FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Bunzity LLC
DOCKET NO.: 11-01526.001-R-1
PARCEL NO.: 03-03-129-030

The parties of record before the Property Tax Appeal Board are Bunzity LLC, the appellant, by attorney Laura Godek of Laura Moore Godek, PC, in McHenry, 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:	$5,033
IMPR.:	$19,258
TOTAL:	$24,291

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property is improved with a split-level single-family dwelling of frame exterior construction containing 1,572 square feet of living area. The dwelling was constructed in 1978. Features of the home include a finished lower level, central air conditioning, a fireplace and a detached one-car garage of 308 square feet of building area. The property has a 5,600 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[1] was purchased on May 5, 2010 for a price of

[1] Based upon the appellant's submission, the subject property consists of two parcels known as 03-03-129-030 and 03-03-129-039. The appellant did not

$73,100. The appellant completed Section IV - Recent Sale Data of the appeal disclosing the parties to the transaction were not related, the property was sold using a Realtor from the firm of Chicago Realty Partners, Ltd., agent Arthur Cirignani, and the property had been advertised on the open market through the Multiple Listing Service. The property had been on the market for 145 days.

In further support of the transaction, the appellant submitted a copy of the Multiple Listing Service data sheet depicting the original asking price of $145,000 which was subsequently reduced to $116,000 prior to its sale in May 2010 for $73,100. The remarks include "HUD Foreclosure Sale" and "sold as-is." Also submitted was a copy of the "Listing & Property History Report" indicating the property was on the market commencing in August 2009 with an asking price of $145,000. A copy of the Settlement Statement reiterated the sale date and sale price as previously reported. A copy of the PTAX-203 Illinois Real Estate Transfer Declaration depicts that the property was advertised prior to its sale and sold for the price previously reported. As additional evidence, the appellant submitted a copy of a Residential Lease reflecting the rental of the subject property commencing July 17, 2010 for $1,150 per month.

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

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $52,444 was disclosed. The subject's assessment reflects a market value of $157,821 or $100.40 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.

The board of review submitted a memorandum and two separate two-page grid analyses of comparable sales and equity evidence all of which were prepared by Michael Bielak, Dundee Township Assessor. The assessor's letter acknowledged the appellant's evidence of a "HUD sale agreement" and a "rental lease agreement." The assessor wrote, "According to the 2011 Kane County Board of Review Rules and Procedures an investment sale should not be considered."

---

submit a copy of the Final Decision for parcel -039 for this appeal and thus, the Board has no jurisdiction with regard to this parcel which the appellant reported had a total assessment of $514.

As the appellant's appeal is based upon overvaluation, the equity data submitted by the assessor is deemed to be non-responsive to the appeal and will not be further examined on this record.

The township assessor also provided information on three comparable sales located in Algonquin, Illinois in the same subdivision as the subject property. The comparables are improved with split-level dwellings of frame construction that contain either 1,576 or 2,032 square feet of living area. The dwellings were constructed in 1977 or 1978. Features of the comparables include a full basement, two of which include finished lower level area. One of the comparables has central air conditioning and each has a garage ranging in size from 432 to 576 square feet of building area. These three comparables sold from April 2009 to May 2010 for prices ranging from $159,000 to $238,000 or from $100.89 to $117.13 per square foot of living area, including land.

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

In written rebuttal, counsel for the appellant noted the subject property was the subject matter of an appeal before the Property Tax Appeal Board the prior year under Docket Number 10-02181.002-R-1. In that appeal, the Board determined a total assessment of $23,909 for the subject parcel on appeal and $477 for the second parcel for which the Board does not have jurisdiction in this 2011 assessment appeal (see Footnote #1).

Next, counsel generally reiterated the listing history of the subject property prior to its sale. Next counsel noted the dates of sale for the board of review's comparables #2 and #3 that occurred in 2009, a date more remote in time to the assessment date of January 1, 2011 and further outlined differences in various aspects of board of review comparables #1, #2 and #3 when compared to the subject property, including lot size, garage amenity, sale concessions, updates, dwelling size differences and other amenities.

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.

In rebuttal, appellant raised a legal contention inferring that the Property Tax Appeal Board's prior year decision for 2010 should be carried forward to the subsequent year of 2011. See Section 16-185 of the Property Tax Code (35 ILCS 200/16-185) which 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**, 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, or unless the decision of the Property Tax Appeal Board is reversed or modified upon review. [Emphasis added.]

The Board further finds that the evidence submitted by the appellant indicates that the subject is a rental property and therefore, is not an "owner-occupied" residential property. Moreover, the Board takes judicial notice that for Kane County 2010 and 2011 are not within the same general assessment period. (See for authority 35 ILCS 200/9-215; 86 Ill.Admin.Code §1910.90(i)). In conclusion, the prior year's decision of the Property Tax Appeal Board is not relevant to determining the correct 2011 assessment of the subject property for the first year of the new general assessment cycle.

As to the merits of this 2011 appeal, 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 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). 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 (1st Dist. 1983). 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 Board finds the best evidence of market value to be the purchase of the subject property on May 5, 2010 for a price of $73,100. The appellant provided evidence demonstrating the sale had the elements of an arm's length transaction. Moreover, 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 assessment date at issue of January 1, 2011.

Therefore, the Board finds these statutes apply to the appellant's 2011 assessment appeal.

Furthermore, the Board finds the purchase price of $73,100 is below the market value reflected by the assessment of $157,821. Moreover, the subject's estimated market value based on its assessment is also greater than the original asking price of the subject property of $145,000. As a general principle of real estate, an asking price can be deemed to reflect the upper limit of value in most circumstances.

The Property Tax Appeal Board also finds that the board of review through the township assessor did not present any substantive evidence to challenge the arm's length nature of the transaction. The notation that the property was sold by "HUD" and citation to the procedural rules of the Kane County Board of Review fail to address the reported arm's length nature of the subject's sale transaction. In summary, the assessor's remarks do not refute the contention that the purchase price was reflective of market value at the time of sale. In light of the record and applicable case law concerning the sale of the subject property as being reflective of market value, the Board has given no weight to the three comparable sales presented by the township assessor.

Based on this record the Board finds the subject property had a market value of $73,100 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.

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: March 21, 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.