



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

APPELLANT: Mark Kmiecik
DOCKET NO.: 19-08247.001-R-1
PARCEL NO.: 05-18-423-005

The parties of record before the Property Tax Appeal Board are Mark Kmiecik, the appellant, 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: \$21,990
IMPR.: \$59,030
TOTAL: \$81,020

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 2019 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

Preliminary Matter

By letter dated May 6, 2022, the Property Tax Appeal Board set this matter for an in-person hearing to be held on July 12, 2022 at 10:00 a.m. At the time and date set for the hearing, Lynette Kmiecik, widow of Mark Kmiecik, appeared to pursue the appeal in her husband's place. She explained that her husband passed away earlier in 2022. She further stated that she resides in the home and pays the property taxes thereon. The DuPage County Board of Review did not object to the substitution of the appellant for purposes of hearing by Lynette Kmiecik.¹

¹ Pursuant to the Property Tax Code any taxpayer dissatisfied with the decision of a board of review may timely file an assessment appeal. (35 ILCS 200/16-160). The Board's adopted procedural rules clarify that either an owner or a taxpayer may pursue an appeal. (86 Ill.Admin.Code §1910.30). Both the appellant's appraisal report and the property record card for the subject property indicate that the recorded property owners are Lynette and Mark Kmiecik.

Findings of Fact

The subject property consists of a one-story single-family dwelling of masonry exterior construction with 1,115 square feet of living area. The dwelling was constructed in 1957 and is approximately 62 years old. Features of the home include a full basement with finished area, central air conditioning and a two-car garage containing 576 square feet of building area. The property has a 7,263 square foot site and is located in Wheaton, Milton Township, DuPage County.

The appellant Mark Kmiecik was substituted for purposes of hearing by his widow, Lynette Kmiecik, contending overvaluation as the basis of the appeal. In support of this argument, the appellant submitted with the appeal petition a written appraisal report prepared by James Swerdon, a Certified Residential Real Estate Appraiser, based upon fee simple property rights. Using the sales comparison approach to value, Swerdon opined that the subject property had a market value of \$185,000 as of January 1, 2019.

Despite the guidance provided within the final provision of the Hearing Notice issued to the appellant stating, in pertinent part, "If your argument is based on an appraisal, you must have the appraiser present to testify," no arrangements were made in advance to have the appraiser appear for hearing by Ms. Kmiecik.

At the hearing, the board of review objected to consideration of the appraisal since the appraiser was not present to provide testimony and/or be cross-examined with regard to the report. At hearing, ruling on the objection was reserved by the Administrative Law Judge (ALJ).

The Property Tax Appeal Board sustains the objection of the board of review to the appellant's appraisal report. The Board finds that in the absence of the appraiser at hearing to address questions as to the selection of the comparables and/or the adjustments made to the comparables in order to arrive at the value conclusion set forth in the appraisal, the Board will consider only the appraisal's raw sales data in its analysis and give no weight to the final value conclusion made by the appraiser. Novicki v. Dept. of Finance, 373 Ill. 342 (1940); Grand Liquor Co., Inc. v. Dept. of Revenue, 67 Ill. 2d 195 (1977); Jackson v. Board of Review of the Dept. of Labor, 105 Ill. 2d 501 (1985). The Board finds the appraisal report is tantamount to hearsay. Oak Lawn Trust & Savings Bank v. City of Palos Heights, 115 Ill. App. 3d 887 (1st Dist. 1983). Illinois courts have held that where hearsay evidence appears in the record, a factual determination based on such evidence and unsupported by other sufficient evidence in the record must be reversed. LaGrange Bank #1713 v. DuPage County Board of Review, 79 Ill. App. 3d 474 (2nd Dist. 1979); Russell v. License Appeal Comm., 133 Ill. App. 2d 594 (1st Dist. 1971). In the absence of an appraiser being available and subject to cross-examination regarding methods used and conclusion(s) drawn, the Board finds that the weight and credibility of the evidence and the value conclusion of \$185,000 as of January 1, 2019 has been significantly diminished and cannot be deemed conclusive as to the value of the subject property.

Examining the raw sales data in the appraisal, there are three comparable sales located from .11 to .57 of a mile from the subject property. It is further noted that the appraiser described the subject parcel as 4,638 square feet of land area. The three comparables were described as parcels ranging in size from 7,405 to 10,019 square feet of land area which are each improved with a

one-story dwelling. The comparable homes range in age from 58 to 67 years old and range in size from 1,008 to 1,288 square feet of living area. Each home has a full basement with finished area and central air conditioning. Comparables #2 and #3 each have a one-car garage and each comparable has a patio or a porch which is not a feature of the subject. The comparables sold from June 2016 to April 2018 for prices ranging from \$153,000 to \$222,000 or from \$151.79 to \$199.10 per square foot of living area, land included.

