



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

APPELLANT: Jennifer & William Albert
DOCKET NO.: 11-01565.001-R-1
PARCEL NO.: 02-07-353-061

The parties of record before the Property Tax Appeal Board are Jennifer & William Albert, the appellants, 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: \$11,482
IMPR.: \$15,767
TOTAL: \$27,249**

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property is improved with a two-story duplex dwelling of frame exterior construction containing 1,689 square feet of living area. The dwelling was constructed in 2007. Features of the home include central air conditioning, a fireplace¹ and an attached one-car garage of 215 square feet of building area. The property has a 3,950 square foot site and is located in Hampshire, Rutland Township, Kane County.

The appellants' appeal is based on overvaluation. In support of this argument the appellants submitted evidence disclosing the subject property was purchased on June 23, 2010 for a price of \$82,000. The appellants 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 with the firm of

¹ The appellants reported the property did not have a fireplace. The property record card submitted by the board of review indicates there is a fireplace. The Board finds this minor factual dispute is irrelevant to determining the correct assessment of the subject property on this record.

Coldwell Banker Residential, agent Frank DeNovi, the property had been advertised on the open market with the Multiple Listing Service and it had been on the market for 31 days.

In further support of the transaction the appellants submitted a copy of the Multiple Listing Service data sheet for the subject property depicting a listing date of April 6, 2010 and an original asking price of \$91,670. The appellants also submitted a "Listing & Property History Report" that similarly displayed the original listing date and asking price. A copy of the PTAX-203 Illinois Real Estate Transfer Declaration was also provided indicating the property was not advertised for sale (emphasis added). The appellants also provided a copy of the Settlement Statement which reiterated the sale date and selling price as previously reported by the appellants. Also attached was a copy of the real estate contract again depicting the purchase price as \$82,000.

Based on this evidence, the appellants 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 \$50,995 was disclosed. The subject's assessment reflects a market value of \$153,461 or \$90.86 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 support of the assessment the board of review submitted a copy of the subject's property record card, a two-page grid analysis entitled "Taxpayer Sales Comparables Report"[sic],² a copy of the PTAX-203 regarding the sale of the subject property in March 2010 for \$227,002 reflecting a sale by Sheriff's Deed along with a two-page spreadsheet.

One of the pages of the spreadsheet includes the following statements:

- The 6/1/11 sales [sic] of this property was a bank sale for \$82,000
- Sheriff's sale earlier in the same year was for \$227,002
- Neither is an arms-length transaction

² While perhaps the appellants submitted comparable sales data in their appeal before the Kane County Board of Review, the Property Tax Appeal Board record has no comparable sales data that was submitted by the appellants in this record.

- Subject's re-finance appraisal's estimate of fair market value is \$127,000
- Comp #3 is not in Rutland Twp. and 3 of the comps are different models
- All sales submitted by the assessor are from the prior three years as required
- Although the subject's \$/sq. ft assessment is the highest [sic] the \$/sq. ft based on the sales subject falls within the range of properties that sold
- Subject is equitably assessed base [sic] on sales

Besides the sale of the subject property, there are two sales that are highlighted with shading in the spreadsheet. The two properties are lots of .08 and .09 of an acre, respectively, that are improved with two-story dwellings that were built in 2008 and 2009. The homes each contain 1,673 square feet of living area and have 215 square foot garages. No other features or the details of these two properties were provided in the spreadsheet. The two highlighted comparables sold in January and April 2009 for prices of \$154,000 and \$166,320 or for \$92.05 and \$99.41 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 appellants noted the subject property was the subject matter of an appeal before the Property Tax Appeal Board the prior year under Docket Number 10-01819.001-R-1. In that appeal, the Board determined a total assessment of \$27,355 for the subject property based upon equity and the weight of the evidence.

Next, counsel for the appellants reiterated the contention that the sale of the subject property reflects its market value. As to the references by the board of review's presentation to an appraisal of the subject property and/or to comparable sales submitted by the appellants, it was noted that no such evidence was filed in this matter.

As to the spreadsheet of 13 sales, the appellants note that 11 sales occurred in 2008 and two sales occurred in 2009. All of this sales evidence is more remote in time to the assessment date of January 1, 2011 than the sale of the subject property which the appellants reported. Lastly, counsel noted that the equity data in the board of review's spreadsheet should not be considered as the appeal was not based upon lack of uniformity.

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, appellants' counsel 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 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.

The appellants contend 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 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 appellants 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 June 23, 2010 for a price of \$82,000. The appellants provided evidence demonstrating the sale had the elements of an arm's length transaction in that the property was advertised on the open market through the Multiple Listing Service for a period of 31 days. The appellants submitted documentation evidencing the listing, despite the assertion on the PTAX-203 indicating the property was "not" advertised prior to its sale. Additionally, the Settlement State in lines 701 and 702 reflects divisions of commissions on the sale which reinforces the proposition that the property was advertised through a Realtor prior to its sale.

Furthermore, the Board finds the purchase price of \$82,000 is below the market value reflected by the assessment of \$153,461. The Property Tax Appeal Board further finds the board of review did not present any substantive evidence to challenge the arm's length nature of the transaction. The mere statement that neither of the recent sales of the subject property were "arms-length transactions" is not evidence. 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, January 1, 2011. Therefore, the Board finds these statutes are instructive as to the appellants' 2011 assessment of the subject property.

Furthermore, as noted in rebuttal, the appellants did not provide an appraisal in this appeal and thus, reference to such a document without more is not valid market value evidence in this record.

The board of review also did not refute the contention that the purchase price was reflective of market value. The sales presented by the board of review were not as proximate in time to the assessment date as the sale of the subject. Moreover, the case law is clear that the sale of the subject, absent other evidence to refute the arm's length nature of the transaction, is the best evidence of the property's market value.

Based on this record the Board finds the subject property had a market value of \$82,000 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.