



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

APPELLANT: Robert Larson
DOCKET NO.: 10-02300.001-R-2
PARCEL NO.: 04-20-300-031

The parties of record before the Property Tax Appeal Board are Robert Larson, the appellant, by Terrence J. Benshoof, Attorney at Law in Glen Ellyn; and the Kane County Board of Review.

Based on the facts and exhibits presented in this matter, the Property Tax Appeal Board hereby finds **No Change** in the assessment of the property as established by the **Kane** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$86,281
IMPR.: \$374,373
TOTAL: \$460,654

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Kane County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2010 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 single family dwelling of brick and stone exterior construction with 6,071 square feet of living area. The dwelling was constructed in 2005. Features of the home include a walk-out basement with finished area, central air conditioning, two fireplaces and a three-car attached garage. The property is also improved with a 3,500 square foot detached garage/shop building adjacent to the home. The property has 6.33 acres or a 275,735 square foot site and is located in Hampshire, Burlington Township, Kane 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 Lee H. Neuschaefer and Chris C. Pheneger of Barron Corporate Tax Solutions (Barron). Neuschaefer and Pheneger determined the subject property

had an estimated market value of \$950,000 or \$156.48 per square foot of living area including land as of January 1, 2010.

During qualification of the witnesses, Pheneger stated 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.

Neuschaefter testified that he worked nine years in the York Township Assessor's Office in DuPage County. He obtained the Certified Assessment Evaluator designation (CAE) through the International Association of Assessing Officers.

Pheneger and Neuschaefter each testified that they are not a licensed appraiser in the State of Illinois. They agreed that they had developed an "opinion" of value for the subject property¹. Pheneger and Neuschaefter acknowledge through testimony any fee for services rendered were a contingency fee. 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 and Neuschaefter prepared the report using four suggested comparable sales and two sale listings described as being located in Plato, Burlington, Hampshire and Grafton Townships. The analysis describes the comparables as being 1 one-story; 1 one and one-half story; 3 two-story; and 1 three-story single family dwellings that were built from 1987 to 2005.² Each comparable has a full or partial basement. Other features include central air conditioning and a fireplace. The comparables have from a two-car garage to a five-car garage. Two comparables have an extra building, one comparable has a barn and one comparable has additional buildings. The dwellings range in size from 1,921 to 4,362 square feet of living area and are situated on lots that range in size from 97,574 to 822,413 square feet of land area or from 2.24 to 18.88 acres of land area. The comparables #C through #F sold from February 2006 to June 2010 for prices ranging from \$520,000 to \$750,000 or from \$127.29 to \$330.56 per square foot of living area including land. Comparable #A was listed for \$1,300,000 or \$385.76 per square foot of living area including land. Comparable #B was listed for \$899,900 or \$206.30 per square foot of living area including land.

The comparables were adjusted for differences to the subject for land area, year built, condition/quality, bathrooms, dwelling size, garage area, extra buildings and date of sale. The adjusted sales/listing prices ranged from \$659,150 to \$1,228,682 or from \$161.36 to \$521.26 per square foot of living area including land. Based on these adjusted sale prices, the witnesses determined the subject property had an estimated market value of \$950,000 or \$156.48 per square foot of living area including land.

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."

² The grid analysis did not disclose the exterior construction for the comparables.

Under cross-examination, Pheneger testified the adjustments amounts were based other appraiser reports he has been reviewing. Pheneger testified that the land adjustments amounts were based on the values assigned by the township assessor. Pheneger testified he did not inspect the interior of the subject and he did not inspect any of the comparables, he just relied on pictures and the Multiple Listing Service.

The appellant also submitted an appraisal prepared by Gregory T. Stewart, an Illinois Certified Residential Appraiser. The appraiser was not present at the hearing to provide direct testimony or be cross-examined regarding the appraisal methodology and final value conclusion. Using the cost approach to value and the sales comparison approach to value, the appraiser estimated the subject property had a market value of \$1,000,000 as of January 1, 2011.

