FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: David Rosen
DOCKET NO.: 14-23783.001-R-2
PARCEL NO.: 14-20-302-001-0000

The parties of record before the Property Tax Appeal Board are David Rosen, the appellant, by attorney Howard W. Melton, of Raila & Associates, P.C. in Chicago; and the Cook County Board of Review.

Based on the facts and exhibits presented in this matter, the Property Tax Appeal Board hereby finds ***A Reduction*** in the assessment of the property as established by the **Cook** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	$ 25,709
IMPR.:	$175,570
TOTAL:	$201,279

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Cook County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2014 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, masonry, single-family dwelling of approximately 109 years of age. Features of the home include: a full basement with a recreation room therein, five full bathrooms, central air conditioning, six fireplaces and a two-car garage with a deck above it. The property has approximately 5,589 square foot site and is located in Lake View Township, Cook County. The subject is classified as a class 2, residential property under the Cook County Real Property Assessment Classification Ordinance.

Procedurally at hearing, the Board indicated that the 2014 and 2015 tax appeal years would be heard simultaneously without objection from the parties. Moreover, the Board indicated that distinct decisions would be rendered for each tax year.

Further, the board of review's representative, William Grossi, moved to admit portions of the board of review's hearing files into evidence at the PTAB hearing, while distributing a multi-page brief as well as copies of a 2011 and 2014 appraisal for the subject property both of which had been commissioned by the appellant. At hearing, the board's representative argued that relevant evidence is admissible as long as its probative value outweighs its prejudicial value and is relevant to establish the value of the property. He also asserted that PTAB could take judicial notice because the board of review is a quasi-judicial agency. The first appraisal was identified for the record as Document #1 CCBOR Motion and is an appraisal of the subject property with an effective date of January 1, 2014, a market value of $2,400,000, and was prepared by appraisers Goldberg and Ulman (hereinafter Ulman appraisal). He asserted that this appraisal was commissioned by the taxpayer/appellant for the 2014 tax year and reflects a different market value than the 2014 appraisal submitted by the appellant's attorney. The appellant's attorney objected while asserting that Ulman be called as a witness and without that no value whatsoever should be accorded the appraisal and raising a hearsay objection.

As to the board of review's Document #2, it was a copy of the appellant's 2011 appraisal evidence submitted within the appellant's initial pleadings. He asserted that all these appraisals reflect wildly different values. The appellant's attorney objected to the admission, while stating 'if you want credibility, bring the appraisers'.

Over the appellant's objection, the Board admitted Document #1 into evidence for impeachment purposes while noting that the appellant has a standing hearsay objection to this document because the expert preparer is not at the hearing to testify regarding the nature of the methodology used in the report. As to Document #2, the Board denied its admission because the same 2011 appraisal was submitted by the appellant as Exhibit #11 of the initial pleadings.

The appellant raises three arguments. First, that the county assessor improperly reassessed the subject property in the third year of the triennial reassessment period based upon a multiple listing service asking price of $5,000,000.

Then, the appellant contends that there is overvaluation and inequity as the second and third bases of the appeal. In support of the overvaluation argument, the appellant submitted a plethora of documents including:

Exhibit #1 - copies of documents from the county assessor level appeal, a copy of an article about the subject property entitled 'Lakeview Mini-Mansion…', and a copy of a multiple listing service (hereinafter MLS) sheet for the subject property with an asking price of $4,999,999;

Exhibit #2 - copies of county assessor printouts for the subject and other properties with highlights and writing by an unidentified individual;

Exhibit #3 - a copy of a county assessor printout for the subject dated 4-10-14 with highlights and writing by an unidentified individual;

Exhibit #4 - a copy of an affidavit from the appellant stating that the subject, then a two-unit apartment building, was purchased in 2005 for $938,500 and was converted into a single-family dwelling with renovation concluding in early 2010. There is an assertion that the subject was

reassessed by the county assessor in a non-triennial assessment year. This exhibit also included a copy of an affidavit from a real estate broker stating that the subject property had been listed for sale for 238 days without any interested callers as well as a copy of a MLS sheet;

Exhibit #6 - copies of a grid sheet entitled '2012 Lake View Township Triennial' as well as copies of MLS sheets or articles from unidentified sources; at hearing, the appellant's attorney asserted that these properties were located in both Lake and Cook counties;

