



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

APPELLANT: James Marzullo
DOCKET NO.: 10-02057.001-R-1
PARCEL NO.: 11-36-308-005

The parties of record before the Property Tax Appeal Board are James Marzullo, the appellant, by attorney Ronald M. Justin, of RMR Property Tax Solutions, in Hawthorn Woods, and the Kane 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 Kane County Board of Review is warranted. The correct assessed valuation of the property is:

**LAND: \$27,000
IMPR.: \$69,744
TOTAL: \$96,744**

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property¹ is improved with a two-story single-family dwelling of frame and masonry exterior construction. The home contains approximately 3,476 square feet of living area and was constructed in 2007. Features of the home include a full walkout-style basement, central air conditioning, a fireplace and an attached 2.5-car garage. The property is located in North Aurora, Blackberry Township, Kane County.

The appellant appeared before the Property Tax Appeal Board through legal counsel contending the subject property was overvalued in light of its recent sale. In support of this market value argument, the appellant's counsel filed a brief citing various Illinois cases along with evidence disclosing the

¹ Descriptive details of the subject property have been drawn from the Multiple Listing Service sheet submitted by the appellant and the submission of the board of review. The appellant also failed to complete Section III - Description of Property and the board of review failed to provide a copy of the subject's property record card as required by the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.40(a)).

subject property was purchased on April 28, 2010 for a price of \$290,000 or for \$83.43 per square foot of living area, including land. The appellant completed Section IV - Recent Sale Data of the appeal petition disclosing the parties to the transaction were not related and the property was sold using a Realtor firm of ReMax with agent Andrew Preze. Furthermore, the property had been advertised on the open market with the Multiple Listing Service for 58 days prior to its sale.

No witness was presented by the appellant to testify as to the purchase process, negotiations and/or the condition of the subject property at the time of purchase.

In further support of the transaction, the appellant submitted a copy of the Multiple Listing Service sheet which depicted an original asking price of \$304,900 and a listing date of January 28, 2010 and a subsequent price reduction to \$296,900.

Based on this evidence and applicable case law, the appellant requested a reduction in the subject's assessment to reflect the purchase price.

The board of review submitted its "Board of Review - Notes on Appeal" wherein the subject's total assessment of \$145,236 was disclosed. The subject's assessment reflects a market value of \$435,360 or \$125.25 per square foot of living area, including land, when applying the 2010 three year average median level of assessment for Kane County of 33.36% as determined by the Illinois Department of Revenue. (86 Ill.Admin.Code §1910.50(c)(1)).

The board of review representative Michael Madziarek contended the case law provides that a sales contract may be a "good sale" that should be looked at as market value, but where there is only a sales contract the terms of the transaction should also be examined along with any further evidence that would also support "a market value." Such that a contract alone is not necessarily market value, but it could be market value.

In support of the subject's estimated market value as reflected by its assessment, the board of review submitted a two-page letter prepared by Uwe Rotter, the Blackberry Township Assessor. As Attachment A to his letter, the township assessor provided a grid analysis with information on three comparable sales located in either Tanner Trails Unit 2 or #5 whereas the subject is located in Remington Landing Unit #1. The comparables are improved with two-story dwellings of frame and masonry exterior

construction. The dwellings range in size from 3,306 to 3,678 square feet of living area which are 4 or 7 years old. Two of the comparables have central air conditioning and each has both a fireplace and a garage ranging in size from 677 to 752 square feet of building area. These properties sold from October 2008 to March 2009 for prices ranging from \$407,500 to \$480,831 or from \$125.81 to \$130.73 per square foot of living area, including land.

Noting that the subject was sold by a financial institution, the township assessor also presented Attachment B with the letter, a copy of the Illinois Real Estate Transfer Declaration - PTAX-203, and contended that the fact the property was "pre-foreclosure" is a "clear indication of a distressed sale, which is not considered to be a market transaction . . . [and] this sale was not included in our analysis [for assessment purposes]." The property was also transferred by special warranty deed and thus was excluded in the assessor's analysis (35 ILCS 200/1-55).

