



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

APPELLANT: Ermirjona & Larry Kekempanos
DOCKET NO.: 09-35554.001-R-1
PARCEL NO.: 19-31-415-007-0000

The parties of record before the Property Tax Appeal Board are Ermirjona & Larry Kekempanos, 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: \$4,461
IMPR: \$3,994
TOTAL: \$8,455

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a 10,497 square foot parcel of land improved with a 56-year old, frame, single-family dwelling containing 816 square feet of living area as well as one bath. The appellant argued that the market value of the subject property is not accurately reflected in its assessed value.

In support of the overvaluation argument, the appellant submitted a copy of the subject's printout from a real estate multiple listing service, Property Tax Appeal Board decision 08-29169.001-R-1 reducing the subject's 2008 assessment, raw sales data, and copies of the Cook County assessor's website printouts for three sale comparables per the the raw sales data.

In support of this overvaluation argument, the appellant asserted in section IV of the Residential Appeal that the property sold in September 2008 for a price of \$95,000. The data disclosed: that the property was purchased from Wells Fargo Bank; the parties were represented by realtors; the property had been advertised for sale on the open market for one month's time; that the appellants learned about the property from a real estate multiple listing service; the appellants purchased the property in settlement of a foreclosure; and that they did not assume the seller's mortgage. In support of these assertions, the appellants submitted a copy of the real estate multiple listing service. Based on this evidence, the appellants requested the

subject's assessment be reduced to reflect the subject's purchase price.

The appellants also submitted prior Property Tax Appeal Board decision 08-29169.001-R-1 reducing the subject's 2008 assessment based on the subject's sale in September 2008. Based on this evidence, the appellants requested the subject's assessment be reduced to reflect the prior PTAB's decision.

Lastly, the appellants submitted a copy of a printout listing 20 property identification numbers, sale date, and amount of sale located within the subject's area. A handwritten note reads the information is sales data from the board of review. From the board of review's raw sales data, the appellants highlighted and included the Cook County assessor's printouts for three properties. The properties are described as one to one and one-half story, masonry, single-family dwellings with one bath, crawl space basement and one or one and one-half car garage for two of the properties. The properties range in age from 53 to 58 years old and in size from 946 to 1,249 square feet of living area. The properties sold from November 1998 to October 1999 for prices ranging from \$105,000 to \$134,000 or from \$106.28 to \$121.56 per square foot of living area, including land.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$17,218 was disclosed. This assessment reflects a market value of \$193,460 using the Illinois Department of Revenue's 2009 three-year median level of assessment for class 2 property of 8.90%. In support of the subject's assessment, the board of review submitted descriptions and assessment information for four properties located within the subject's neighborhood. These properties are described as one or one and one-half story, frame, single-family dwellings with between one and one and one-half baths, and one or one and one-half car garage. The properties range: in size from 816 to 885 square feet of living area; and in improvement assessments from \$13.36 to \$16.63 per square foot of living area. These four properties sold from October 2007 to April 2008 for prices ranging from \$175,66 to \$235,000 or from \$211.65 to \$283.82 per square foot of living area, including land. Based on this evidence, the board of review requested confirmation of the subject's assessment.

In addition, the board of review submitted a brief stating that the subject property is not owner-occupied per the appellants' own assertions and the information submitted regarding prior PTAB appeal and decision 08-29169.001-R-1. In addition, the board of review states that the subject property was the product of a foreclosure or compulsory sale under 35ILCS 200/1-23, *i.e.* that the subject was not 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 board of review asserts that since the sale was a foreclosure and the seller was listed as Wells Fargo, the evidence meets the definition of a compulsory sale under Illinois law and therefore, the appellants have not

met their burden of proof by showing the subject's market value by a preponderance of the evidence.

In rebuttal, the appellants in a letter assert that the prior Property Tax Appeal Board's decision 08-29169.001-R-1 reducing the subject's assessment should "carry forward" to 2009 based on the subject's sale in September 2008 for \$95,000. In addition, the appellants submitted five additional sales comparables that sold in 2009. The Official Rules of the Property Tax Appeal Board prohibit the submission of new evidence as rebuttal and, therefore, the four additional comparables cannot be considered by the PTAB. 86 Ill.Admin.Code 1910.66

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.

Pursuant to section 16-185 of the Property Tax Code (35 ILCS 200/16-185), the Board finds the prior year's decision should not be carried forward to the subsequent year subject only to equalization.

Section 16-185 of the Property Tax Code (35 ILCS 200/16-185) provides in part:

If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel on which a residence occupied by the owner is situated, such reduced assessment, subject to equalization, shall remain in effect for the remainder of the general assessment period as provided in Sections 9-215 through 9-225, unless that parcel is subsequently sold in an arm's length transaction establishing a fair cash value for the parcel that is different from the fair cash value on which the Board's assessment is based, or unless the decision of the Property Tax Appeal Board is reversed or modified upon review.

The record disclosed the Property Tax Appeal Board issued a decision reducing the subject's 2008 assessment. The record further indicates that the subject property is not an owner-occupied dwelling and hence, for this sole reason the Property Tax Appeal Board finds that a reduction in the subject's assessment is not warranted to reflect the Board's prior year's decision.

When overvaluation is claimed, the appellant has the burden of proving the value of the property by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3d Dist. 2002; Winnbago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d (2d Dist. 2000). 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. 86 Ill. Admin. Code 1910.65(c).

Having considered the evidence presented, the Board concludes that the evidence indicates a reduction in the subject's assessment is warranted.

In addressing the appellants' market value argument, the Board finds that the sale of the subject in September 2008 was a "compulsory sale." 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.

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 Chicago, 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.

Therefore, the Board is statutorily required to consider the compulsory sale of the subject in September 2008 submitted by the appellants.

In determining the fair market value of the subject property, the Board finds that the subject's sale documentation submitted by the appellants is the best evidence of market value. The appellants' petition states that the property was advertised on the open market; that both parties to the transaction were unrelated and were represented by real estate brokers; and the buyers did not assume the seller's mortgage.

Therefore, the Board finds the best evidence of the subject market value is the 2008 sale for \$95,000 for the tax year 2009. Since the market value of the subject has been established, the Department of Revenue's median level of assessment for class 2, the residential property of 8.90% shall apply. In applying this level of assessment to the subject, the total assessed value is 8,455, while the subject's current total assessed value is above this amount at 17,218. Thereby, the Board finds that a reduction is warranted to the subject's assessment.

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

J. R.

Member

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.