Under the cost approach the appraiser estimated the subject had a site value of \$175,000. The report indicated the appraiser estimated the replacement cost new of the improvements to be \$1,014,347 using Marshall and Swift Cost Data. The appraiser estimated the physical depreciation to be approximately \$76,632. A deduction of \$172,500 was also made for functional obsolescence. No deduction was taken for external obsolescence. The appraiser calculated the depreciated cost of the building improvements to be \$765,215. The appraiser then added \$50,000 for site improvements and \$30,000 for well and septic. The appraiser added the land value of \$175,000 to arrive at an estimated value under the cost approach of \$1,020,200.

Under the sales comparison approach the appraiser utilized six comparable sales located in St. Charles, Hampshire and Elgin, approximately 2.38 to 13.42 miles from the subject property. The comparables were described as being improved with one-story or two-story dwellings that ranged in size from 2,688 to 6,259 square feet of living area. The dwellings were of brick, brick and frame or brick and stone exterior construction that were built from 1978 to 2008. Each comparable has a walk-out style or look-out style basement with four comparables having finished area. Each comparable has central air conditioning and a three or four-car garage. One comparable has an in-ground pool and one comparable has a pole building. The analysis does not disclose fireplaces. The comparables sold from May 2008 to October 2010 for prices ranging from \$645,000 to \$1,285,000 or from \$138.58 to \$274.55 per square foot of living area, land included. After making adjustments for differences from the subject property, the appraiser concluded the comparables had adjusted prices ranging from \$885,000 to \$1,221,000. Using this data the appraiser estimated the subject had an estimated value under the sales comparison approach of \$1,000,000.

In reconciliation, the appraiser opined a market value of \$1,000,000 for the subject property which was based upon the sales comparison approach as reported in the addendum.

At the hearing the board of review objected to the appraisal report contending the appraiser was not present to be cross-examined. The Board reserved ruling on the objection.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$460,654. The subject's assessment reflects a market value of \$1,380,857 or \$227.45 per square foot of living area, land included, when using the 2010 three year average median level of assessment for Kane County of 33.36% as determined by the Illinois Department of Revenue. Representing the board of review was member Timothy

Sullivan and also present was the board of review's witness, Debbie McKermitt, Burlington Township Assessor.

In support of its contention of the correct assessment the board of review submitted information on four comparable sales. The township assessor submitted one additional comparable sale. The suggested comparables are located in St. Charles, Campton and Plato Townships. The comparables are improved with two-story single family dwellings of unknown exterior construction. The comparables were built from 2005 to 2007. The comparables have full basements with one comparable having finished area. The comparables have central air conditioning and from two to six fireplaces. The comparables have a three or four-car garage. The dwellings range in size from 5,062 to 6,855 square feet of living area and are situated on lots that range in size from 25,265 to 81,022 square feet of land area. The comparables sold from September 2007 to September 2008 for prices ranging from \$1,165,669 to \$2,200,000 or from \$222.24 to \$410.60 per square foot of living area including land.

Under cross-examination, McKermitt acknowledged that the subject property is unique for Burlington Township. McKermitt testified that none of her comparables are in Burlington because she could not find any sales for homes over 5,000 square feet with an extra building that is three stories with the quality of construction.

In written rebuttal, the appellant submitted two exhibits, Exhibit A and Exhibit B. Exhibit A displays all the homes that sold in St. Charles, Illinois from January 1, 2007 to December 31, 2009 for more than \$500,000. Exhibit B displays all the homes that sold in Elgin, Illinois from January 1, 2007 to December 31, 2009 for more than \$500,000. The Board finds this evidence is improper rebuttal evidence. Section 1910.66(c) of the rules of the Property Tax Appeal Board provides that:

Rebuttal evidence shall not consist of new evidence such as an appraisal or newly discovered comparable properties. A party shall be precluded from submitting its own case in chief in the guise of rebuttal evidence.

86 Ill.Admin.Code 1910.66(c). The Board finds that this evidence presented by the appellant is improper rebuttal evidence and gives it no weight in determining the subject's assessment.

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 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 Pheneger, CMI and Lee Neuschaefer, CAE, of Barron Corporate Tax Solutions containing an estimate of value of \$950,000. During the hearing Pheneger and Neuschaefer asserted this was not an appraisal even though they and the report provided an opinion of value. The Board finds their testimony not to be credible.

