



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

APPELLANT: Gerry & Terri Niedert
DOCKET NO.: 21-07124.001-R-2
PARCEL NO.: 05-17-229-016

The parties of record before the Property Tax Appeal Board are Gerry & Terri Niedert, the appellants, by attorney Nora Devine, of The Devine Law Group, LLC in Northfield; 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: \$120,780
IMPR.: \$741,350
TOTAL: \$862,130

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellants 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 2021 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 2-story dwelling of frame and masonry exterior construction with 6,588 square feet of living area. The home was built in 2020 and is approximately 1 year old. Features of the home include an unfinished basement containing 4,185 square feet of building area, central air conditioning, two fireplaces, and a garage with 1,382 square feet of building area. The subject property has a 32,090 square foot site and is located in Wheaton, Milton Township, DuPage County.

The parties appeared at a hearing before the Property Tax Appeal Board on May 2, 2023. Appearing on behalf of the appellants was their attorney, Nora Devine,¹ along with her witness and appellant Gerry Niedert. Appearing on behalf of the DuPage County Board of Review was

¹ The Devine Law Group, LLC substituted recently for the original counsel who filed the appeal and supporting evidence on behalf of the appellants.

the board of review member, Donald Whistler, along with his witness Luke Wiesbrock, Residential Deputy Assessor in Milton Township.

The appellants contend overvaluation² and contention of law as the bases of the appeal.³ In support of these arguments, the appellants submitted a grid analysis with information on four comparable sales located in Wheaton with three being located in the same assessment neighborhood code as the subject property.

At the hearing, Attorney Devine summarized the appellants' grid data. The comparable properties have sites ranging in size from 12,384 to 30,000 square feet of land area. The comparables are improved with two-story dwellings of frame, masonry, or frame and masonry exterior construction ranging in size from 4,310 to 6,577 square feet of living area. The dwellings range in age from 11 to 20 years old. The comparables each feature a basement ranging in size from 2,310 to 2,923 square feet of building area with three having finished area. Each comparable features central air conditioning, one to five fireplaces, and a 3-car garage ranging in size from 616 to 986 square feet of building area. The comparables reportedly sold from November 2018 to September 2020 for prices ranging from \$975,000 to \$1,375,000 or from \$148.24 to \$298.99 per square foot of living area, including land. The comparables have improvement assessments ranging from \$242,950 to \$432,220 or from \$55.15 to \$91.65 per square foot of living area.⁴ The appellants' evidence also included copies of Milton Township Property Information sheets with respect to the subject property and the appellants' comparables. Finally, the evidence includes a Plat of Survey for the subject property depicting a schematic diagram of the entirety of the subject property including the improvements and surrounding "stormwater management" easements in addition to "public utility and drainage" easements along the northern, southern, and western borders of the subject parcel.

The appellant, Gerry Niedert, testified that he originally purchased two adjoining properties and consolidated them into a single parcel upon which he had the current dwelling built.⁵ Prior to construction, the appellants were required to procure a site development plan for topographical grading of the site as part of mitigation of stormwater runoff and flood control. This required excavation of deep "swales" or water-retention ditches along with drain covers on three sides of the dwelling for the purpose of flood control in the event of heavy rainfall. As a result, Niedert testified that no landscaping is possible in the area of these swales and the use of the yard is very limited. Also, Niedert added that he was required to build a retaining wall on the sides of the swales to prevent erosion. During heavy rains, Niedert stated that these areas fill up with up to a couple of feet deep rainwater. Although not required, he purchased flood insurance in the event

² Although the appellant requested an assessment reduction to both land and improvement/dwelling, the record does not contain evidence of land-only sales. Therefore, the Property Tax Appeal Board will analyze and determine the value of the subject property with land and improvement together. See Showplace Theatre Company v. Property Tax Appeal Board, 145 Ill.App 3d. 774 (2nd Dist. 1986).

³ At hearing, the appellants' counsel also made a quasi-uniformity argument without requesting to amend the appeal to include assessment inequity as an alternate basis of the appeal. The Board finds that amending the basis of the appeal at the hearing is prohibited by PTAB Rules. The Board will, however, address the counsel's argument, analyze and give appropriate weight to any improvement assessment data that was submitted by both parties and is already a part of this record.

⁴ The improvement assessment data was drawn from the property record cards submitted by the board of review.

