



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

APPELLANT: Efren Santos
DOCKET NO.: 08-02921.001-R-1
PARCEL NO.: 01-19-202-007

The parties of record before the Property Tax Appeal Board are Efren Santos, the appellant, and the DuPage County Board of Review.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds a reduction 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: \$37,970
IMPR: \$93,450
TOTAL: \$131,420

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a two-story single-family frame dwelling that was constructed in 2002. The home contains 3,266 square feet of living area and features a full unfinished basement, central air conditioning, a fireplace, and an attached three-car garage. The property is located in West Chicago, Wayne Township, DuPage County.

The appellant submitted a residential appeal contending overvaluation based on a recent sale of the subject property. In support of this argument, the appellant indicated on the appeal form that the subject property was purchased in February 2008 for a price of \$395,000. The appellant indicated the subject property was sold by Wells Fargo Bank, the property was advertised on the open market through the Multiple Listing Service for 9 days and the sale involved Realtor Stephen Randolph of ReMax Suburban. Furthermore, the parties to the transaction were not related. The appellant also submitted a copy of the Multiple Listing Service (MLS) sheet with an original listing price of \$451,000 and a closing statement dated February 25, 2008 disclosing a sales price of \$395,000 or \$120.94 per square foot of living area including land. On the MLS sheet, the remarks

were "Bank foreclosure, property to be sold as-is. All offers must have Addendum "A" signed. If cash offer proof of funds is needed. Survey to be paid by buyer if needed."

Based on this evidence the appellant requested the subject's assessment be reduced to \$131,666 or a market value of approximately \$395,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling \$169,030 was disclosed. The subject's assessment reflects a market value of approximately \$508,055 or \$155.56 per square foot of living area including land when applying the 2008 three year median level of assessments for DuPage County of 33.27%.

The board of review submitted a two-page letter from Michael E. Musson, the Wayne Township Assessor, along with two spreadsheets. In the letter, the township assessor outlined two reasons to reject the subject's sale price as reflective of market value: (1) the sale occurred in February 2008 and thus was not included in the sales ratio study to determine 2008 assessments; using such sales after the assessment date "would have a detrimental impact on assessment uniformity" and (2) the sale was not an arm's-length transaction as it was due to a foreclosure, the grantor was Ocwen Loan Servicing, LLC, the MLS sheet indicated it was sold "as is" and "this sale is excluded from state and county sales ratio studies for determining assessment changes for 2009 and subsequent years."¹ A copy of the Illinois Real Estate Transfer Declaration was also submitted where it was noted a real estate agent was involved in the sale and the transfer occurred through a "Special Warranty" deed.

¹ The Board recognizes that Public Act 96-1083 amended the Property Tax Code adding sections 1-23 and 16-183 (35 ILCS 200/1-23 & 16-183), effective July 16, 2010.

Section 1-23 of the Property Tax Code provides:

Compulsory sale. "Compulsory sale" means (i) the sale of real estate for less than the amount owed to the mortgage lender or mortgagor, if the lender or mortgagor has agreed to the sale, commonly referred to as a "short sale" and (ii) the first sale of real estate owned by a financial institution as a result of a judgment of foreclosure, transfer pursuant to a deed in lieu of foreclosure, or consent judgment, occurring after the foreclosure proceeding is complete.

Section 16-183 provides:

Compulsory sales. The Property Tax Appeal Board shall consider compulsory sales of comparable properties for the purpose of revising and correcting assessments, including those compulsory sales of comparable properties submitted by the taxpayer.

The Board finds the effective date of these statutes is subsequent to assessment date at issue, January 1, 2008. The Board finds there is no language within either provision evidencing a clear expression of legislative intent to give these amendments retroactive effect. Therefore, the Board finds neither statute specifically applies to the appellant's 2008 assessment.

One spreadsheet set forth nine sales, five which were in the subject's subdivision and four "lower quality homes" in Concord at Cornerstone Lakes. These properties were described as two-story or part one-story and part two-story dwellings of frame or frame and masonry construction that were built between 2000 and 2002. Each home has a full or partial basement, two of which have finished area, central air conditioning, a fireplace, and a two-car or three-car garage. They sold between May 2005 and November 2007 for prices ranging from \$427,500 to \$572,000 or from \$147.20 and \$180.94 per square foot of living area including land.

A spreadsheet of 161 two-story homes in the subject's subdivision for uniformity of improvement assessments was also presented. The township assessor argued that granting a reduction in the subject's improvement assessment would "undermine the strong uniformity that exists in this neighborhood." The Property Tax Appeal Board finds that submission of equity comparables in response to the appellant's market value argument is not responsive and the board of review's additional equity comparables will not be further addressed herein.

Based on the foregoing data, the board of review requested confirmation of the subject's estimated market value as reflected by its assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds the evidence in the record supports a reduction in the subject's assessment.

The appellant contends the assessment of the subject property is excessive and not reflective of its market value. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. *Official Rules of the Property Tax Appeal Board*, 86 Ill. Admin. Code Sec. 1910.65(c). The Board finds the appellant has met this burden.

