



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

APPELLANT: Jamie Holmes
DOCKET NO.: 11-00047.001-R-1
PARCEL NO.: 09-25-205-008

The parties of record before the Property Tax Appeal Board are Jamie Holmes, the appellant, and the Winnebago County Board of Review.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds a reduction 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:

LAND: \$13,405
IMPR.: \$34,135
TOTAL: \$47,540

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Winnebago County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2011 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

The subject property consists of a two-story dwelling of frame construction which was built in 2004.¹ Features of the home include a full basement, central air conditioning, a fireplace and a garage. The property has an approximately 14,450 square foot site and is located in Winnebago, Pecatonica Township, Winnebago County.

The initial factual dispute between the parties concerns the dwelling size of the home. The appellant, based upon an appraisal, contends that the home contains 2,417 square feet of

¹ The board of review incorrectly reported the dwelling was built in 2002.

living area. The appraisal report includes a schematic drawing of both the first and second stories of the dwelling which depicts an open area on the second floor above the living room. At the hearing, the appellant, Jamie Holmes, testified that the dwelling has a "cathedral" ceiling over the living room which is located on the first floor of the home.

As to the home, the board of review contends the dwelling contains 2,700 square feet of living area.² The Administrative Law Judge at the hearing ordered a copy of the subject's property record card (PTAB Exhibit #1) which document has a schematic drawing for a two-story dwelling with a footprint of 1,380 square feet which "times two" reflects a total dwelling size of 2,760 square feet of living area. At the hearing, Scott Hamilton, the Pecatonica Township Assessor, testified that his practice for assessment purposes is to exclude cathedral ceiling area(s) when determining living area square footage.

On this record, the Property Tax Appeal Board finds that the best evidence with a detailed schematic drawing and testimony of the owner/appellant is that the subject dwelling contains approximately 2,417 square feet of living area. The home features a cathedral ceiling over the first floor living room which was erroneously included as living area in the property record card of the home by the assessing officials.

The appellant Jamie Holmes appeared before the Property Tax Appeal Board contending overvaluation of her home.³ In support of this argument, the appellant submitted data regarding the recent purchase of the property, comparable sales data, an appraisal of the home and a letter discussing the evidence and argument.

In Section IV of the Residential Appeal petition, the appellant disclosed that the subject property was purchased on March 25, 2011 for a price of \$130,000. As part of the appeal, the appellant submitted a copy of the Settlement Statement reiterating the purchase price which had no indication of the payment of any broker commissions associated with the sale. The property was purchased by the appellant from the previous owners Karen and Robert Sundberg, to whom the appellant is not related. In Section IV, the appellant acknowledged that the subject property was not advertised for sale prior to the transaction. At hearing, Ms. Holmes testified that she learned of the potential availability of the home from a relative of her ex-husband; she believed the property was available for purchase through 'word of mouth' referrals for about one and a half years prior to the sale. Ms. Holmes further stated that there had been

² The board of review failed to include a copy of the subject property record card as part of its response to the appeal as required by Section 1910.40(a) of the rules of the Board. (86 Ill.Admin.Code §1910.40(a)).

³ As part of Section 2d of the Residential Appeal petition, the appellant also marked "assessment equity" as a basis of the appeal, but the appellant provided no comparable data with assessment information for this aspect of the appeal.

some missed payments by the prior owner which had been covered by relatives and she contended that the previous owner "wanted out of the neighborhood" due to problems with "the kids and the schools." As part of the appellant's assertion that the home was in poor condition, she noted that the previous owner had five children and a boyfriend with four children; Ms. Holmes further opined that the property may not have been listed in the traditional manner due to its condition.

As part of Section IV, the appellant also reported that she was able to occupy the home three days after the purchase. Ms. Holmes testified that at the time of purchase the home did not have a sump pump installed which led to some flooding in the basement and there were cracks in the foundation. The appellant has since installed a sump pump which solved the basement flooding problem.

To further support the subject's purchase price, in Section V of the appeal petition the appellant provided data on three comparable sales located from .25 to .73 of a mile from the subject property. Two of these three comparable sales were described as one-story ranch dwellings with no design description for the third property. These homes reportedly range in size from 2,000 to 2,300 square feet of living area and feature air conditioning. One of the comparables has a fireplace and each has a two-car or a three-car garage. These properties sold between April and December 2011 for prices ranging from \$126,500 to \$133,000 or from \$56.52 to \$63.25 per square foot of living area, including land.

