



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

APPELLANT: Neil & Collette McLaughlin
DOCKET NO.: 09-30838.001-R-1 through 09-30838.002-R-1
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Neil & Collette McLaughlin, the appellant(s); and the Cook 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 Cook County Board of Review is warranted. The correct assessed valuation of the property is:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
09-30838.001-R-1	24-05-105-130-0000	4,382	30,551	\$34,933
09-30838.002-R-1	24-05-105-069-0000	6,508	3,877	\$10,385

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of 11,669 square feet of land that is improved with a seven year old, two-story, frame and masonry, single-family, dwelling. The subject contains three baths, a full unfinished basement, air conditioning, one fireplace, and a three-car garage. The appellant's evidence states that the subject's improvement size is 3,557 square feet, while the board of review's evidence states that the subject's improvement size is 3,630 square feet. The appellant's pleadings also state that there is an adjacent parcel to the subject, which is also the subject of this appeal. This adjacent parcel contains 17,356 square feet of land and is improved with a class 2-01 residential garage. The appellant argued that the fair market values of the subject and the adjacent parcel were not accurately reflected in their assessed values.

In support of the subject's market value argument, the appellant submitted an appraisal undertaken by James E. Sloan of Accurate Services, Inc. The report states that Sloan is a State of Illinois certified residential real estate appraiser. The appraiser stated that the subject has an estimated market value of \$392,500 as of "Tax Year 2009." The appraisal report utilized the sales comparison approach to value to estimate the market value for the subject property. The appraisal states that Sloan personally inspected the property, and that the subject's highest

and best use as improved is its present use. Additionally, the report does not indicate that the adjacent parcel was taken into consideration.

Under the sales comparison approach, the appraiser analyzed the sales of three comparables, described as two-story, frame and masonry, single-family dwellings, which range in age from two to four years old, and in improvement size from 3,037 to 3,557 square feet of living area. These comparables have from two and one-half to three and one-half baths, either a two-car or a three-car garage, and either one or two fireplaces. All of the dwellings have a full unfinished basement, and air conditioning. These sales comparables sold from July 2009 to November 2009 for prices ranging from \$360,000 to \$405,000, or from \$113.86 to \$125.12 per square foot of living area. The appraiser adjusted each of the comparables for pertinent factors. Based on the similarities and differences of the comparables when compared to the subject, the appraiser estimated a value for the subject under the sales comparison approach of \$392,500.

The cost approach to value and income approach to value were not developed for the appraisal. The appraiser stated that the sales comparison approach to value is considered the most reliable, and therefore, is given the most weight when appraising a single-family dwelling. Thus, the appraiser concluded that the subject's appraised value was \$392,500 as of "Tax Year 2009."

The appellant did not submit any evidence regarding the adjacent parcel, except for a printout from the Cook County Assessor's website describing the property's characteristics and assessment. Based on this evidence, the appellant requested a reduction in the subject's assessment and the adjacent parcel's assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$46,744 was disclosed. The subject's final assessment reflects a fair market value of \$525,213 when the 2009 Illinois Department of Revenue three-year median level of assessment for Class 2 properties of 8.90% is applied. In support of the subject's assessment, the board of review presented descriptions and assessment information on four suggested comparables described as two-story, masonry or frame and masonry, single-family, dwellings that range in age from two to seven years old, and in size from 3,411 to 3,619 square feet of living area. These dwellings have either a full or partial unfinished basement, and either a two-car or a three-car garage. These properties all have three and one-half baths, air conditioning, and a fireplace. The comparables have improvement assessments ranging from \$11.63 to \$12.74 per square foot of living area.

The board of review also submitted a list of sales of properties located within the subject's neighborhood. This list included the PIN, deed number, the date of the sale, and the sale price for twenty properties. No further information was provided

regarding these properties. Based on this evidence, the board requested confirmation of the subject's assessment.

At hearing, the appellant re-affirmed the evidence previously submitted. The Cook County Board of Review Analyst, Israel Smith, testified that Comparables #1 and #3 in the appellant's appraisal were both sold pursuant to short sales, and that the appraiser made no adjustments for this fact. Additionally, Mr. Smith testified that the effective date of the appraisal was January 1, 2009, and that all three comparables in the appraisal described sales which were completed seven to eleven months after that date. Furthermore, Mr. Smith testified that Comparable #3 is not similar to the subject, because Comparable #3 is in "average-good" condition according to the appraisal, while the subject is in "average" condition according to the appraisal.

The Board then asked Mr. Smith if he had any evidence to support the testimony that Comparables #1 and #3 were sold pursuant to a short sale. Mr. Smith testified that he did not have any documentary evidence, but that the MLS records indicated that the sales were pursuant to a short sale. The Board then gave Mr. Smith until the close of business on June 29, 2012 to submit documentary evidence to support the testimony that Comparables #1 and #3 in the appellant's appraisal were sold pursuant to short sales.

The Board received two MLS printouts from the Cook County Board of Review on June 6, 2012. The first printout states that Comparable #1 in the appellant's appraisal sold for \$380,000 in September 2009, and that the sale was pursuant to a short sale. The second printout states that Comparable #3 in the appellant's appraisal sold for \$405,000 in July 2009, and that the sale was pursuant to a short sale. The Board took these printouts into evidence. The MLS printout describing the sale of Comparable #1 in the appellant's appraisal was marked as "Board of Review Hearing Exhibit #1," and the MLS printout describing the sale of Comparable #3 in the appellant's appraisal was marked as "Board of Review Hearing Exhibit #2."

