



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

APPELLANT: Robert & Judith Kerby
DOCKET NO.: 07-02968.001-R-1
PARCEL NO.: 09-08-428-002

The parties of record before the Property Tax Appeal Board are Robert & Judith Kerby, the appellants, and the Kane County Board of Review.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds no change in the assessment of the property as established by the Kane County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$67,360
IMPR.: \$237,066
TOTAL: \$304,426

Subject only to the State multiplier as applicable.

ANALYSIS

The subject 1.52-acre parcel has been improved with a two-story single-family dwelling of brick/stone/cedar construction which was built in 2005. The dwelling contains 4,383 square feet of living area and features central air conditioning, two fireplaces, a full 2,583 square foot walkout basement of which 1,650 square feet¹ is finished, and a four-car garage of at least 900 square feet of building area. The property is located in St. Charles, St. Charles Township, Kane County.

The appellant Robert Kerby appeared before the Property Tax Appeal Board on behalf of the appellants arguing both a lack of uniformity in the assessment process and that the fair market value of the subject was not accurately reflected in its assessment. Appellants also reported on the Residential Appeal form that the subject property was purchased in March 2005 for

¹ The board of review through the township assessor reports there are 1,800 square feet of finished area in the basement, but there is no schematic to confirm this data.

\$820,965 or \$187.31 per square foot of living area, including land.

As a consequence of examining the subject's property taxes, appellants discovered an error in the living area square footage of the subject. Once that size error was fixed and the dwelling size was reduced by 429 square feet, appellants contend the adjustment in the improvement assessment did not properly reflect the reduction in size. Moreover at that same time, the basement was finished in 2006 with an investment of \$62,000. Appellant Kerby testified that he believes the finished basement has resulted in an increased improvement assessment in excess of \$81,717 of market value.² It was the value assigned to the basement to which appellants primarily objected.

In the appeal, appellants also contended that there was an issue of law to be considered in that the assessor had recorded an incorrect size for the subject dwelling. Appellants reported the correct dwelling size to be 4,383 square feet and the assessor has confirmed that the records have been corrected to reflect 4,383 square feet of living area for the subject dwelling. As such, the Property Tax Appeal Board finds that there is no longer a legal issue to be decided in this matter regarding dwelling size. However, the appellants further assert that the reduction in dwelling size by 8.9% did not result in a corresponding 8.9% decrease in the improvement assessment, but only a 2.1% decrease in the improvement assessment; as such, the appellants have filed the instant appeal.

In support of the inequity argument, the appellants submitted assessment data and descriptions on three properties located in the subject's subdivision. The properties were described as two-story brick/cedar and either stone or stucco dwellings that ranged in age from 1.5 to 3 years old. The comparables range in size from 4,190 to 4,219 square feet of living area and feature central air conditioning, two fireplaces, a full basement, one of which has about 1,600 square feet of finished area, and a three or more car garage. The comparables had improvement assessments ranging from \$193,519 to \$217,646 or from \$45.87 to \$51.94 per square foot of living area. The subject had an improvement assessment of \$237,066 or \$54.09 per square foot of living area. On the basis of this analysis, the appellants requested an improvement assessment for the subject of \$219,698 or \$50.13 per square foot of living area. The appellants also reported these three comparables sold or were listed between March 2004 and July 2006 for prices ranging from \$820,000 to \$870,000 or from \$194.36 to \$207.64 per square foot of living area, including land. Based on this analysis, the appellants requested a reduction in the subject's total assessment to \$287,058 or approximately a market

² Appellants calculated the difference between the original improvement assessment based on 4,812 square feet of living area and the revised improvement assessment after the change in the dwelling's size.

value of \$861,174 or \$196.48 per square foot of living area, including land.

Lastly, in a brief included with the appeal, appellants note the subject has had an assessment increase from 2006 to 2007 of 7.06%. Furthermore, appellants contend the market value of homes has decreased throughout 2007 (see Exhibit 5 - a February 2008 press release from Standard & Poor's) and continuing to decline into 2008. Appellants also point out that the subject property is located across the street from an illegal dump (Exhibit 6 photographs) upon which code enforcement proceedings have recently begun. Based on these foregoing considerations and evidence, appellants contend the subject's assessment does not accurately reflect its fair market value.

