



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

APPELLANT: Bradley Auker
DOCKET NO.: 15-00620.001-R-1
PARCEL NO.: 04-25-430-005

The parties of record before the Property Tax Appeal Board are Bradley Auker, the appellant, and the Ogle 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 **Ogle** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$5,350
IMPR.: \$0
TOTAL: \$5,350

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Ogle County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2015 tax year.¹ 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 is a vacant residential parcel of land in Rose Meadows subdivision. The property is Lot 137 Rose Meadows, Phase 5, located on Westmont Drive in Byron, Byron Township, Ogle County.

The appellant's appeal is based on overvaluation. In support of this argument the appellant submitted evidence disclosing the subject parcel was purchased on November 28, 2014 from Byron Area Development Company, LLC for a price of \$5,000. The appellant reported in Section IV of the appeal petition that the parties to the transaction were not related, the property was sold by the owner after the property was advertised in the local paper and Multiple Listing Service for a period of approximately 2 years.

¹ The Notice of Final Decision on Assessed Value by the Ogle County Board of Review was issued to the appellant Bradley Auker on January 11, 2016 and advised the appellant that an appeal could be filed with the Property Tax Appeal Board within 30 days.

In further support, the appellant submitted a copy of the Agreement For Deeds between the seller and the appellant concerning ten vacant parcels identified in Exhibit A to the agreement, which includes the subject parcel. The agreement provided for a purchase price of \$50,000 for the lots with no money being paid upon the execution of the Agreement, but when the appellant sold a lot to a third party, the appellant was to pay \$5,000 plus 2% per annum interest from the date of the Agreement through the date of completion of the sale of the lot; the balance for any unsold lots along with 2% per annum interest would be paid from the date of the Agreement is due November 30, 2019. The Agreement also called for the appellant to be responsible for the real estate taxes upon the parcels for tax year 2015 onward.

Also attached as additional evidence, was a copy of a Settlement Statement with a date of December 29, 2014 with a sales price of \$50,000.² In addition, the appellant provided a copy of a listing of a parcel with an asking price of \$24,900 and indicating the property was listed as of April 30, 2013; the 'pertinent facts' included the comment "Choice of 10 lots for sale. Building packages available." The listing expired as of November 12, 2014.

The appellant additionally submitted a Contract for Purchase and Sale executed between Byron Area Development Company as the seller and buyers Derek and Abbey Wheeler concerning Lot 149 in Rose Meadows subdivision for a purchase price of \$6,000 with a closing date of March 5, 2016.

The appellant also partially completed Section V of the Residential Appeal petition with data on three comparable properties; the comparable parcels are located within a mile of the subject and range in size from .19 to .39 of an acre of land. Comparables #1 and #2 sold in March 2015 and January 2015 for prices of \$5,000 and \$13,500, respectively. Comparable #3 was reported as an 'active listing' with no reported price information or supporting documentation of an asking price.

Based on this evidence, the appellant requested a reduction in the subject's assessment to reflect the purchase price of \$5,000.

In response to the appeal, the Ogle County Board of Review initially submitted a Motion to Dismiss contending that the appellant, who signed the instant appeal petition, was not the owner of record of the subject property. Instead, the board of review asserted that Byron Area Development Company is the owner of record and has paid the 2015 (and prior) taxes on the subject parcel. As to the Agreement for Deeds, the board of review contended the document does not convey ownership and has never been recorded.

In response to the dismissal motion, the appellant disputed the assertion that he was not the owner of record based upon the Agreement for Deeds document. As to the taxes on the subject parcel, for tax year 2015 payable in 2016, the appellant has paid the taxes as depicted in an attachment with a copy of a check to the Ogle Collector. In addition, based upon City of Byron requirements concerning vacant lots being mowed a minimum of four times per year, the

² The property identified on the Settlement Statement was PIN 04-25-427-025 with an address of 737 Oaks Lane, the first of the 10 parcels identified on Exhibit A to the Agreement.

appellant provided documentation of payments for mowing services and payment for clean-up of debris on one particular lot.

On March 14, 2017, the Property Tax Appeal Board issued an Order denying the Motion to Dismiss on the grounds that the appellant's evidence indicated he has possession of the premises and is responsible for paying the real estate taxes. (See 35 ILCS 200/16-160 and 86 Ill.Admin.Code §1910.10(c)). The Order further granted the board of review 30 days to submit its evidence in this proceeding. This Order of March 14, 2017 is adopted for purposes of this Final Administrative Decision as if fully set forth herein.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$10,179. The subject's assessment reflects a market value of \$30,440, when using the 2015 three year average median level of assessment for Ogle County of 33.44% as determined by the Illinois Department of Revenue.

