FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Marc and Marilyn Franson
DOCKET NO.: 16-25516.001-R-1
PARCEL NO.: 05-28-302-032-0000

The parties of record before the Property Tax Appeal Board are Marc and Marilyn Franson, the appellant(s); and the Cook 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 **Cook** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	$ 22,275
IMPR.:	$ 71,538
TOTAL:	$ 93,813

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 2016 tax year. The Property Tax Appeal Board (the "Board") finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

The subject consists of a two-story dwelling of masonry construction with 2,822 square feet of living area. The dwelling is 87 years old. Features of the home include a full unfinished basement, a fireplace, and a two-car garage. The property has a 12,375 square foot site, and is located in Kenilworth, New Trier Township, Cook County. The subject is classified as a class 2-06 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends assessment inequity as the basis of the appeal. In support of this argument, the appellant submitted information on three equity comparables.

The appellant also contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal estimating the subject property had a market value of $850,000 as of January 1, 2016. The appraisal states that the subject is owner occupied. The

appellant also submitted information on one sale comparable and one sale listing. The sale comparable sold in July 2014 for $1,092,000, or $261.37 per square foot of living area, including land. The sale listing was listed for $899,000, or $222.30 per square foot of living area, including land. The appellant requested that the subject's assessment be reduced to 10.00% of the appraisal's estimate of market value.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $93,813. The subject property has an improvement assessment of $71,538, or $25.35 per square foot of living area. The subject's assessment reflects a market value of $938,130, or $332.43 per square foot of living area, including land, when applying the 2016 statutory level of assessment for class 2 property of 10.00% under the Cook County Real Property Assessment Classification Ordinance.

In support of its contention of the correct assessment, the board of review submitted information on four equity comparables and four sale comparables. These comparables sold between April 2016 and August 2016 for $1,033,500 to $1,250,000, or $376.62 to $445.51 per square foot of living area, including land.

In written rebuttal, the appellant argued that the board of review's comparables are not similar to the subject for various reasons. The appellant also submitted three additional sale comparables.

At hearing, the appellant reaffirmed the evidence previously submitted. The appellant also requested that the Board take judicial notice that the subject's assessment decreased in the tax years subsequent to the tax year at issue, and the Board took judicial notice of this fact, over the objection from the board of review analyst. The board of review analyst objected to the appellant's appraisal, as the appraiser: was not present; did not testify; and was unavailable for cross-examination. Therefore, it was argued, the appraisal should be dismissed as hearsay evidence. After hearing argument from the appellant on this point, the Board sustained the objection on hearsay grounds, but allowed the appellant to make argument regarding the raw sales data submitted in the sales comparison approach of the appraisal. The analyst then reaffirmed the evidence previously submitted. During oral rebuttal, the appellant argued that the board of review's comparables were not similar to the subject for various reasons.

Conclusion of Law

Initially, the Board gives no weight to the appellant's contention of law raised at hearing regarding the reduction of the subject's assessment in the tax years subsequent to the tax year at issue in this appeal. This argument was addressed by the appellate court in Hoyne Savings & Loan v. Hare, 60 Ill.2d 84 (1974), and 400 Condominium Ass'n v. Tully 79 Ill.App.3d 686 (1st Dist. 1979). However, in Moroney & Co. v. Property Tax Appeal Board, 2013 IL App (1st) 120493, the Court stated that the appellant's reliance on Hoyne "for the proposition that subsequent actions by assessing officials are fertile grounds to demonstrate a mistake in a prior year's assessments" was misplaced. Moroney, 2013 IL App (1st), ¶ 46. In Moroney, the Court wrote in pertinent part:

> [I]n each of those unique cases [Hoyne and 400 Condominium], which are confined to their facts, there were glaring errors in the tax assessments—in

> Hoyne, the assessment was increased on a property from $9,510 to $246,810 in one year even though no changes or improvements to the property had occurred (Hoyne, 60 Ill.2d at 89), and in 400 Condominium, assessments on a garage were assessed separately from the adjoining condominium in violation of the Condominium Property Act (400 Condominium, 79 Ill.App.3d at 691). Here, based upon the evidence that was submitted, there is no evidence that there was an error in the calculation of the 2005 assessment. Rather, the record shows that the 2005 assessment was properly calculated based on the market value of the property.

Id. The Board finds the appellant presented no credible evidence showing there were unusual circumstances present in this 2016 appeal relative to the establishment of the subject's assessment for tax years 2017 or 2018. Therefore, the Board finds that the appellant's contention of law, based on Hoyne and 400 Condominium, is without merit.

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.

Initially, the Board finds that it cannot consider the additional sale comparables submitted by the appellant in rebuttal. “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.” 86 Ill.Admin.Code §1910.66(c). As such, the three additional sale comparables submitted by the appellant in rebuttal have been given no weight in the Board’s analysis.

The Board finds the adjustments to the comparables in the sales comparison approach to value and the corresponding final conclusion of value for the subject found in the appraisal submitted by the appellant to be hearsay. At hearing, the board of review analyst argued that the appraisal was hearsay evidence because the appraiser was not available to testify. The Board finds this to be the case. For proceedings before the Board, "[t]he procedure, to the extent that the Board considers practicable, shall eliminate formal rules of pleading, practice and evidence, ..." 35 ILCS 200/16-180. However, in Novicki v. Department of Finance, 373 Ill. 342 (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. Thus, while the Board's rules allow for informal rules of evidence, the Board cannot abrogate a basic rule of evidence under the Supreme Court's holding in Novicki. Therefore, the Board finds that the appraisal is hearsay evidence for which no exception exists, and that the adjustments and conclusions of value found in the appraisal shall not be considered as relevant evidence in this appeal. However, the Board will analyze the raw sales data submitted by the parties, including the sales data included in the sales comparison approach of the appraisal.

The Board finds the best evidence of market value to be appellant's comparables #1, #2, #3, #4, #5, and #6 found in the sales comparison approach in the appraisal, and board of review comparables #1, #2, and #3. These comparables sold for prices ranging from $295.58 to $445.51 per square foot of living area, including land. The subject's assessment reflects a market value of $332.43 per square foot of living area, including land, which is within the range established by the best comparables in this record. Based on this record, the Board finds that the appellant has not proven, by a preponderance of the evidence, that the subject is overvalued.

The taxpayer 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 did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The Board finds the best evidence of assessment equity to be board of review comparables #1, #2, and #3. These comparables had improvement assessments that ranged from $26.71 to $30.61 per square foot of living area. The subject's assessment of $25.35 per square foot of living area falls below the range established by the best comparables in this record. Based on this record, the Board finds the appellant did not demonstrate with clear and convincing evidence that the subject's improvement was inequitably assessed, and a reduction in the subject's assessment is not 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: May 21, 2019

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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