On cross-examination, appellant acknowledged that the basement was finished including a bathroom with shower, wash basin and toilet. Appellant further expounded on the illegal dump noting that governmental agencies from the county have recently become involved and legal action has now taken place; dumping began in 2007.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of \$304,426 was presented. The subject's assessment reflects an estimated market value of \$914,742 or \$208.70 per square foot of living area, including land, based on the 2007 three-year median level of assessments in Kane County of 33.28%. The board of review submitted a two-page letter from Colleen Lang, the St. Charles Township Assessor, along with a grid analysis.

The township assessor wrote that in November 2005 the appellants obtained a building permit with a value of \$65,000 to finish the basement "adding 1,800 square feet of living area with a three-fixture bathroom" and therefore adding "\$18.65 per square foot to the above grade living area." The township assessor further wrote that the subject property without the finished basement and additional bathroom would be \$209,827 or \$47.87 per square foot of living area.

In support of the subject's assessment, the board of review submitted a grid analysis repeating the three comparables presented by the appellants and adding one new comparable from the subdivision. The board of review reported that appellants' comparables #1 and #2 had walkout basements like the subject. The additional comparable presented by the board of review was described as a two-story frame and masonry dwelling containing 4,233 square feet of living area which was built in 2004. The dwelling features two fireplaces, a full unfinished English basement, and a 1,095 square foot garage. The property had an improvement assessment of \$198,863 or \$46.98 per square foot of living area. This comparable also was purchased in December 2004 for \$860,000 or \$203.17 per square foot of living area, including land. The board of review also reported that appellants' comparable #2 sold in October 2004 for \$798,000 or \$189.14 per

square foot of living area, including land.³ The township assessor further pointed out that the subject property besides having a large finished basement area unlike any of the comparables also had the second largest garage of the four comparables presented in the board's grid analysis. In summary, the board of review contended that the subject's improvement assessment of \$54.09 per square foot of living area was justified given its superior features as compared to the comparables which had improvement assessments ranging from \$45.86 to \$51.94 per square foot of living area. Furthermore, the board of review contended that the subject's estimated market value of \$208.39 per square foot of living area including land was also appropriate due to its superior features as compared to the comparables which had sale prices ranging from \$189.14 to \$207.64 per square foot of living area including land as set forth in the grid analysis.

As to the purported illegal dump, the township assessor in her letter contended that "with lots still being improved in the subdivision construction traffic and conditions are to be expected and are certainly not permanent." As a result of this analysis, the board of review requested confirmation of the subject's assessment contending that the finished basement and larger garage of the subject property justify the slightly higher improvement assessment and resultant estimated market value.

In written rebuttal, the appellants contend the comparable #3 presented by the appellants has a finished basement which is not properly reported in the grid presented by the board of review. Appellants also contend that the subject garage consists of 900 square feet of building area, not the 1,039 square feet reported in the board of review's grid analysis. Included in appellants' rebuttal evidence were exhibits #4 and #5 which data had not been previously submitted in this matter; Exhibit #4 displays a purchase price as of July 2008 for appellants' comparable #2 of \$768,000 which is nineteen months after the valuation date at issue and also occurred after appellants filed the instant appeal in April 2008. As Exhibit #5, appellants submitted in May 2009 a new listing of a property near the subject which appellants contend has been abandoned in an unfinished state by the developer.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds that the appellants have failed to support either the contention of unequal treatment in the assessment process or the contention of overvaluation of the subject property.

Pursuant to the Official Rules of the Property Tax Appeal Board, rebuttal evidence is restricted to that evidence to explain,

³ Appellants had reported a "current asking price" of \$820,000 for this comparable.

repel, counteract or disprove facts given in evidence by an adverse party. (86 Ill. Admin. Code, Sec. 1910.66(a)). Moreover, rebuttal evidence shall not consist of new evidence such as an appraisal or newly discovered comparable properties. (86 Ill. Admin. Code, Sec. 1910.66(c)). In light of these Rules, the Property Tax Appeal Board has not considered appellants' exhibits #4 and #5 submitted in conjunction with their rebuttal argument. As to Exhibit #4, the board of review reported that comparable #2 sold in October 2004 for \$798,000 and submitted the property record card also showing that sale price; appellants did not refute that data, but rather presented a "more recent" purchase price from July 2008 of \$768,000.

