



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

APPELLANT: Bernard Fiedor
DOCKET NO.: 08-01332.001-R-1
PARCEL NO.: 02-05-179-007

The parties of record before the Property Tax Appeal Board are Bernard Fiedor, the appellant, 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: \$27,575
IMPR.: \$55,884
TOTAL: \$83,459

Subject only to the State multiplier as applicable.

ANALYSIS

The subject residential parcel consists of .235-acres located on Black Oak Trail, Huntley, Rutland Township, Kane County. The parcel is a corner lot along Cold Springs Drive with driveway ingress/egress on Black Oak Trail. The parcel is improved with a one-story single-family residential dwelling.

The appellant appeared before the Property Tax Appeal Board asserting a contention of law as the basis for challenging the land assessment of the subject property. No dispute was raised concerning the improvement assessment. Appellant pointed out that the land assessment of the subject parcel increased 97% from 2005 to 2008 from \$13,998 to \$27,575. In support of his legal contention, the appellant submitted a six-page brief with numerous attachments.¹

¹ The appellant originally raised a second legal issue asserting that the property record card for the subject parcel "contains an incorrect legal description" (attachment 1). By letter dated July 26, 2009 appellant withdrew that issue from consideration in this matter, but at hearing the appellant continued to present evidence and argue that the legal description on the subject's property record card was erroneous.

The appellant contends that the land assessment for the subject parcel is not 'fair' as the parcel is located in an inferior location. The subject, located on a corner lot with open space to the rear of the lot, is exposed on three sides to Cold Springs Drive. The appellant purchased the property in 1999. As a consequence of various residential and commercial developments in the surrounding area since 1999, including but not limited to Regency Square with access via Farm Hill Drive, the appellant contends there has been an increase of 'cut-through' traffic along Cold Springs Drive. Various zoning maps such as Attachment F and Exhibit 16, which is dated April 25, 2002, do not depict a public road known as Farm Hill Drive connecting from the north to Cold Springs Drive in the subject's neighborhood.

In further support of these contentions, the appellant submitted Attachment I, a traffic study performed by Civiltech Engineering, Inc. dated August 14, 2000, analyzing the amount of additional traffic that may travel on Cold Springs Drive due to a roadway connection, Farm Hill Drive, built between Del Webb's Sun City and a proposed Regency Square Development. Among the conclusions of the study was that "[t]he only negative impact is to the residents living along Cold Springs Drive who will be exposed to additional traffic volumes due to the connection." The appellant contends that community ordinances and land use maps define and identify 'local' street as one carrying up to 1,000 vehicles per day. As Cold Springs Drive was designed as a local street (Exhibit 8), the appellant asserts that the traffic counts exceed "what would normally be considered desirable on a local street." This same engineering report further stated "these volumes are not surprising based on the level of development within the Del Webb community."

Appellant submitted attachment 1, a copy of a property record card for the subject parcel. Under the heading "legal description" on the property record card is written "Corner of Black Oak and Cold Springs." The appellant raised this issue with the board of review and, as stated in his brief, was advised that information was "for office purposes." For his appeal to the Property Tax Appeal Board, the appellant included Attachments C and K, one of which is a recorded legal document, setting forth the complete legal description of the subject property. Although the appellant contested these documents as having 'uninitialed changes' shown in italics, they set forth the subject's legal description as follows:

Lot 30 in the *second* amended plat of subdivision of Del Webb's Sun City-Huntley, Illinois neighborhood seven, a subdivision of part of Section 5, Township 42 North, Range 7 East of the Third Principal Meridian and part of the southwest quarter of Section 32, Township 43 North, Range 7 East of the Third Principal Meridian, in the Village of Huntley, according to the plat thereof recorded March 30, 1999 in plat envelope A250 A&B and A251 A as Document No. 1999K032456, in Kane County,

Illinois and recorded April 5, 1999 as Document No. 99R-0025238 in McHenry County, Illinois.

(Attachment C). Appellant also submitted Attachment L, a non-recorded copy of the Warranty Deed which did not have the italicized change. Based on the foregoing, the appellant contends that the 'legal description' set forth on the subject's property record card is erroneous. In response to a question by the Hearing Officer, the appellant acknowledged that he owns the parcel identified as 02-05-179-007 which is the subject matter of this proceeding.

The appellant requested that the land assessment be consistent with its 2005 treatment. Recognizing the various classifications of lots in the subject's immediate area, the appellant's brief concludes that the subject lot with an inferior location should be classified as a "base" lot. As shown on the appeal petition, the appellant requested a reduced land assessment to \$15,299.

The board of review submitted its "Board of Review Notes on Appeal" wherein the final assessment of the subject totaling \$83,459 was disclosed with a land assessment of \$27,575 and an improvement assessment of \$55,884. Based on the statutory level of assessments of 33.33%, the subject property has a total estimated market value of approximately \$250,402 for both the land and improvements.

