



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

APPELLANT: Bernfield Galena Property Trust
DOCKET NO.: 09-05754.001-R-1 through 09-05754.002-R-1
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Bernfield Galena Property Trust, the appellant, by attorney Glen R. Bernfield in Highland Park, and the Jo Daviess County Board of Review.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds a reduction¹ and no change in the assessment of the property as established by the Jo Daviess County Board of Review is warranted as identified below. The correct assessed valuation of the property is:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
09-05754.001-R-1	06-204-108-00	40,097	45,073	\$85,170
09-05754.002-R-1	06-204-107-00	58,080	0	\$58,080

Subject only to the State multiplier as applicable.

ANALYSIS

The subject appeal concerns two adjacent parcels. The property at 37 Shorewood consists of a .789-acre parcel located in Galena Territory which is improved with a one-story frame single-family dwelling that was built in 1992. The home contains 1,407 square feet of above-grade living area and features a partial finished basement, central air conditioning, two fireplaces, a deck, an additional two-story deck, two porches and an attached 460 square foot garage. The property at 39 Shorewood consists of 1.213-acres of vacant land. The parcels are each located in Galena, East Galena Township, Jo Daviess County.

37 Shorewood

As to the above-referenced property, the appellant filed a residential appeal with the Property Tax Appeal Board contending overvaluation based on a recent sale. In support of the argument, the appellant completed Section IV of the Residential

¹ A reduction is warranted only for parcel 06-204-108-00.

Appeal petition reporting the sale occurred on February 16, 2010. The appellants sold the subject property to an unrelated party, Aloysius and Carol Musur, through agent Damon Heim of Coldwell Banker after the property had been advertised in the local paper and Multiple Listing Service for a period of 3 years, 8 months. In further support of the assertion, the appellant provided a copy of the Contract For Purchase between the parties entered into on February 16, 2010 and a copy of the Settlement Statement of March 19, 2010 reflecting a contract sales price of \$267,250. The Contract For Purchase included an Amendment addressing, among other things, proration of taxes related to this pending appeal, and acknowledgement that the personal property included in the sale contract has a value of \$15,000.

In addition, the appellant submitted documentation received from the buyers as a consequence of an inspection of the home and an estimate to repair and replace certain defects according to the buyer's contractor, Jim's Home Improvements LLC, totaling \$25,760. In the submission, the appellant contends that the work not covered by this estimate "would be at least \$4,240" resulting in a total repair/replacement cost of \$30,000. As a consequence of the inspection, the appellant reports the parties agreed to reduce the purchase price by \$10,000 as reflected in the Second Amendment to Contract to Purchase.

As part of the appeal, the appellant reports a septic inspection by the county health department ascertained that the septic tank and pump had to be replaced.² As a consequence of this inspection, the appellant reports the contract price was further reduced as shown in the Third Amendment to Contract to Purchase by \$4,550 based on the estimate of Mike and Nick Sproule Construction in Galena.

As part of the evidence, the appellant further contends that the "value of the home" was further reduced by the brokers' commission of \$13,362.50, the accrued real estate taxes of \$6,515 and the closing costs of \$947.85, each of which is reflected in the Settlement Statement.

As a consequence of the foregoing evidence with these deductions and reductions in the sale price of the property, the appellant contends the "value of home" is \$196,874.65. Based upon these arguments and evidence, the appellant requested a total assessment of \$65,625 which would reflect a market value of approximately \$196,875.

The board of review submitted its "Board of Review Notes on Appeal" as to the property at 37 Shorewood wherein its final assessment of \$93,478 was disclosed. The subject's assessment reflects an estimated market value of approximately \$280,715 or \$199.51 per square foot of above-grade living area, including

² A copy of correspondence to the appellant asserted the leaking septic tank and the non-functioning pump "are to be replaced before residence can be resumed."

land, utilizing the 2009 three-year median level of assessments for Jo Daviess County of 33.30% as determined by the Illinois Department of Revenue. (86 Ill.Admin.Code §1910.50(c)(1)).

The board of review submitted a two-page letter outlining its evidence for this appeal along with various exhibits. The subject is located in Galena Territory, a private 6,800 acre recreational, residential and resort community with a 225-acre lake along with walking and hiking trails, a clubhouse, pool complex, marina, equestrian center and 63 holes of championship golf.

