value of the pole building. Based upon a market value finding as of January 1, 2006 of \$387,000 for the subject property, the Property Tax Appeal Board finds that a reduction in the assessment is warranted.

While the Property Tax Appeal Board does not have jurisdiction with regard to the 2005 assessment, it should be noted that Exhibit 36 is an Instant Assessment Notice issued on December 16, 2005 for assessment year 2005 stating, in pertinent part, that the subject dwelling was "substantially completed and initially occupied or used" as of October 1, 2005 and therefore the property was deemed to be owner-occupied for 91 days in 2005. This document contradicts the contention made by Chairman Russell that the subject dwelling was occupied on December 24, 2005. Moreover, the Property Tax Appeal Board notes that Section 9-180 of the Property Tax Code states in relevant part:

Pro-rata valuations; improvements or removal of improvements. The owner of property on January 1 also shall be liable, on a proportionate basis, for the increased taxes occasioned by the construction of new or added buildings, structures or other improvements on the property from the date when the occupancy permit was issued or from the date the new or added improvement was inhabitable and fit for occupancy or for intended customary use to December 31 of that year. . . .  
(35 ILCS 200/9-180) [Emphasis added].

The Board finds the best evidence in the record is that the subject dwelling was issued a Certificate of Occupancy on January 17, 2006 (Exhibit 43). The Property Tax Code defines for purposes of Section 9-180 that an "occupancy permit":

means the certificate or permit, by whatever name denominated, which a municipality or county, under its authority to regulate the construction of buildings, issues as evidence that all applicable requirements have been complied with and requires before any new, reconstructed or remodeled building may be lawfully occupied.

(35 ILCS 200/9-165). The Board finds the record evidence is at best contradictory as to whether the dwelling was occupied at any time prior to January 17, 2006. Chairman Russell's testimony that the dwelling was occupied on December 24, 2005 contradicts the board's own instant assessment notice (Exhibit 36) executed in part by Russell asserting that the dwelling was occupied on October 1, 2005. Exhibit 45 notarized on February 6, 2006 is a copy of a letter notifying the township assessor of the issuance

of the occupancy permit in accordance with the provisions of Section 9-180 of the Property Tax Code with service being established in Exhibit 46. Also included in appellants' evidence was Exhibit 44, an Owner Occupancy Affidavit, executed by a notary on March 11, 2006 wherein the appellants aver that they have occupied the subject dwelling "from January 21, 2006 to Present."

Based on Section 9-180 of the Property Tax Code and the best evidence in this record, the subject dwelling was entitled to an "instant" assessment from January 17, 2006 to December 31, 2006. Thus, the Property Tax Appeal Board finds the subject's 2006 assessment was excessive based on its market value and the 2006 improvement assessment shall be pro-rated for 348 days in accordance with Section 9-180 of the Property Tax Code (35 ILCS 200/9-180) using the 2006 three-year median level of assessments for Rock Island County of 33.14%.

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 Morris*

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: January 26, 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.