The board of review also requested reconsideration of the denial of its dismissal motion contending that the Agreement for Deeds document was incomplete due to a missing signature of a co-buyer and two missing dates on pages 3 and 4 of the document. The Property Tax Appeal Board finds that the record contains multiple copies of the Agreement for Deeds, some of which have all of the cited signatures and dates and some of which are incomplete. With the issuance of this Final Administrative Decision, the Property Tax Appeal Board denies the board of review's request for reconsideration of its dismissal motion; besides the previously cited provision of the Property Tax Code and the procedural rule, the Property Tax Appeal Board further takes notice that the Ogle County Board of Review issued its Notice of Final Decision on January 11, 2016 to the appellant Bradley Auken and provided in pertinent part:

Reason for Change: Final Decision

It is further noted this Notice of Final Decision from the board of review as the last paragraph states, in pertinent part:

. . . You may appeal this decision to the Property Tax Appeal Board by filing a petition for review . . . within 30 days after this notice is mailed to you . . .

In substantive response to the appellant's data, the board of review contends that none of the subject parcels on appeal by the appellant have been advertised for sale at a price of \$5,000 each. Furthermore, appellant's comparable sale #1, as depicted in an aerial photograph, is situated on an island in the river with only boat access and is an unbuildable lot located entirely within the FEMA flood hazard. Appellant's comparable sale #2 sold in July 2015, not January 2015 as reported by the appellant. In the letter, the board of review asserted there have been no vacant lot sales within Byron for "such a low amount" as the appellant is requesting for the subject other than appellant's comparable sale #1.

In support of its contention of the correct assessment, the board of review submitted a letter and a list of 14 accessible vacant residential land sales located within 1.5-miles of the subject that occurred within 2 years prior to the assessment date, along with an aerial photograph depicting the location of the subject parcel subdivision area and the comparable parcels. The 14 vacant

parcels of unknown size(s) sold between October 2013 and November 2015 for prices ranging from \$14,500 to \$62,000 with a median sale price of \$22,000 and a mean sale price of \$30,893.

In closing, the board of review offered to stipulate to an assessment of \$7,300 for the subject parcel based upon the median sale price of the comparable sales presented by the board of review which would reflect a market value of \$21,830 at the 2015 Ogle County three-year median level of assessment.

The appellant was informed of this proposed assessment reduction and rejected the offer. The appellant also filed his rebuttal evidence consisting of a two-page analysis of data along with supporting documentation. Part of the submission included arguments concerning an additional six vacant lots available for sale in the same subdivision as board of review sales #1 through #9 with a reported asking price of \$10,000 and a listing date of November 8, 2013. There was one copy of a listing sheet for a vacant parcel of .24-acres attached to the rebuttal.

Additionally, the appellant argued that board of review sales #13 and #14 are located in the newest, upscale subdivision of Fawn Ridge in Byron and contain 1.2 and .8 of an acre of land area, respectively. The appellant contended that these two comparables were dissimilar from the subject parcel.

The appellant contends that board of review sales #10, #11 and #12 are also in an upscale subdivision of Jackson Knolls with these three parcels established for duplex condominium development meaning there will be two condos on each lot making these parcels dissimilar to the subject parcel.

Additionally, board of review comparables #1 through #9 were also described as an upscale subdivision of Brighton Ridge that is superior to the subject parcel's subdivision. To establish this superior difference, the appellant argued that average home sales in Brighton Ridge for the period August 2006 through September 2016 was \$233,235 as compared to the average home sale in the subject subdivision of Rose Meadows for the period November 2012 through September 2015 that sold for \$154,120.

The appellant concluded that the foregoing data for Brighton Ridge and the subject Rose Meadows subdivisions suggested a market value of \$6,600 for lots in Rose Meadows.

Upon receipt of the appellant's rebuttal filing, the board of review filed a letter objecting to new evidence presented by the appellant, including new lot listings data and sales of residential properties in "attempts to opine about the county's previous submission of comparable sales."

The appellant filed a letter in response to the board of review assertion that the appellant's rebuttal included new evidence. The appellant characterized his filing of rebuttal as being solely in response to the board of review evidence of 14 lot sales.

For its reply, the board of review clarified its argument that the appellant's rebuttal filing included new evidence, specifically, the list of home sales and/or listings dating back to the year 2000.

Conclusion of Law

As an initial matter, concerning the appellant's rebuttal filing and the board of review's contention that the rebuttal filed by the appellant constitutes "new evidence," the Property Tax Appeal Board finds the board of review's argument lacks merit. Pursuant to the rules of the Property Tax Appeal Board, rebuttal evidence is restricted to that evidence to explain, repel, counteract or disprove facts given in evidence by an adverse party. (86 Ill.Admin.Code §1910.66(a)). Moreover, rebuttal evidence shall not consist of new evidence such as an appraisal or newly discovered comparable properties. (86 Ill.Admin.Code §1910.66(c)). In light of these rules, the Property Tax Appeal Board does not view the home sale data presented by the appellant as new evidence, in that the data was solely used to argue that the subject subdivision and the comparable subdivision of Brighton Ridge differed in characteristics and were not suitable comparable parcels for purposes of comparison.

