FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Carolyn S. Faivre, as Trustee
DOCKET NO.: 16-06647.001-R-1
PARCEL NO.: 05-16-416-009

The parties of record before the Property Tax Appeal Board are Carolyn S. Faivre, as Trustee of the Carolyn S. Faivre Trust, the appellant;[1] and the DuPage 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 **DuPage** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	$24,970
IMPR.:	$82,840
TOTAL:	$107,810

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the DuPage County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2016 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 1.5-story dwelling of frame exterior construction with 1,687 square feet of living area. The dwelling was constructed in 1948. Features of the home include a partial unfinished basement, a fireplace, and a 2-car garage with 576 square feet of building area.[2] The property has a 9,463-square foot site and is located in Wheaton, Milton Township, DuPage County.

[1] The appeal was filed by attorney Jeffrey R. Diver in April 2017. Mr. Diver retired from the practice of law in April 2019 and is no longer representing the appellant. As he is familiar with the property and the transactions, he instead appeared at hearing as a witness for the appellant.

[2] Section III of the appeal form erroneously indicates that the subject property has central air-conditioning. Mr. Diver testified that at the time of purchase in 2015 the subject property was equipped with three window air-conditioners and did not have central air-conditioning; he checked the box in Section III without thinking about "central" air-conditioning. This erroneous information was relied upon by the board of review in its grid analysis and on the property record card submitted into evidence.

The appellant's appeal is based on a recent sale, overvaluation, contention of law[3] and assessment inequity with respect to the improvement. In support of the overvaluation argument based on a recent sale, the appellant submitted information on the March 27, 2015 purchase of the subject property for a price of $268,000. Appellant completed Section – IV Recent Sale Data on the appeal form asserting that the sale was not a transfer between family or related corporations and that the property was sold by the owner. In response to the question of whether the property was advertised for sale, appellant responded, "Property was MLS-listed at time purchased by Elizabeth Diver on 2/14/13. On that date appellant entered into a Lease agreement and Option to Purchase agreement with Ms. Diver; however, the option price was more than $18,000 more than price paid by Ms. Diver. See Affidavit of Jeffrey R. Diver." (Said affidavit was submitted with the appeal.) In response to the question of whether the property was sold in settlement of an installment contract or contract for deed, appellant responded, "No!"

At hearing appellant, Carolyn Faivre, first called Jeffery R. Diver as a witness. Mr. Diver testified that he represented the Ms. Faivre when the appeal was filed in April 2017 but had retired from the practice of law in April 2019. He also testified that he was personally familiar the property. In November 2012, he and his wife, Elizabeth, sold a condominium in Colorado as part of a 1031 tax-deferred exchange. As they were required to seek replacement property in fulfillment of the requirements of the exchange, they began working with a Realtor and looking for replacement properties in and around Wheaton, Illinois. They narrowed their search down to two properties, one of which was the subject property. Mr. Diver testified that in deciding how much to offer for the subject, he reviewed the MLS listing history. He discovered that the subject property was originally listed in the MLS in February 2012 for $319,000. As time passed with no offers, the sellers reduced the sale price several times. By the time the Divers were ready to make an offer, the sale price had been reduced to $274,000. The Divers offered to purchase the subject property for $224,000. After some negotiation, the sellers agreed to sell the subject to the Divers for $250,000. Upon approval by the qualified intermediary, Ms. Diver purchased the property, taking title in her land trust. Mr. Diver testified that the February 2013 purchase for $250,000 was an arm's-length transaction. The property had been advertised for sale in the MLS for approximately 10 months. The buyers and sellers were unrelated parties and were both represented by Realtors. No mortgage was assumed, and the property was not sold in fulfillment of an installment contract, contract for deed or foreclosure.

During the course of looking at properties, the Divers discovered that the appellant and her husband, who were long-time friends of the couple, were also seeking to buy or rent property in Wheaton and were also interested in purchasing the subject property. After some discussion, the two couples agreed that Elizabeth Diver would purchase the property in her trust and that appellant and her husband, Gary Kreutz, would then rent the house for two years, with an option to purchase, while they gathered enough cash to purchase the property.