As part of a grid analysis found on the second side of the "Board of Review - Notes on Appeal," the board of review also reported the subject's sale on March 26, 2010 for \$290,000 or \$83.43 per square foot of living area, including land.

At hearing, the board of review called Rotter for testimony. He discussed the comparable sales which occurred most proximate in time to January 1, 2010. He noted the three properties are similar to the subject in lot size, dwelling size and close in proximity to the subject with similar quality of construction to the subject. He further addressed that a Special Warranty Deed does not provide the same warranties and guarantees of title that transfer with a Warranty Deed with a clean chain of title. He additionally opined that as a bank-owned property there was a greater motivation to sell the property because "banks are not in the business of owning property especially if maintenance of property taxes have to be paid, historically they will drop the price so people will buy it as soon as possible and take the loss and write it off." He concluded his testimony noting that the subject was equally assessed with similar area homes.

Other than submission of the PTAX-203 which depicts that the subject property was advertised, sold by a financial institution and sold in March 2010 for \$290,000, the board of review did not specifically address nor challenge the subject's sale price. Moreover, the board of review did not provide any information as

to the purchase process, negotiations and/or the condition of the subject property at the time of purchase.

In rebuttal, counsel for the appellant acknowledged that the home sold by special warranty deed "which does affect the price of a house, lowering the cost of the house."

In surrebuttal, Madziarek asserted that "an appraisal from the appellant would have better established a conclusion [as] to whether the market value is the sales contract or whether it is the assessor's comparables."

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's assessment is warranted.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. Except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Fair cash value is defined in the Property Tax Code as "[t]he 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 Supreme Court of Illinois has construed "fair cash value" to mean 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 to do. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970). A contemporaneous sale between two parties dealing at arm's length is not only relevant to the question of fair cash value but practically conclusive on the issue on whether the assessment is reflective of market value. Korzen v. Belt Railway Co. of Chicago, 37 Ill.2d 158 (1967). 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 appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The Property Tax Appeal Board finds the best evidence of market value to be the purchase of the subject property on April 28, 2010 for a price of \$290,000, which was less than four months after the assessment date at issue. The appellant provided evidence demonstrating the sale had the elements of an arm's-length transaction. The subject was advertised for sale and the buyer and seller were not related parties.

As argued by the board of review, the Illinois courts have stated that the sale price of property does not necessarily establish its value without further information on the relationship of the buyer and seller and other circumstances. Ellsworth Grain Co. v. Illinois Property Tax Appeal Board, 172 Ill.App.3d 552 (4th Dist. 1988). As set forth in this record, the board of review failed to adequately rebut the apparent arm's-length nature of the sale transaction in that the only evidence of record is that the buyer and seller were not related, the property was open and exposed on the market for a period of time and sold for \$290,000 on April 28, 2010, less than four months after the assessment date at issue of January 1, 2010.

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).

Additionally, the Board finds the purchase price of \$290,000 is below the market value reflected by the assessment of \$435,360. Moreover, the original listing price of \$304,900 for the subject property at the time of marketing on January 28, 2010, a month after the assessment date, was also less than the estimated market value as reflected by its January 1, 2010 assessment. Furthermore, the Property Tax Appeal Board finds the board of review did not present any substantive evidence to challenge the arm's-length nature of the transaction or to refute the contention that the purchase price was reflective of market

value at the time of sale. The Board gave less weight to the comparables submitted by the board of review finding that they do not refute the arm's-length sale price evidence presented by the appellant.

Based on this record, the Board finds the appellant demonstrated by a preponderance of the evidence that the subject property was overvalued. The best evidence in the record is that the subject property had a market value of \$290,000 as of January 1, 2010. Since market value has been determined the 2010 three year average median level of assessment for Kane County of 33.36% shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

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.



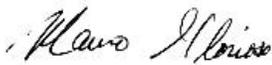
Chairman



Member



Member



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: January 24, 2014



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.