In addition, the appellant submitted a letter and a copy of an appraisal of the subject property. The appellant's letter outlines numerous condition issues with the subject dwelling "which will reflect further reasoning for the reduced price of this particular home." In this letter, the appellant stated in pertinent part, "We negotiated the price with the previous homeowner because of a lack of necessary repairs and upkeep on the property, as well as grading and foundation concerns that were made available to us by the previous owner." In her testimony, she further opined the condition was due to nine children living in the home. Included with the appeal petition were numerous photographs depicting: a water leak at a patio door through a vent to the basement; a crack in the patio door frame; two bedroom windows that are broken in a manner that will not allow the windows to be opened on their hinges; a crack/hole in exterior vinyl siding with deteriorating wood beneath; damaged/scratched interior trim; cuts, gouges and/or missing vinyl flooring; warped and/or poorly installed trim on the fireplace; cigarette burns, pet stains and cuts in carpeting; gaps and/or warping of hardwood flooring; damage issues with a kitchen counter and warped/damaged cabinetry; a dented garage door; and mold/water damage in the garage including water seeping in below an entry door. Ms. Holmes also testified that the grading of the backyard results in flooding of the yard and damages the lawn.

The appraisal was prepared in conjunction with the purchase transaction and opined a market value for the property of \$165,000 as of February 23, 2011. The appraiser noted the property had not been advertised for sale for the twelve month period prior to the effective date of the appraisal. "Subject is a private pending sale by owner not currently listed on the local MLS system." The appraiser did examine the purchase contract and found no unusual circumstances.

In describing the subject site, the appraiser noted the lot "backs to the golf course offering added appeal." The subject is located in a "small lake community with various single family and condominium properties" along with recreational facilities including a small lake, clubhouse, golf course, pool and park areas according to the appraisal report. The appraiser further noted that "large custom homes with frontage on the lake and golf course set the upper end of the value structure." The appraiser developed the sales comparison approach to value and analyzed the sale of three comparables located within .94 of a mile from the subject. The comparables were described as two-story dwelling that sold between August 2010 and February 2011 for prices ranging from \$144,000 to \$160,000. After making adjustments to the comparables for differences from the subject, the appraiser estimated adjusted sale prices for the comparables ranging from \$159,400 to \$174,000.

The appellant in her letter and at hearing addressed the poor condition of the dwelling at the time of purchase and contended that the appraiser failed to consider these condition issues in opining an estimated market value for the dwelling including the grading issue, foundation cracks and she asserted that the comparable dwellings do not have the condition issues that are present with the subject dwelling. In particular, the appellant disputed the appraiser's characterizations that the subject's foundation walls were "good"; that hardwood flooring was "good"; and she noted that the master bathroom whirlpool tub has only three of six jets that work.

Based on the recent sale price of the home and the recent sales of other nearby properties, the appellant requested a reduction in the subject's assessment to reflect the purchase price.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$55,000. The subject's assessment reflects a market value of \$167,785 or \$69.42 per square foot of living area, land included, based upon a dwelling size of 2,417 square feet of living area and when using the 2011 three year average median level of assessment for Winnebago County of 32.78% as determined by the Illinois Department of Revenue. Appearing before the Property Tax Appeal Board on behalf of the board of review was Richard Crosby, member of the board of review, who argued that the photographs submitted by the appellant reflect "normal wear and tear" of a nearly ten year old dwelling that has been occupied.

The board of review called Scott Hamilton, the Pecatonica Township Assessor, as its witness. Hamilton asserted that the subject property is located in an "upscale" subdivision with a lake and a golf course.

In support of its contention of the correct assessment the board of review submitted a grid analysis with information on three comparable sales located within ½ of a mile of the subject property. Board of review comparable sale #1 is the same property as reflected in the appellant's appraisal report as the appraiser's sale #1. The three comparables are described as two two-story frame dwellings and a third home which is described as frame has no design description. The homes are either 5 or 11 years old and range in size from 2,100 to 2,534 square feet of living area. Each home has central air conditioning, a fireplace and a garage of either 684 or 700 square feet of building area. These properties sold between February and December 2010 for prices ranging from \$145,000 to \$159,900 or from \$59.59 to \$76.14 per square foot of living area, including land.

Based on this evidence and the contention that the sale of the subject property was not advertised, the board of review requested confirmation of the subject's assessment.

The Administrative Law Judge asked Mr. Hamilton if he had viewed the interior of the subject dwelling; he stated that he has not.