⁵ The evidence submitted by the board of review disclosed that the Certificate of Occupancy was issued on February 7, 2020.

the basement floods. This is also a primary reason why he opted to leave the basement area unfinished. Niedert argued that his property is unique due to the topography of the neighborhood and that no other neighboring lot is required to or has these stormwater mitigation swales.

The appellant offered into evidence at the hearing what has been marked as Appellant's Group Exhibit A for identification. This purports to be an engineering report with schematic drawings and plat map of the subject property and the locations of the deep drainage swales on the subject property. Also attached to this exhibit are five color photographs of the exterior of the subject dwelling depicting the drainage swales.

Section 1910.67(k)(1) of the rules of the Property Tax Appeal Board provide:

- k) In no case shall any written or documentary evidence be accepted into the appeal record at the hearing unless:
 - 1) Such evidence has been submitted to the Property Tax Appeal Board **prior to the hearing** pursuant to this Part; [Emphasis added] (86 Ill.Admin.Code §1910.67(k)(1)).

Based on the above, the Board finds the submission of the engineering report at hearing to be improper and thus denies the admission of the said report along with diagrams as these were not previously submitted into evidence prior to the hearing according to PTAB Rules. As to the five color photographs (marked as Trial Group Exhibit #1), the Board finds that these shall be accepted into the evidence based on being accurate representations of the subject premises, the proper foundation having been established as to their admissibility, and there being no objection from the board of review. The color photographs of the appellants' property depict large stone pavers stacked alongside the slopes of the retention ditches to prevent erosion as well as four manhole-sized drains on each side of his home. Niedert testified that these negatively affect the marketability and market value of the property because it severely limits the use of the property in addition to discourages potential buyers due to flooding potential. Niedert further testified that the original lots that he purchased did not have this stormwater mitigation and he was not aware that this would be mandated as a condition of new construction. Additionally, appellants' counsel argued that the grid analysis also includes data with respect to the improvement assessments for the subject and the comparable dwellings which discloses that the subject dwelling is assessed at a much higher rate per square foot of living area than the comparable dwellings. Given the issue of the stormwater mitigation swales which negatively impact the market value of the subject property, counsel argued that the subject dwelling is over-assessed.

Based on the foregoing evidence and argument, the appellants contend that the subject should have a reduced estimated market value of approximately \$1,716,664 or \$260.57 per square foot of living area, including land, using the statutory level of assessment of 33.33%.

Under cross-examination, Niedert acknowledged that his home is not located in a designated flood plain and thus he is not required to purchase flood insurance. Regardless, however, he purchased flood insurance because of recurrent standing water around his home after each heavy rainstorm. Under further cross-examination, Niedert was asked if the swales around his dwelling were necessary due to the fact that the appellants' current parcel was consolidated out of two

previous parcels and the current dwelling, driveway and other improvements take up more area of the parcel and, therefore, do not allow the water to naturally percolate or dissipate. Niedert replied that the footprint of the subject dwelling is not much larger, if at all, than that of the two prior dwellings combined. Finally, Niedert estimated that the total cost of the construction including permits, material, labor, and construction of the mandated stormwater mitigation was approximately \$5,000,000. However, in his opinion, based on recent sales in Wheaton of similar custom homes, he does not believe that his home can sell for any more than \$2,000,000.

Under re-direct examination, Niedert stated that had he known about the water runoff issues, he would not have purchased the lots nor constructed this home. He has three sump pumps that run on a regular basis even during moderate rainfall. All three sump pumps had to be replaced since the home was built. During heavy rainfall, the swales typically fill up to two feet or more with rainwater and it takes five to six hours for the water to subside. Given the limited use of the yard surrounding his home due to frequent ground saturation and the potential for flooding, Niedert argued that the marketability of his home is severely impacted. Upon questioning by the Administrative Law Judge, Niedert stated that his home is the only one in Wheaton or Glen Ellyn that has these "significant changes to the contours of the property" which don't exist on any other plat in the area.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$862,130. The subject's assessment reflects a market value of \$2,578,911 or \$391.46 per square foot of living area, land included, when using the 2021 three-year average median level of assessment for DuPage County of 33.43% as determined by the Illinois Department of Revenue.

