

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Thomas and Jane Klemm
DOCKET NO.: 06-02691.001-R-1
PARCEL NO.: 18-13-34-455-035

The parties of record before the Property Tax Appeal Board are Thomas and Jane Klemm, the appellants, and the Stephenson County Board of Review.

The subject property consists of a free standing, two-story brick and frame condominium containing 2,250 square feet of living area that was built in 1992. The dwelling features a 1,404 square foot walkout basement, of which 1,300 square feet is finished. Other features include central air conditioning, two fireplaces and a 500 square foot attached two-car garage.

The appellants appeared before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. More specifically, the appellants argued the subject property was purchased in February 2004 for \$128,500 and \$6,000 was spent on repairs before being occupied in July 2004, but the subject's property's fair market value has not increased because the dwelling is a condominium, which does not appreciate; and the subject property could not be sold at its estimated market value based on its current assessment.

In support of the overvaluation claim, the appellants submitted the same evidence that was presented to the Stephenson County Board of Review at its local appeal and hearing process. This evidence is comprised of a five page letter raising various arguments made by the appellants; an appraisal estimating the subject property had a fair market value of \$130,000 as of February 2, 2004; a statistical analysis of condominium sales from the Freeport area market from 2006; and a comparative market analysis prepared by a local real estate agent and broker.

The appellants argued they are contesting the increase in assessments and property taxes of the subject property. The appellants noted that since the purchase of the subject property, two floors and the heating and air conditioning have been replaced, a garage heater has been installed, and the master

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

LAND:	\$	1
IMPR.:	\$	54,990
TOTAL:	\$	54,991

Subject only to the State multiplier as applicable.

bathroom was reconfigured. The appellants claimed no serious remodeling has been made since the sale; the kitchen is in need of updating; and the size of the dwelling has not changed. As a result, the appellants argued the increase in the subject's assessment by \$10,000 or \$30,000 in fair market value from 2004 is not justified. In summary, the appellants argued they have been discriminated against by having the subject's assessment increased for two consecutive years.

The appellants next argued housing values in the Freeport market are down at least 10% over the past few years. The appellants argued only 35 condominium sales occurred between January 1, 2006 and March 15, 2007. The appellants argued of the 35 condominium sales, only one new condominium of high quality sold for its listing price. The appellants argued the average listing price was \$98,000 with an actual median sale price of \$94,000. Only 16 or 45% of the 35 condominiums sold for prices over \$100,000 and only two condominiums contain over 2,000 square feet of living area. The appellants argued this information was independently obtained from a statistical analysis from the Galena-Freeport Realtors Association. The appellants argued the average condominium in Freeport was on the market for 231 days. The appellants argued in 2006, single-family condominium sales represent only 13% of the total market. Thus, the appellants argued there is a limited pool of potential buyers for condominiums in the Freeport market. The appellants argued the subject dwelling was empty for nearly 3 years before their offer to purchase was accepted. They also argued the subject's driveway is a market deterrent for any potential buyer due to its steep incline. However, the appellants could not quantify the market impact, if any, regarding these claims. Finally, the appellants testified they have been informed by many real estate agents that condominiums never sell in the secondary market for more than the original sale price. The appellants argued the information supporting these claims are contained within the statistical analyses. In addition, the appellants argued the information contained in the statistical analysis can be verified by Roger Kerr, manager for the Realtor's office. However, Kerr was not present at the hearing for direct testimony or cross-examination regarding the method in which the statistical analysis was compiled or the probative application of the raw sales data in relation to the subject's fair market value.

The next packet of evidence discussed at the hearing was the comparative market analysis. The analysis was prepared by Margaret A. Christensen of Christensen Home Town Realtors. Christensen was not present at the hearing for direct testimony or cross-examination regarding any conclusion drawn from the report. The report lists nine suggested condominiums and shows their photographs. The condominiums range in size from 1,130 to 3,160 square feet of living area. No other descriptive data was provided such as proximate location, age, design, exterior construction or features for comparison to the subject. The condominiums were offered for sale for prices ranging from

\$94,500 to \$149,900 or from \$50.63 to \$100.68 per square foot of living area including land. The average listing price was \$122,630 and the median listing price was \$124,000. The condominiums sold from April 2005 to September 2006 for prices ranging from \$90,000 to \$146,000 or from \$45.89 to \$93.33 per square foot of living area including land. The average sale price was \$118,611 or approximately \$73.00 per square foot of living area and the median sale price was \$124,000. The days on the market (DOM) averaged 361. The analysis did not present a value conclusion or potential offering price for the subject property.

The appellants next presented an appraisal of the subject property. The appraiser, K. James Friedenbach, was not present at the hearing for direct testimony or to be cross-examined regarding the appraisal methodology and final value conclusion. Using only the sales comparison approach to value, the appraiser estimated the subject property has a fair market value of \$130,000 as of January 2, 2004. Based on this evidence, the appellants requested a reduction in the subject's assessment.

