



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

APPELLANT: Terrance C. & Mary Totz
DOCKET NO.: 10-01757.001-R-1
PARCEL NO.: 02-04-390-097

The parties of record before the Property Tax Appeal Board are Terrance C. & Mary Totz, the appellants, and the Kendall 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 Kendall County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$4,262
IMPR.: \$19,479
TOTAL: \$23,741

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property is improved with a one-story condominium unit of frame and masonry construction with a first floor entry. The home contains 1,150 square feet of living area and was constructed in 2006. Features include a concrete slab foundation, a garage of 180 square feet of building area and "air conditioning."¹ The property is located in Yorkville, Bristol Township, Kendall County.

The appellants' appeal is based on overvaluation. In support of this argument, the appellants submitted information regarding the recent purchase of the subject property and data on three comparable sales.

In Section IV - Recent Sale Data, the appellants reported that the subject property was purchased in September 2009 for a price of \$69,500. The appellants indicated the subject property was sold by Nationstar Mortgage, LLC, the property was advertised on the open market for a period of 48 days on the Multiple Listing Service. A Realtor with Midwest Executive Realty was involved in the transaction and the parties to the transaction were not related. In addition, the appellants expended \$1,500 in

¹ The appellants report that the subject and comparable properties each have "3 window units." The assessing officials on the property record card for the subject report the feature of central air conditioning.

renovations before occupying the property in October 2009. The appellants also submitted a copy of the listing sheet and the closing statement. The listing sheet disclosed an original list price of \$69,000 for the unit and the appellants further asserted that the "property was purchased for more than the list price and there were multiple bids on the property."

In Section V, the appellants provided information on three comparable sales located in the same neighborhood code assigned by the assessor as the subject property. The comparables are within .2 of a mile of the subject and are described as Deerbrook one-story condominium units of frame and masonry construction. The units each contain 1,150 square feet of living area, have concrete slab foundations, for air conditioning have "3 window units" and have one-car garages of 180 square feet of building area. The dwellings were constructed in 2006. The comparables sold in October or November 2009 for prices ranging from \$58,800 to \$81,600 or from \$51.13 to \$70.96 per square foot of living area, including land.

Based on this evidence, the appellants requested a reduction in the subject's total assessment to \$23,250 which would reflect a market value of approximately \$69,750 or \$60.65 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 \$33,566 was disclosed. The subject's assessment reflects a market value of \$100,738 or \$87.60 per square foot of living area, including land, when applying the 2010 three year average median level of assessment for Kendall County of 33.32% as determined by the Illinois Department of Revenue.

The board of review submitted a memorandum along with evidence of four comparable sales. As to the subject's purchase price and appellants' comparable #1, the board of review contends that each of these properties were "REO sales"² and appellants' comparable #2 was "sold in lieu of foreclosure."³

In support of the subject's estimated market value, the board of review presented information on four comparable sales located in the subject's Bristol Bay Condo subdivision. Board of review comparable #4 is the same property as appellants' comparable #3. The board of review's comparables are each one-story condominium units of frame and masonry construction that contain 1,150 square feet of living area. The dwellings were constructed in 2006 or 2007. Features of the comparables include a concrete slab foundation, central air conditioning and a garage of 180 square feet of building area. The comparables sold from April to

² An REO property is one that a bank or other financial institution now owns after an unsuccessful sale at a foreclosure auction. William Roark (2006), *Concise Encyclopedia of Real Estate Business Terms*.

³ The board of review included a copy of the PTAX-203 Illinois Real Estate Transfer Declaration which indicated that this property had been advertised for sale.

November 2009 for prices ranging from \$81,000 to \$111,000 or from \$70.43 to \$96.52 per square foot of living area, including land.

Based on this evidence, the board of review requested confirmation of the subject's assessment.

In written rebuttal, the appellants contend that either REO or Deed in Lieu of Foreclosure does "not preclude the inclusion of these two purchase prices in an assessment review of the subject property's Fair Market Value." In support of this proposition, the appellants cite to Sections 16-55 and 1-23 of the Property Tax Code regarding "compulsory sales." (See 35 ILCS 200/16-55 and 35 ILCS 200/1-23, effective 7-16-10).

In reply, the board of review contends that Section 16-55 of the Property Tax Code (35 ILCS 200/16-55) provides in pertinent part:

The board [of review] shall include compulsory sales in reviewing and correcting assessments, including, but not limited to, those compulsory sales submitted by the taxpayer, if the board determines that those sales reflect the same property characteristics and condition as those originally used to make the assessment. The board shall also consider whether the compulsory sale would otherwise be considered an arm's length transaction. [Emphasis added.]

The board of review further asserted that "no evidence has been submitted to determine the condition of the appellant's comps." In addition, the board of review contends that the Multiple Listing Service sheet for the subject property included in the remarks that the subject property was sold "AS IS." "We don't believe that this is reflective of properties that were used to set the original assessment. We also question the arms-length nature of the subject sale." As an additional submission, the board of review provided the PTAX-203 Illinois Real Estate Transfer Declarations for the subject, appellants' comparable #1 and each of the board of review's comparables highlighting that the subject and appellants' comparable #1 transferred via "Special Warranty Deed" whereas the board of review's sales transferred via "Warranty Deed."