In support of the subject's assessment, the board of review submitted a two-page letter outlining the board's evidence along with attachments. As to the subject's reduced sale price of \$196,874, the board of review notes that the sale occurred in March 2010 which is more than a year after the assessment date at issue of January 1, 2009. In addition, the contract price was actually \$267,250 as shown in the Illinois Real Estate Transfer Declaration (PTAX-203) where no personal property was identified (Exhibit B). Furthermore, the board of review contends the brokers' commission and/or septic inspection/repair "are not considered personal property." The board of review notes that these were deductions from the cash received by the seller, but "do not affect the total sale price."

To support the subject's estimated market value based on its assessment, Exhibit C is a grid analysis of five suggested comparable properties which sold and are located in Galena Territory along with applicable property record cards and both aerial and ground-level photographs. The parcels range in size from .804 to 1.53-acres of land area. Each parcel is improved with a one-story frame dwelling that was built between 1992 and 1994. The dwellings range in size from 1,397 to 1,596 square feet of above-grade living area and each home has a full basement with finished area ranging in size from 1,120 to 1,460 square feet. Features also include central air conditioning, one or two fireplaces and garages ranging in size from 400 to 783 square feet of building area. Each property also has a deck and one or two porches. These comparables sold between June 2007 and August 2008 for prices ranging from \$295,000 to \$365,000 or from \$192.36 to \$244.80 per square foot of above-grade living area, including land.

The board of review also presented Exhibit G, a copy of the listing of the subject property including both a lake photograph and an assertion that the property is a wood lot with lakeviews of Thunder Bay.

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

In written rebuttal, the appellant contends the subject's sale date is sufficiently proximate to the assessment date to be the best indication of the property's market value. "However,

Appellant agrees that any reduction in value from January 1, 2009, the assessment date, until February 16, 2010, the date of the sale contract, should be taken into account." Based on information obtained from broker Damon Heim of Coldwell Banker, the appellant notes that the median home sales during 2009 declined 7.6% from median home sales during 2008. Therefore, the appellant reported that the valuation of the subject at \$196,974.65 should be increased to reflect this price decline to \$213,176.02.

As to the Illinois Real Estate Transfer Declaration, appellant contends the document was in error in not deducting the personal property noting the document was prepared by counsel in Chicago who did not have copies of the various amendments to the sale contract. The appellant notes the error in not deducting personal property resulted in payment of approximately \$22 more in real estate transfer tax being paid to the State and County.

The then appellant reiterates the contention that the subject's contract sale price should be reduced by the value of personal property (First Amendment), the reductions due to the inspection report (Second Amendment), the reduction for the septic issue (Third Amendment) and the "reductions reflected" in the Settlement Statement.

As to the board of review's comparable sales, the appellant contends the properties are not in close proximity to the subject being located "in the Shenandoah area" and the "Eagle Ridge area" whereas the subject is in the Thunder Bay area. Furthermore, three of the sale occurred in 2007 "at the very beginning of the housing decline."

As to the listing of the subject property (Exhibit G) noting a "lakeview," the appellant states, "the house does have a distant lake view, which is not an open lake view inasmuch as there are numerous trees that prevent a clear close up view of the lake."

Based on the foregoing evidence and argument, the appellant requested a total assessment of \$71,058.67 or a market value of approximately \$213,176.

After reviewing the record and considering the evidence as to the improved parcel, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds the evidence in the record supports a reduction in the subject's assessment.

The appellant contends 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 support a reduction in the subject's assessment.

The appellant contends the subject's assessment should be reduced based on the sale of the subject less numerous deductions, plus a time adjustment for the date of sale as reported in rebuttal, resulting in the appellant's opinion of a market value of \$213,176. The board of review disputes the validity of the subject's sale which was not finalized until March 2010 when the assessment date at issue is January 1, 2009. To support the subject's estimated market value based on its assessment, the board of review presented sales that occurred between June 2007 and August 2008, a period of time at least as distant from January 1, 2009 as the subject's date of sale.

Ordinarily, property is valued based on its fair cash value (also referred to as fair market value), "meaning the amount the property would bring at a voluntary sale where the owner is ready, willing, and able to sell; the buyer is ready, willing, and able to buy; and neither is under a compulsion to do so." Illini Country Club v. Property Tax Appeal Board, 263 Ill.App.3d 410, 418 (4th Dist. 1994); see also 35 ILCS 200/9-145(a). The Illinois Supreme Court has held that a contemporaneous sale of the subject property between parties dealing at arm's length is relevant to the question of fair market value. People ex rel. Korzen v. Belt Ry. Co. of Chicago, 37 Ill.2d 158, 161, 226 N.E.2d 265, 267 (1967). A contemporaneous sale of property between parties dealing at arm's-length is a relevant factor in determining the correctness of an assessment and may be practically conclusive on the issue of whether an assessment is reflective of market value. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369 (1st Dist. 1983); People ex rel. Munson v. Morningside Heights, Inc., 45 Ill.2d 338 (1970); People ex rel. Korzen v. Belt Railway Co. of Chicago, 37 Ill.2d 158 (1967); and People ex rel. Rhodes v. Turk, 391 Ill. 424 (1945).