At hearing after being advised about the hearsay issue in presenting an appraisal without the testimony of the appraiser at the scheduled hearing, Lynette Kmiecik was given an opportunity to discuss her home in order to add to the evidentiary record. Ms. Kmiecik testified that the subject dwelling is overvalued since the property is located on a dead-end street and "everyone turns around in our driveway."² There is also a sign posted in the driveway of the property asking people not to turn around in the driveway; there is a photograph of this in the appraisal report as well. She also stated that there is flooding in the backyard of the home where nothing will grow and she described the area as "a mess."

Based on the foregoing evidence, the appellant requested a reduction in the subject's assessment to \$61,667 which would approximately reflect a market value of \$185,000 when applying the statutory level of assessment of 33.33%.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$81,020. The subject's assessment reflects a market value of \$245,590 or \$220.26 per square foot of living area, land included, when using the 2019 three year average median level of assessment for DuPage County of 32.99% as determined by the Illinois Department of Revenue.

The board of review was represented at hearing by member Don Whistler and Mary Lopez, Chief Residential Deputy Assessor in Milton Township was presented as the board of review's witness.

Besides the objection to the appraisal, Whistler would have questioned Swerdon about the reported lot size of the subject parcel given what is recorded in the property record card of approximately 7,260 square feet of land area. Likewise, Whistler noted that Swerdon adjusted the lot sizes of each of the three comparable sales based upon the reportedly smaller lot size of the subject parcel.

In support of its contention of the correct assessment, the board of review called Mary Lopez who testified regarding the grid analysis of six comparable sales provided in the record and remarked on one of the sales in the appraisal report. Lopez testified that appraisal sale #1 was not considered in the 2019 sales ratio study because there was new construction put on after the sale (see board of review Exhibit #2 building permit for kitchen remodel). She also noted the lack of a garage amenity associated with appraisal sale #1. As to appraisal sales #2 and #3,

² As part of the Supplemental Addendum to the appraisal report, Swerdon stated in part, "The subject is located on a dead end street which is typically considered a premium location however, the subject's street is narrow and per the owner and neighbor, the amount of traffic that comes down the street and is forced to turn around in their driveways is a major concern and distraction."

Lopez testified the garages of these properties were inferior to the subject and appraisal sale #2 is noted located in the same neighborhood code as the subject.

The comparables presented by the board of review are located from .27 to .85 of a mile from the subject and located within the same neighborhood code as is assigned by the assessor to the subject property. The parcels range in size from 7,685 to 10,333 square feet of land area and are improved with one-story dwellings of frame or masonry exterior construction. The homes were built from 1923 to 1959 and range in age from 60 to 96 years old. The dwellings range in size from 936 to 1,332 square feet of living area. Each comparable has a full or partial basement, five of which have finished area. Each home has central air conditioning and two comparables each have a fireplace. The dwellings also feature either one-car or two-car garages. The comparables sold from January 2018 to June 2019 for prices ranging from \$291,000 to \$310,000 or from \$227.48 to \$310.90 per square foot of living area, including land.

Based on this evidence and argument, the board of review requested confirmation of 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 three comparable sales through the Swerdon appraisal for the Board's consideration and the board of review presented six comparable sales. The Property Tax Appeal Board has given less weight to board of review comparable sales #3, #4 and #6 due to differences in age and/or dwelling size when compared to the subject dwelling.

Based on the foregoing analysis, the Board finds the best evidence of market value to be the appellant's comparable sales along with board of review comparable sales #1, #2 and #5 due to their similarities to the subject in location, age, design, dwelling size, foundation and/or basement finish. The Board has given no consideration to the township assessor's argument that appraisal sale #1 is "no longer" considered in the three-year sales ratio study due to remodeling that occurred after the purchase. The Property Tax Appeal Board finds that a sales ratio study is a mechanism to compare the accuracy of assessments of properties to recent sales in the area. As this appeal is based on overvaluation, the argument that appraisal sale #1 is not analyzed within the three-year sales ratio study has no relevance to the Board's analysis of comparable sales data within the immediate vicinity of the subject property for purposes of an overvaluation appeal.

The six best comparable sales in the record sold from June 2016 to June 2019 for prices ranging from \$153,000 to \$310,000 or from \$151.79 to \$253.91 per square foot of living area, including land. The subject's assessment reflects a market value of \$245,590 or \$220.26 per square foot of living area, including land, which is within the range established by the best comparable sales in the record. Based on this evidence and after considering appropriate adjustments to the best

comparables for differences when compared to the subject property, the Board finds 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

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: January 17, 2023



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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