FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Jim Aparo
DOCKET NO.: 10-04932.001-R-1
PARCEL NO.: 09-04-400-013

The parties of record before the Property Tax Appeal Board are Jim Aparo, the appellant, by attorney Joanne Elliott of Elliott & Associates, P.C., in Des Plaines, and the DuPage 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 **DuPage** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	$27,490
IMPR.:	$96,830
TOTAL:	$124,320

Subject only to the State multiplier as applicable.

ANALYSIS

The subject parcel of approximately 10,080 square feet of land area is improved with a two-story frame and masonry exterior constructed single-family dwelling that was built in 2007. The dwelling contains approximately 3,086 square feet of living area[1] with a full unfinished basement. Additional features of the dwelling include central air conditioning, a fireplace, a two-car garage of 420 square feet of building area, a gazebo and a deck. The subject property is located in Westmont, Downers Grove Township, DuPage County.

The appellant's appeal initially asserts that the subject property is entitled to an assessment reduction for 2010 in accordance with Section 16-185 of the Property Tax Code (35 ILCS 200/16-185). As set forth in counsel's cover letter, "since the 2009 PTAB decision lowered the assessment on a residence occupied by the owner such reduction subject to equalization, shall remain in effect for the remainder of the general assessment period."

[1] The appellant's appraiser reported a dwelling size of 3,206 square feet supported by a schematic drawing. The board of review reported a dwelling size of 3,086 square feet supported by a property record card with a schematic drawing. A second appraisal in the record includes a schematic drawing and a dwelling size of 3,028 square feet.

Also as part of this appeal, the appellant contends that the market value of the subject property is not accurately reflected in its assessed valuation as supported by an appraisal with an opinion of value of $373,000 and a brief prepared by counsel that reported the subject property was purchased by the appellant "at auction on September 23, 2009 for a gross price of $357,000."

As to the recent purchase price of the subject, counsel reported the subject was a newly constructed dwelling in 2007 which was listed by the developer for $599,000 as shown in an attached copy of a Multiple Listing Service sheet on the property.[2] As presented in the brief, "after exposing [the home] to the open market for two years and not receiving one offer on the subject, as a last resort, the developer offered it at auction." Counsel contends that the appellant and four to five other bidders engaged in a bidding contest for the subject resulting in the appellant's purchase of the property for $357,000 in September 2009.

The appellant also presented an appraisal of the subject property which was prepared for JP Morgan Chase Bank, NA, of Schaumburg, for a purchase transaction wherein the fee simple rights of the subject property were appraised. As to the purchase contract, the appraiser noted it appeared to be a standard arm's length transaction. "Nothing unusual noted. Subject was purchased at Levin auctions." The appraiser reported the contract price of $357,000 with a contract date of July 2009. For this report, the appraiser used the sales comparison approach to value in concluding an opinion of market value of $373,000 for the subject property as of September 1, 2009.

Based on this evidence, the appellant through legal counsel requested a reduction in the subject's total assessment to $124,320 so as to approximately reflect the appraised value at the statutory level of assessment of 33.33%.

The board of review submitted its "Board of Review Notes on Appeals" wherein the subject's final assessment of $204,100 was disclosed. The final assessment of the subject property reflects a market value of $613,281 using the 2010 three-year median level of assessments for DuPage County of 33.28%.

In support of the subject's assessment, the board of review submitted a memorandum along with supporting evidence. In response to the contention of law, the board of review reported that the appellant has never lived in the subject dwelling, citing a "For Sale by Owner" listing and presenting a copy as evidence. The listing includes the remarks "BRAND-NEW TOP-QUALITY CONSTRUCTION! NEVER LIVED IN! MOVE-IN-READY!" The assessing officials also acknowledge that a homestead exemption was afforded to the subject property for 2009, 2010 and 2011, but it has been removed for 2012.

[2] The listing sheet reflects an "original list price" in the bottom right hand corner of the document of $648,500.

In support of the subject's estimated market value, the board of review presented three grid analyses of properties. The first grid reiterates the four comparables in the appellant's appraisal with a valuation date of September 2009. The board of review reported that sale #1 from December 2008 which sold in lieu of foreclosure for $325,000, sold again in October 2009 for $515,000. Sale #2 is also presented by the board of review as its sale #4. And sale #4 in the appraisal shown as an active listing for $523,000 sold "6/09 [via] Sheriff's Deed"; this grid also depicts a February 2010 sale of this property for $465,000.