Exhibit #7 - copies of undated assessor printout for the subject, copy of the subject's property record card dated 4-26-11 reflecting a building diagram as well as 3,620 square feet of living area, and unsigned, building record printouts for the subject reflecting 3,620 and 4,280 square feet of living area with extraneous handwriting thereon;

Exhibit #8 - a copy of the subject's plat of survey with extraneous highlighting and printing thereon that reflects 3,720 square feet of living area with field work completed on 2-24-05;

Exhibit #9 - a copy of 'Standard on Verification and Adjustment of Sales as published by the International Association of Assessing Officers approved as of 11-10;

Exhibit #10 – a copy of a Google aerial map reflecting the subject's block as well as other blocks with extraneous highlighting and printing thereon as well as photographs of the subject building;

Exhibit #11 – copies of a residential appraisal for the subject with an effective date of 1-19-11 and a market value of $1,750,000 undertaken by Patrick Maher (hereinafter Maher appraisal) as well as a retrospective appraisal report with an effective date of 1-1-14 and a market value of $1,900,000 prepared by Andrew Hartigan (hereinafter Hartigan appraisal);

Exhibit #12 – a page with a photograph of the subject as well as three other buildings with limited descriptive data as well as copies of MLS sheets;

Exhibit #14 – a copy of an e-mail chain between unidentified individuals. There was no Exhibit #5 or #13 submitted.

The appellant submitted additional evidence in response to the Board's request for a copy of the subject's board of review decision. The appellant's submission also included another copy of the appellant's initial petition, a grid sheet of eight properties with limited data thereon, and multiple copies of MLS printouts sheets that appear to have been obtained from a real estate broker.

Based upon this evidence, the appellant requested a reduction. The appellant's attorney asserted that the correct size of the subject's improvement was 3,720 square feet and did not call any witnesses to testify at the hearing.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject initially of $99,249, which was later corrected to reflect $240,000. The subject's assessment reflects a market value of $2,400,000 or $662.98 per square foot of living area, using 3,620 square feet, when applying the level of assessment for class 2 property under the Cook County Real Property Assessment Classification Ordinance of 10%.

In support of its contention of the correct assessment, the board of review submitted data on four suggested comparable sales. These properties sold from December, 2012, to December, 2013 for prices that ranged from $595.73 to $734.74 per square foot. The properties were improved with a two-story or three-story, single-family dwelling with either masonry or frame and masonry exterior construction. They ranged in age from 7 to 119 years and in size from 2,375 to 4,838 square feet of living area.

In support of the contention of inequity, the board of review submitted assessment data on the four sales comparables as well as a fifth equity comparable on a second grid sheet. In total, the five equity comparables contained improvements that were either two-story or three-story, single-family dwellings with masonry or frame and masonry exterior construction and a full basement. They ranged: in improvement age from 7 to 126 years; in improvement size from 2,375 to 4,838 square feet; in bathrooms from 4 to 6; in fireplaces from 0 to 3; while in garage area properties #1 through #4 contained either a one-car or three-car garage. Properties #1 and #4 were identified as being located in the subject's subarea. The improvement assessments ranged from $24.75 to $66.81 per square foot, while the subject's improvement assessment using 3,620 square feet was $59.20 per square foot of living area.

At hearing, the board's representative argued that under 35 ILCS 200/9-85 the county assessor and board of review in counties over 3,000,000 or more shall have authority annually to revise the assessment books and correct them as appears to be just. He stated that this gives the assessor latitude in performing assessment yearly if they deem it to be just. However, he testified that he has no personal knowledge of the assessor's thought process regarding the subject property. Thereafter, he noted the variances in comparability of the subject property and the appellant's proposed comparables.

As to the subject property, the board of review moved an MLS listing from 2015 into evidence. After considering the parties' positions, it was admitted into evidence over the objection of the appellant and identified as CCBOR #1 for the record. The MLS sheet contained a date of 3-11-15 with a list price of $2.895 million and stated that the improvement was built in 2010 and that it contained 6,000 square feet. In contrast, the appellant's attorney argued that if this MLS was to be entered into evidence that the county should have produced a witness to testify regarding it.