The board of review called Luke Wiesbrock, Residential Deputy Assessor in Milton Township, as its witness. Wiesbrock testified that he prepared the board of review's evidence consisting of, first, a grid analysis containing information on the subject property as well as the four appellants' comparables and four board of review comparables. Two board of review comparables are located in Wheaton and two are located in Glen Ellyn. They have sites ranging in size from 13,500 to 94,558 square feet of land area and are improved with 2-story dwellings of masonry or frame and masonry exterior construction that were built between 2004 and 2016. The dwellings range in size from 4,006 to 8,470 square feet of living area. The comparables each feature a basement ranging in size from 981 to 5,142 square feet of building area with three having finished area. Each comparable has central air conditioning, one to three fireplaces, and a multi-car garage ranging in size from 679 to 2,630 square feet of building area. The comparables sold from May 2018 to August 2021 for prices ranging from \$1,725,000 to \$2,890,000 or from \$341.20 to \$436.84 per square foot of living area, including land. The comparables have improvement assessments ranging from \$328,350 to \$814,380 or from \$81.96 to \$102.71 per square foot of living area.

The board of review submission also includes property record cards for the subject property and each of the parties' comparables; a map showing the locations of each of the comparables in relation to the subject; sale documents related to the appellants' purchase of and consolidation of two parcels including the demolition permits of the preexisting dwellings; construction and occupancy permit for the current dwelling; Illinois Real Estate Transfer Declaration (PTAX-203) forms associated with the two additional sales of appellants' comparable #2; aerial photographs

of the subject property and board of review comparables in relation to downtown Wheaton and downtown Glen Ellyn; aerial photo of appellants' comparable #3 in proximity to the Wheaton Sanitation District; and a memorandum setting forth the arguments against the appellants' comparables and in support of the board of review comparables.

As set forth in the memorandum, Luke Wiesbrock testified on behalf of the board of review that the subject dwelling is a unique property and that he had to look outside the city of Wheaton to find comparable sales. Wiesbrock opined that considering the subject's location near downtown Wheaton, there has been more growth and higher property values closer to downtown areas of both Wheaton and Glen Ellyn due to proximity to commuter trains and the commercial district. In critiquing the appellants' comparables, Wiesbrock noted that appellants' comparable #3, was owned by a well-known professional baseball player who attempted to sell the property on multiple occasions as documented by the Multiple Listing Service (MLS) sheets submitted into evidence. The home is located within 1,500 feet of a sanitary district which may account for the home being on the market for several years prior to ultimately selling for a price that is by far the lowest of all the parties' comparable sales. Wiesbrock argued that the remaining comparables are all older in age and significantly smaller in dwelling size. Additionally, Wiesbrock noted that appellants' comparable #2 was a relocation sale that sold twice in January and February 2021 with the first sale not being advertised. Both sales were for a price of \$1,475,000. The appellants only reported the prior sale in December 2019 for a price of \$1,375,000.

Under cross-examination, Wiesbrock testified that in selecting the board of review comparables, he was looking for similar size homes closest to the subject in age utilizing the internal market data from the last three years of sales. Wiesbrock stated that he does not consider the amount of time the home was on the market, but rather strictly the sale dates, sale prices, and sale terms. He acknowledged that the board of review comparables are all outside of the subject's neighborhood ranging in distance from 1.32 to 3.0 miles in distance, but he opined that these were the best comparables available and further that downtown Wheaton is very similar in desirability and market value as downtown Glen Ellyn. Wiesbrock also opined under further cross-examination that given the subject's features and characteristics, he believes that the subject property can sell for \$3,000,000 although he was not able to identify any other comparable property in Wheaton that recently sold for this amount or higher. Wiesbrock acknowledged that the two adjoining properties that the appellants purchased in order to demolish the existing homes and build the current dwelling sold for \$560,000 and \$875,000, respectively. He believes that the two sales represented fair cash values of each property. The Illinois Real Estate Transfer Declaration (PTAX-203) forms associated with the two aforementioned sales were submitted into evidence in order to illustrate that the subject property was purchased for a combined value of \$1,435,000. Wiesbrock contended that the comparables submitted by the board of review were more similar to the subject and a better indicator of the subject's market value than the comparables submitted by the appellants.

On redirect examination, Wiesbrock reiterated that when considering the cost approach to value, and the subject being newly constructed with very little depreciation, and further considering the lack of newly constructed comparable sales, the subject's market value of approximately \$2,500,000 as reflected by the assessment is well supported by the board of review comparables.

In written rebuttal, the appellants' original counsel took issue with the board of review evidence arguing that the vast majority of it should be stricken from the record as prejudicial, unverified, irrelevant, and/or unsupported. As to the parties' comparables, the appellants' counsel argued in rebuttal that the board of review comparables are dissimilar from the subject in characteristics and that the appellants' comparables present more persuasive evidence of the subject's overvaluation.