The appellant contends the subject's assessment should be reduced based on the sale of the subject as set forth in the record. The evidence disclosed that the subject sold in February 2008 for a price of \$395,000. The information provided by the appellant indicated the sale occurred only two months after the assessment date at issue of January 1, 2008. The board of review's responsive evidence contested the consideration of a sale after January 1, 2008 and the arm's-length nature of the sale of the subject property as it was sold by "Ocwen Loan Servicing, LLC" and was transferred through a "Special Warranty" deed.

Ordinarily, property is valued based on its fair cash value (also referred to as fair market value), "meaning the amount the property would bring at a voluntary sale where the owner is ready, willing, and able to sell; the buyer is ready, willing, and able to buy; and neither is under a compulsion to do so." Illini Country Club, 263 Ill. App. 3d at 418, 635 N.E.2d at 1353; see also 35 ILCS 200/9-145(a). The Illinois Supreme Court has held that a contemporaneous sale of the subject property between parties dealing at arm's length is relevant to the question of fair market value. People ex rel. Korzen v. Belt Ry. Co. of Chicago, 37 Ill. 2d 158, 161, 226 N.E.2d 265, 267 (1967). A contemporaneous sale of property between parties dealing at arm's-length is a relevant factor in determining the correctness of an assessment and may be practically conclusive on the issue of whether an assessment is reflective of market value. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill. App. 3d 369 (1st Dist. 1983), People ex rel. Munson v. Morningside Heights, Inc., 45 Ill. 2d 338 (1970), People ex rel. Korzen v. Belt Railway Co. of Chicago, 37 Ill. 2d 158 (1967); and People ex rel. Rhodes v. Turk, 391 Ill. 424 (1945). Based on the foregoing, even though the sale occurred after January 1, 2008, the Board finds the February sale price may still be the best evidence of the subject's market value as of two months prior.

The Property Tax Appeal Board also finds the best evidence of the subject's fair market value in the record is the February 2008 sale for \$395,000. The Property Tax Appeal Board finds the sale was not a transfer between family or related parties; the property was advertised for sale in the Multiple Listing Service and involved a Realtor. Furthermore, the Board finds there is no evidence in the record that the sale price was not reflective of the subject's market value. The original listing price of \$451,000 is also less than the subject's estimated market value as reflected by its assessment.

The subject's Real Estate Transfer Declaration and the appellant's appeal petition clearly establish that the subject property was advertised for sale. Thus, the general public did have the same opportunity to purchase the subject property at any negotiated sale price. Other recognized sources further demonstrate the fact a property must be advertised or exposed in the open market to be considered an arm's-length transaction that is reflective of fair market value. Black's Law Dictionary (referencing Bourjois, Inc. v. McGowan and Lovejoy v. Michels (citation omitted)), states:

. . . the price a property would command **in the market**" (Emphasis added). This language suggests a property must be publicly offered for sale in the market to be considered indicative of fair market value.

The Board finds there are other credible sources that specify a property must be advertised for sale in the open market to be

considered an arm's-length transaction. The Dictionary of Real Estate Appraisal [American Institute of Real Estate Appraisers, *The Appraisal of Real Estate*, 8th ed. (Chicago American Institute of Real Estate Appraisers, 1983), provides in pertinent part:

The most probable price in cash, terms equivalent to cash, or in other precisely revealed terms, for which the appraised property will sell **in a competitive market** under all conditions requisite to fair sale; The property is **exposed for a reasonable time on the open market**.

Additionally, the Property Assessment Valuation, 2nd edition, states: Market value is the most probable price, expressed in terms of money, that a property would bring if **exposed for sale in the open market** (Emphasis added) in an arm's-length transaction between a willing seller and a willing buyer; a reasonable time is allowed for **exposure to the open market**. (Emphasis added). (International Association of Assessing Officers, Property Assessment Valuation, 2nd edition, Pgs. 18, 35, (1996)). The board of review did not provide substantive evidence to dispute the arm's length nature of the sale transaction. The board of review provided nine comparable sales, five of which were in the subject's subdivision; of those five subdivision sales, Sale #4 occurred in November 2007, two months prior to the assessment date at issue, for \$147.20 per square foot of living area including land for a dwelling of 3,210 square feet which is very similar to the subject. While this one sale close in time to the assessment date is slightly higher than the subject's sale price, the Board finds one sale comparable does not overcome the arm's length nature of the subject's sale transaction. Since the appellant presented evidence showing the subject property was advertised for sale and exposed to the open market through the MLS in an arm's-length transaction, the Property Tax Appeal Board finds the subject's February 2008 sale price of \$395,000 was reflective of its market value.

Based on the foregoing analysis, the Property Tax Appeal Board finds the subject property had a market value of \$395,000 on January 1, 2008. The subject's assessment reflects an estimated market value of approximately \$508,055, which is substantially higher than its February 2008 sale price. Therefore a reduction is warranted. Since the fair market value of the subject has been established, the Board finds that the 2008 three-year median level of assessments for DuPage County of 33.27% shall apply.

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.

Ronald R. Cuit

Chairman

K. L. Fern

Member

Frank A. Huff

Member

Mario M. Louie

Member

Shawn R. Lerbis

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: July 22, 2011

Allen Castrovillari

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 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 the subsequent year 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.

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.