In rebuttal at hearing, the appellant's attorney asserted that the board of review's comparables lack comparability in various ways and that the CCBOR #1 was in error as to improvement size and age. In addition, he noted that the appellant's Exhibit #7 from the building department reflects that the subject was renovated and not torn down; therefore, the age of the subject's improvement should be 109 years.

In written rebuttal, the appellant submitted: a copy of the board of review's notes with handwritten comments and corrections relating to the subject's assessment as well as the board's comparables and Google maps displaying the locations of the subject and the board of review's comparables. In addition, the appellant resubmitted a copy of the petition and the appellant's four equity comparables as well as new grid sheets reflecting additional evidence numbered comparables #5 through #14. At hearing, the board's representative objected to the submission of new evidence in the guise of rebuttal evidence.

As to the appellant's written rebuttal, Section 1910.66(c) of the official rules of the Property Tax Appeal Board states that

> rebuttal evidence shall not consist of new evidence such as an appraisal or newly discovered comparable properties...a party to the appeal shall be precluded from submitting its own case in chief in the guise of rebuttal evidence. 35 ILCS 200/16-180.

Therefore, the Board shall not accord any weight to the appellant's subsequent new evidence submissions submitted in the guise of rebuttal evidence.

Lastly, in the appellant's closing arguments, the attorney requested a 'rollover' of the subject's 2012 & 2013 total assessments of approximately $890,000 to the 2014 assessment year.

Pursuant to section 16-185 of the Property Tax Code (35 ILCS 200/16-185), the Board finds that the prior year's decision solely rendered by the board of review should not be 'rolled over' to the subsequent year.

Section 16-185 of the Property Tax Code (35 ILCS 200/16-185) provides in part:

> If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel on which a residence occupied by the owner is situated, such reduced assessment, subject to equalization, shall remain in effect for the remainder of the general assessment period as provided in Sections 9-215 through 9-225, unless that parcel is subsequently sold in an arm's length transaction establishing a fair cash value for the parcel that is different from the fair cash value on which the Board's assessment is based, or unless the decision of the Property Tax Appeal Board is reversed or modified upon review.

There is no evidence in this record that the Property Tax Appeal Board rendered any decision reducing the subject's 2012 or 2013 assessment. Therefore, the Property Tax Appeal Board finds that a 'rollover' reduction in the subject's assessment is not warranted under this provision.

Conclusion of Law

Initially, the parties' evidence reflects approximately five suggested improvement sizes. The board of review's pleadings reflect 3,620 square feet of living area, while the appellant's submission of copies of the subject's property record card reflects 3,620 square feet and two county assessor field check sheets reflect 3,620 square feet dated in 2011 and 4,280 square feet with unexplained handwriting thereon. In addition, the appellant's pleadings reflect 3,620 square feet of living area, while the appellant's Maher 2011 appraisal reflects 3,747 square feet, which is also reflected on the subject's plat of survey from 2005 prior to any renovations. The appellant's Hartigan 2014 appraisal also reflects the subject containing 3,620 square feet. Moreover, the Ulman 2014 appraisal commissioned by the appellant and submitted by the board of review reflects 3,835 square feet. The Board finds that the best evidence of the subject's

improvement size was the signed and dated copy of the assessor's property record card for the subject reflecting 3,620 square feet of living area.

Second, the appellant contends that the county assessor exceeded its authority by reassessing the subject property within a triennial reassessment period. In contrast, the board of review sited 35 ILCS 200/9-85, where the county assessor and board of review in counties over 3,000,000 or more shall have authority annually to revise the assessment books and correct them as appears to be just. The board of review's representative argued that this gives the assessor latitude in performing assessments yearly if they deem it to be just. The Board finds that the appellant failed to submit a legal brief or persuasive authority to support its contention in contrast to the board of review's argument and case law; therefore, the Board finds a reduction based on the appellant's contention unjustified.

Third, 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 under this issue.

Despite the appellant's submission of a plethora of paper in its pleadings, the Board finds that the appellant failed to call any witnesses to explain the documentation or lay a foundation for any of the paperwork, including photographs, with the majority of the documents reflecting highlights and/or extraneous printing thereon. The Board finds it poignant that the appellant's attorney objected at hearing when the board of review requested admittance of the Ulman appraisal, stating 'if you want credibility, bring the appraisers' and then the attorney failed to call any witnesses in the appellant's case in chief. Therefore, no weight could be afforded to these documents.