At hearing, the board of review reported that land in the subject's neighborhood for 2008 was reassessed using a site value, rather than a square foot methodology. Township Assessor Janet Siers testified that in 2005 there was a contractual employee hired by the township to finish out the term of the previous assessor. During a nine-month-period, the contractual employee decided to apply a per-square-foot land valuation methodology. Siers further testified that since Sun City had been developed in 1999, the developer had always used the site value method and the township had used a site value method until 2005. In 2006, the Kane County Board of Review requested that Siers, as the township assessor, review the land values in Sun City and seek to make the land assessments more uniform. As that review process took time, it was not until 2008 that all the land in Sun City was revalued applying the site method.

Siers testified that the original developer, Del Webb, had created classifications of land based on the homes that could be built on a given lot based on the parcel's width. Those classifications were Classic, Premier, Estate and Reserve in addition to some parcels that were duplex, triplex, fourplex and sixplex designations. The subject is classified as a Premier lot as shown on the property record card. In the revaluation process, Siers went back to those same classifications based on a site valuation originally determined by Del Webb. Included in the board of review's documentation is a chart entitled "Sun City Land Value Chart - 2008 Revalue." The document includes a left-hand column for the classifications as established by the

developer and a row across the top for the location/view adjustment determined by the assessor identified as either Base, Standard or Open.² The single-family residential lots for 2008 according to the chart have land assessments ranging from \$15,296 to \$36,255. The subject was categorized as an open lot which is defined as "[l]ots with unobstructed view such as common area, wet land, park, golf course view, water." Based on the foregoing, the subject parcel has a 2008 land assessment of \$27,575.

The assessor made no adjustment for corner location, but if the property either backs or fronts to a particularly busy street like Del Webb Boulevard the assessor would make a percentage adjustment on that. Siers also testified that in 2009 the township assessor's office made a 2% adjustment to the parcels on Cold Springs Drive located north of Farm Hill Drive. According to Siers, the subject parcel which sides along Cold Springs Drive and is north of Farm Hill Drive was afforded the same 2% land assessment reduction in 2009. Although this does not compute mathematically, Siers testified the 2009 land assessment for the subject property was \$28,526 after deducting 2% for location on Cold Springs Drive and applying the township equalization factor of 1.0345.³

The township assessor testified that Cold Springs Drive winds through and cuts down the middle of most of the development from Del Webb Boulevard on the north and then reconnects with Del Webb Boulevard on the south as the boulevard reaches out to Route 47. She described that the boulevard winds around the outside of the Sun City development and Cold Springs Drive winds through the center of the development. Siers stated that in 2008 her office did a traffic study based on a resident's complaint wherein her field staff were sent out for a two week period at different times of the day and determined that there was a traffic problem. Her office concluded the problem was due to road construction to the north in the village of Huntley so that many of the school buses and related traffic was going down Cold Springs Drive.

The township assessor opined that if an individual purchases a property in the early phases of subdivision development either on or along a street that goes through the middle of the subdivision that an increase in traffic could be anticipated as the area is developed. Siers further contended that she understood from the commencement of the Sun City development that Farm Hill Drive would extend from the subject's subdivision to a commercial development on Regency Drive which eventually became Regency Square. In any event, the failure of an individual property owner to not be aware of that future development potential does

² At the bottom of the chart are brief descriptions or definitions of each of the adjustment categories.

³ A 2008 land assessment of \$27,575 with a factor of 1.0345 results in an equalized land assessment of \$28,526. Had the subject's 2009 land assessment been lowered by 2% ($\$27,575 - 2\% = \$27,024$) and then applied the equalization factor, the 2009 land assessment would have been \$27,956.

not impact Siers' duty as township assessor to assess properties in accordance with market value data.

Sier's office did a study of sales of properties on Cold Springs Drive as shown in a spreadsheet with a date of December 10, 2008 (see board of review evidence). The analysis divided the sales data by dwelling model on Cold Springs Drive versus the same model in other parts of the subdivision. The lot types on the analysis were either standard or open. The analysis revealed no great difference and that, in fact, some of the homes on Cold Springs Drive had sold for more than the same homes in other parts of the subdivision. Based on the data gathered from those 23 sales, the township assessor concluded that there is no indication that the Cold Springs Drive location has a negative effect on market value.

The board of review also submitted a spreadsheet with assessment data for the subject and 24 properties. The parcels are said to range in size from .18 to .36-acres. Each is an open lot type. Three of the comparables have street addresses on Cold Springs Drive. Each comparable has a land assessment of \$27,575, identical to the 2008 land assessment of the subject property.