As a further response, the appellants move to strike the board of review's surrebuttal as not being allowed for within the procedural rules as set forth in the letter of the Property Tax Appeal Board dated September 10, 2012. In the alternative, the appellants contend the comparable sales originally presented by the appellants were similar to the subject based on exterior examination. The appellants acknowledge that they are no privy to the interior condition(s) of the comparables, but the subject's listing sheet which indicates the property was sold "as is" is "further evidence of the subject property's lesser condition which should merit it a lower assessment." As a final point, the appellants note the board of review failed to provide evidence to support that the sale of the subject property was not

an arm's length transaction. Instead, the unrefuted evidence is that there was no relationship between the parties to the transaction and the subject property was listed on the open market with the appellants paying a sales price above the list price for the property.

The Property Tax Appeal Board hereby denies the appellants' request to strike the board of review's surrebuttal submission. While the rules of the Board do not specifically call for such surrebuttal, the Board finds each party appropriately replied and responded directly in response to the assertion of the opposing party until both parties have presented their complete respective arguments before the Board.

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's assessment is warranted.

The appellants contend the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property 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 (3rd Dist. 2002); 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the appellants met this burden of proof and a reduction in the subject's assessment is warranted.

The appellants contend in part that the subject's assessment should be reduced based on the purchase price of the subject as set forth in the record. The evidence disclosed that the subject sold in September 2009 for a price of \$69,750. The board of review's evidence summarily questioned the arm's-length nature of the transaction, but only cited to the REO and "Special Warranty Deed" as the transfer mechanism along with the "as-is" nature of the sale as evidence contesting the arm's-length nature of the sale.

Ordinarily, property is valued based on its fair cash value (also referred to as fair market value), "meaning the amount the property would bring at a voluntary sale where the owner is ready, willing, and able to sell; the buyer is ready, willing, and able to buy; and neither is under a compulsion to do so." Illini Country Club, 263 Ill.App.3d at 418, 635 N.E.2d at 1353; see also 35 ILCS 200/9-145(a). The Illinois Supreme Court has held that a contemporaneous sale of the subject property between parties dealing at arm's length is relevant to the question of fair market value. People ex rel. Korzen v. Belt Ry. Co. of Chicago, 37 Ill. 2d 158, 161, 226 N.E.2d 265, 267 (1967). A contemporaneous sale of property between parties dealing at arm's-length is a relevant factor in determining the correctness of an assessment and may be practically conclusive on the issue

of whether an assessment is reflective of market value. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369 (1st Dist. 1983); People ex rel. Munson v. Morningside Heights, Inc., 45 Ill. 2d 338 (1970); People ex rel. Korzen v. Belt Railway Co. of Chicago, 37 Ill. 2d 158 (1967); and People ex rel. Rhodes v. Turk, 391 Ill. 424 (1945).

The Property Tax Appeal Board further finds the best evidence of the subject's fair market value as of January 1, 2010 in this record is the September 2009 sale for \$69,750 plus the renovation costs of \$1,500 which the appellants reported. The Property Tax Appeal Board finds the sale was not a transfer between family or related parties; the property was advertised for sale utilizing the Multiple Listing Service and involved a Realtor. Furthermore, the Board finds there is no evidence in the record that the sale price was not reflective of the subject's market value as the appellants purchased the property for more than the asking price of \$69,000.

The appellants' appeal petition further establishes that the subject property was advertised for sale for 48 days. Thus, the general public had the same opportunity to purchase the subject property at any negotiated sale price. 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)). The board of review provided no substantive evidence to dispute the arm's length nature of the sale transaction.

As additional market value evidence, the parties submitted a total of six comparable sales to support their respective positions before the Property Tax Appeal Board. Each of the comparables was similar to the subject in location, size, style, exterior construction, features and age. The six comparables sold for prices ranging from \$58,800 to \$111,000 or from \$51.13 to \$96.52 per square foot of living area, including land.

The Property Tax Appeal Board further finds that three of the six comparable sales presented by the parties sold for prices less than the subject's estimated market value of \$100,738 or \$87.60 per square foot of living area, including land, as reflected by its assessment. Moreover, comparables #1, #2 and #3 presented by the appellants, along with duplicate board of review comparable #4, were more proximate in time to the assessment date of January 1, 2010 than the board of review's comparables #1, #2 and #3 which sold for prices greater than the subject's estimated market value based upon its assessment. Given the totality of the evidence, the Property Tax Appeal Board finds that these sale comparables presented by the board of review neither support the subject's estimated market value nor do they overcome the arm's length nature of the subject's sale transaction which occurred in September 2009, approximately three months prior to the assessment date at issue.

Furthermore, since the appellant presented evidence showing the subject property was advertised for sale and exposed to the open market through the MLS in an arm's-length transaction, the Property Tax Appeal Board finds the subject's September 2009 sale price of \$69,750 plus renovation costs of \$1,500 was reflective of its market value as of January 1, 2010.

Therefore, the Board finds the appellants did demonstrate by a preponderance of the evidence that the subject was overvalued and a reduction in the subject's assessment is warranted. Since the fair market value of the subject has been established, the Board finds that the 2010 three-year median level of assessment for Kendall County of 33.32% shall apply.

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

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: June 21, 2013

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.