



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

APPELLANT: Miguel Orjuela
DOCKET NO.: 13-01274.001-R-1
PARCEL NO.: 12-16-253-005

The parties of record before the Property Tax Appeal Board are Miguel Orjuela, the appellant, by attorneys Michael R. Davies and Kelly Murray, of the Law Offices of Michael R. Davies, Ltd. in Oak Lawn; and the Kane County Board of Review.

Based on the facts and exhibits presented in this matter, the Property Tax Appeal Board hereby finds **No Change** 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: \$29,465
IMPR.: \$67,982
TOTAL: \$97,447

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Kane County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2013 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

The subject property consists of a two-story dwelling of brick and frame construction with 2,420 square feet of living area. The dwelling was constructed in 1988. Features of the home include a partial basement with finished area, central air conditioning, a fireplace and a two-car garage. The property has an 11,761 square foot site and is located in Geneva, Geneva Township, Kane County.

The appellant appeared before the Property Tax Appeal Board through counsel contending overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal of the subject property prepared by Mary Connolly, a State of Illinois Certified Residential Real Estate Appraiser. The appraiser was not present at the hearing to provide direct testimony or be cross-examined regarding the appraisal methodology and final value conclusion.

Using the cost approach and the sales comparison approach to value, the appraiser estimated the subject property had a market value of \$275,000 as of August 26, 2011.

The appellant's attorney called no witnesses.

Based on this evidence, the appellant requested a reduction in the subject's assessed valuation.

At the hearing the board of review objected to the appraisal report contending the appraiser was not present to be cross-examined. The Board reserved ruling on the objection.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$97,447. The subject's assessment reflects a market value of \$292,546 or \$120.89 per square foot of living area, land included, when using the 2013 three year average median level of assessment for Kane County of 33.31% as determined by the Illinois Department of Revenue. Representing the board of review was Board Member Timothy Sullivan. Sullivan called Geneva Township Assessor Denise LaCure as a witness.

LaCure testified about the comparable sales selected in the appellant's appraisal. LaCure testified that comparables #2, #3 and #5 are located in Batavia Township with the subject located in Geneva Township. Sullivan testified that the appraiser's comparable #4, which at the date of the appraisal was a listing, sold in November 2011 for a price of \$238,000 or \$128.72 per square foot of living area, land included.

In support of its contention of the correct assessment the board of review submitted information on three comparable sales located in the same subdivision and within .09 of a mile from the subject property. The comparables are improved with two-story single family dwellings that ranged in size from 2,192 to 2,637 square feet of living area. The dwellings were of frame or brick and frame exterior construction and were built in 1988 or 1991. Each comparable has a partial unfinished basement, central air conditioning, one fireplace and a two-car garage. The comparables have sites ranging from 10,454 to 20,909 square feet of land area. The comparables sold in April 2010 and June 2012 for prices ranging from \$275,000 to \$342,000 or from \$119.98 to \$129.69 per square foot of living area, land included.

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

Conclusion of Law

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. 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 did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

In support of the overvaluation argument the appellant submitted an appraisal estimating the subject had a market value of \$275,000 as of August 26, 2011. The board of review objected to the appraisal report contending the appraiser was not present to be cross-examined. The Board

hereby sustains the objection. The Board finds the appellant's appraiser was not present at the hearing to provide direct testimony or be cross-examined regarding the appraisal methodology and final value conclusion. In Novicki v. Department of Finance, 373 Ill.342, 26 N.E.2d 130 (1940), the Supreme Court of Illinois stated, "[t]he rule against hearsay evidence, that a witness may testify only as to facts within his personal knowledge and not as to what someone else told him, is founded on the necessity of an opportunity for cross-examination, and is basic and not a technical rule of evidence." Novicki, 373 Ill. at 344. In Oak Lawn Trust & Savings Bank v. City of Palos Heights, 115 Ill.App.3d 887, 450 N.E.2d 788, 71 Ill.Dec. 100 (1st Dist. 1983) the appellate court held that the admission of an appraisal into evidence prepared by an appraiser not present at the hearing was in error. The court found the appraisal was not competent evidence stating: "it was an unsworn ex parte statement of opinion of a witness not produced for cross-examination." This opinion stands for the proposition that an unsworn appraisal is not competent evidence where the preparer is not present to provide testimony and be cross-examined. Based on this case law, the Board gives the conclusion of value contained in the appraisal no weight since the appraiser was not present at the hearing to be cross-examined with respect to the appraisal methodology, the selection of the comparables, the adjustment process and the ultimate conclusion of value.

The courts have also stated that where there is credible evidence of comparable sales these sales are to be given significant weight as evidence of market value. In Chrysler Corporation v. Property Tax Appeal Board, 69 Ill. App. 3d 207 (2nd Dist. 1979), the court held that significant relevance should not be placed on the cost approach or income approach especially when there is market data available. In Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill. App. 3d 9 (5th Dist. 1989), the court held that of the three primary methods of evaluating property for the purpose of real estate taxes, the preferred method is the sales comparison approach. The Board finds there are credible market sales contained in this record, and therefore, the Board will examine the raw sales data contained in this record, including the sales in the appellant's appraisal.

The Board finds the record contains eight comparables submitted by the parties in support of their respective positions. The Board gave less weight to the appraiser's comparable sales/listing along with the board of review's comparable sales #1 and #2. These comparables sold/listed from April 2010 to November 2011, which is less indicative of fair market value as of the subject's January 1, 2013 assessment date. The Board finds the best evidence of market value to be board of review comparable sale #3. The Board finds that this comparable has varying degrees of similarity when compared to the subject in location, land size, age, dwelling size and features. This property sold in June 2012, which is more proximate in time to the assessment date at issue than the sales contained in the appellants' appraisal or the other two sales presented by the board of review. Board of review comparable #3 sold for \$275,000 or \$119.98 per square foot of living area including land. The subject's assessment reflects a market value of \$292,546 or \$120.89 per square foot of living area including land, which is above the best comparable sale in the record, but justified by the fact that the subject is superior in land size, building size and has a finished basement. Based on this record the Board finds no reduction in the subject's assessment is warranted.

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



Acting Member

DISSENTING: _____

CERTIFICATION

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: November 23, 2016



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.