In viewing the totality of the market value evidence, the Board finds that three appraisals of the subject property commissioned by the appellant were submitted into evidence. However, the appellant failed to call as a witness any one of the appraisers whose work product was submitted and included in a voluminous record. Specifically, these appraisers were not present at hearing to testify as to his qualifications, identify his work, testify about the contents of the evidence, the conclusions or be cross-examined by the opposing party and the Board. 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 appellate court found the appraisal to be hearsay that did not come within any exception to the hearsay rule, thus inadmissible against the defendant, and the circuit court erred in admitting the appraisal into evidence. Id.

In Jackson v. Board of Review of the Department of Labor, 105 Ill.2d 501, 475 N.E.2d 879, 86 Ill.Dec. 500 (1985), the Supreme Court of Illinois held that the hearsay evidence rule applies to the administrative proceedings under the Unemployment Insurance Act. The court stated, however, hearsay evidence that is admitted without objection may be considered by the administrative body and by the courts on review. Jackson 105 Ill.2d at 509. In the instant case, the board of review has not objected to the appellant's appraisal as hearsay, while the appellant's attorney made a hearsay objection regarding the absence of a witness from the board of review relating to the Ulman appraisal commissioned by the appellant and submitted by the board of review. Nevertheless, the parties failed to call any appraisal witnesses in their case in chief where a total of three appraisals of the subject were submitted. Therefore, the Board finds the appraisals hearsay and the adjustments and conclusions of value are given no weight. However, the Board will consider the raw sales data submitted by both parties.

In totality, the parties submitted 19 suggested sale comparables. The Board finds that the best evidence of market value to be the *appellant's Hartigan appraisal properties #3, #4, #5 and #6 in addition to the appellant's Ulman appraisal property #3 as well as the board of review's property #3*. These six comparable sales sold from May, 2013, through July, 2014, for prices ranging from $473.44 to $722.13 per square foot of living area, including land. The subject's assessment reflects a market value of $662.98 per square foot of living area, which is within the range established by the best comparable sales in the record. The Board accorded diminished weight to the remaining properties due to a disparity in date of sale, location, style, improvement age, improvement size, and/or variance in amenities. Therefore, the Board finds no reduction based upon this issue.

Lastly, the appellant contends assessment inequity as the basis of the appeal. When unequal treatment in the assessment process is the basis of the appeal, the inequity of the assessments must be proved by clear and convincing evidence. 86 Ill.Admin.Code §1910.63(e). Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property. 86 Ill.Admin.Code §1910.65(b). The Board finds the appellant *met* this burden of proof and a reduction in the subject's assessment *is* warranted.

The Board finds the best evidence of assessment equity to be *the appellant's comparables #1, #3 and #4 as well as the board of review's comparables #3, #4 and #5*. These six comparables had improvement assessments that ranged from $17.48 to $30.98 per square foot of living area. The subject's improvement assessment of $59.20 per square foot of living area falls above the unadjusted range established by the best comparables in this record. However, the Board finds that appropriate adjustments are required to the comparables for sizable variances in amenities including: a range of fireplaces from zero to three, while the subject contains six fireplaces; a full unfinished basement, while the subject contains a full finished basement with a recreation room therein; a range of bathrooms from two to six, while the subject contains five baths; a range from zero to three-car garages, while the subject contains a masonry, two-car garage with a deck atop it; as well as adjustments for improvement style, age and size. After making adjustments to these comparables for pertinent factors, the Board finds that the appellant *did* demonstrate with clear and convincing evidence that the subject's improvement was inequitably assessed, but that the subject's improvement assessment after adjustments is appropriately sited above the

comparables' unadjusted range of improvement assessments. Therefore, the Board finds that a slight 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. Pursuant to Section 1910.50(d) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.50(d)) the proceeding before the Property Tax Appeal Board is terminated when the decision is rendered. The Property Tax Appeal Board does not require any motion or request for reconsideration.

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: December 18, 2018

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 or years of the same general assessment period, as provided in Sections 9-125 through 9-225, 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 such subsequent year or years 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 OR YEARS. A separate petition and evidence must be filed for each of the remaining years of the general assessment period.

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.

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