



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

APPELLANT: Robert Potokar
DOCKET NO.: 09-31476.001-R-1
PARCEL NO.: 18-24-207-013-0000

The parties of record before the Property Tax Appeal Board are Robert Potokar, 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:

LAND: \$1,550
IMPR: \$ 408
TOTAL: \$1,958

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of 3,100 square feet of land that is improved with a 56 year old, two-story, masonry, multi-family, building containing 2,352 square feet of living area and two dwelling units which is not owner occupied. The subject contains two baths, a full unfinished basement, and a two-car garage. The appellant argued that the fair market value of the subject was not accurately reflected in its assessed values.

In support of this overvaluation argument, the appellant stated in the pleadings that the subject sold on July 17, 2009 for \$22,000, or \$9.35 per square foot of living area. The appellant's pleadings further state that the sale was not between related parties, that the property was advertised on the open market for about two years, that both parties were represented by real estate brokers, and that the seller's mortgage was not assumed. The pleadings further state that the subject was purchased pursuant to a foreclosure. The appellant also submitted an MLS printout and a settlement statement. Both of these documents state that the subject sold in July 2009 for \$22,000.

Also in support of the overvaluation argument, the appellant submitted descriptive and sales information for three comparable properties. These properties are described as two-story, frame

or masonry, multi-family buildings, which range in age from 48 to 86 years old, and in size from 1,920 to 3,679 square feet of living area. All of the comparables have two baths, a two-car garage, and two dwellings units. One of the buildings has a full finished basement. These properties sold between February 2010 and June 2010 for prices ranging from \$9,000 to \$126,000, or from \$4.25 to \$54.69 per square foot of living area. The appellant also submitted MLS printouts for each of these properties, but none of the printouts include the sale price or the sale date for the properties. Furthermore, the bottom half of all the MLS printouts are illegible.

The appellant also submitted photographs of the subject and the comparables, and one page of a Real Estate Sale Contract, stating that the purchase price of the subject was \$78,900, and that the closing was to take place prior to October 29, 2010. Based on this evidence, the appellant requested a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$22,177 was disclosed. The subject's final assessment reflects a fair market value of \$249,180 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, multi-family, buildings that range in age from 45 to 54 years old, and in size from 2,061 to 2,976 square feet of living area. Three of the comparables have a full basement area, while one has a slab. Three of the properties also have a two-car garage. The comparables have improvement assessments ranging from \$7.55 to \$10.15 per square foot of living area.

Additionally, the board of review's grid sheet states that all four of the comparables sold between February 2007 and September 2008 for between \$265,000 and \$372,000, or from \$120.67 to \$128.58 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.

In rebuttal, the appellant testified that the subject sold for \$47,900 in October 2010. The appellant's rebuttal letter further states that the subject was under a contract for sale for \$130,000 in October 2009. The appellant stated that this sale was contingent on the property tax assessment being lowered to reflect a market value of \$130,000. The appellant also indicated that appeals to the Cook County Assessor and the Cook County Board of Review did not result in the subject's assessment being lowered to reflect \$130,000, and, therefore, the sale was never completed. The appellant asserts that Cook County is responsible

for paying the difference between the \$130,000 unconsummated sale and the \$47,900 actual sale that was completed in October 2010, minus \$15,000 in closing costs.

At hearing, the Board initially addressed an issue regarding standing and the correct named appellant on the appeal. The original pleadings state that Roger Potokar is the owner of the property, when, in fact, Robert Potokar is the true owner. On the record, the Board asked Robert Potokar to sign the original pleadings next to Roger Potokar's signature, which he did. Next, Roger Potokar initialed next to Robert Potokar's signature in acknowledgment that Robert Potokar is now the named appellant in the appeal. The original pleadings were marked as "Amended" by the Board, and the hearing continued on to the presentation of evidence by the appellant. The board of review had no objection to the above actions.

