



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

APPELLANT: Joseph & Angela DeSario
DOCKET NO.: 08-03419.001-R-1
PARCEL NO.: 01-22-103-012

The parties of record before the Property Tax Appeal Board are Joseph & Angela DeSario, the appellants; and the DuPage 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 DuPage County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$53,830
IMPR.: \$ 0
TOTAL: \$53,830

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a 40,106 square foot vacant residential lot located Smythe Settlement Subdivision, Wayne Township, DuPage County, Illinois.

The appellant, Angela DeSario, appeared before the Property Tax Appeal Board claiming the subject's land is inequitably assessed. In support of the inequity claim, the appellants submitted a letter addressing the appeal and three suggested assessment comparables. The comparables are located in different subdivisions than the subject. The comparables contain $\frac{1}{2}$, 1 or 2 acres of land area and have land assessments ranging from \$18,390 to \$30,940. The subject property has a land assessment of \$53,830.

The appellants' letter, photographic evidence and the testimony presented by Desario indicate there is a three to four foot deep swale used for water drainage that runs along the edge of the subject lot. The appellants also claim there is a 20 foot wide utility easement on the property, further limiting its buildable area. The appellants also argued there are 10 foot setback requirements on each side of the lot creating a narrow buildable

site. Due to these restrictions, the appellants allege they are prohibited from building the same house (width) as the homes in the subdivision. The appellants argued other lots in the subdivision that are located on a cul-de-sac or have water frontage are unfairly assessed at the same rate as the subject's lot. The appellants acknowledged they were well aware of the inconveniences regarding the size and shape of the lot when they purchased it in 1991 for \$51,500. The appellants argued the subject's sale price in 1991 was \$15,000 to \$20,000 lower than other lots and premium lots, but submitted no evidence to support this claim. Based on all these factors, the appellants argued the subject lot should be assessed less than all other lots located in Smythe Settlement Subdivision or a land assessment of \$35,000.

Under cross-examination, the appellant testified she was not sure if there was a utility easement under the swale.

The board of review submitted its "Board of Review Notes on Appeal wherein the subject's final land assessment of \$53,830 was disclosed. In support of the subject's assessment, the board of review submitted a letter addressing the appeal and the land assessments for all the properties located in Smythe Settlement Subdivision. Nancy Franz, Residential Deputy Assessor for Wayne Township, was present at the hearing and provided testimony in connection with the evidence submitted.

Franz testified land in the subject's subdivision is assessed on a site basis like the subject. The assessor submitted a list of all 88 lots located in Smythe Settlement Subdivision. They range in size from 40,001 to 59,197 square feet of land area and each have a land assessment of \$53,830 like the subject.

The assessor agreed the subject lot does contain a utility easement and a water drainage swale, which results in a narrower frontage than other lots in the subject's subdivision. However the assessor argued the appellants did not provide any evidence that the subject lot is unbuildable. The assessor testified the subject lot has sufficient depth to allow for construction of a dwelling, although the home may need to be positioned at an angle on the lot.

With respect to evidence submitted by the appellant, the assessor testified comparable 1 receives the preferential land assessment for developers as provided in Section 10-30 of the Property Tax Code. (35 ILCS 200/10-30). This comparable sold in 2008 and received a 2009 land assessment of \$52,330. Appellants' comparables 2 and 3 are not buildable lots, but are parcels of excess land with adjoining home sites that are receiving the majority of the value along with the home values. In addition, comparables 2 and 3 are located in different subdivisions that are 2.25 and 3 miles from the subject, respectively. In addition, these properties have dwellings that straddle both parcels.

Based on this evidence, the board of review argued the subject property is equitably assessed.

Under written rebuttal, the appellants argued they never argued that the subject lot was unbuildable, but the lot has a water swale ditch and a 20 foot wide utility easement, restricting its use based on building codes. The appellants allege there are no other lots in the subject's subdivision that have the same restrictions as the subject. The appellants argued it makes no sense that premium lake front or cul-de-sac lots are assessed the same as the subject. As a result, the appellant's contend the subject lot should be assessed lower than other lots in the subject's subdivision.

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 Board further finds no reduction in the subject's assessment is warranted.

The appellants argued unequal treatment in the assessment process. 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. The appellants have not overcome this burden of proof.

The Board finds the parties submitted assessment information for 81 suggested land comparables. The Board gave little weight to the three comparables submitted by the appellants. These properties are not located in subject's subdivision. Furthermore, two comparables are located 2.25 and 3 miles from the subject, which are not considered close in proximity to the subject. In addition, comparable 1 receives a preferential land assessment for developers as provided in Section 10-30 of the Property Tax Code (35 ILCS 200/10-30) and is therefore not considered similar to the subject for ad valorem assessment purposes.

The Property Tax Appeal Board further finds the land comparables submitted by the board of review are more similar to the subject in location and size. They range in size from 40,001 to 59,197 square feet of land area and each have a land assessment of \$53,830. The subject property contains 40,106 square feet of land area and has a land assessment of \$53,830, identical to the most similar comparables contained in this record. After considering adjustments to these comparables for differences when compared to the subject the Board finds the subject's land assessment is supported and no reduction is warranted.

The appellants asserted that the subject's assessment was unfair and excessive because there is a three to four foot deep swale used for water drainage that runs along the edge of the subject

lot; there is a 20 foot wide utility easement on the property that further limits its buildable area; and there are 10 foot setback requirements on each side of the lot creating a narrow buildable site. As a result, the appellants contend the subject's land should be assessed lower than other lots in the subdivision, especially those lots located on a cul-de-sac or with water frontage. The Board gave little weight to this aspect of the appellants' inequity claim. The Board finds that the appellants submitted no market data demonstrating the subject's land assessment was not reflective of its fair market value or that the subject lot is less valuable than other lots located within the subject's subdivision.

When an appeal is based on assessment inequity, the appellants have the burden to show the subject property is inequitably assessed by clear and convincing evidence. Proof of an assessment inequity should consist of more than a simple showing of assessed values of the subject and comparables together with their physical, locational, and jurisdictional similarities. There should also be market value considerations. The supreme court in Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395, 169 N.E.2d 769, discussed the constitutional requirement of uniformity. The court stated that "[u]niformity in taxation, as required by the constitution, implies equality in the burden of taxation." (Apex Motor Fuel, 20 Ill.2d at 401) The court in Apex Motor Fuel further stated:

"the rule of uniformity ... prohibits the taxation of one kind of property within the taxing district at one value while the same kind of property in the same district for taxation purposes is valued at either a grossly less value or a grossly higher value. [citation.]

Within this constitutional limitation, however, the General Assembly has the power to determine the method by which property may be valued for tax purposes. The constitutional provision for uniformity does [not] call ... for 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 in its general operation. A practical uniformity, rather than an absolute one, is the test.[citation.]" Apex Motor Fuel, 20 Ill.2d at 401.

In this context, the supreme court stated in Kankakee County that the cornerstone of uniform assessments is the fair cash value of the property in question. According to the court, uniformity is achieved only when all property with similar fair cash value is assessed at a consistent level. Kankakee County Board of Review, 131 Ill.2d at 21. 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). Again, the Board finds that the appellants submitted no market data demonstrating the subject's land assessment was not reflective of its fair market value or that the subject lot is less valuable than other lots located within the subject's subdivision.

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. 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 M. Louie

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: July 22, 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.