Mr. Diver testified that, as an attorney, he practiced environmental law and been involved in numerous real estate transactions both personally and professionally. He added that he and his wife had purchased approximately 20 properties in various cities in Illinois and elsewhere and

[3] In support of the contention of law argument, Mr. Diver submitted an affidavit outlining the details of the 2013 and 2015 sales of the property all of which was included in his testimony at hearing and will not addressed as a separate basis of appeal by the Board.

that he had some expertise in real estate transactions. The two couples desired to avoid additional costs such as appraisal fees, title insurance fees and real estate commissions and also desired to preserve their friendship and reach a sale price for the property that was fair to all parties, so Mr. Diver did research on Zillow which showed that the average property increases in value at a rate of 3.6% per year. As the parties planned to enter into a two-year agreement, the appellant agreed to pay 7.2% above the 2013 purchase price resulting in a sale price of $268,000. Mr. Diver stated that this was basically an agreement to purchase the property, with the closing delayed for two years.

The appellant also called her husband, Gary Kreutz, to testify about the circumstances of the sale. Kreutz testified that they were working with a realtor and looking to rent or buy a home in Glen Ellyn or Wheaton. They met the Divers at a social gathering and discovered that both couples were looking at the subject property. They entered into a discussion as outlined above by Mr. Diver's testimony. Kreutz testified three documents were executed for the transaction, being the two-year lease, an option to buy, and a contract outlining the terms of sale, copies of which were submitted with appellant's appeal. The documents were executed by all of the parties on February 14, 2013, being the same day that Elizabeth Diver closed on the purchase of the subject property. Mr. Kreutz and the appellant then moved into the subject property, lived there for two years, then exercised the option to buy in February 2015 and closed on the purchase in March 2015.

In further testimony, Mr. Diver stated that he had checked a number of boxes as part of appeal. The first one was the recent sale. He stated that, in this appeal, the assessor never argued that the 2015 sale was not an arm's length transaction although at the board of review hearing the assessor claimed this was not an arm's length transaction and said "see PTAX" which said that "Buyer is exercising an option to purchase." Since then he claims that there has been not one word regarding the validity of the "recent sale."

Mr. Diver testified that on or about December 31, 2015, only nine months after purchase of the subject property for $268,000, they received notice that the property was being assessed at $328,000. This represented a 22.5% increase in the value of the property in only nine months. At the board of review hearing, Mr. Kreutz contested the assessment and also disputed the size of the dwelling, which was shown larger than it actually was on the property record card. The board of review reduced the dwelling size from 1,791 square feet to 1,687 square feet and, based on the lower square footage, reduced the assessment to $323,500.

Upon cross-examination by Mr. Rasche, who appeared on behalf of the board of review, Mr. Diver agreed that "exposure to the open market" was one of the required elements of an arm's length transaction. Diver testified that, although the subject was advertised on the open market for the 2103 sale, it had not been advertised for the 2015 sale. He agreed that other elements of an arm's length transaction include duress, capacity, and unrelated parties. He contended that in this case the parties were not related, only good friends. Rasche asked Diver about the 3.6% per year interest agreed to by the parties in February 2013. Diver agreed that if the fair market value had an 8% increase, that the appellant had gotten a deal on the property but argued that the opposite could be true as well. Diver argued that the sale price might appear low but that's because they did not have to include additional costs for real estate commissions, title insurance fees or appraisal fees since no realtors were involved in the sale to appellant and since the Divers

had a current title report and appraisal in conjunction with their contemporaneous purchase and had entered into the lease agreement and option to purchase with the appellant on the same day that Elizabeth Diver took title to the property.

