



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

APPELLANT: Richard Schrom
DOCKET NO.: 10-01641.001-R-1 through 10-01641.003-R-1
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Richard Schrom, the appellant, and the Winnebago 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 Winnebago County Board of Review is warranted. The correct assessed valuation of the property is:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
10-01641.001-R-1	08-18-126-022	6,551	0	\$6,551
10-01641.002-R-1	08-18-126-023	6,551	0	\$6,551
10-01641.003-R-1	08-18-126-024	6,551	0	\$6,551

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of three vacant densely wooded, mostly with scrub, riverfront lots, each with 50 feet of frontage on Ventura Boulevard in Machesney Park, Harlem Township, Winnebago County. Each parcel enjoys slightly more river frontage than road frontage and the parcels are approximately 380 feet deep. The parcels have a combined area of approximately 1.38-acres of 60,000 square feet of land area.

The appellant appeared before the Property Tax Appeal Board contending the subject parcels were overvalued based upon an "opinion of value" and the appellant's testimony.

At hearing, as outline in his opening statement the appellant sought to share his feelings on the value of the lots and their desirability based upon the physical circumstances and challenges that the lots present which the appellant opines diminishes the value of the lots such that he questions if the lots are even saleable and for what purpose they would be used. In this regard, the appellant testified that only 65 feet of depth from the roadway is above the "AE" floodplain whereas the remainder of the depth of the parcels is within the "AE" floodplain; thus, of the entire property, 83% is in the "AE" floodplain. He stated

that quite frequently the land is subject to being either mostly underwater or some parts of it being underwater. The appellant stated that the river frontage of these parcels cannot be used and thus, the appellant would not characterize such property as desirable as most of the time the river frontage is inaccessible as the water comes up quite far into the lots. According to the appellant "it is not allowed" to move earth and fill-in the low area of the parcel near the river.

The appellant testified that standing on the dry portion of the lots near the roadway and facing the river, the viewer would not know there was a river at the rear of the lots because the river cannot be seen as there is no view due to the foliage of the trees on the property. He further asserted that removal of trees is very expensive. Clearing the lower portion of the land that retains water to create a view would also be expensive and would require permission from neighboring landowners to use heavy equipment to access the site due to the density and wetness of the subject property. Furthermore, the appellant opined that such permission would not be forthcoming because it is his belief that the neighbors prefer that the subject parcels remain open undeveloped space between the two neighbors. To clear the dry portion of the land would also be difficult as there is a gully at the road and heavy construction equipment may not be able to traverse the gully directly from the roadway. Additionally within the boundaries of the parcels there are two very low spots that retain water for most of the year. One of these low spots is just at the bottom of the high and dry portion of the property and separates from the remainder. This low spot does not flow off back to the river and thus remains as a pond which is stagnant and subject to mosquitoes and "nasty things that lurk around stagnant water" except in times of drought. He further testified that over the last ten years, there have been probably three years when the river water has extended from the low spot near the river front to the low spot directly behind the dry portion of the parcel.

As to the processes to obtain a building permit begins with the Winnebago County Department of Public Health. That agency requires sample borings be taken to see if a septic system could be installed. If the property is suitable for installation of a septic field, the minimum size would be 70 feet by 20 feet which would take up quite a bit of the high and dry portion of the land. In addition, there is a 30 foot setback requirement from the lot line thus reducing the buildable area to 35 feet and a dwelling of 25 feet in depth would result in a 10 foot backyard that is out of the "AE" floodplain.

Citing a wide-view aerial photograph within the board of review's submission, the appellant noted that the photograph tells a big story. He testified that the property owner to the south of the subject parcels has an improvement that is located within the floodplain, but the underlying ground was built up prior to construction. The appellant stated that at one time when the river crested, the water was within an inch of invading this

neighboring dwelling. Furthermore, a 2008 flood of the neighboring parcel destroyed an inground swimming pool that was thereafter filled in as shown in the aerial photograph. This property owner has additional parcels further to the south that are not depicted in the photograph and are improved with a bed and breakfast establishment. According to the appellant, those parcels include gravel elevated pathways that are high enough that the water does not overcome them.

In a three-page electronic mail message prepared by Barbara Chaney of Doyle, Woodhouse & Moore, Inc., Realtors, date May 24, 2010, she reported having inspected the subject property. Chaney reported having examined local, state and federal regulations, laws, maps and having engaged in various discussions with staff from local, state and/or federal entities. In light of this data gathering, Chaney concluded "that the subject properties are not buildable, due to their location in a flood hazard area." Therefore, she asserted this fact "will severely limit the value of these lots." The appellant did not present Chaney at the hearing for purposes of direct and/or cross-examination as to her opinions and/or conclusions regarding the value of the subject parcels.

Chaney further wrote that there have been no sales in the past 3.5 years in the Multiple Listing Service of river lots in Machesney Park. She stated:

Two sold, one in Roscoe in 2007 for \$110,000; one on the west side of the river, on Brenda Drive, in 2006, closing in 2007, for \$220,000. I have included them here for information. I know little about them, but would have to conclude that they were deemed buildable. As such, they would not be good comparables for the subject properties.