Furthermore, Pheneger and Neuschaefer testified that Barron Corporate Tax Solutions' fee is contingent on the outcome of the appeal. They explained that the company gets a percentage of the tax savings and if there is no tax savings Barron's does not get paid. The Board finds the fact that Pheneger and Neuschaefer's employer's fee is contingent on the outcome of the appeal calls into question the objectivity of the preparer of the report. Neuschaefer, in fact, stated within the Certificate on page 2 of his report that, "Barron Corporate Tax Solutions, Ltd. is not performing services that constitute appraisal practice, requiring impartiality" The Board finds that Barron's has a direct pecuniary interest in the outcome of the appeal that may result in a biased report. The Board finds that by their employer having a direct interest in the outcome of the hearing undermines Pheneger and Neuschaefer's testimony as impartial unbiased experts.³ For these reasons the Board finds Pheneger and Neuschaefer's testimony, the report and the opinion of value offered by Pheneger and Neuschaefer is not credible.

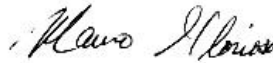
The appellant also submitted an appraisal estimating the subject had a market value of \$1,000,000 as of January 1, 2011. The board of review objected to the appraisal report contending the appraiser was not present to be cross-examined. The Board hereby sustains the objection. The Board finds the appellant's appraiser was not present at the hearing to provided direct testimony or be cross-examined regarding the appraisal methodology and final value conclusion. In Novicki v. Department of Finance, 373 Ill.342, 26 N.E.2d 130 (1940), the Supreme Court of Illinois stated, "[t]he rule against hearsay evidence, that a witness may testify only as to facts within his personal knowledge and not as to what someone else told him, is founded on the necessity of an opportunity for cross-examination, and is basic and not a technical rule of evidence." Novicki, 373 Ill. at 344. In Oak Lawn Trust & Savings Bank v. City of Palos Heights, 115 Ill.App.3d 887, 450 N.E.2d 788, 71 Ill.Dec. 100 (1st Dist. 1983) the appellate court held that the admission of an appraisal into evidence prepared by an appraiser not present at the hearing was in error. The court found the appraisal was not competent evidence stating: "it was an unsworn ex parte statement of opinion of a witness not produced for cross-examination." This opinion stands for the proposition that an unsworn appraisal is not competent evidence where the preparer is not present to provide testimony and be cross-examined. Based on this case law, the Board gives the conclusion of value contained in the appraisal no weight. The appraiser was not present at the hearing to be cross-examined with respect to the appraisal methodology, the selection of the comparables, the adjustment process and the ultimate conclusion of value. Furthermore, the Board finds the appraisal dated January 1, 2011, is past the subject's January 1, 2010 assessment date to be considered reliable indicator of market value. However, the Board will examine the raw sales data contained in this record, including the sales in the appellant's appraisal.

The parties submitted 17 comparable sales for the Board's consideration. The Board gave less weight appellant's comparables #D and #F and appraiser's comparable #4 along with the board of review comparables. These properties sold from February 2006 to September 2008, which are dated and less indicative of fair market value as of the subject's January 1, 2010 assessment date. The Board gave less weight to the appellant's comparables #C and the appraiser's comparable #3

³ The Property Tax Appeal Board finds that the IAAO, the organization which awarded Neuschaefer his CAE designation, has a Code of Ethics and Standards of Professional Conduct which was adopted by the IAAO executive Board, September 19, 2005. IAAO Ethical Rule ER 3-3 provides: It is unethical to accept an assignment or participate in an activity where a conflict of interest exists and could be perceived as a bias, or impair objectivity.

based on their one-story design when compared to the subject's two-story design. The Board finds the best evidence of market value to be the appellant comparable sales/listings #A, #B, #E and the appraiser's comparables #1, #2, #5 and #6. These comparables have varying degrees of similarity when compared to the subject in land size, age, design and features. The subject is superior in dwelling size than the comparables. The appellant's comparable sales sold/listed for prices ranging from \$520,000 to \$1,300,000 or from \$127.29 to \$385.76 per square foot of living area, including land. The subject's assessment reflects a market value of \$1,380,857 or \$227.45 per square foot of living area, including land, which is within the range established by the most similar comparable sales in the record. After considering 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. Therefore, no reduction in the subject's assessment 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.



Chairman



Member

Member



Member

Member

DISSENTING: _____

CERTIFICATION

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: June 24, 2016



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.