FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: David Zyzak
DOCKET NO.: 13-23987.001-R-1
PARCEL NO.: 01-21-206-007-0000

The parties of record before the Property Tax Appeal Board are David Zyzak, the appellant(s); and the Cook 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 **Cook** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	$ 10,899
IMPR.:	$ 74,611
TOTAL:	$ 85,510

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Cook 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 (the "Board") finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

The subject consists of a two-story dwelling of masonry construction with 6,298 square feet of living area. The dwelling is seven years old. Features of the home include a full unfinished basement, central air conditioning, four fireplaces, and a four-car garage. The property has a 217,992 square foot site, and is located in Barrington Hills, Barrington Township, Cook County. The subject is classified as a class 2-09 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal estimating the subject property had a market value of $1,000,000 as of January 3, 2011, and a second appraisal estimating the subject property had a market value of $1,075,000 as of April 23, 2012. The appellant also submitted evidence disclosing the subject property was purchased on February 11, 2011 for a price of $850,000, however, the appellant did not mark the "Recent Sale" checkbox in Section II(2d) of the Board's Residential Appeal form.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $123,948. The subject's assessment reflects a market value of $1,232,087, or $195.63 per square foot of living area, including land, when applying the 2013 three year average median level of assessment for class 2 property of 10.06% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment, the board of review submitted information on three equity comparables, and three sale comparables. The board of review's evidence also states that the subject was purchased in January 2011 for $850,000.

At hearing, the appellant reaffirmed the evidence previously submitted. The board of review analyst objected to the final opinions of value and adjustments in the appraisals, as the appellant's appraisers: were not present; did not testify; and were unavailable for cross-examination. Therefore, it was argued, the appraisals should be dismissed as hearsay evidence. The Board sustained the objection on hearsay grounds, but allowed the appellant to make argument regarding the raw sales data submitted in the sales comparison approaches of the appraisals.

Upon questioning from the Board, the appellant testified that he purchased the subject in January 2011 for $850,000, as stated in both parties' evidentiary submissions. The Board further inquired as to whether the appellant had any evidence to support the sale. The appellant answered in the affirmative, but that he did not have the evidence with him at hearing. The Board granted the appellant 30 days from the date of the hearing to submit evidence of the sale to the Board. The board of review analyst objected to the Board's request for evidence of the subject's recent sale pursuant to Board Rule 1910.67(k), which

states, "In no case shall any written or documentary evidence be accepted into the appeal record at the hearing. . ." 86 Ill.Admin.Code §1910.67(k). The Board overruled the objection based on Board Rule 1910.67(k)(3) as both parties agreed that the sale took place, and the Board believed it was necessary to analyze the sale of the subject to determine the subject's market value. 86 Ill.Admin.Code §1910.67(k)(3). The board of review analyst then argued that the appellant had not made a recent sale argument because the "Recent Sale" checkbox in Section II(2d) of the Board's Residential Appeal form was not marked. The Board overruled this objection based on reasons more fully explained below. The board of review analyst then offered into evidence a printout from the Cook County Recorder of Deeds' website showing that a *lis pendens* was placed on the subject sometime after the appellant purchased the subject. After realizing the *lis pendens* was filed after the appellant purchased the subject, the board of review analyst withdrew the request to admit the printout.

The board of review analyst testified that one of the appellant's comparable sales, found in one of the appraisal, was a compulsory sale. In support of this argument, the board of review analyst submitted a copy of Calumet Transfer, LLC v. Prop. Tax Appeal Bd., 401 Ill.App.3d 652, and the Board took judicial notice of this case. 86 Ill.Admin.Code § 1910.90(i). The board of review analyst quoted the following language from Calumet Transfer:

> Property in Illinois is assessed for property tax purposes as a percentage of "fair cash value," which is synonymous with fair market value. [Citation omitted.] Fair cash value is defined by statute 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." . . . The best evidence of fair cash value is an arm's-length sale. [Citation omitted.]

Id. at 655. The board of review analyst argued that the appellant's comparable sale that was a foreclosure should, therefore, be given little weight in the Board's analysis. The board of review analyst further argued that the comparable sales in the appraisals were not similar to the subject, and that the board of review's comparables were more similar to the subject.

In oral rebuttal, the appellant argued that the board of review's comparables were not similar to the subject for various reasons.

The appellant timely submitted a settlement statement pursuant to the Board's oral order at hearing.

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 met this burden of proof and a reduction in the subject's assessment is warranted.