Based on the foregoing evidence, the board of review requested confirmation of the subject's land assessment.

In rebuttal and as to the board of review's sales data, the appellant pointed out only four of the sales along Cold Springs Drive were north/west of the connection and thus affected by the cut through traffic. These four sales directly on Cold Springs Drive consist of lots ranging in size from .20 to .28 acres with dwellings ranging in size from 1,778 to 2,306 square feet of living area. These properties sold between September 2005 and September 2007 for prices ranging from \$300,728 to \$440,000 or from \$169.12 to \$190.81 per square foot of living area including land. Moreover, of these four sales, the appellant pointed out that only one was a Mackinac model like the subject. While this one comparable sold for \$300,728 in November 2006, the appellant further noted that this property has "an unobstructed view of the sunset being on the golf course and an unobstructed view of the sunrise being across the street of the wetland."

As to the subject parcel, the appellant testified that the assessing officials note the subject as being on a "wetland" which for the revaluation places the property in the 'open' location category. However, the appellant contends that the subject is actually on a retention pond; while there were supposed to be canopy trees in the area, unsightly algae got "all over." As the assessor reduced some lots to 'base' because of inferior location "primarily backing to a busy street," the appellant contends the subject lot which is exposed on three sides to a busy street should be classified as 'base.'

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 no reduction in the subject's assessment is warranted on the evidence presented.

The Property Tax Appeal Board may consider appeals based upon contention of law. **Such contentions must be concerned with the correct assessment of the subject property.** If contentions of law are raised, the party shall submit a brief in support of his position. [Emphasis added.]

(86 Ill.Admin.Code §1910.65(d)). The appellant based the instant appeal upon a contention of law. The appellant provided a brief and documentation that he believed supported his various assertions. In his submissions and during the hearing, the appellant raised concerns that there were no published rules for proceedings before the Kane County Board of Review; the appellant also sought to draw a distinction between 'public streets' and 'private streets' (Attachment A); and the appellant also alleged that the 'legal description' on the property record card for the subject parcel was incorrect.

As to each of the foregoing contentions, the Property Tax Appeal Board finds it has no authority to remedy those matters.⁴ Proceedings before the Property Tax Appeal Board are *de novo*. (86 Ill.Admin.Code §1910.50(a)). Under the *de novo* standard of review, the assessments set by a board of review are entitled to no deference on appeal to the Property Tax Appeal Board. LaSalle Partners, Inc. v. Illinois Property Tax Appeal Board, 269 Ill.App.3d 621, 627 (2nd Dist. 1995). The Property Tax Appeal Board has limited authority as provided for by the Property Tax Code. (35 ILCS 200/16-160 et al). As stated by the court in People ex rel. Thompson v. Property Tax Appeal Board, 22 Ill.App.3d 316, 317 N.E.2d 121 (2nd Dist. 1974):

The only authority and power placed in the [Property Tax Appeal] Board by statute is to receive appeals from decisions of Board of Review, make rules of procedure, conduct hearings and make a decision on the appeal. [citations omitted] That is all. The only types of appeal provided for in the statute are by 'any taxpayer dissatisfied with the decision of a board of review as such decision pertains to an assessment of his property for taxation purposes or any taxing body that has an interest in the decision of the board of review on an

⁴ Even if the Property Tax Appeal Board did have authority on these issues, determinations of these issues in appellant's favor would have no impact or effect on the assessed valuation of the subject property. For instance, whether the 'legal description' on the property record card is correct or not is irrelevant to the valuation or assessment question pending before the Board; the appellant at hearing acknowledged that he is the owner and taxpayer of parcel number 02-05-179-007 which is the subject matter of this appeal. Appellant presented no evidence that the shorthand description of the subject property on the property record card under the category of 'legal description' has any relevance to the assessment placed on the property.

assessment made by any local assessment officer . . .

Thompson, 22 Ill.App.3d at 322. The court in Thompson went on to hold that the Property Tax Appeal Board is limited to the question of the correctness of the assessment on the property that is the subject matter of the appeal. Thompson, 22 Ill.App.3d at 321.

The only questions the appellant raised concerning the correctness of the assessment of the subject parcel concerned: (1) the impact on value of the increased traffic and (2) the substantial percentage increase in the assessment of the subject parcel from 2005 to 2008.

Addressing the percentage increase, the Board first finds that the township assessor reassessed all land in Sun City in 2008 changing from a per-square-foot valuation to a site valuation method. There is no real dispute that certainly for the subject property, this revaluation process raised the land assessment from its 2005 value of \$13,998.⁵ The Board also finds that the township assessor provided a detailed chart that listed the 2008 land revaluations by classification and applicable location adjustments providing a range of land assessments from \$15,296 to \$36,255. The subject's land assessment of \$27,575 fits under the classification of a Premier lot with an 'open' adjustment and is within the range of land assessments for 2008 in the subject's subdivision.