The Property Tax Appeal Board finds the most credible record evidence disclosed that the subject had a contract sale price in February 2010 of \$267,250 less \$15,000 in personal property and subsequent reductions in price of \$10,000 and \$4,550 for a final total sale price for the real estate of \$237,700. The information provided by the appellant indicated the sale had the elements of an arm's length transaction. However, the sale occurred approximately 15 months after the assessment date at issue.

The Property Tax Appeal Board finds no merit in the appellant's argument that a brokers' commission and/or closing costs are legitimate deductions in determining a property's market value. The Board finds these are standard expenses or costs that parties may incur in the sale and purchase of real estate, but as stated above market value is "the amount the property would bring at a voluntary sale."

The Property Tax Appeal Board further finds the appellant reported in rebuttal a time adjustment would be warranted to the sale price of the subject in order to estimate the property's value as of January 1, 2009. Based on taking the contract price

of \$267,250 the appropriate deduction of personal property (\$15,000) and the reductions in the contracted sale price (\$10,000 and \$4,550), the Board finds that the appellant's reported time adjustment of 7.6% (x 1.076) results in an estimated market value of the subject of \$255,765 or \$181.78 per square foot of above-grade living area, including land.

The record also contains five comparable sales presented by the board of review. Other than location with Galena Territory, each of the properties is very similar to the subject in all respects. These properties sold between June 2007 and August 2008 for prices ranging from \$295,000 to \$365,000 or from \$192.36 to \$244.80 per square foot of above-grade living area.

In light of the applicable cases which find a recent arm's length sale of the subject to be probative and relevant to determining market value, the Board finds that the best evidence of the subject's estimated market value is derived as described above resulting in a value of \$255,765. Furthermore, the board of review's comparable sales from 2007 and 2008, more distant in time from the assessment date than the subject's sale price, are less probative of the subject's estimated value.

The subject property's assessment reflects an estimated market value of approximately \$280,715 or \$199.51 per square foot of above-grade living area, including land, which is higher than its adjusted sale price as of January 1, 2009 as outline above. Therefore, the Property Tax Appeal Board finds that a reduction in the assessment of the property at 37 Shorewood is warranted.

39 Shorewood

As to the above-referenced property, the appellant's appeal is based on both lack of assessment uniformity and overvaluation of the subject vacant parcel. In support of these arguments, the appellant submitted a grid analysis of four comparable parcels located within four blocks of the subject property.

The parcels range in size from .749 to 1.218-acres of land area and are said to be in Thunder Bay 4 like the subject. The properties sold between March and September 2007 for prices ranging from \$36,000 to \$46,000 or from \$0.81 to \$1.40 per square foot of land area. These parcels have land assessments ranging from \$14,682 to \$38,420 or from \$0.30 to \$1.17 per square foot of land area. The subject has a land assessment of \$58,080 or \$1.10 per square foot of land area. In the submission, the appellant wrote, "[t]here is little to distinguish the value of these four lots and the subject property."

With the appellant's submission of evidence in June 2011, the appellant asserted that there were 1,066 vacant lots in Galena Territory with 166 lots "currently" listed for sale. From October 2006 until January 2010, the appellant asserts that 16 lots had asking prices over \$100,000, "but they have not sold."

The subject lot is heavily wooded with mostly cedar and other evergreens with "green space" between the lot line and Lake Galena which is also heavily wooded with tall evergreen trees which obscure the view of the lake. Absent permission by the area homeowners association, trees may not be removed.

In a brief which accompanied the appeal, the appellant also made a separate market value argument based on sales of similarly sized lots in Galena Territory. The appellant wrote that from 2006 through 2009, 68 parcels that range in size from 1-acre to less than 2-acres sold with an average price of \$59,035. The appellant stated that 16 of those 68 sales occurred in 2008 and 2009.