For this appeal, 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.

The initial issue raised by the instant appeal is whether the Agreement for Deed documentation is equivalent to an arm's length sale transaction of the subject property for purposes of ad valorem assessment. American Jurisprudence Trials, Liability of Agreement for Deed Principal for Failure to Honor Deed Obligations (67 Am.Jur. Trials 213, 1998 (April 2018 update)), at Section 1, outlined the following general information concerning an agreement for deed or 'contract for deed' transaction:

An agreement (or contract)-for-deed transaction is a contract for the sale of land in which the subject property is used to secure the purchasing party's payment. This type of contract or agreement is essentially a security instrument that takes the place of the more traditional purchase-money mortgage. The subject of the transaction is the real property (including appurtenances), which is deemed to be owned by the vendee (buyer, or mortgagor), although the legal title in the land is usually retained by the seller (mortgagee, or vendor) as security. In theory as well as substance, the buyer is the equitable owner of the property, and the seller, through legal title retained in the property, is in the position of a mortgagee.

Because of the nature and scope of such contracts, and because the transaction itself may be properly termed a less common method of effecting a time-payment sale of land, an agreement-for-deed (whether called a contract for deed, installment sales contract, land contract, retained title, or conditional-sale contract) is considered to be an executory contract for the sale of land, wherein the buyer agrees and is obligated to pay the purchase price (usually in a series of payments over an extended period of time) until the debt has been satisfied in full. As in a mortgagor-mortgagee transaction, the buyer under an agreement-for-deed is usually accorded title to and possession of the land; and the seller agrees that

when the purchase price has been paid in full, the seller will convey the full legal interest to the buyer, usually via warranty deed.

This treatise further characterized the agreement for deed as a transaction for the sale of land in which the buyer agrees to pay the purchase price, usually in a series of payments over a relatively long period of time and the seller agrees to allow the buyer quiet enjoyment of the land in the intervening days between the agreement's consummation and the final payment date. (Id. at Section 3)

Based on the foregoing guidance of an Agreement for Deed along with the pertinent terms of the agreement that are set forth in this decision, the Property Tax Appeal Board finds that the Agreement for Deeds is a contract for the sale of the subject parcel with a payment schedule to occur over a period of time as specified in the agreement. Thus, the Property Tax Appeal Board gives no weight to the argument of the Ogle County Board of Review that the document was not reflective of a sale transaction.

Additionally, the Property Tax Appeal Board recognizes that a contract for deed executed many years prior to the valuation date at issue may not be an accurate reflection of market value as of the assessment date at issue, in this proceeding, the Agreement for Deed was executed shortly before the assessment date at issue of January 1, 2015. Therefore, the Board finds that the proximity in time of the execution of the Agreement for Deeds to the assessment date indicates that the sales price reflected in the document may be deemed reflective of market value.

The board of review also contended that the Agreement for Deed was a 'marketing tool' and was not reflective of market value since the property had not been advertised. The appellant provided a copy of a listing sheet referencing the availability of 10 residential lots and that listing indicated that it began in April 2013. The asking price set forth on the listing was \$24,900. The Property Tax Appeal Board finds this documentary evidence defeats the claim of the Ogle County Board of Review that the subject property was not exposed on the open market for sale.

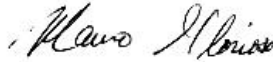
The parties submitted data concerning the sale of the subject property and data on 16 comparable sales of parcels to support their respective positions before the Property Tax Appeal Board. The Board has given little weight to appellant's comparable sale #1 which was shown to be a parcel located in a river, accessible only by boat and also within a flood hazard zone making it an unbuildable lot. The Board finds that these facts make appellant's comparable sale #1 dissimilar to the subject vacant residential parcel located in Rose Meadows subdivision. The Board has also given reduced weight to board of review comparable sales #10 through #14 as these parcels are larger than the subject and/or designed for construction of duplex condominium units which differs from the subject's residential vacant lot status in Rose Meadows subdivision.

The Board finds the best evidence of market value to be the purchase by contract for deed of the subject property in December, 2014 for a price of \$5,000 plus 2% interest per annum along with appellant's comparable sale #2 and board of review sales #1 through #9. The data reflects 11 sales ranging in price from \$5,000 plus 2% interest per annum to \$23,000.

The Board finds the contract for deed purchase price and the prices of the most similar comparable parcels is below the market value reflected by the assessment of \$30,440. Based on

this record, the Property Tax Appeal Board finds the subject's assessment is not reflective of 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. 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: _____

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: May 15, 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.

PARTIES OF RECORD

AGENCY

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