In support of both the overvaluation and inequity arguments, the appellant submitted a grid analysis with information on five comparable properties. Testimony at hearing indicated that the comparables were chosen by Mr. Diver and Mr. Kreutz. The properties are located within .68 of a mile from the subject and all share the same neighborhood code as the subject. The dwellings were built from 1948 to 1957 and consist of one, two-story, two, ranch-style, and two, 1.5-story single-family dwellings of brick or frame exterior construction. The houses range in size from 1,284 to 1,858 square feet of living area and are situated on sites ranging in size from 6,526 to 13,762 square feet of land area. According to the grid analysis, the dwellings each have a full or partial basement, four of which have finished area, central air-conditioning, and a one-car or a two-car garage. Three comparables each have one fireplace. These properties sold from February 2013 to December 2014 for prices ranging from $236,000 to $370,000 or from $165.73 to $257.01 per square foot of living area, including land. The comparables have improvement assessments that range from $59,020 to $95,240 or from $41.45 to $67.36 per square foot of living area.

Based on the above evidence and testimony, the appellant requested an assessment of $91,102, which reflects a market value of approximately $273,333 or $162.02 per square foot of living area, land included, at the statutory level of assessment of 33.33%. The request would lower the subject's improvement assessment to $66,132 or $39.20 per square foot of living area.

As part of his testimony, Mr. Diver also critiqued the board of review's comparables. He opined that comparables #5 and #6 should be disregarded as they sold after assessment date at issue. He observed that the board of review's grid analysis does not show the number of bedrooms for comparables #1, #2 and #4. He concluded that, based on the number of bedrooms and baths, basement size and finish, exterior finish, and central air-conditioning, none of the board of review's comparables properties were comparable to the subject.

Diver testified that while he was still a licensed attorney and representing the appellant in this appeal, he submitted a rebuttal brief to PTAB dated May 24, 2018. That brief contained an analysis of the assessments of both parties comparables evaluating the average assessment increase per month for each comparable. At hearing, he corrected some math errors in his evaluation and determined that the average increase was basically 1% which when applied to the $268,000 purchase price of the subject property would equate to a value of $270,200.[4] In the May 24, 2018 letter, he offered to settle for such an amount. The board of review did not accept said offer.

Mr. Diver testified that although multiple boxes were checked as bases for this appeal, he had been focusing primarily on the recent sale argument. On further cross-examination, Mr. Diver agreed that he had also raised equity and market value as part of appellant's appeal. Mr. Rasche directed Diver's to the grid analysis submitted by the board of review which includes details of the characteristics of the subject property, appellant's comparables and the board of review

[4] The stated offer of settlement for $268,643.20 in the rebuttal brief was made prior to correction of the math errors.

comparables. Mr. Rasche questioned Diver about Column 19 which shows each building's assessed value per square foot of living area (BAV) and looks exclusively at how structures are valued. The subject is presently assessed at $49.10 per square foot of living area. He pointed out that, of appellant's five comparables, three are in in low to high $60.00 per square foot of living area range.[5] Regarding the market value argument, Rasche direct Mr. Diver's attention to Column 20 of the board of review's grid analysis which depicts the comparables' market assessed value (MAV) per square foot of living area, including land. Mr. Diver agreed that the subject was assessed at $191.74 per square foot of living area, including land, and that four of the five appellant's comparables were assessed significantly above that amount.[6] Mr. Diver countered that he had focused on the recent sale of the subject property and the lack of comparability of the board of review's comparables to the subject.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $107,810. The subject's assessment reflects a market value of $323,851 or $191.97 per square foot of living area, land included, when using the 2016 three-year average median level of assessment for DuPage County of 33.29% as determined by the Illinois Department of Revenue. The subject has an improvement assessment to $82,840 or $49.10 per square foot of living area.

In response to both appellant's overvaluation and assessment inequity arguments the board of review submitted a grid analysis containing information on the subject, six board of review comparables and the appellant's five comparables, along with a memorandum critiquing appellant's comparables. The board of review comparables are located within .64 of a mile from the subject and have the same neighborhood code as the subject. The comparables consist of 1.5-story single-family dwellings of brick or frame exterior construction that are situated on sites containing from 7,675 to 11,451 square feet of land area. The homes were built from 1925 to 1952 and range in size from 1,558 to 1,717 square feet of living area. The comparables each have a full or partial basement with 153 to 756 square feet of finished area, central air conditioning, one fireplace, and a one-car or a two-car garage. The comparables sold from February 2014 to June 2016 for prices ranging from $343,000 to $392,000 or from $208.13 to $251.60 per square foot of living area, including land. The comparables have improvement assessments that range from $80,390 to $97,220 or from $51.60 to $59.86 per square foot of living area.