At the conclusion of the presentation of evidence and during cross-examination, the board of review objected to the statistical analyses, the comparative market analysis, and appraisal report submitted by the appellants. The board of review argued the authors of these reports were not present at the hearing for cross-examination regarding their validity in relation to the subject's January 1, 2006 assessment date. The Property Tax Appeal Board reserved ruling on the objection.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of \$54,991 was disclosed. The subject's assessment reflects an estimated market value of \$165,885 or \$73.73 per square foot of living area including land using Stephenson County's 2006 three-year median level of assessments of 33.15%.

In support of the subject's assessment, the board of review submitted a voluminous packet of information prepared by the township assessor. The packet contains, in part, a letter addressing the appeal and the appellants' evidence, a copy of a letter submitted by the appellants regarding repairs made to the subject dwelling after its 2004 sale, two appreciation analyses of condominium sales from the Freeport area, a market analysis of 40 suggested condominium sales, property record cards, photographs, and Real Estate Transfer Declarations. In addition, the board of review submitted several spreadsheets showing corrections to the suggested comparables submitted by the appellants in terms of descriptions and net sale prices after the deduction of personal property. During the hearing, the board of review and assessor agreed to cull the most similar comparable sales of the 40 properties submitted for consideration. Subsequently, the board of review submitted a side by side comparative analysis of 15 condominium sales, which included five

properties contained in various parts of the appellants' evidence.

The township assessor testified the subject property was inspected in March 2004. The appellants supplied a list of deferred maintenance items that had been remedied, such as the air handler, compressor and ducts for the heating and cooling system, plumbing fixtures, and roof and drywall repairs. Since the subject had been repaired, the assessor determined the subject was back in average condition. Thus, the subject's 2006 assessment was based upon the cost approach to value plus application of market appreciation using 2005 and 2006 arm's-length condominium sales, resulting in its increased assessment.

The board of review also refuted the appellants' claim that housing values in the Freeport market are down at least 10% over the past few years and that many real estate agents indicated condominiums do not sell in the secondary market for more than their original sale price. The board of review presented an appreciation analysis of 45 condominium sales. These properties sold from April 2000 to April 2007 for prices ranging from \$41,000 to \$185,000. They re-sold from April 2005 to September 2007 for prices ranging from \$42,000 to \$207,500. The paired sales appreciation analysis shows four sales had monthly market depreciation rates from $-.08\%$ to $-.24\%$. However, 41 sales showed monthly market appreciation rates ranging from $.01\%$ to 6.36% . The assessor opined comparable 40 was the most similar comparable to the subject, which showed a monthly appreciation rate of 1.15% .

The board of review also submitted an additional appreciation analysis of 30 additional condominiums. They range in size from 890 to 2,092 square feet of living area and originally sold from May 1973 to April 2007 for prices ranging from \$36,000 to \$162,000. These same properties re-sold from July 2005 to September 2007 for prices ranging from \$52,000 to \$207,500. Two comparables decreased in market value by \$6,538 and \$13,895, respectively, while 27 properties had market value increases ranging from \$4,500 to \$79,500. Based on these analyses, the board of review argued the appellants' claim that housing values in the Freeport area market are down at least 10% over the past few years and that many real estate agents indicated condominiums do not sell in the secondary market for more than their original sale price is not factually supported.

The market evidence submitted by the board of review, after redaction, consists of 15 suggested condominium comparables, including five comparables that were contained in the appellants' evidence. They consist of one-story or one and one-half story condominiums that were built from 1982 to 2006. One dwelling is a free standing condominium unit like the subject while 14 comparables are attached condominium units. Thirteen comparables have full or partial finished walkout basements and two comparables have unfinished basements. All the comparables have

central air conditioning and two-car garages. Eight comparables have one or two fireplaces. The dwellings range in size from 1,122 to 2,192 square feet of living area and sold for prices ranging from \$102,000 to \$235,000 or from \$80.29 to \$116.65 per square foot of living area including land. These transactions occurred from July 2004 to October 2006. The board of review argued the subject's estimated market value, as reflected by its assessment, of \$165,886 or \$73.73 per square foot of living area including land is supported. Based on this evidence, the board of review requested confirmation of the subject's assessment.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds no reduction in the subject property's assessment is warranted.

The appellants argued the subject property is overvalued. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2d 1256 (2nd Dist. 2000). The Board finds the appellants have not overcome this burden.

The appellants argued the subject property was purchased in February 2004 for \$128,500, with \$6,000 spent on repairs prior to occupancy. However, the appellants contend the subject's market value has not increased since because the dwelling is a condominium, which does not appreciate in value in the Freeport area market. The appellants testified they have been informed by multiple real estate agents that condominiums do not sell in the secondary market for more than their original sale price. The appellants contend the subject property could not be sold at its current assessed valuation. The appellants claim housing values in the Freeport market are down at least 10% over the past few years. The appellants argued of the 35 condominium sales in 2006, only one new condominium of high quality sold for its listing price. Only 16 or 45% of the 35 condominium sales sold for prices over \$100,000 and only two condominiums contain over 2,000 square feet of living area, which limits the number of potential buyers for the subject. The appellants indicated the information used in making these claims was obtained from a statistical analysis by the Galena-Freeport Realtors Association. The appellants argued the information contained in the statistical analysis can be verified by Roger Kerr, Manager for the Realtor's office. However, the Property Tax Appeal Board finds Kerr was not present at the hearing for direct or cross-examination regarding the method in which the statistical analysis was compiled or how sales data correlates in relation to the subject's assessed valuation.