The appellant argued that the 97% increase in the land assessment of the subject parcel from 2005 to 2008 was inappropriate. 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 or overvalued. The Property Tax Appeal Board finds such an analysis or argument is not an accurate measurement or a persuasive indicator to demonstrate assessment inequity by clear and convincing evidence or overvaluation by a preponderance of the evidence. The assessment methodology and actual assessments together with the salient characteristics of properties must be compared and analyzed to determine whether uniformity of assessments exists and/or whether properties reflect their fair cash values. The Board further 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.

By inference, the appellant was arguing that the increased traffic on Cold Springs Drive impacted that value of the subject

⁵ The property record card for the subject also displays: the 2006 land assessment of \$14,272 and the 2007 land assessment of \$14,654.

parcel. The Property Tax Appeal Board has given this argument little merit because the appellant failed to present any substantive evidence indicating the subject's assessment was inequitable or the parcel was overvalued due to the increased area traffic.

When market value is the basis of the appeal, the appellant has the burden of proving the value of the property by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill. App. 3d 179, 728 N.E.2d 1256 (2nd Dist. 2000); National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill. App. 3d 1038 (3rd Dist. 2002); *Official Rules of the Property Tax Appeal Board*, 86 Ill.Admin.Code §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. *Official Rules of the Property Tax Appeal Board*, 86 Ill. Admin. Code Sec. 1910.65(c). The Board finds the appellant has not overcome this burden.

The record contains no market evidence to support the appellant's claim regarding the purported loss in value, if such loss exists. Besides his theory that location along a road with cut-through traffic makes a difference in the marketplace, the Board finds appellant provided no information to support what that lower value should be based on this argument; a mere theory and claim of reduced value by the appellant without more is insufficient evidence of an impact on market value. Thus, the Board finds appellant failed to present any substantive evidence indicating the subject's market value was impacted by its location. The Property Tax Appeal Board recognizes the appellant's premise that the subject's value may be affected due to the aforementioned factor, however, without credible market evidence showing the subject's land or total assessment was inequitable or not reflective of fair market value, the appellant has failed to show the subject's property assessment was incorrect.

Except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Illinois Supreme Court has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced so to do. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970).

The Board finds the appellant submitted no credible market evidence that would indicate that subject's land assessment is

not reflective of its fair market value.⁶ The only market value data in this record was supplied by the board of review in support of the subject's estimated market value.

The board of review submitted data on 23 recent sales in the subject's subdivision. The appellant criticized those sales, but remarked that only four sales on Cold Springs Drive were affected by the traffic like the subject. Those four sales consist of lots ranging in size from .20 to .28 acres with dwellings ranging in size from 1,778 to 2,306 square feet of living area. These properties sold between September 2005 and September 2007 for prices ranging from \$300,728 to \$440,000 or from \$169.12 to \$190.81 per square foot of living area including land. The subject property has a total estimated market value of approximately \$250,402 or \$152.50 per square foot of living area including land, which is below the range of the four comparables that appellant agreed were the most similar to the subject dwelling and impacted by the cut-through traffic. Given the evidence in the record of these most similar comparables, the Board finds the subject's estimated market value as reflected by the assessment is supported.

As to the unfairness argument the appellant made, 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, 544 N.E.2d 762 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. Having considered the evidence presented, the Board concludes that the appellant has failed to meet this burden and finds a reduction is not warranted.

With regard to the subject's land assessment, the Board finds the record contains a detailed chart identifying the classification and lot adjustment applied in 2008 to all parcels in Sun City with the township assessor applied a site value methodology in the area. The subject's 2008 assessment of \$27,575 is shown on the chart for Premier class 'open' lots. The board of review submitted a spreadsheet of 24 comparables that range in size from .18 to .36-acres with open lot type and a land assessment of \$27,575. As a result of this analysis, the Property Tax Appeal Board finds the subject's 2008 land assessment is supported and no reduction is warranted.

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 taxation burden with a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly

⁶ While the appellant included the board of review's sales and equity data in his materials, the appellant only raised questions as to the comparability of those properties and/or whether those properties should be considered in analyzing the appellant's contentions.

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 appellant 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. For the foregoing reasons, the Board finds that the appellant has not proven by clear and convincing evidence that the subject property is inequitably assessed. 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.

In conclusion, the Board finds the appellant failed to demonstrate that the subject property was inequitably assessed by clear and convincing evidence or overvalued by a preponderance of the evidence. Therefore, the Board finds 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

Frank J. Huff

Member

Member

Mario M. Louie

Shawn R. Lerbis

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: September 23, 2011

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.