In rebuttal, the appellant noted that the subject's location on the golf course results in golf balls in the yard and broken windows. Ms. Holmes also stated that the lake in the subdivision has not been available for use for the past two years due to algae. The appellant also asserted that the condition of the subject dwelling differs greatly from the condition of the comparable sales presented by the board of review. As to the "deck" that the assessing officials have recorded for the subject property, Ms. Holmes testified it was no better than a "wooden pallet" outside the patio door with no attachment to the dwelling and was falling apart (a photograph is included in the appellant's petition).

Conclusion of Law

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. 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 met this burden of proof and a reduction in the subject's assessment is warranted.

Initially, the appellant relied upon the purchase price of the subject property that occurred in March 2011 for \$130,000. The record is clear that the subject property was not exposed on the market in a traditional manner; there was no indication that the owner had a sign in the yard offering the property for sale or otherwise exposed to the property to the open market in a broad manner. Instead, the appellant learned of the property through a relative of her ex-husband, a third party. Thus, in this transaction, there was no indication that the property was available to the general public in a manner such that all persons had the same opportunity to purchase the subject property at any negotiated sale price as did the appellant. There are other recognized sources which further demonstrate the fact a property must be advertised or exposed in the open market to be considered an arm's-length transaction that is reflective of fair market value. Black's Law Dictionary (referencing Bourjois, Inc. v. McGowan and Lovejoy v. Michels (citation omitted)), states:

. . . the price a property would command **in the market**" (Emphasis added). This language suggests a property must be publicly offered for sale in the market to be considered indicative of fair market value.

The Dictionary of Real Estate Appraisal [American Institute of Real Estate Appraisers, The Appraisal of Real Estate, 8th ed. (Chicago American Institute of Real Estate Appraisers, 1983), provides in pertinent part:

The most probable price in cash, terms equivalent to cash, or in other precisely revealed terms, for which the appraised property will sell in a competitive market under all conditions requisite to fair sale; The property is exposed for a reasonable time on the open market.

Additionally, the Property Assessment Valuation, 2nd edition, states: Market value is the most probable price, expressed in terms of money, that a property would bring **if exposed for sale in the open market** [emphasis added] in an arm's-length transaction between a willing seller and a willing buyer; a **reasonable time is allowed for exposure to the open market**. [emphasis added]. (International Association of Assessing Officers, Property Assessment Valuation, 2nd edition, Pgs. 18, 35, (1996)). Thus, under the factual circumstances of this sale transaction, the Property Tax Appeal Board cannot find that the sale was an "arm's length" transaction that would be virtually conclusive of the subject's fair cash value or fair market value in the absence of any other pertinent facts.

Next, while the appellant submitted a copy of an appraisal of the subject property, the appellant was not seeking to rely upon the appraisal to establish value. Even though at hearing the board of review urged that the appraised value be accepted as reflective of the subject's market value and sustaining the

assessment, the Property Tax Appeal Board finds that in the absence of the appraiser at hearing to address questions as to the selection of the comparables, the condition of the subject dwelling and/or the adjustments made to the comparables in order to arrive at the value conclusion set forth in the appraisal, the Board will give no weight to the final value conclusion made by the appraiser. 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 appraisal report 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 an appraiser being available and subject to cross-examination regarding methods used and conclusion(s) drawn, the Board finds that the weight and credibility of the appraisal evidence and the value conclusion of \$165,000 as of February 2011 has been significantly diminished and cannot be deemed conclusive as to the value of the subject property.

As the final market value argument, the parties submitted a total of six comparable sales to support their respective positions before the Property Tax Appeal Board. The Board finds the best evidence of market value in the record to be these six comparable sales submitted by both the appellant and the board of review which were similar to the subject in location and in other respects such as style, construction, features and/or age. These homes range in size from 2,000 to 2,534 square feet of living area and thus bracket the subject's dwelling size; these homes also bracket the subject dwelling in age. The properties sold between February 2010 and December 2011, dates that bracket and are proximate in time to the assessment date at issue of January 1, 2011. The comparables sold for prices ranging from \$126,500 to \$159,900 or from \$56.52 to \$76.14 per square foot of living area, including land, with the smallest comparable dwelling carrying the largest sale price per square foot which is logical. 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. The subject's assessment reflects a market value of \$167,785 or \$69.42 per square foot of living area, including land, which is above five of the six most similar comparable sales on a per-square-foot basis and the subject's estimated market value based on its assessment exceeds all of the comparable sales in terms of overall value.

In conclusion, based upon the best evidence in this record, the Board finds the subject's assessment is not reflective of the

Docket No: 11-00047.001-R-1

property's market value and a reduction in the subject's assessment is justified.

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. Ferr

Member

Member

Marko M. Louie

Member

[Signature]

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: October 24, 2014

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.