Based on this equity evidence and the appellant's calculation of the "average assessment" of the four comparable parcels, the appellant requested a reduction in the subject's land assessment to \$22,107 or \$0.42 per square foot of land area. Based on the alternative analysis using various sales described in the brief, the appellant contended the market value of the subject should be \$59,035 or an assessment of \$19,678.

The board of review submitted its "Board of Review Notes on Appeal" as to the property at 39 Shorewood wherein the subject's final assessment of \$58,080 was disclosed. The subject's assessment reflects an estimated market value of \$174,414 or \$3.30 per square foot of land area using the 2009 three-year median level of assessments for Jo Daviess County of 33.30%. (86 Ill.Admin.Code §1910.50(c)(1)).

In support of the subject's assessment, the board of review presented a letter discussing the evidence with various exhibits. The board of review asserted that lots were valued according to their size and location (i.e., resort core, lakeview, golf course, etc.).

As to the appellant's comparable vacant lots identified in the grid analysis, the board of review presented Exhibit F consisting of aerial photographs which show that "locations are not similar" to the subject which is depicted in Exhibit A as a large, wooded parcel with "green space" between the lot line and the lake.

As Exhibit D, the board of review presented a spreadsheet of four sales of vacant land parcels. The parcels were identified either as Thunder Bay Unit 4 or Thunder Bay Unit 6. The parcels range in size from .731 to .867 of an acre of land area. Attached aerial photographs depict each of the comparables as being along water with a small amount of "greenspace" between the lot line and the shore. The sales occurred between January 2006 and November 2008 for prices ranging from \$91,900 to \$186,000 or from \$2.43 to \$5.84 per square foot of land area.

As Exhibit E, the board of review presented a spreadsheet of twenty-two vacant lots located in Thunder Bay Unit 4 along with applicable property record cards and aerial photographs depicting

the parcels situated along water with "greenspace" between the lot line and the shore. The parcels range in size from .713 to 1.487 acres of land area. These properties have land assessments ranging from \$41,411 to \$86,365 or either \$1.17 or \$1.33 per square foot of land area.

Based on this evidence, the board of review requested confirmation of the subject's assessment as to the property located at 39 Shorewood.

In written rebuttal, the appellant agreed that "lakeview" lots are generally the most valuable lots in Galena Territory. In this regard, the appellant writes that the subject is not a lakeview lot as the "greenspace" trees obscure the view. In addition, the appellant noted that three of the comparable sales presented by the board of review occurred in 2006. As to the board of review's equity comparables, the appellant reiterates that being along the water does not necessarily mean these are "lakeview" lots, although most of the Peninsula lots do view the lake.

After reviewing the record and considering the evidence as to the property at 39 Shorewood, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

The appellant argued in part that the subject's assessment was not reflective of 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 this burden of proof has not been met and a reduction in the subject's assessment is not warranted on this basis.

The parties presented a total of eight sales to support their respective positions before the Property Tax Appeal Board. The Board finds the most proximate sale occurred in November 2008 as shown as board of review comparable #3 although this parcel is nearly half the size of the subject parcel. Accepted real estate valuation theory provides that all factors being equal, as the size of the property increases, the per unit value decreases. In contrast, as the size of a property decreases, the per unit value increases. Board of review comparable #3 sold for \$4.41 per square foot whereas the subject has an estimated market value based on its assessment of \$3.30 per square foot which is less than the most recent comparable sale on a per-square-foot basis. After considering adjustments to the comparables for any differences when compared to the subject, the Property Tax Appeal Board finds the subject's estimated market value as reflected by its land assessment is supported and no reduction is warranted.

The appellant also contended unequal treatment in the subject's land assessment as a basis of the appeal. 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). After an analysis of the assessment data, the Board finds the appellant has not met this burden.

The parties submitted a total of twenty-six equity comparables to support their respective positions before the Property Tax Appeal Board. The Board has given less weight to the appellant's comparables since these properties are not along water and associated "greenspace" like the subject parcel. The Board finds the comparables submitted by the board of review were located in the subject's neighborhood of Thunder Bay Unit 4. These comparables had land assessments of \$1.17 or \$1.33 per square foot of land area. The subject's land assessment of \$1.10 per square foot of land area is below these most similar land assessments of neighboring properties on a per-square-foot basis. After considering adjustments and the differences in both parties' comparables when compared to the subject, the Board finds the subject's land assessment is equitable and a reduction in the subject's land assessment is not warranted on this record.

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 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 vacant land parcel is inequitably assessed.

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.

Donald R. Cuit

Chairman

Frank J. Huff

Member

Mark Morris

Member

J.R.

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: March 22, 2013

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.