FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Deena Bernett
DOCKET NO.: 15-20348.001-R-1
PARCEL NO.: 16-30-116-032-0000

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

LAND:	$ 3,809
IMPR.:	$10,059
TOTAL:	$13,868

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 2015 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 102-year old. two-story, frame, multi-family dwelling with 1,584 square feet of living area. Features of the home include a two-car garage. The property has a 4,762 square foot site and is located in Berwyn Township, Cook County. The subject is classified as a class 2, residential 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 $118,000 as of May 21, 2014. The appraisal indicated that the property is tenant-occupied, while developing the income and sales comparison approaches to value. As to the subject's condition, the appraisal stated that it was of average condition with regular maintenance and updating. Numerous photographs of the exterior and interior were also submitted as well as a building schematic reflecting the subject's estimated living area.

In addition, the appellant's pleadings reflect limited data on the subject's purchase in May, 2014 for a price of $100,000. The data indicated that the sale was not between related parties and that the property was advertised for sale on the open market. At hearing, the appellant, Deena Bernett, testified that the sale was a short sale. The pleadings requested a total assessment of $9,500 for the subject property.

Moreover, at hearing, the appellant called her husband, Mr. Newton, as a witness. He testified that he is not on the title of the subject, but that his wife had purchased the property in May, 2014. He stated that the purchase price was in error and should reflect a $5,000 adjustment to the sale price; however, he could not point to any documents supporting that statement. He also asserted that the sale price did not take into consideration the condition of the subject property. He then testified that he and his wife had a pre-existing relationship with the bank which had been trying to sell the subject property for some period of time and had been unable to do so. He indicated that his wife did not have a real estate broker representing them in the purchase of the subject, but that the bank had a real estate broker as a representative. She affirmed this statement.

On cross examination, the appellant and her husband stated that at the time of purchase that the subject was tenant-occupied and remains so as of this hearing date.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $13,868. The subject's assessment reflects a market value of $138,680 or $87.55 per square foot of living area, including land, when applying the 10% level of assessment for class 2 property under the Cook County Real Property Assessment Classification Ordinance.

In support of its contention of the correct assessment, the board of review submitted assessment and sales data on four suggested comparables. The properties were improved with a one-story, one and one-half story, or two-story dwelling of masonry exterior construction as well as basement area. They ranged in age from 60 to 89 years and in building size from 1,786 to 2,280 square feet of building area. The properties sold from October, 2014, to September, 2015, for prices that ranged from $98.99 to $139.30 per square foot of building area.

The board of review also submitted a brief with attachments asserting that the subject's sales was a short sale; and therefore, not reflective of the market.

At hearing, the board of review's representative rested on the written evidence submissions. On cross examination, he testified that he had no personal knowledge of the board's properties location or the nature of 'subarea' on the board's grid sheet. Further, he stated that the board's properties contained masonry exterior construction with basement area, while the subject had frame construction while sited on a slab. As to property #2, he indicated that this property contained a younger improvement with three apartments, while the subject contained only two apartments.

Further, the board of review made a hearsay objection to the appellant's appraisal report specifically the conclusions and adjustments reflected therein due to the absence of the appraiser to testify regarding the methodology used in preparation of the report.

The appellant's written rebuttal included: an 11-page building inspection dated April 22, 2014 identifying numerous, serious flaws in the subject's interior and exterior condition; a copy of the settlement agreement for the subject's May 30, 2014 purchase; a second copy of the previously submitted appraisal report; and a brief outlining the lack of comparability of the board of review's properties compared to the subject. In addition, new evidence in the form of the subject's settlement statement was submitted.

Further, the appellant testified that the board of review's properties contained upgraded amenities and/or that the building's that had been rehabbed per her review of the real estate multiple listing website.

Conclusion of Law

Initially, the Board's official rules indicate that:

Rebuttal evidence shall not consist of new evidence such as an appraisal of newly discovered comparable properties. A party to the appeal shall be precluded from submitting its own case in chief in the guise of rebuttal evidence. 86 Ill.AdminCode Section 1910.66(c).

