



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

APPELLANT: Enrique Garcia
DOCKET NO.: 10-02195.001-R-1
PARCEL NO.: 06-24-152-020

The parties of record before the Property Tax Appeal Board are Enrique Garcia, 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: \$9,808
IMPR.: \$15,879
TOTAL: \$25,687

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property¹ is improved with a 1.5-story dwelling of frame construction. The dwelling consists of two apartment units containing approximately 1,329 square feet of living area. The dwelling was constructed in 1900. Features of the home include a full basement, a fireplace and a 216 square foot garage. The property is located in Elgin, Elgin 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 subject property was purchased on December 22, 2009 for a price

¹ Descriptive details of the subject property have been drawn from the property record card submitted by the board of review as the appellant failed to complete Section III - Description of Property.

of \$77,000. 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 Robert Anthony Real Estate with agent Bryan Balk. Furthermore, the property had been advertised on the open market with the Multiple Listing Service, a sign and the internet for 123 days prior to its sale. At hearing, counsel further reported that both the buyer and seller were represented by real estate agents at the time of the transaction.

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 \$109,000 and a listing date of October 28, 2009. Also included was a copy of the Settlement Statement depicting the settlement date of December 22, 2009 and contract purchase price of \$77,000.

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 \$63,220 was disclosed. The subject's assessment reflects a market value of \$189,508 or \$142.59 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 Kevin Schulenburg contended that the subject Multiple Listing Service sheet that was provided was a cancelled or expired listing. Furthermore, there were two transactions on the property: 1) was a Sheriff's Sale in October 2009 for \$47,262 and 2) the purchase in December 2009 for \$77,000 as reported by the appellant "was not recorded in the Multiple Listing." "Based upon the circumstances of the sale, [the board of review] does not feel that one sale makes a market value."

In support of the subject's estimated market value as reflected by its assessment, the board of review submitted information on three comparable sales that are improved with two-story

dwelling of frame exterior construction. Dwelling sizes range from 1,119 to 1,554 square feet of living area. The dwellings were built between 1888 and 1900. Each comparable has a basement, with finished area, and a garage ranging in size from 400 to 1,107 square feet of building area. The properties sold from March 2007 to August 2009 for prices ranging from \$190,000 to \$251,000 or from \$161.52 to \$169.79 per square foot of living area, including land.

At hearing, the board of review called Steven Surnicki, the Elgin Township Assessor, for testimony. He contended based on a residential rental listing that the subject property was listed as a "residential rehab." The remarks on the document include: This is a recent rehab!!! He further contended that the sale listing was cancelled on December 21, 2009.²

The board of review did not specifically address nor challenge the subject's sale price.

Based on this evidence, the board of review requested confirmation of the subject's estimated market value as reflected by its assessment.

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. 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

² The "cancellation" date for the listing is the day before the closing occurred.

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 December 22, 2009 for a price of \$77,000. 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. The board of review failed to adequately rebut the apparent arm's-length nature of the transaction.

Additionally, the Board finds the purchase price of \$77,000 is below the market value reflected by the assessment of \$189,508. Moreover, the original listing price of \$109,000 for the subject property at the time of marketing in October 2009 was also less than the estimated market value as reflected by its 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. 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 \$77,000 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.

Ronald R. Cuit

Chairman

K. L. Fern

Member

Tracy 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: January 24, 2014

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.