



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

APPELLANT: Keith Dubose  
DOCKET NO.: 09-04932.001-R-1  
PARCEL NO.: 03-36-108-016

The parties of record before the Property Tax Appeal Board are Keith Dubose, the appellant, by attorney Brian P. Liston, of the Law Offices of Liston & Tsantilis, P.C., in Chicago,<sup>1</sup> 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:** \$56,230  
**IMPR:** \$75,960  
**TOTAL:** \$132,190

Subject only to the State multiplier as applicable.

**ANALYSIS**

The subject property consists of a two-story single-family dwelling with 1,738 square feet of living area. The dwelling has a frame and brick exterior and was constructed in 1950. Features of the property include a basement and a detached garage with 576 square feet of building area. The property is located in Elmhurst, Addison Township, DuPage County.

The appellant appeared before the Property Tax Appeal Board through legal counsel contending 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 Ragona Partners LP for \$330,000 in May 2005. Included with the appeal was a copy of the Illinois Real Estate Transfer Declaration (PTAX-203) representing both that the parties to the sale transaction were either family or related corporations and that the property was not advertised or sold

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<sup>1</sup> At hearing, appellant was represented by Attorney Gregory P. Diamantopoulos of the firm.

using a real estate agent. Based on the foregoing, the appellant requested the subject's assessment be reduced to \$109,989 in order to reflect the recent purchase price.

Upon questioning by the board of review's representative, appellant's counsel indicated that he had not reviewed the sales contract related to the transaction cited by the appellant. Counsel further indicated that the handwritten modifications on the PTAX-203 form reflect the way the document was recorded with DuPage County.

The board of review presented its "Board of Review Notes on Appeals" wherein the subject property's final assessment of \$132,190 was disclosed. The subject's assessment reflects an estimated market value of \$397,444 or \$228.68 per square foot of living area including land using DuPage County's 2009 three-year median level of assessments of 33.26%.

The board of review submitted an Addendum outlining its evidence in response to the appeal along with Exhibit 1. The board of review asserted that the subject property's sale in "June 2005" [*sic*] was a sale between related individuals or corporate affiliates and therefore should be given no weight. The board of review called an assessing official from the Addison Township Assessor's Office who indicated that to be considered a valid sale transaction, a property should be exposed on the open market and be an arm's-length transaction.

In support of the subject's estimated market value as reflected by its assessment, the board of review submitted a spreadsheet analysis of two suggested comparable sales, identified as #1 and #3, located in the same neighborhood code assigned by the assessor as the subject property.<sup>2</sup> These two sale properties are improved with two-story dwellings of frame or frame and brick construction that were built in 1971 and 1952, respectively. The comparables contain 1,728 and 1,560 square feet of living area. Comparable #1 has an unfinished basement, central air conditioning and a 399 square foot garage. Comparable #3 has no basement and a 360 square foot garage. The comparables sold in April and December 2006 for prices of \$370,000 and \$372,000 or for \$214.12 and \$238.46 per square foot of living area, land included. Based on these sales, the board of review requested confirmation of the subject's estimated market value as reflected by its assessment.

On cross examination, the assessing official noted that board of review comparable #1 was most similar to the subject in living area square footage. The witness also acknowledged that the age of a dwelling generally affects its sale price and admitted that comparable #1 was newer having been built in 1971 than the subject dwelling which was built in 1950.

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<sup>2</sup> Comparable #2 in the spreadsheet has only equity data and no recent sale price information.

Comparable #3 presented by the board of review while smaller than the subject, lacks a basement which is enjoyed by the subject dwelling.

After hearing the testimony and considering the record, 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 May 2005 sale price of \$330,000. When market value is the basis of the appeal, the value 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 (3<sup>rd</sup> Dist. 2002). 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 as reflected by the PTAX-203 clearly shows the subject property was not advertised or exposed for sale on the open market. 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 can be 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*, 8<sup>th</sup> 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, 2<sup>nd</sup> 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, 2<sup>nd</sup> 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 were reportedly related. 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 two sales contained in this record that were submitted by the board of review probative of the subject's market value. These properties are located in the subject's neighborhood and are similar to the subject in age, size, style and/or features to varying degrees. They sold in April and December 2006 for prices of \$370,000 and \$372,000 or for \$214.12 and \$238.46 per square foot of living area including land. The subject's assessment reflects an estimated market value of \$397,444 or \$228.68 per square foot of living area including land. The subject's estimated market value based on its assessment of \$228.68 per square foot of living area is within the range of these comparable sales on this record on a per-square-foot basis. 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

*J. R.*

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: September 21, 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.