Matthew Rasche, a member of the DuPage County board of review, appeared on behalf of the board of review. Rasche argued that not all elements of an arm's length transaction were met in execution of the option to purchase, therefore, the purchase price was given little weight by the board of review. The board of review provided a copy of the PTAX-203 Illinois Real Estate Transfer Declaration associated with the March 2015 sale of the subject property. The transfer declaration disclosed that the property was not advertised for sale and the buyer was exercising an option to purchase. The board of review focused on uniformity and the sales comparable methodology. Rasche called Luke Wiesebrock, deputy assessor of Milton Township, as a witness. Wiesbrock testified that he prepared the evidence for this appeal. He chose six comparables homes that were all the same 1.5-story style as the subject, were located in the same

[5] Appellant's comparables #1 through #3 have BAVs ranging from $60.89 to $67.36 per square foot of living area.
[6] Appellant's comparables #1 through #4 have MAVs ranging from $197.97 to $260.31 per square foot of living area, including land.

neighborhood as the subject and were approximately the same age, size, and bath count as the subject, except that each comparable has a finished basement, dissimilar to the subject. Wiesbrock testified that the assessor does not assess on bedroom count, but rather on square footage, because owners differ on what is a "bedroom," as some rooms can be used either as a bedroom or an office or a den. Therefore, it is the square footage of the home that is important. He also testified that he relied on the appellant's appeal form which stated that the subject has central air-conditioning, which turned out to be inaccurate. He was unable to confirm certain other details of the subject property since there was no MLS sheet associated with the sale to the appellant.

Wiesbrock testified that, as to uniformity, the board of review comparables are assessed at a range of from $51.60 to $59.86 per square foot of living area, which is higher than the subject's improvement assessment of $49.10 per square foot of living area. Furthermore, the subject is assessed within the range of the appellant's own comparables, which range from $41.15 to $67.36 per square foot of living area. He critiqued appellant's comparables and noted that comparables #1, #3 and #4 were of dissimilar ranch or two-story design and thus assessed differently than a 1.5-story dwelling like the subject and added that appellant's comparable #5, although a 1.5-story home, is a leased property in inferior condition to the subject and is an outlier due to its lower assessed value compared to all of the other comparables in the record. He concluded that appellant's comparable #2, which is 1.5 story home, was appellant's best comparable and confirms the subject's assessed value.

Wiesbrock testified that the board of review sales comparables have total assessments that reflect market values ranging from $208.13 to $251.60 per square foot of living area, including land, with appellant's best comparable, being its comparable #2, falling within that range as well. The subject, which is assessed at a market value of $191.74 per square foot of living area, including land, is well below the range of all of the best 1.5-dwellings in the record and within the range of all of the comparables in the record, when appellant's comparable #5 is excluded as an outlier.

Wiesbrock testified that the Zillow metrics which estimated a 3.6% increase in value per year were below the actual township factors for the 2015 quadrennial assessment period. Based on his analysis, he determined that the subject was assessed uniformly and correctly based on both market value and equity and may even be a little low.

Based on the foregoing evidence and argument, the board of review requested confirmation of the subject's assessment.

In her closing argument, appellant argued that the primary focus of her case was the recent sale, and, based on the testimony of her witnesses regarding the recent sale, the subject property is over-assessed.[7] In his closing argument, Mr. Rasche reiterated that the comparables presented by both parties actually support the subject's assessment on both an equity and market value basis and further argued the March 2015 sale lacked the elements of an arm's length transaction.

