



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

APPELLANT: Tony Richter  
DOCKET NO.: 11-01496.001-R-1  
PARCEL NO.: 03-08-106-007

The parties of record before the Property Tax Appeal Board are Tony Richter, 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:** \$20,659  
**IMPR.:** \$69,062  
**TOTAL:** \$89,721

Subject only to the State multiplier as applicable.

**ANALYSIS**

The subject property is improved with a two-story single-family dwelling of frame construction containing 2,994 square feet of living area. The dwelling was constructed in 2000. Features of the home include a full basement, central air conditioning and an attached three-car garage of 630 square feet of building area. The property has a 13,068 square foot site and is located in Algonquin, Dundee 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 August 10, 2011 for a price of \$270,000. 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

Prudential First Realty, agent Gloria Jenson, the property had been advertised on the open market with the Multiple Listing Service and it had been on the market for 63 days.

In further support of the transaction, the appellant submitted a copy of the settlement statement which reiterated the sale date and sale price.

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 \$100,408 was disclosed. The subject's assessment reflects a market value of \$302,161 or \$100.92 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 submitted a letter and data gathered by Michael Bielak, Dundee Township Assessor. The township assessor wrote, "The appellant purchased the property in August 2011 as a Short Sale." To support this contention, the township assessor provided a copy of the Multiple Listing Service data sheet regarding the subject which indicates the home "was a Short sale, sold in as in [sic] condition." The data sheet also reveals the property had an original asking price of \$324,900 which was reduced to \$284,000 prior to its sale for \$270,000. The document also reveals the property was on the market for 63 days.

In support of the subject's estimated market value as reflected by its assessment, the township assessor prepared a grid analysis with information on five comparable sales located in the Willoughby Farms Subdivision like the subject and from .15 to .67 of a mile from the subject. The comparables are improved with two-story dwellings of frame construction that range in size from 2,686 to 3,100 square feet of living area. The dwellings were constructed from 1999 to 2001. Features of the comparables include a full basement, central air conditioning and a garage ranging in size from 420 to 630 square feet of building area. Four of the homes also have a fireplace. One comparable also has a swimming pool. These comparables have sites ranging in size from 10,019 to 13,504 square feet of land area. The comparables sold between October 2009 and June 2011 for prices ranging from \$305,000 to \$323,000 or from \$100.90 to

\$118.21 per square foot of living area, including land. The township assessor concluded his letter with the assertion that the "appellant failed to provide by clear and convincing evidence that the assessment should be changed. The Appellant has failed to provide any other sales in the subdivision to show a reduction in the assessment is warranted."

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

In written rebuttal, counsel for the appellant argued that the sales data "containing raw, unconfirmed and unadjusted sales data from 2009-2011." Moreover, counsel noted there was no documentary evidence supplied to confirm the sales data and/or property characteristics set forth in the grid analysis. Counsel also contends that the township assessor's remarks in the memorandum are "pure hearsay and contain many conclusions and statements which are not supported by any facts or documentation." Counsel points out that the property record card which the assessor submitted reflects the subject's August 2011 sale for \$270,000 via "warranty deed." Counsel also noted the wrong legal standard of proof was referred to in the memorandum for an overvaluation argument. Finally, counsel noted that the board of review's data has not been adjusted for market conditions, size, location, or for any other relevant matters. In closing, counsel reported that for 2012 the assessor reduced the assessment of the subject property to \$90,518 "which reflects the \$270,000 purchase price in August, 2011."

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 August 10, 2011 for a price of \$270,000. 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 63 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 \$270,000, approximately eight months 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 "Short Sale." 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 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. (Emphasis added.)

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 August 10, 2011 sale of the subject property.

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 \$270,000 was reflective of the subject's market value at the time of the sale transaction. As a result of the lack of evidence to dispute that the subject's sale price was reflective of its market value at the time of sale and in light of the applicable case law, the Property Tax Appeal Board has afforded less weight to the five 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

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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.