Chaney then stated that based on the conclusion that the parcels are not buildable and the fact that their highest and best use may be for a neighbor or a green space, "I would estimate the value to be \$10,000 to \$15,000 per lot, at best, if we can find a buyer."

In closing, Chaney addressed her real estate qualifications and specifically noted that she is not an appraiser. "My opinion of value and marketability of these properties is based on my real estate education and experience."

Based on this evidence, the appellant requested reductions in the assessments of each of the parcels to \$4,166 which would reflect a market value of approximately \$12,500 per parcel.

On cross-examination, the appellant explained that he came to own the subject property through inheritance passing first from his grandfather and then to his own father. Since owning the property, it has remained substantially the same and the appellant was aware of the deficiencies of the parcels when it

passed to his possession. The appellant also acknowledged that Chaney did not find good sales comparables of similarly deficient lots in order to value to the subject parcels. While there is a dwelling directly adjacent to the subject property to the north, it is the appellant's opinion that the existence of that dwelling does not indicate that the subject parcels are likewise potentially buildable. The appellant further asserted that he cannot fill in ground on the subject parcels enough to make it like the neighbors or enough to do away with the large depression or enough to fill in the gully to access the property from the road.

The board of review submitted its "Board of Review Notes on Appeal" wherein the assessments of each of the parcels of \$6,551 were disclosed. The assessment of each parcel reflects a market value of \$19,768 per parcel or approximately \$0.99 per square foot of land area for each of the three lots when applying the 2010 three year average median level of assessment for Winnebago County of 33.14% as determined by the Illinois Department of Revenue. (86 Ill.Admin.Code §1910.50(c)(1)).

At hearing, the board of review representative acknowledged that there is a contention as to the buildable nature and/or quality of the lots including zoning and like issues. The representative acknowledged that whether the property is buildable may affect its value in some fashion, but there is no evidence presented by the appellant to quantify that matter.

The board of review presented a memorandum from the Harlem Township Assessor along with additional evidence. The assessor described the subject parcels as "high and dry river front" where the three adjacent lots have 150 feet of river frontage. The assessor further asserted that there are very few vacant river front lots in the area and there is a high demand for river frontage. According to the assessor, these lots are buildable and very desirable due to the large amount of river frontage. As to the buildable nature of the parcels, the assessor provided a color aerial photograph depicting that directly adjacent to one of the three contiguous subject lots was a parcel with a dwelling on it and a depiction that the floodplain skirted around the backside of this improvement that faces Ventura Boulevard.

In support of the subject's assessment, the assessor provided one comparable sale and equity data on numerous parcels. The comparable sale was located on the same street as the subject and consists of a 14,400 square foot lot. The property sold in August 2011 for \$50,000 or \$3.47 per square foot of land area. The assessor also provided 18 equity comparables of vacant lots, 13 of which were located on the same street as the subject parcels. The 18 comparables range in size from 4,108 to 34,810 square feet of land area. These properties have land assessments ranging from \$6,211 to \$28,572 or from \$0.32 to \$1.51 per square foot of land area whereas the subject parcels are assessment at \$6,551 for each lot or about \$0.33 per square foot of land area.

Based on this evidence and the contention that the subject parcels have a market value lower than the comparable sale of a riverfront property, viewable or not, and furthermore the subject's assessment is at the low end of the range on a per-square-foot basis, therefore, the board of review requested confirmation of the assessments of the three subject parcels.

On cross-examination, the board of review representative testified that the understanding was that the first 65 feet of depth of the subject parcels from the roadway were "high and dry" as compared to the portions of the parcel that are within the floodplain. As to the board of review's comparables, each is along the river. However, the board of review did not present evidence as to the portion of these comparables that is located within the "AE" floodplain.

In rebuttal to the board of review's assertion that the lots are buildable, the appellant contended that there was no substantive evidence presented by the board of review to support the contention that the lots are buildable and the assertion is therefore more of an opinion. The appellant further opined that it may be unknown if the lots are buildable "until someone goes through all of the legal processes to determine that it is." He further stated that he "has reasons to believe that the lots are either not buildable due to certain circumstances or that the costs to go through all the processes would be so great that it would render it impractical to be buildable." Moreover, the neighboring parcels that include improvements indicate that extensive fill has been brought in to raise the level of the ground prior to construction of dwellings as the outline of the "AE" floodplain skirts each of these neighboring dwellings that face Ventura Boulevard as depicted in the photographs presented by the board of review. In addition, the appellant opined that the neighboring parcels may have been built up prior to regulatory agencies being in charge of changes to land topography in floodplains.

As to the board of review's suggested comparables, the appellant testified that he could not dispute them as he did not know the elevations of these properties to know whether they were similar or dissimilar to the subject in terms of location in the "AE" floodplain.

