



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

APPELLANT: Timothy Kluckman
DOCKET NO.: 10-03612.001-R-1
PARCEL NO.: 05-16-211-004

The parties of record before the Property Tax Appeal Board are Timothy Kluckman, the appellant, by attorney Terrence J. Benshoof Glen Ellyn; 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: \$ 25,020
IMPR.: \$ 158,570
TOTAL: \$ 183,590

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a two-story frame dwelling that contains 2,870 square feet of living area. The dwelling was constructed in 1948. Features include a concrete slab foundation, central air conditioning, a fireplace and a 220 square foot attached garage. The subject dwelling is situated on a 8,001 square foot lot. The subject property is located Milton Township, DuPage County.

The appellant appeared before the Property Tax Appeal Board by counsel contending overvaluation as the basis of the appeal. In support of this argument, the appellant submitted a market value consulting report prepared by Chris C. Pheneger of Barron Corporate Tax Solutions (Barron). Pheneger estimated the subject property had a market value of \$372,000 or \$129.62 per square foot of living area including land as of January 1, 2010.

Pheneger was called as the appellant's witness. He has a degree in Business Administration from North Park University, Chicago, and holds a Certified Member of the Institute (CMI) designation from the Institute for Professionals in Taxation. During

qualification of the witness, Pheneger testified he is not a licensed appraiser in the State of Illinois. He agreed that he had developed an "opinion" of value for the subject property¹. He testified he is qualified to render an opinion of value for the subject property. Based on his experience, he "pulled comps" to evaluate the subject property. Pheneger acknowledge through testimony any fee for services rendered is contingent based upon any tax saving on a percentage basis. Pheneger testified if we (Barron) lose, we get nothing. After discussing the Real Estate Appraise Licensing Act of 2002 (225 ILCS 458/1-10) Pheneger did not believe he had prepared an appraisal and did not believe he was acting as an appraiser. Page 2 of the consulting report states in part: "Barron Corporate Tax Solutions, Ltd., is not performing services that constitute appraisal practice . . . but is providing consulting services which is not under the purview of the Uniform Standards of [Professional] Appraisal Practice (USPAP)."

Pheneger prepared an analysis of three suggested comparable sales described as being located in the Lowell Sch Area neighborhood of Wheaton, Illinois. The analysis describes the comparables as two-story dwellings of unknown exterior construction that were built in 1887 or 1950. The comparables have full or partial unfinished basements; two comparables have central air conditioning; two comparables have fireplace; and all the comparables have garages that contain from 280 to 440 square feet. The dwellings are situated on lots that range in size from 7,224 to 10,395 square feet of land area. The comparables sold from February 2009 to January 2010 for prices ranging from \$295,500 to \$452,525 or from \$137.06 to \$183.36 per square foot of living area including land. Pheneger adjusted the comparables for differences to the subject for land area, number of bathrooms, dwelling size, basement area, garage size, fireplace and date of sale. After adjustments, Pheneger calculated adjusted sales prices ranging from \$282,488 to \$436,585 or from \$131.02 to \$183.36 per square foot of living area including land. Based on these adjusted sale prices, Pheneger estimated the subject property had an indicated market value of \$372,000 or \$129.62 per square foot of living area including land.

Under cross-examination, Pheneger testified the adjustments amounts were based on his "experience and other appraiser reports he has been reviewing." Land adjustments amounts were based on the values assigned by the township assessor. Other adjustment amounts for dwelling size, garages and the like were also questioned. A positive or negative time adjustment was made at .5% per month in relation to the January 1, 2010 valuation date, but the adjustment amount was capped at 10%. Pheneger testified he did not inspect the subject and may have "driven by" the comparable sales. Pheneger testified he did review Real Estate

¹ The Board notes the 13th Edition of the Appraisal of Real Estate and the Appraisal Institutes Uniform Standards of Professional Appraisal Practice (USPAP) defines an "appraisal" as "The act or process of developing an opinion of value."

Transfer Declarations associated with the comparable sales to determine if they were arm's-length transactions. The declarations were not included in the report. Pheneger did not interview the buyers or sellers involved in the transactions.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$183,590 was disclosed. The subject's assessment reflects a market value of \$551,653 or \$192.21 per square foot of living area including land when applying the 2010 three year average median level of assessments for DuPage County of 33.28%. In support of the subject's assessment, the board of review submitted an analysis of six suggested comparable sales with accompanying property record cards and a location map. The evidence was prepared by the Milton Township Assessor's office.

The board of review called as its witness Mary Cunningham, Deputy Assessor for Milton Township. Cunningham has the Certified Illinois Assessing Officer (CIAO) designation. The process of obtaining a CIAO designation was outlined. Cunningham holds a college degree in accounting and business. Appellant's counsel raised no objection with respect to the testimony of Cunningham.

The assessor opined appellant's comparable A was not an arm's-length transaction because it was a foreclosure/short sale and was being renovated at the time of sales due to previous damage. Appellant's comparable C was a relocation sale that may not reflect market value.

