



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

APPELLANT: Jeff Wolak
DOCKET NO.: 08-02946.001-R-1
PARCEL NO.: 09-05-421-018

The parties of record before the Property Tax Appeal Board are Jeff Wolak, 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: \$51,200
IMPR.: \$105,170
TOTAL: \$156,370

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a part two-story and part one-story brick single-family dwelling that was constructed in 2005. The home contains 3,198 square feet of living area and features a full unfinished basement, central air conditioning, a fireplace, and an attached 484 square foot garage. The property is located in Downers Grove, Downers Grove 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 \$470,000. The appellant indicated the subject property was sold by US National Bank through use of Realtor William Knapp of Lake Shore Drive Realty and the property was advertised on the open market through the Multiple Listing Service for 102 days. Furthermore, the parties to the transaction were not related. The appellant also submitted a copy of the Multiple Listing Service sheet displaying an original asking price of \$599,000 and another list price of \$490,000. The appellant also provided a copy of the Real Estate Contract and a closing statement dated February 14, 2008 disclosing a sales price of \$470,000 or \$146.97 per square foot of living area

including land. Among the remarks on the MLS sheet were "vacant, easy to show . . . lender owned property sold as is . . . Mold present! Enter at your own risk!!!!*****SOLD AS IS*****"

Based on this evidence the appellant requested the subject's assessment be reduced to \$156,666 or a market value of approximately \$470,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling \$226,140 was disclosed. The subject's assessment reflects a market value of approximately \$679,711 or \$212.54 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 memorandum from the township assessor who asserted the subject's 2008 sale was a foreclosure sale. A copy of the Real Estate Transfer Declaration was submitted reflecting that the property was advertised for sale, the property was sold for \$470,000 and a Special Warranty Deed was the transfer document. The assessor further reported "the terms on the sale are unknown, however, it was a distress sale and in no way reflects the market value as of January 1, 2008." The assessor further contends the assessment is uniform and:

Had the sellers not been in a negative financial situation, this property would have most likely sold in the same range as the comparables. A personal financial situation such as this should not impact the assessed value of property, as the assessed value is used to spread the tax burden. Had the market in this area dropped to this level, it would have been indicated by comparable sale property as well.

A spreadsheet set forth five sales of the properties located in the subject's assigned neighborhood code. The homes were described as a part two-story, part three-story and part one-story and four, part two-story and part one-story frame and masonry dwellings that were built between 2005 and 2007. The homes range in size from 3,043 to 3,665 square feet of living area with full or partial basements, two of which are $\frac{3}{4}$ finished. Each home also has a garage ranging in size from 537 to 693 square feet of building area. No further amenity details were set forth in the spreadsheet. The sales occurred between April 2006 and March 2008 for prices ranging from \$735,000 to \$938,500 or from \$215.16 and \$271.11 per square foot of living area including land.

Based on the foregoing evidence, 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 \$470,000. The information provided by the appellant indicated the sale had the elements of an arm's length transaction and the sale occurred only two months after the assessment date at issue of January 1, 2008. The appellant's evidence also reflected that the subject property was infested with mold, suggesting that it may be in a condition that would reduce its market value as compared to other properties. The board of review's responsive evidence contested the arm's-length nature of the sale of the subject property as it was sold after foreclosure. However, the board of review presented no substantive evidence to support the implication that the sale was under duress or in some manner a compulsory sale due to the sale occurring after foreclosure. Moreover, the five sale comparables were not necessarily similar to the subject as there was no indication that these comparables were infested with mold. Moreover, three sales were from 2006 and were given less weight.

The property tax system in Illinois is an *ad valorem* tax meaning that it is based on value. Except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Illinois Supreme Court has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced so to do. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970). 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 of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code Sec. 1910.65(c)). The Board finds the

appellant met this burden of proof and a reduction in the subject's assessment is warranted.

A contemporaneous sale between two parties dealing at arm's length is not only relevant to the question of fair cash value but practically conclusive on the issue on whether the assessment is reflective of market value. Korzen v. Belt Railway Co. of Chicago, 37 Ill.2d 158 (1967). Our supreme court has at least indicated that a sale of property during the tax year in question is a "relevant factor" in considering the validity of an assessment. [citations omitted]. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369, 375 (1st Dist. 1983).

The Property Tax Appeal Board finds the best evidence of the subject's fair market value in the record is the February 2008 sale for \$470,000. 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 \$599,000 is also less than the subject's estimated market value as reflected by its assessment. The subject property suffers from mold. The Board further finds that the board of review did not adequately contest the arm's-length nature of the subject's sale.¹ Thus, based on the foregoing facts, the Property Tax Appeal Board finds the subject's February 2008 sale price of \$470,000 was reflective of market value.

Based on the foregoing analysis, the Property Tax Appeal Board finds the subject property had a market value of \$470,000 on January 1, 2008. The subject's assessment reflects an estimated

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 the 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 directly applies to the appellant's 2008 assessment.

market value of approximately \$679,711, 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 Morris

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: August 19, 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.