The appellant then questioned Roger Potokar about the subject. Roger Potokar initially testified that he is licensed as a State of Illinois General Real Estate Appraiser, and further testified that, due to significantly high crime in the area around the subject, the subject's market value should be decreased. Roger Potokar then testified that the appellant purchased the subject in July 2009 for \$22,000 pursuant to a foreclosure. Roger Potokar also testified about a failed attempt to obtain a line of credit to make improvements to the subject. The appellant then testified that the subject was eventually renovated and sold for \$47,900 in October 2010, and offered an MLS printout into evidence that described this sale. The Cook County Board of Review Analyst, Douglas Lasota, objected to the admission of the MLS printout. The Board sustained the objection under Section 1910.67(k) of Title 86 of the Illinois Administrative Code, which precludes the admission of evidence at a hearing that has not previously been submitted. The Board then questioned the appellant about the contract for sale that was submitted with the purchase price of the subject listed as \$78,900. Roger Potokar testified that the contract for sale was for \$130,000, and that the sale was not completed because the subject's assessment was not reduced to reflect a market value of \$130,000.

Mr. Lasota then asked the appellant if the subject was purchased from a bank pursuant to a foreclosure. The appellant answered in the affirmative. The other Cook County Board of Review Analyst, Israel Smith, asked the appellant what the original list price was for the subject prior to the appellant purchasing the subject for \$22,000. The appellant answered that the original list price was approximately \$25,900, but that he offered \$22,000 to purchase the subject, and the seller accepted his offer.

Mr. Lasota testified that the three comparables submitted by the appellant, and the sale of the subject in July 2009 were all distressed sales, which do not represent the true market value of the subject. Mr. Lasota also testified that the board of review submitted four comparables, that they all sold in either 2007 or

2008 for substantially more money, and that the sales were not distressed sales.

Roger Potokar then made a statement that the comparables submitted by the board of review do not reflect the true market value of the subject. He referenced his comparables, and in particular Comparable #1, to support that testimony. The appellant then attempted again to admit the MLS printout that describes the sale of the property for \$78,900 in October 2010. Once again, the Board refused to allow the admission of this evidence. At this point, with no further testimony or evidence to be presented by the parties, the hearing concluded.

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). Furthermore, in general, "a contemporaneous sale between parties dealing at arms length is not only relevant to the question of fair cash market value, but [is] practically conclusive." Village of Lake Villa v. Stokovich, 211 Ill. 2d 106, 132 (2004) (quoting People ex rel. Korzen v. Belt Ry. Co. of Chi., 37 Ill. 2d 158, 161 (1967)). 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 that the sale of the subject in July 2009 for \$22,000 is a "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, the Illinois General Assembly recently 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 recent sale of the subject. 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 sale of the subject in July 2009 for \$22,000.

The Board gives diminished weight to the board of review's comparables since the market data submitted was only raw sales data. The Board also gives diminished weight to the sales comparables submitted by the appellant because the MLS printouts describing these sales were mostly illegible, and did not include the final sale price and sale date. Diminished weight was also given to the statements regarding the sale of the subject in October 2010 for \$78,900. Under the Illinois Property Tax Code, property is to be assessed as of January 1 for real estate taxation purposes. See 35 ILCS 200/9-155. The Board finds that the sale of the subject in October 2010 is too remote in time to accurately reflect the market value of the subject as of January 1, 2009. Additionally, the sale of the subject in July 2009 is closer in time to January 1, 2009, and is a better indication of what the market value of the subject was as of January 1, 2009.

The Board also finds that it does not have the authority to order Cook County to issue the refund requested by the appellant in the rebuttal letter. This Board is limited to determining property tax assessments. 35 ILCS 200/16-160. What the appellant requests in the rebuttal evidence seems akin to a tort claim that this Board has no authority to remedy.

Based on this record the Board finds that the subject property had a market value of \$22,000 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 \$1,958 while the subject's current total assessed value is above this amount. Therefore, the Board finds that a 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.

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.