Cunningham analyzed six suggested comparable sales in defense of the subject's assessed valuation. Only two comparable sales were described as being located in the Lowell Sch Area like the subject. The remaining comparables are located outside the subject's neighborhood code in various other neighborhood codes as defined by the local assessor. However, the location map depicts the comparable B is located in relative close proximity to the subject, but the remaining five comparables located a further distance from the subject than the comparables submitted by the appellant. The analysis describes the comparables as two-story frame or brick and frame dwellings that were built from 1919 to 1968. Three comparables have full or partial unfinished basements. Three comparables have full or partial basements that contains some finished area. Other features include central air conditioning, one or two fireplaces and attached or detached garages that range in size from 374 to 504 square feet. The dwellings are situated on lots that range in size from 7,200 to 19,979 square feet of land area. The comparables sold from June 2008 to May 2010 for prices ranging from \$426,000 to \$730,000 or from \$210.89 to \$272.08 per square foot of living area including land.

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

Under cross-examination, Cunningham was questioned as to proximate location of comparables in Glenn Ellyn, Illinois. The assessor testified they are located in similar market areas. The land value for properties located in Glenn Ellyn in relation property located Wheaton was also discussed. Cunningham agreed to the general proposition that land in Glenn Ellyn is assessed higher than land in Wheaton. Cunningham testified she did not inspect the subject or comparables.

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 the appeal. The Board further finds the evidence in the record does not support a reduction in the subject's assessment.

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). 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 submitted a report prepared by Chris C. Pheneger, of Barron Corporate Tax Solutions containing an estimate of value of \$372,000. During the hearing Pheneger claimed the report was not an appraisal, although the report offered an opinion of value. The Board finds Pheneger's value conclusion and testimony not to be credible. Pheneger testified that Barron Corporate Tax Solutions' fee is contingent on the outcome of the appeal. Pheneger testified the company receives a percentage of the tax savings. If there are no tax savings, Barron's does not get paid. The Board finds the fact that Barron's fee is contingent on the outcome of the appeal calls into question the objectivity of the preparer of the report and final value conclusion. Page 2 of the consulting report states that "Barron Corporate Tax Solutions, Ltd. is not performing services that constitute appraisal practice, **requiring impartiality (Emphasis Added)**, but is providing consulting services which is not under the purview of the Uniform Standards of Appraisal Practice (USPAP) . . . The Board finds that Barron has a direct pecuniary interest in the outcome of the appeal that may result in a biased report. The Board finds that Pheneger's employer having a direct interest in the outcome of the hearing undermines Pheneger's testimony as an impartial unbiased expert.

The Board further finds the adjustments amounts applied by Pheneger to the comparables, though logical, are not supported by any credible market value evidence contained in the consulting report. Pheneger explained the adjustment amounts were based

upon his experience and reviewing other appraiser reports. Furthermore, the Board finds Pheneger is not a licensed appraiser nor deemed to be an expert in the field of real estate evaluation for purposes of this appeal, which further detracts from the weight of his adjustment process and value opinion. The Board recognized Pheneger holds a Certified Member of the Institute (CMI) designation from the Institute for Professionals in Taxation. However, the Board is not aware of any accreditations associated with this entity or that this entity been recognized in Illinois for their expertise in the field of real property valuation. Furthermore, Board finds the comparable sales selected by Pheneger are not particularly similar to the subject. In reviewing the Multiple Listing Service sheets contained in the consulting report, the photographs depict dwellings that are not aesthetically similar to the subject. Additionally, comparable A is considerably older in age than the subject and was under renovation at the time of sale. Comparables B and C are considerably smaller in dwelling size than the subject. Therefore, the Board gave less weight to the comparable sales selected by Pheneger in estimating the market value for the subject property. For these reasons the Board finds Pheneger's testimony, the report and the opinion of value are not credible.

With respect to the six comparable sales submitted on behalf of the board of review, the Board finds three of the comparable sales submitted by the board of review are dissimilar to the subject in many respects and received little weight. After reviewing property record cards², the photographs depict comparables A, B and C are not similar to the subject in design and aesthetic appeal. Furthermore, comparables A is older in age and sold in 2008, which is not considered a credible indicator of market value as of the subject's January 1, 2010 assessment date. Comparable B is smaller in dwelling than the subject. The Board finds the remaining three comparable sales are more representative of the subject in terms of design, age, size and most features, but contain more land area than the subject. The comparables sold from July 2009 to May 2010 for sale prices ranging from \$554,000 to \$730,000 of from \$216.74 to \$272.08 per square foot of living area including land. The subject's assessment reflects a market value of \$551,653 or \$192.21 per square foot of building area including land, which falls below the range established by the most similar comparable sales contained in this record. After considering logical adjustments to the comparables for differences when compared to the subject, the Board finds the subject's estimated market value as reflected by its assessment is supported and no reduction is warranted.

In conclusion, based on this record, the Board finds the assessment of the subject property as established by the board of review is correct and a reduction is not justified.

² The Property record card for comparable F was not submitted.

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

K. L. Fern

Member

Frank A. Huff

Member

Mario Morris

Member

J. R.

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 20, 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.