The Board does not find the appraisal submitted by the appellant persuasive. At hearing, the board of review analyst argued that the appraisal was hearsay evidence because the appraiser was not available to testify. The Board finds this to be the case. For proceedings before the Board, "[t]he procedure, to the extent that the Board considers practicable, shall eliminate formal rules of pleading, practice and evidence, . . ." 35 ILCS 200/16-180. However, 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 Novicki an action was brought under the provisions of the Retailers' Occupation Tax Act that contained a section providing in part that:

> In the conduct of any investigation or hearing, neither the department nor any officer or employee thereof shall be bound by the technical rules of evidence and no informality in any proceeding, or in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made or approved or confirmed by the department.

Id. The Court stated that this section permits the asking of leading questions and other informalities but the legislature

did not intend to abrogate the fundamental rules of evidence. Id. Thus, while the Board's rules allow for informal rules of evidence, the Board cannot abrogate a basic rule of evidence under the Supreme Court's holding in Novicki. Therefore, the Board finds that the appraisal is hearsay evidence for which no exception exists, and that the appraisal shall not be considered as relevant evidence in this appeal.

The board of review argued that since the appellant did not check the "Recent Sale" box in Section II(2d) of the Board's Residential Appeal form, the recent sale argument is not properly before the Board. The Board does not find this argument persuasive. Board Rule 1910.50 states that "[e]ach appeal shall be limited to the grounds listed in the petition filed with the Board." 86 Ill.Admin.Code Sec. 1910.50(a). Section 16-180 of the Property Tax Code uses the phrase "in the petition," and the appellant did put the sale of the subject in the petition.

Section 16-180 was amended by Public Act 93-248, which added the sentence, "Each appeal shall be limited to the grounds listed in the petition filed with the Property Tax Appeal Board." H.B. 2567, 93rd Gen. Assemb., Reg. Sess. (Ill. 2003) (enacted). During debate in the House of Representatives, the chairman of the House Revenue Committee at the time, Representative Molaro, stood in support of the bill, and stated as follows:

> So, all this Bill says, when you go to PTAB and you want your taxes reduced and you say these are the seven reasons, then when you go to PTAB to argue it you stick with those seven reasons. You shouldn't be able to surprise the assessor and surprise the other taxpayers. This isn't that type of thing. We're not looking for surprises. It should all be laid out. We should see what it is. And if you lay it out and you weren't fairly assessed you should get the reduction. That's the American way. And I urge an "aye" vote.

93rd Gen. Assemb., 35th Legis. Day, H. of Reps., Floor Debate on HB 2567 (statements by Representative Molaro). Representative Molaro was also a chief co-sponsor of HB 2567.

According to the legislative debate regarding HB 2567, it seems clear that the intention of the added sentence was to prevent the adversarial party from being surprised with a new or different argument made while at the Board. However, no one

stated during debate that a particular box must be checked on a particular form for an argument to be properly before the Board.

Based on the foregoing discussion, the Board finds that Section 16-180 was to avoid a surprise argument. Thus, it appears the word "petition" as used in Section 16-180 may include everything submitted by the appellant, since everything would be available to the board of review, and it could prepare a proper defense based on the appeal form, brief, evidence, or any other documentation submitted by the appellant. With the ability to prepare a proper defense, the board of review can hardly say it was surprised at hearing by the recent sale argument made by the appellant.

The appellant raised the recent sale argument in the petition. Furthermore, the board of review reported the sale of the subject on its grid sheet. In essence, not only was the board of review made aware of the recent sale of the subject through the appellant's submission, it acknowledged the sale in its own pleadings. Therefore, the Board finds that the recent sale argument is properly before the Board even though the appellant did not check the "Recent Sale" box in Section II(2d) of the Board's Residential Appeal form.

The Board finds the best evidence of market value to be the undisputed purchase of the subject property in January 2011 for a price of $850,000. The appellant testified that the sale had the elements of an arm's length transaction, including disclosing that the parties to the transaction were not related, that the property was sold using a Realtor, and that it was advertised for sale on the open market for approximately seven month with a listing on the MLS. In further support of the transaction, the appellant submitted the settlement statement. The Board finds the purchase price is below the market value reflected by the assessment. The Board finds 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 was reflective of market value. Based on this record the Board finds the subject property had a market value of $850,000 as of January 1, 2013. Since market value has been determined the 2013 three year average median level of assessment for class 2 property of 10.06% as determined by the Illinois Department of Revenue shall apply. 86 Ill.Admin.Code §1910.50(c)(2).

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

Acting 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: November 20, 2015

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.