[7] Appellant submitted a written argument instead of an oral argument. Her written argument was marked as Appellant's Exhibit #2. She also submitted a list of PTAB cases supporting the validity of the recent sale which was marked as Appellant's Exhibit #1.

Conclusion of Law

The appellant contends, in part, that 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 Board gave little weight to the March 2015 purchase of the subject property for $268,000. The evidence disclosed that the transaction was the result of an option to purchase entered into in 2013 and that the property was not advertised for sale. The appellant completed Section IV - Recent Sale Data of the appeal acknowledging that the property had not been advertised on the open market. At hearing, Mr. Diver testified that the transaction was basically "an agreement to purchase the property, with the closing delayed for two years." In support of the transaction, the appellant submitted a copy of three documents, being the two-year lease, an option to buy and a contract outlining the terms of sale, which were all executed by the parties on the same day that Elizabeth Diver closed on the purchase of the subject property in February 2013. The Board finds that the purchase did not have the elements of an arm's length transaction due to the lack of advertisement.

In further support of their respective overvaluation arguments, the parties submitted information on eleven comparable sales. The Board gave less weight to appellant's comparables #1, #3, #4 and #5, along with board of review comparables #1 and #4, as their sales occurred 17 to 35 months prior to the January 1, 2016 assessment date at issue and are thus less likely to be reflective of the subject property's market value. Further, appellant's comparables #1, #3 and #4 were of dissimilar design when compared to the subject. The Board also gave less weight to board of review comparables #5 and #6 which are over 20 years older than the subject. Further, though much older dwellings, these two comparables were the two highest selling comparables in the record indicating that they may have been updated or remodeled.

The Board finds the best evidence of market value in the record to be appellant's comparable #2 and board of review comparables #2 and #3 which were similar to the subject in location, age, design, and most features, although downward adjustments are necessary to these three best comparables for their central air-conditioning, masonry exterior and/or finished basement area, superior to the subject. These properties sold more proximate in time to the assessment date at issue for prices ranging from $318,000 to $362,000 or from $208.73 to $224.89 per square foot of living area, including land. The subject's assessment reflects a market value of approximately $323,851 or $191.97 per square foot of living area, including land, which falls within the range established by the best comparable sales in this record on an overall basis and below the range on a per square foot basis. This evidence further supports the conclusion that the option to purchase was not reflective of the market value as of the assessment date. Based on this record and after considering adjustments to the comparables for any differences from the subject, the Board finds the subject's assessed value is supported and a reduction in the subject's assessment is not warranted on this basis.

Alternatively, the taxpayer contends assessment inequity with respect to the improvement as a 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 did not meet this burden of proof and a reduction in the subject's assessment is not warranted on this basis.

The parties used the same eleven comparables for the inequity argument. The Board gave less weight to appellant's comparables #1, #3, #4 and #5 as comparables #1, #3 and #4 were of dissimilar ranch or 2-story design when compared to the subject's 1.5-story design and as comparable #5 appears to be an outlier based on its much lower improvement assessment in comparison to any of the other comparables submitted in this record. The Board also gave less weight to board of review comparables #5 and #6 which are more than 20 years older than the subject.

The Board finds the remaining five comparables are similar to the subject in age, design, location, size, and most features, although all of these best comparables have central air-conditioning and/or finished area in the basement, superior to the subject, suggesting downward adjustments are necessary to make them more equivalent to the subject. These comparables had improvement assessments ranging from $86,640 to $97,220 or from $53.98 to $67.36 per square foot of living area. The subject's improvement assessment of $82,840 or $49.10 per square foot of living area falls below the range established by the best comparables submitted for the Board's consideration on both an overall and per square foot which is logical given its unfinished basement and lack of central air-conditioning. Based on this record, the Board finds that the appellant did not demonstrate with clear and convincing evidence that the subject's improvement was inequitably assessed and no reduction in the subject's assessment is warranted.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). Although the comparables presented by the parties disclosed that properties located in the same area are not assessed at identical levels, all that the constitution requires is a practical uniformity, which exists on the basis of the evidence.

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: March 15, 2022

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

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