Notwithstanding the pending objections made by the board of review, the Property Tax Appeal Board finds many of the allegations and opinions raised by the appellants were not

supported by any credible market evidence or corroborating testimony. In addition, the Property Tax Appeal Board finds the board of review submitted ample credible market evidence in the form of two separate appreciation analyses clearly showing condominiums have consistently appreciated over the years, which clearly refute the appellants' claim regarding the subject property and the general market as a whole. More importantly, the Property Tax Appeal Board hereby sustains the board of review objection with respect to the statistical analyses. The Property Tax Appeal Board finds the above-referenced evidence is hearsay and was given no weight. The general rule is that hearsay is inadmissible in an administrative hearing. Spaulding v. Howlett, 59 Ill.App.3d 249, 251, 375 N.E.2d 437, 16 Ill.Dec 564 (1st Dist. 1978). Furthermore, in Novicki v. Department of Finance, 373 Ill. 342, 26 N.E.2d 130 (1940), the Illinois Supreme Court stated "[t]he rule against hearsay evidence, that a witness may testify only as to facts within his personal knowledge and not as to what someone else told him, is founded on the necessity of an opportunity for cross-examination, and is basic and not a technical [rule of evidence]."

The Property Tax Appeal Board further finds the comparative market analysis and appraisal report submitted by the appellants were given no weight. The comparative analysis did not present a value conclusion or potential offering price for the subject property. Additionally, the Board finds the comparative analysis lacked descriptive information for an adequate meaningful comparative study in relationship to the subject. The Board further finds the effective valuation date of the appraisal is almost two years prior to the subject's January 1, 2006, assessment and due to this time difference is considered less indicative of the subject's fair market value. Finally, as a legal proposition, the Property Tax Appeal Board finds the comparative market analysis and appraisal report are hearsay in the context of this appeal. The Board finds the preparers of these reports were not present at the hearing. In Oak Lawn Trust & Savings Bank v. City of Palos Heights, 115 Ill.App.3d 887, 450 N.E.2d 788, 71 Ill.Dec. 100 (1st Dist. 1983), the appellate court held the admission of an appraisal into evidence that was prepared by an appraiser not present at the hearing was in error and found the appraisal report to be hearsay that did not meet any exception to the hearsay rule. Illinois courts have long held that where hearsay evidence appears in the record, a factual determination based on such evidence and unsupported by other sufficient evidence in the record must be reversed. LaGrange State Bank #1713 v. DuPage County Board of Review, 79 Ill.App.3d 474 (2nd Dist. 1979); Russell v. License Appeal Comm., 133 Ill.App.2d 594 (1st Dist. 1971). With respect to these decisions, the Property Tax Appeal Board has consistently found that the absence of corroborating testimony, the weight and credibility of the evidence and opinion of value is significantly diminished.

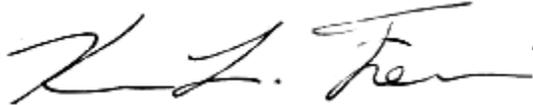
The appellants further argued the subject dwelling sat empty for nearly 3 years before their offer for purchase was accepted and

the driveway is a market deterrent for any potential buyer due to its steep incline. The appellants acknowledged they could not quantify the market impact, if any, regarding these claims or how it related to the subject's assessed valuation for 2006.

The Property Tax Appeal Board finds the board of review submitted 15 sales of condominiums, after redaction, to support its assessment of the subject property. The Board recognizes that there is a lack of two-story condominiums sales in the Freeport market for comparison to the subject as detailed by both parties. Keeping this fact in mind, the Board gave less weight to nine comparables sales due to their dissimilar size, age and features when compared to the subject. The Property Tax Appeal Board finds the remaining six comparable sales were most representative of the subject in age, size, location and features. They sold from July 2005 to June 2006 for prices ranging from \$153,900 to \$207,500 or from \$80.29 and \$116.65 per square foot of living area including land. The subject's assessment reflects an estimated market value of \$165,886, which falls within the range established by the sale prices of the most similar comparable sales. In addition, the Board finds the subject's estimated market value of \$73.73 per square foot of living area including land, as reflected by its assessment, falls below the range of sale prices established by the comparable sales on a per square foot basis. After considering adjustments to these comparables for any differences when compared to the subject, such as age, size, design, and features, the Board finds the subject's assessed valuation is supported. Based on this analysis, the Property Tax Appeal finds no reduction in the subject's assessment is 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.

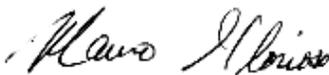
Chairman



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: April 24, 2009



Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

Section 16-185 of the Property Tax Code provides in part:

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the subsequent year are being considered, the taxpayer may, within 30

days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for the subsequent year directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.