The appellants argued in part that the subject's assessment was inequitable because of the percentage increases in its assessment from 2006 to 2007. The Board finds this type of analysis is not an accurate measurement or a persuasive indicator to demonstrate assessment inequity by clear and convincing evidence. The Board finds rising or falling assessments from year to year on a percentage basis do not indicate whether a particular property is inequitably assessed. The assessment methodology and actual assessments together with their salient characteristics of properties must be compared and analyzed to determine whether uniformity of assessments exists. The Board finds assessors and boards of review are required by the Property Tax Code to revise and correct real property assessments, annually if necessary, that reflect fair market value, maintain uniformity of assessments, and are fair and just. This may result in many properties having increased or decreased assessments from year to year of varying amounts and percentage rates depending on prevailing market conditions and prior year's assessments.

The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds that the appellants have failed to overcome this burden.

The parties submitted four comparable properties for the Board's consideration. None of the comparables have a finished basement and only one has a garage larger than that of the subject property. The comparables have improvement assessments ranging from \$45.87 to \$51.94 per square foot of living area. The subject's improvement assessment of \$54.09 per square foot of living area is slightly above this range, but is justified given the subject's substantial finished basement area which is superior to each of the comparables presented. While appellants assert that comparable #3 also has a finished basement, the evidence is that this property has an English basement as compared to the subject's walkout basement feature which again makes the subject superior in amenities to comparable #3. After

considering adjustments and the differences in both parties' comparables when compared to the subject, the Board finds the subject's improvement assessment is equitable and a reduction in the subject's assessment is not warranted on grounds of lack of uniformity.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. The requirement is satisfied if the intent is evident to adjust the burden with a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly establishing the method of assessing real property in its general operation. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395 (1960). Although the comparables presented by the appellants disclosed that properties located in the same area are not assessed at identical levels, all that the constitution requires is a practical uniformity which appears to exist on the basis of the evidence.

The appellants also 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 (3rd Dist. 2002). The Board finds the evidence in the record does not support a reduction in the subject's assessment.

The valuation date at issue in this matter is January 1, 2007. The parties presented four sales comparables for consideration. The comparables sold between October 2004 and March 2007 for prices ranging from \$798,000 and \$870,000 or from \$189.14 to \$207.64 per square foot of living area including land. The subject has an estimated market value of \$914,742 or \$208.70 per square foot of living area including land based on the 2007 three-year median level of assessments in Kane County of 33.28%. Again, the Property Tax Appeal Board finds that the subject's slightly higher per square foot market value is justified by its finished walkout basement area and its second largest garage. The subject's estimated market value is further supported by the sale price of comparable #1 presented by the appellants which sold in April 2006 for \$207.64 per square foot of living area including land and does not have a finished basement, has a smaller garage than the subject and has one less bathroom than the subject.

Appellants also argued that issues external to the subject property, namely, an illegal dump across the street, make it less valuable than comparable properties. Importantly, however, appellants provided no empirical data to indicate the property was over-valued based on the existence of this illegal dump and thus the Property Tax Appeal Board has given these arguments little merit. Appellants presented no evidence as to what effect the location of the subject property has upon its market value

other than presenting three sales of comparable properties all located on the same street as the subject. The Board recognizes the appellants' premise that the subject's value may be affected due to its location, but without credible market evidence showing the subject's assessment was inequitable or not reflective of market value, the appellants have failed to show the subject property's assessment should be reduced due to this external factor, particularly where nearby sales of property support the subject's estimated market value as determined by the assessor.

For the foregoing reasons, the Board finds that the appellants have not proven by clear and convincing evidence that the subject property is inequitably assessed or by a preponderance of the evidence that the subject is overvalued. Therefore, the Property Tax Appeal Board finds that the subject's assessment as established by the board of review is correct and no reduction is warranted.

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.