



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

APPELLANT: Vic Krause  
DOCKET NO.: 11-01481.001-R-1  
PARCEL NO.: 09-28-155-031

The parties of record before the Property Tax Appeal Board are Vic Krause, the appellant, by attorney Joanne Elliott of Elliott & Associates, P.C., in Des Plaines, 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:** \$12,665  
**IMPR.:** \$35,519  
**TOTAL:** \$48,184

Subject only to the State multiplier as applicable.

**ANALYSIS**

The subject property is improved with a two-story townhome of frame and masonry construction containing 1,766 square feet of living area. The dwelling was constructed in 1996. Features of the home include a full unfinished basement, central air conditioning, a fireplace and an attached two-car garage. The property has a 5,473 square foot site and is located in St. Charles, St. Charles Township, Kane County.

The appellant's appeal is based on overvaluation. In support of this argument, the appellant submitted evidence disclosing the subject property was purchased on January 27, 2011 for a price of \$145,000. The appellant completed Section IV - Recent Sale Data of the appeal petition disclosing the parties to the transaction were not related, the property was sold using a Realtor from Tyan Hill Realty, LLC, agent Teresa Ryan, the property had been advertised on the open market with the

Multiple Listing Service and it had been on the market for 161 days. The property was sold in settlement of a foreclosure action.

In further support of the transaction, the appellant submitted a copy of the settlement statement, the Illinois Real Property Transfer Declaration and a copy of the Multiple Listing Service data sheet depicting the original listing price of \$190,000 followed by a price reduction to \$159,900 and the final selling price of \$145,000.

Based on this evidence, the appellant requested a reduction in the subject's assessment to reflect the purchase price at the statutory level of assessment of 33.33%.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$63,327 was disclosed. The subject's assessment reflects a market value of \$190,572 or \$107.91 per square foot of living area, including land, when applying the 2011 three year average median level of assessment for Kane County of 33.23% as determined by the Illinois Department of Revenue.

In response to the appellant's evidence, the board of review wrote, "the recent purchase price involved a lender selling the property after acquiring it at a sheriff's sale." Additionally, the board of review submitted a letter and data gathered by Colleen Lang, St. Charles Township Assessor. The township assessor wrote, "The appellant purchased the property through a bank REO sale in January 2011 for \$145,000. The property transferred previously in March 2010 for \$148,865 through a Sheriff Sale."

In support of the subject's estimated market value as reflected by its assessment, the township assessor prepared a grid analysis with information on three comparable sales located in the Wildwood Cove Subdivision like the subject. The comparables are improved with two-story townhomes of frame and masonry construction that range in size from 1,551 to 1,755 square feet of living area. The dwellings were constructed in 1994. Features of the comparables include a full basement, two of which include finished area. Each townhome has central air conditioning and a garage of either 414 or 428 square feet of building area. Two of the townhomes also have a fireplace. The comparables have sites ranging in size from 3,140 to 4,005 square feet of land area. These three comparables sold in May or July 2010 for prices ranging from \$181,500 to \$210,000 or

from \$117.02 to \$119.66 per square foot of living area, including land. The township assessor concluded her letter with the assertion that the "preponderance of the evidence submitted does not support a reduction in the fair cash value of the subject property."

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

In written rebuttal, counsel for the appellant contended that the assessor's sale data for comparable properties lacked any documentary support and was not adjusted for market conditions and/or differences from the subject property.

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 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).

Furthermore, 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 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) (Emphasis added). Furthermore, **the sale of a property during the tax year in question is a relevant factor in considering the validity of the assessment.** Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369, 375 (1<sup>st</sup> Dist. 1983) (Emphasis added).

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 (3<sup>rd</sup> 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 January 27, 2011 for a price of \$145,000. The appellant provided evidence demonstrating the sale had the elements of an arm's-length transaction. The subject was advertised for sale on the open market for a period of 161 days and the buyer and seller were not related parties.

While 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 (see Ellsworth Grain Co. v. Illinois Property Tax Appeal Board, 172 Ill.App.3d 552 (4<sup>th</sup> 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. As to the subject's sale price 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 \$145,000, 26 days after the assessment date at issue of January 1, 2011.

The Property Tax Appeal Board also recognizes the contention of the township assessor that the sale of the subject property was a "bank REO sale."<sup>1</sup> In this regard, it should be noted that Public Act 96-1083 amended the Property Tax Code adding sections 1-23 and 16-183 (35 ILCS 200/1-23 & 16-183), effective July 16, 2010.

Section 1-23 of the Property Tax Code provides:

Compulsory sale. "Compulsory sale" means (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

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<sup>1</sup> 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*.

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.

Section 16-183 provides:

Compulsory sales. 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.

The Board finds the effective date of these statutes is applicable to the assessment date at issue of January 1, 2011. Thus, the Board finds these statutory provisions apply to the appellant's 2011 assessment appeal and the January 27, 2011 sale of the subject property after foreclosure.

In light of the foregoing provisions of the Property Tax Code, the Board finds that the board of review did not present any evidence to challenge the arm's length nature of the transaction or to refute the contention that the purchase price of \$145,000 was reflective of the subject's market value at the time of the sale transaction. As a result, the Property Tax Appeal Board has afforded less weight to the three comparable sales presented by the board of review.

In conclusion and based upon this record, the Board finds the subject property had a market value of \$145,000 as of January 1, 2011. Since market value has been determined the 2011 three year average median level of assessment for Kane County of 33.23% 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: March 21, 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.