Conclusion of Law

The appellants contend in part 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 based on the evidentiary record herein that the appellants did not meet this burden of proof and, therefore a reduction in the subject's assessment is not warranted.

The parties submitted a total of eight comparable properties, one of which has three reported sales in the record, in order to support their respective positions before the Property Tax Appeal Board. The comparable properties have varying degrees of similarity to the subject. While the evidence described that appellants' comparable #3 was celebrity-owned and included the associated history related to that player, the Board finds only relevant and material the fact that this property sold approximately 5 years after first being listed on the market. Moreover, the property is located within 1,500 feet of the Wheaton Sanitary District which calls into question the marketability of said comparable and may account in part for the lengthy listing of this property and ultimately being sold for an amount significantly less than the remaining comparables in the record. As such, the Board has given it reduced weight in the final analysis as the subject is not similarly located near the sanitary district. The Board has also given less weight to appellant's reported comparable sales #1, #2, and #4, along with board of review comparable sale #2 based on their sale dates in 2018 and 2019 which are more remote in time relative to the January 1, 2021 assessment date at issue and thus less likely to be reflective of the subject's market value than the remaining sales in the record. Additionally, appellants did not report two additional sales of comparable property #2 purchased and sold by a relocation company in January and February 2021, respectively, both for a price of \$1,475,000 with the first transaction not being advertised for sale. This calls into question the arm's-length nature of these transactions and, consequently, the Board has given reduced weight to these two sales.

The Board finds the best evidence of market value in the record to be the board of review comparable sales #1, #3 and #4. These three comparables present varying degrees of similarity to the subject in location, site size, age, dwelling size, and features. Notably, each of the comparables is older in age relative to the subject newly-constructed dwelling; comparable #1 is significantly larger in dwelling size and lot size, while the remaining comparables are significantly smaller in dwelling size and lot size; and each comparable has a smaller garage relative to the subject. These differences suggest that both upward and downward adjustments are appropriate to the best comparables in order to make them more equivalent to the subject. These best comparables in the record sold between October 2020 and August 2021 for prices ranging from \$1,725,000 to \$2,890,000 or from \$341.20 to \$436.84 per square foot of living

area, including land. The subject's assessment reflects a market value of \$2,578,911 or \$391.46 per square foot of living area, including land, which is within the range established by the best comparable sales in this record, and appears to be justified when considering the subject's new age of construction, as well as appropriate adjustments for differences in lot size, dwelling size, and garage size. Based on this evidence, the Board finds that the appellants did not prove by a preponderance of evidence that the subject property is overvalued and, therefore, no change in the subject's assessment is justified based on overvaluation.

The appellants also raise a quasi-uniformity argument (which was purportedly mismarked as "contention of law" on the residential appeal form). The appellants' newly retained counsel made it clear that the appellants are not attempting to amend the original bases of the appeal and are not expressly arguing inequity in assessment. Rather, the appellants' counsel argues that the subject property is located in a low-lying area which experiences recurrent standing stormwater which required the excavation and construction of deep drainage swales on three sides of the subject dwelling prior to the construction of the home. Appellants argue that these swales fill with rainwater during heavy rainfall, render the majority of the property unusable, require the installation and maintenance of retaining walls, and negatively impact the marketability of the subject property. The appellant, Mr. Niedert, testified that his property is the only one in Wheaton and Glen Ellyn that has these types of swales around his dwelling and that at the time he purchased the original two lots he had no way of knowing that this would be a condition required for the constructing his home.

The Board finds this argument persuasive to the extent that the condition of the subject property being located in a low-lying area requiring flood and drainage mitigation may theoretically have a negative impact upon the marketability of the subject property. However, the record is devoid of any quantitative evidence as to the amount of such impact. The appellants failed to procure an appraisal report prepared by a qualified expert making appropriate quantitative and logical adjustments to the comparables in order to demonstrate the negative impact of the stormwater drainage mitigation system in terms of dollar value. Without such evidence, the Board is left with analyzing the raw unadjusted sales contained in this record. Even considering broad upward and downward adjustments to the best comparables in this record to account for the superior and inferior features relative to the subject property, the subject falls within the range of the best comparables in the record. In summary, based on this record, the Board finds that the appellants did not establish by a preponderance of the evidence that the subject property is overvalued and, therefore, a reduction in the subject's assessment is not warranted.

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: June 27, 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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