Therefore, the Board is barred from giving any weight to the settlement statement submitted in the appellant's rebuttal evidence.

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 determining the fair market value of the subject property, the Board looks to the evidence presented by the parties. As to the minimal sales data of the subject as well as the appellant and her witness's testimony, the Board finds that the tenant-occupied, subject's sale in May, 2014 was neither an arm's length transaction nor a market value sale. The undisputed evidence reflects that: there was a pre-existing relationship between the buyer and seller; the property was not advertised on the open market; the buyer was not represented by a real estate broker; and the subject was a short sale.

A "compulsory sale" is defined as

> (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.

35 ILCS 200/1-23. Real property in Illinois must be assessed at its fair cash value, which can only be estimated absent any compulsion on either party.

> Illinois law requires that all real property be valued at its fair cash value, estimated at the price it would bring at a fair voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is likewise ready, willing, and able to buy, but is not forced to do so.

Board of Educ. of Meridian Community Unit School Dist. No. 223 v. Illinois Property Tax Appeal Board, 961 N.E.2d 794, 802, 356 Ill.Dec. 405, 413 (2d Dist. 2011) (citing Chrysler Corp. v. Illinois Property Tax Appeal Board, 69 Ill.App.3d 207, 211, 387 N.E.2d 351 (2d Dist. 1979)).

However, the Illinois General Assembly recently provided very clear guidance for the Board with regards to compulsory sales. Section 16-183 of the Illinois Property Tax Code states as follows:

> 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.

35 ILCS 200/16-183. Therefore, the Board is statutorily required to consider the compulsory sales of comparable properties.

Moreover, the appellant submitted a small residential income property appraisal report that included five sales properties, one sale listing as well as three income properties. However, the appellant's appraiser or preparer was not present at hearing to testify as to his qualifications, identify his work, testify about the contents of the evidence, the conclusions or be cross-examined by the board of review and the Board.

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 appellate court found the appraisal to be hearsay that did not come within any exception to the hearsay rule, thus inadmissible against the defendant, and the circuit court erred in admitting the appraisal into evidence. Id.

In Jackson v. Board of Review of the Department of Labor, 105 Ill.2d 501, 475 N.E.2d 879, 86 Ill.Dec. 500 (1985), the Supreme Court of Illinois held that the hearsay evidence rule applies to the administrative proceedings under the Unemployment Insurance Act. The court stated,

however, hearsay evidence that is admitted without objection may be considered by the administrative body and by the courts on review. Jackson 105 Ill.2d at 509. In the instant case, the board of review has objected to the appraisal's adjustments and conclusions as hearsay. Therefore, the Board finds the appraisal hearsay and the adjustments and conclusions of value are given no weight. However, the Board will consider the raw sales data submitted by the parties.

In totality, the parties submitted raw, unadjusted sales data on 9 suggested comparables. The Board finds most probative appellant's sales #1, #2 and #6 as well as the board of review's sale #1. The four sales were improved with a frame or masonry, multi-family dwelling with two apartments, therein. They ranged in age from 64 to 104 years and in building size from 1,467 to 1,786 square feet of living area. They sold from February, 2012, to September, 2015, for unadjusted prices ranging from $76.87 to $98.99 per square foot of living area. In comparison, the appellant’s assessment reflects a market value of $87.55 per square foot of living area which is within the range established by the sale comparables. After considering adjustments and the differences in the comparables when compared to the subject, the Board finds the tenant-occupied, subject's per square foot assessment is supported and a reduction is not 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. Pursuant to Section 1910.50(b) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.50(b)) the proceeding before the Property Tax Appeal Board is terminated when the decision is rendered. The Property Tax Appeal Board does not require any motion or request for reconsideration.

Chairman

Member

Acting 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: January 16, 2018

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 or years of the same general assessment period, as provided in Sections 9-125 through 9-225, 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 such subsequent year or years 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 OR YEARS. A separate petition and evidence must be filed for each of the remaining years of the general assessment period.

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.

PARTIES OF RECORD

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