



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

APPELLANT: Michael Garber
DOCKET NO.: 08-04116.001-R-1
PARCEL NO.: 09-12-307-007

The parties of record before the Property Tax Appeal Board are Michael Garber, the appellant, by attorney Dennis W. Hetler, of Dennis W. Hetler & Associates, P.C., in Chicago, and the DuPage County Board of Review.

Based on the facts and exhibits presented, 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: \$108,190
IMPR: \$494,160
TOTAL: \$602,350

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a two/three/one-story brick dwelling that was built in 2006 and contains 3,869 square feet of living area. Features include four full baths, a half-bath, central air conditioning, four fireplaces, and a full finished basement of 1,592 square feet. The property also features a 588 square foot garage which is situated on a 10,200 square foot parcel of land located in Hinsdale, Downers Grove Township, DuPage County.

The appellant through legal counsel contends the subject's assessment is not reflective of its fair market value. In support of this argument, the appellant represented that the subject property was purchased from Rebrag, Inc. for \$1,725,000 in June 2007. On the Residential Appeal form, the appellant indicated that the property was sold in settlement of a contract for deed. On the appeal form and in a letter from counsel, it was reported that the parties to the sale transaction were either family or related corporations. However, appellant and counsel further reported the property was listed on the market through the Multiple Listing Service (MLS) for 482 days with the property being sold by a Realtor, agent Beth Burtt of Brush Hill. No

documentation of this listing price was included in the appeal, but the appellant submitted a copy of the Settlement Statement reflecting the contract sales price of \$1,725,000. Based on the foregoing, the appellant requested the subject's assessment be reduced to \$574,942 in order to reflect the recent purchase price.

The board of review presented its "Board of Review Notes on Appeal" wherein the subject property's final assessment of \$602,350 was disclosed. The subject's assessment reflects an estimated market value of \$1,810,490 or \$467.95 per square foot of living area including land using DuPage County's 2008 three-year median level of assessments of 33.27%.

The board of review submitted a memorandum outlining its evidence in response to the appeal. The board of review asserted that the subject property sold in December 2004 for \$650,000; the existing dwelling at that time was demolished and a new home was built in its place. The board of review questions the sale of this latter home as it "seems to be between related parties and therefore may not be indicative of market value." In support of this contention, the board of review asserts the December 2004 purchase was by Rebrag, Inc.; the demolition application listed the property owner as Garber Construction and the building permit application listed the property owner and general contractors as Garber Construction. The June 2007 purchase of the subject property was made by Michael and Kelly Garber. The Illinois Real Estate Transfer Declaration for the June 2007 sale indicates the property was not advertised for sale and the Warranty Deed lists Margaret Mary Garber as the President/Secretary of Rebrag, Inc.

In support of the subject's estimated market value as reflected by its assessment, the board of review submitted a grid analysis of four suggested comparable sales, all of which were located in the same neighborhood code assigned by the assessor as the subject property. The parcels are improved with dwellings containing three separate story heights like the subject. The homes were built in 2006 or 2007. The comparables range in size from 3,407 to 3,940 square feet of living area and feature full finished basements. Each has central air conditioning, three to five fireplaces, and a garage ranging in size from 440 and 651 square feet of building area. The comparables sold from January to December 2007 for prices ranging from \$1,835,000 to \$2,300,000 or from \$534.99 to \$596.32 per square foot of living area, land included. Based on these suggested sales, the board of review requested confirmation of the subject's assessed valuation.

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 this appeal. The Board further finds a reduction in the subject property's assessment is not warranted.

The appellant argued the subject property's assessment was not reflective of its fair market value based on its June 2007 sale

price of \$1,725,000. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2d 1256 (2nd Dist. 2000). The Board finds the appellant failed to overcome this burden.

The Illinois Supreme Court has defined fair cash value as 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 to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d. 428 (1970). In addition, Section 1-50 of the Property Tax Code defines fair cash value as:

The 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 Property Tax Appeal Board finds the subject's sale does not meet at least two of the fundamental requirements to be considered an arm's-length transaction reflective of fair cash value. The Board finds the best evidence in the record clearly shows the subject property was not advertised or exposed for sale on the open market as set forth in the Real Estate Transfer Declaration filed with regard to the sale transaction. Thus, the general public did not have the same opportunity to purchase the subject property at any negotiated sale price. Therefore, the subject's sale price was given little weight and is not considered indicative of fair market value.

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)). Since the appellant presented no factual evidence showing the subject property was advertised for sale or exposed to the open market in an arm's-length transaction, the Board gave little weight to the subject's transaction for market value consideration.

Furthermore, the parties to the transaction appear to be related. The appellant reported the parties/corporations were related and the transactions were among persons all with the last name of Garber, including those of corporate representatives.

Absent an arm's-length transaction, Illinois courts have stated that where there is credible evidence of comparable sales these sales are to be given significant weight as evidence of market value. Chrysler Corporation v. Property Tax Appeal Board, 69 Ill.App.3d 207 (1979) and Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (1989). The Board finds there are four sales contained in this record that were submitted by the board of review probative of the subject's market value as of its January 1, 2008 assessment date. These properties are located in the subject's neighborhood and are similar to the subject in age, size, style and features. They sold from January to December 2007 for prices ranging from \$1,835,000 to \$2,300,000 or from \$534.99 to \$596.32 per square foot of living area including land. The subject's assessment reflects an estimated market value of \$1,810,490 or \$467.95 per square foot of living area including land which is less than the similar comparable sales on this record. After considering adjustments to these comparables for differences when compared to the subject, the Property Tax Appeal Board finds the subject's estimated market value as reflected by its assessment is supported. Therefore, no reduction is warranted.

In conclusion, the Board finds the evidence in this record does not demonstrate the subject property is overvalued by a preponderance of the evidence. Therefore, the Board finds the subject property's assessment as established by the board of review is correct and no reduction is 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.

Ronald R. Cuit

Chairman

K. L. Fern

Member

Frank A. Huff

Member

Mario Morris

Member

Acting 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: January 20, 2012

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.