On June 6, 2012, the Board mailed a copy of "Board of Review Hearing Exhibit #1" and "Board of Review Hearing Exhibit #2" to the appellant, and requested that if the appellant wished to respond, the response must be postmarked by July 6, 2012. The appellant timely responded, and stated that "Senate Bill 3334 provides that short sales and foreclosures should be taken into account when re-assessing properties." Included in the appellant's response was a printout from the Illinois General Assembly website with the enrolled version of Senate Bill 3334 from the 96th General Assembly. On page one, lines 7 through 15 of the enrolled version of Senate Bill 3334, Section 1-23 was added to the Property Tax Code; and on page eight, lines 15 through 20 of the enrolled bill, Section 16-183 was added to the Property Tax Code.

After reviewing the record, hearing the testimony, and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. Cook Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 339 Ill. App. 3d 529, 545 (1st Dist. 2002); National City Bank of Michigan/Illinois v. Prop. Tax Appeal Bd., 331 Ill. App. 3d 1038, 1042 (3d Dist. 2002) (citing Winnebago Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 313 Ill. App. 3d 179 (2d Dist. 2000)); 86 Ill. Admin. Code § 1910.63(e). 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. Calumet Transfer, LLC v. Prop. Tax Appeal Bd., 401 Ill. App. 3d 652, 655 (1st Dist. 2010); 86 Ill. Admin. Code § 1910.65(c). Having considered the evidence presented, the Board concludes that the evidence indicates a reduction is warranted.

In addressing the appellant's market value argument, the Board finds the appellant's argument regarding Senate Bill 3334 persuasive. Initially, the Board takes judicial notice that the enrolled version of Senate Bill 3334 was signed by the Governor on July 16, 2010, becoming Public Act 96-1083.

The Board finds that the sales of Comparables #1 and #3 in the appellant's appraisal were "compulsory sales." A "compulsory sale" is defined as

(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.

35 ILCS 200/1-23. Real property in Illinois must be assessed at its fair cash value, which can only be estimated absent any compulsion on either party.

Illinois law requires that all real property be valued at its fair cash value, estimated at the price it would bring at a fair voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is likewise ready, willing, and able to buy, but is not forced to do so.

Bd. of Educ. of Meridian Cmty. Unit Sch. Dist. No. 223 v. Ill. Prop. Tax Appeal Bd., 961 N.E. 2d 794, 802 (2d Dist. 2011) (citing Chrysler Corp. v. Ill. Prop. Tax Appeal Bd., 69 Ill. App. 3d 207, 211 (2d Dist. 1979)).

However, Public Act 96-1083 provided very clear guidance for the Board with regards to compulsory sales. Section 16-183 of the Illinois Property Tax Code states as follows:

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.

35 ILCS 200/16-183 (emphasis added).

The effective date of Section 16-183 is July 16, 2010, after the lien date for tax year 2009. Id. Therefore, it must be determined whether Section 16-183 can be retroactively applied. "In the absence of an express provision regarding the Act's temporal reach, [the Board] examine[s] whether the Act is substantive or procedural in nature." Doe v. Univ. of Chi., 404 Ill. App. 3d 1006, 1012 (1st Dist. 2010) (citing Deicke Center-Marklund Children's Home v. Ill. Health Facilities Planning Bd., 389 Ill. App. 3d 300, 303 (1st Dist. 2009)). "If the Act is procedural in nature, it may be applied retroactively as long as such retroactive application will not impair rights [either party] possessed when acting, increase [either party]'s liability for past conduct, or impose new duties with respect to transactions already completed." Doe, 404 Ill. App. 3d at 1012 (citing Deicke Center, 389 Ill. App. 3d at 303). "Procedure is the machinery for carrying on the [appeal], including pleading, process, evidence and practice . . ." Doe, 404 Ill. App. 3d at 1012 (citing Deicke Center, 389 Ill. App. 3d at 303). Furthermore, "In the absence of legislative intent to the contrary, a court is to apply the law in effect at the time of its decision, unless to do so results in manifest injustice." People v. Boatman, 386 Ill. App. 3d 469, 472 (4th Dist. 2008) (citing People v. Hardin, 203 Ill. App. 3d 374, 376 (2d Dist. 1990)).

The Board finds that Section 16-183 is a procedural act because it simply defines what evidence the Board must consider. Imposing Section 16-183 after the effective date does not create or impair any rights for either party, does not increase either party's liability for past conduct, does not impose new duties with regard to transactions already completed, and does not result in manifest injustice.

Section 16-183 uses the verb "shall" and, therefore, the Board is statutorily required to consider the compulsory sales submitted by the appellant in the appraisal. See Citizens Org. Project v. Dep't of Natural Res., 189 Ill. 2d 593, 598 (2000) (citing People v. Reed, 177 Ill. 2d 389, 393 (1997)) ("When used in a statute, the word 'shall' is generally interpreted to mean that something is mandatory."). In doing so, the Board finds that the best evidence of the subject's market value is the appraisal submitted by the appellant.

Based on this record the Board finds that the subject property had a market value of \$392,500 for tax year 2009. Since market value has been determined, the 2009 Illinois Department of Revenue three-year median level of assessment for class 2 property of 8.90% shall apply. In applying this level of assessment to the subject, the total assessed value is \$34,933 while the subject's current total assessed value is above this amount. Therefore, the Board finds that a reduction is warranted. The Board further finds that since no evidence was submit to support a reduction in the adjacent parcel's assessment, a reduction is not warranted for the adjacent parcel.

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.

Donald 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: August 28, 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.