The appellant testified that he had a conversation by telephone with a staff member of the Illinois Department of Natural Resources, Mark McCauley [phonetic], during which the appellant outlined the layout of the subject lots. Reportedly it was McCauley's opinion that it might be difficult to get a permit to correct the deficiencies of the parcels to make them desirable such as filling in the depressions and remove the trees to obtain a river view.

As additional cross-examination, the appellant testified that he would today sell each of the subject parcels for \$12,500 each although the parcels are not currently listed for sale. The

appellant further volunteered that an individual Winnebago County Board of Review member has offered to buy all three parcels for \$25,000 which the appellant stated he is also willing to finalize that transaction. Additionally, a neighbor to the south of the subject parcels has offered \$9,000 for all three parcels. Absent a finalized sale within the next 30 days, the appellant anticipates listing the parcels on the market.

As a final matter before closing arguments, the appellant displayed and sought to admit into the record numerous color photographs of the subject property that had not been previously presented as evidence. The photographs were taken in approximately early May 2013 depicting the riverfront portion of the subject land underwater as well as portions of a neighboring property underwater to the north.

The board of review objected to the relevancy of the photographs given that they were taken in 2013 which has been an unusually wet spring. Furthermore, the date of the photographs was not close in time to the valuation date of January 1, 2010. Additionally, in the course of objecting to the newly presented photographs, the board of review representative acknowledged that the subject property is riverfront land which is subject to flooding from time to time as the river rises and the flood maps further depict what the Department of Natural Resources and other regulatory entities have indicated are areas subject to flooding.

The Administrative Law Judge sustained the relevancy objection and furthermore found the photographs were both not timely submitted as evidence in this proceeding (86 Ill.Admin.Code §1910.30 or §1910.66) and were duplicative of the evidence in the record evidence that the subject property does flood from time to time. Therefore, the photographs were not accepted as evidence and no further testimony regarding the photographs was taken.

After hearing the testimony and reviewing 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 a reduction in the subject's assessment is not warranted.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. 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); 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The appellant's evidentiary submission of an opinion of market value prepared by Chaney is not an appraisal of the subject property. The data provided by Chaney fails to include any

comparable sales data for analysis or examination of the rationale for Chaney's value opinion. The submission by Chaney also fails to provide any estimated costs to modify the subject parcels to raise the land out of the floodplain and thereby provide some value evidence related to cost of construction/land preparation. Thus, in summary, the appellant provided insufficient evidence of value to establish that the assessment of the subject property was erroneous.

The Property Tax Appeal Board has given the appellant's arguments related to the desirability and/or salability of the subject property little merit because the appellant failed to present any substantive evidence indicating the subject's assessment was inequitable or incorrect on market value grounds. The record contains no market evidence to support the appellant's claim regarding the value of the subject parcels. The Board finds that in the absence of Chaney at hearing to address questions as to the search for comparables to arrive at a value estimate or range of suggested values based on comparable sales, results in a determination that Chaney's submission can be given no weight. Novicki v. Dept. of Finance, 373 Ill. 342 (1940); Grand Liquor Co., Inc. v. Dept. of Revenue, 67 Ill. 2d 195 (1977); Jackson v. Board of Review of the Dept. of Labor, 105 Ill. 2d 501 (1985). The Board finds the Chaney document is tantamount to hearsay. Oak Lawn Trust & Savings Bank v. City of Palos Heights, 115 Ill. App. 3d 887 (1st Dist. 1983). Illinois courts have held that where hearsay evidence appears in the record, a factual determination based on such evidence and unsupported by other sufficient evidence in the record must be reversed. LaGrange Bank #1713 v. DuPage County Board of Review, 79 Ill. App. 3d 474 (2nd Dist. 1979); Russell v. License Appeal Comm., 133 Ill. App. 2d 594 (1st Dist. 1971). In the absence of Chaney being available and subject to cross-examination regarding methods used and conclusion(s) drawn, the Board finds that the weight and credibility of the evidence and the value conclusion of \$10,000 to \$15,000 per lot has been significantly diminished and cannot be deemed conclusive as to the value of the subject property.

Furthermore, the Board finds the appellant provided no information to support what that lower value should be based on the arguments of flooding, uneven terrain and/or lack of a river view. 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 these factors and/or if there is an impact, what the actual value would be. The Property Tax Appeal Board along with the board of review recognizes the appellant's premise that the subject's value may be affected due to flooding and related issues, 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.

In conclusion, the Board finds the appellant submitted no credible market evidence that would indicate that subject's assessment is not reflective of its fair market value. The board of review submitted a recent sale of river front land that sold in August 2011 for \$3.47 per square foot of land area. The subject's assessment reflects an estimated market value of \$0.99 per square foot of land area, which is less than this recent sale comparable. Given the evidence in the record of the only comparable sale, the Board finds the subject property has not been shown to be overvalued based on its assessment. Therefore, a reduction in the subject's assessment is not warranted on this record.

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.

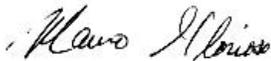


Chairman



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: August 23, 2013



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.