The second grid consists of four sales presented by the board of review which sold between September 2008 and August 2009 for prices ranging from $506,000 to $630,000.

The third grid analysis depicts six sales that were part of the appellant's appraisal presented at the 2011 board of review hearing. The board of review has attached a copy of this Restricted Use Appraisal of the subject which depicts an opinion of value of $550,000 as of December 31, 2010 based on the sales comparison approach and analysis of six sales that occurred between May 2008 and December 2010.[3] As to the sale of subject in September 2009, the appraiser reported the price was $357,000 "in a bank short sale."

Both the first and second grid analyses also depict the subject's September 2009 sale price of $357,000.

The board of review also reported that the subject as of January 2012 was listed for $549,000 and as of October 31, 2012 was listed for $499,900.

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

For written rebuttal, the appellant's counsel submitted an Affidavit of Owner Occupancy executed on January 31, 2013 by appellant James John Aparo. The affiant avers he purchased the subject property in September 2009 at auction for $357,000. "At the time I purchased the property in 2009 it had never been lived in." Furthermore, the appellant listed the property for sale by owner shortly after the purchase and have decreased the asking price, "but I have not updated the remainder of the listing, in the statement 'NEVER LIVED IN!'" The affiant further contends that changing the narrative section of the listing requires "additional contact with the 'Buy Owner' website" although price changes only require "logging in." Aparo further avers that he

[3] In an addendum, the appraiser wrote, "Due to subject real estate tax assessment being based upon an array of comparable sales comprising the three prior years to the assessment date, the retrospective effective date of this report is 12/31/10. This date is relevant because it is the last day of the three year period upon which the most recent real estate tax assessment is based."

has used the home only for his personal use and the use of his family. "I and/or family members sleep in the home, on average, at least one night a week." Lastly, the affiant stated he spends time daily in the home "including to retrieve my personal mail, which is delivered to the Property." Counsel argues that "while the subject is not the owner's only or primary residence, it is an owner-occupied residence used exclusively by the owner for the benefit of himself and his family."

As to the September 2009 and December 2010 appraisals in the record, the appellant contends that the valuation date closest to the assessment date at issue of January 1, 2010 should control.

As to the 2012 listing of the property in some manner impacting the 2010 valuation, the appellant through counsel noted the property has been on the market for sale for over three years with no buyers and little interest. Listing prices in 2012 are not reflective of market value as of the assessment date.

In summary, the appellant contends that Section 16-185 of the Property Tax Code is applicable to the subject's 2010 assessment, but in the alternative, the appellant requests a determination based on the evidence submitted. As a final remark, the appellant notes that the subject's 2011 assessment was reduced to $201,310 and the 2012 assessment was reduced to $147,560.

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 that a reduction in the subject's assessment is warranted.

The subject property is a residence that was the subject matter of an appeal before the Property Tax Appeal Board the prior year under docket number 09-04614.001-R-1. In that appeal the Property Tax Appeal Board rendered a decision lowering the assessment of the subject property based on the appellant's appraisal with a valuation date of September 2009. The final 2009 assessment was commensurate with the appellant's request of $124,320.

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, <u>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</u>, or unless the decision of the Property Tax Appeal Board is reversed or modified upon review. [Emphasis added.]

The evidence reveals that the subject property sold subsequent to the valuation date of January 1, 2009 that was the focus of the Board's 2009 decision on the subject property. Thus, as set forth in Section 16-185, due to the subsequent sale which established a difference fair cash value, the subject's assessment is not mandated to remain the same for 2010 subject only to equalization.

In the alternative, the appellant argued that the subject's assessment was not reflective of market value. 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). 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 this burden of proof has been met and a reduction in the subject's assessment is warranted.

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 Illinois Supreme Court 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 so to do. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970).

The Board finds the best evidence of 2010 market value in the record is the September 2009 sale of the subject property at auction for $357,000. The sale of the subject property about three months prior to the assessment date at issue is a relevant factor in analyzing the assessment. Furthermore, 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). The board of review did not dispute the arm's length nature of the subject's sale transaction. The Property Tax Appeal Board finds the record disclosed the sale had the elements of an arm's length transaction. The concept that a sale price is reflective of 'market value' also includes a number of factors, including but not limited to, exposure on the open market for a reasonable period of time. See also, Calumet Transfer, LLC v. Property Tax Appeal Board, 401 Ill.App.3d 652 (1st Dist. 2010).

In conclusion, the Board finds a reduction in the subject's assessment commensurate with the appellant's request is justified.

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: September 20, 2013

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.