FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Mark Lurvey
DOCKET NO.: 06-23731.001-C-1 through 06-23731.002-C-1
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Mark Lurvey, the appellant(s), by attorney Edward Larkin, of Larkin & Larkin in Park Ridge; and the Cook 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 **Cook** County Board of Review is warranted. The correct assessed valuation of the property is:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
06-23731.001-C-1	09-15-306-013-0000	12,936	336	$13,272
06-23731.002-C-1	09-15-306-014-0000	12,890	336	$13,225

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of two parcels totaling 33,540 square feet of land with site improvements of crushed stone. The appellant, via counsel, argued that there was unequal treatment in the assessment process and that the fair market value of the subject is not accurately reflected in its assessed value of as the bases of this appeal.

In support of the equity argument, the appellant submitted a brief asserting that the subject property is located in a Federal Flood plain and Federal Floodway with two creeks adjacent to the property and has been designated by the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area. The appellant also asserts there are further restrictions placed on the property by the Village of Des Plaines and that the subject property is not buildable. He argues these restrictions and the flood control required of the property devalue it.

The appellant's brief asserts the subject should not be classified as a commercial property with minor improvements, but as a vacant lot with minor improvements due to the inability to build on the property. He claims the Village of Des Plaines allows only for the storing of inventory on the parcel.

The appellant asserts that he was required to reduce the grade level of the land by several feet for purposes of flooding prevention. He argues that his property is used for flood control for the adjacent businesses as his property floods continually.

The appellant included the following documents to support his argument: colored photographs on a portion of the subject property and the road behind the property; a copy of a Sidwell map for block 306 which includes the subject property; an aerial map of the subject parcel and adjoining parcels; a copy of a City of Des Plaines Internal Floodway Map for the subject parcel; a copy of a FEMA Floodway map for the subject parcel; a copy of a letter from the City of Des Plaines stating the subject can be used for the purposes of a gardening business, but does not approve any construction activity including parking area and driveways; and a copy of the City of Des Plaines Flood Control Regulations.

In addition, the appellant has submitted assessment data and descriptions on a total of eight properties suggested as comparable to the subject and located adjacent to the subject and owned by the appellant. These parcels are also used for the same business as the subject. The data in its entirety reflects that six of the parcels are minimally improved with crushed stone and are subject to the same limitations as the subject. Two parcels are improved with a one-story store. The properties range: in size from 5,540 to 33,360 square feet of building area; in land assessments from $.65 to $1.54 per square foot; and in improvement assessments from $93.00 to $3,889.00. Based upon this analysis, the appellant requested a reduction in the subject's improvement assessment and a reduction in the land assessment to $10,000.

At hearing, the appellant's attorney, Edward Larkin, argued that the subject property, along with the other parcels that make up the appellant's garden center business, contain between 50 and 70 drainage sewers that are used for drainage of the creeks and the Des Plaines River located adjacent to or near the subject. He argued that the Village of Des Plaines required the appellant to place the sewers on the property in return for allowing the business to exist; however, the evidence did not include any documentation in regards to this. Mr. Larkin asserted that the Village would not put any of these requirements in writing.

Mr. Larkin cited 35 ILCS 200/10-166 as supporting the argument that the subject is a conservation area and should be assessed accordingly.

In additionally, Mr. Larkin argues that the subject has been mis-classified as a commercial property, but that it should be classified as vacant land with minor improvements that do not add any value.

He argues that Appellant's Exhibit #1, a copy of the floodway map, shows the floodway with a diagonal stripping of lines and the floodplain with a dark grey coloring. He argues that these areas are unbuildable due to the floodplain. Mr. Larkin also argues that the businesses surrounding the appellant's business are not located within the floodway or flood plain.

The appellant also presented Appellant's Exhibit #2, a copy of the FEMA Floodway Map, and indicated in blue pen the subject's placement within the floodplain. Mr. Larkin argued that the appellant cannot place any permanent structures on the parcel, but uses the parcel for temporary storage of pallets of landscaping products.

The board of review submitted "Board of Review-Notes on Appeal" wherein the subject's total assessment was $87,167 yielding a market value of $229,387 per square foot of building area, including land, using the Cook County Real Property Classification Ordinance for Class 5A property of 38%. The improvement is assessed at $10,696 for a market value of $28,148 and the land is assessed at $76,471 or $2.28 per square foot. The board also submitted two grids. The first grid included sales data on three properties in the subject's neighborhood. The sales occurred between June 2001 and April 2004 for prices ranging from $340,000 to $5,166,000. The grid does not include any information about the characteristics of these properties other than they are commercial. The second grid includes assessment data on four parcels located adjacent to the subject. These parcels are commercial properties with minor improvements and range in size from 16,920 to 16,980 square feet. No assessment data was provided for these parcels only a range of market values from $101,518 to $101,879. Based on this evidence, the board of review requested confirmation of the subject's assessment.

In response to questions, the board of review's representative, David Flores, testified that the assessor arrived at the subject's classification as a 5-90 because the property was being used for commercial purposes. He testified that minor improvements would include the crushed stone and fencing. As to the difference between a classification of a 1-90 and a 5-90, Mr. Flores testified if a lot is vacant it is classified as vacant land, 1-90, and if a lot is being used for commercial purposes, it will be classified as commercial, 5-90.

After considering the evidence and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. *Property Tax Appeal Board Rule* 1910.63(e). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. *Property Tax Appeal Board Rule* 1910.65(c).

As to the argument that the subject property is devalued due to the subject's location on a floodway, the PTAB finds that appellant failed to establish the value lost by this. The subject property is being used as a landscape business. The appellant's own evidence shows that the appellant uses the land in a way that generates revenue for the business. Therefore, the property is not completely unusable. The appellant cited the Property Tax Code to assert a value for the land at $10,000. However, the appellant failed to show that the property met the requirements of the code to qualify as land registered or encumbered by conservation rights. 35 ILCS 200/10-166.

The PTAB also finds the appellant failed to present sufficient evidence to justify a classification change to the subject property. Again, the appellant's evidence shows the property is used for commercial purposes. The board of review's representative testified that when a property is vacant, but being used for commercial purposes, it will be classified as commercial. The PTAB finds the subject is properly classified.

Appellants 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, 544 N.E.2d 762 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. Proof of assessment inequity should include assessment data and documentation establishing the physical, locational, and jurisdictional similarities of the suggested comparables to the subject property. *Property Tax Appeal Board Rule* 1910.65(b). Mathematical equality in the assessment process is not required. A practical uniformity, rather than an absolute one is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395, 169 N.E.2d 769 (1960). Having considered the evidence presented, the PTAB concludes that the appellant has met this burden and that a reduction is warranted.

The appellant presented assessment data on a total of eight equity comparables. Of these comparables, two parcels are improved with a one-story store. The PTAB finds the remaining six comparables similar to the subject. The properties are located adjacent to the subject and are used by the appellant for the same purpose. The parcels range: in size from 5,540 to 16,740 square feet; in land assessments from $.65 to $1.54 per square foot; and in improvement assessments from $93.00 to $429.00 or from $.01 to $.03 per square foot of land. In comparison, the

subject's land assessment of $2.28 per square foot and improvement assessment of $10,696 or $.32 per square foot of land are above the range of comparables. After considering adjustments and the differences in both parties' comparables when compared to the subject, the Board finds the subject's assessment is not supported and a reduction 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: May 21, 2010

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.