



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

APPELLANT: James Zierdt
DOCKET NO.: 17-27509.001-R-1
PARCEL NO.: 18-05-315-028-0000

The parties of record before the Property Tax Appeal Board are James Zierdt, 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 **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: \$ 5,670
IMPR.: \$ 58,015
TOTAL: \$ 63,685

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 2017 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 frame construction with 2,667 square feet of living area. The dwelling is 50 years old. Features of the home include a full unfinished basement, central air conditioning, a fireplace, and a two-car garage. The property has a 8,724 square foot site, and is located in Western Springs, Lyons Township, Cook County. The subject is classified as a class 2-78 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 evidence disclosing the subject property was purchased on January 11, 2016 for a price of \$636,850, or \$238.79 per square foot of living area, including land. Based on this evidence, the appellant requested a reduction in the subject's assessment to 10.00% of the sale price.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$78,986. The subject's assessment reflects a market value of \$789,860, or \$296.16 per square foot of living area, including land, when applying the 2017 statutory level of assessment for class 2 property of 10.00% under the Cook County Real Property Assessment Classification Ordinance.

In support of its contention of the correct assessment, the board of review submitted information on four equity comparables and four sale comparables. These comparables sold between August 2015 and October 2016 for \$710,000 to \$1,120,000, or \$315.88 to \$468.42 per square foot of living area, including land. The board of review also submitted a supplemental brief arguing that the sale of the subject was a compulsory sale, and therefore, the sale was not an arm's length transaction and the sale price does not represent the subject's fair cash value. In support of this argument, the board of review submitted a printout from the Cook County Recorder of Deeds' website showing that Wells Fargo Bank filed a *lis pendens* on the subject on September 6, 2012, that the Judicial Sales Corporation conveyed the subject to Right Residential II – Fund 3, LLC via a deed filed on August 5, 2015, and that Right Residential II – Fund 3, LLC conveyed the subject to the appellant via a warranty deed filed on January 26, 2016. The board of review also submitted a copy of FirstMerit Bank N.A. v. Bridgeview Bank, 2017 IL App (2d) 150364-U. The board of review asserts that this case stands for the proposition that:

[w]here the plaintiff in the foreclosure action is the high bidder at the judicial sale of the foreclosed property, the transaction is not an arm's-length transaction. Thus, although the price paid by a willing buyer to a willing seller is generally a sound indication of an item's value when the sale is at arm's length—see Walsh v. Property Tax Appeal Board, 181 Ill.2d 228, 230 (1998)—it would be error to use this measure in a situation in which the plaintiff controlled both the offer and the acceptance and thus could set any price it liked.

Id. at ¶ 39.

In rebuttal, the appellant argued that the sale of the subject in January 2016 for \$636,850 was an arm's length transaction. In support of this argument, the appellant submitted an appraisal estimating the subject property had a market value of \$640,000 as of November 24, 2015. The appraiser utilized the cost approach and the sales comparison approach to value in estimating the subject's market value. The sales comparison approach to value utilized four sale comparables and two sale listings. The four sale comparables sold between March 2015 and August 2105 for \$585,000 and \$677,500, or \$203.05 and \$318.00 per square foot of living area, including land. The appraisal states that the subject is owner occupied. The appellant also submitted the residential real estate contract for the sale of the subject.

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

Initially, the Board finds that it cannot consider the market value conclusions found in the appraisal that was submitted by the appellant in rebuttal. "Rebuttal evidence shall not consist of new evidence such as an appraisal or 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.Admin.Code §1910.65(c). However, it is clear from the appellant's rebuttal cover letter that this evidence was submitted to rebut the board of review's argument that the sale of the subject was not an arm's length transaction. Therefore, to the extent that this evidence does rebut the board of review's argument, the Board will consider such evidence for the limited purpose of determining whether the sale of the subject was an arm's length transaction.

The Board finds that the sale of the subject in January 2016 for \$636,850 was a "compulsory 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. The Board finds that the sale of the subject in January 2016 is a compulsory sale, in the form of a foreclosure, based on the printout from the Cook County Recorder of Deeds' website submitted by the board of review.

The board of review argues that since the sale was a compulsory sale, it is not an arm's-length transaction. The board of review cites FirstMerit Bank in support of this assertion. The board of review also submitted four sale comparables to show that the subject's purchase price was below its fair market value, and, therefore, the transaction was not arm's-length. The appellant submitted the appraisal and residential real estate sale contract to rebut the board of review's argument.

The Board finds that the board of review's reliance on FirstMerit Bank is misplaced. Initially, the Board notes that this case is an unpublished decision that was filed subject to Illinois Supreme Court Rule 23(e), which states that unpublished decisions are "not precedential and may not be cited by any party except to support contentions of double jeopardy, *res judicata*, collateral estoppel or law of the case." None of these exceptions are relevant in this appeal, and, therefore, this case is not binding on the Board. Nor should it have been cited by the board of review.

Nevertheless, FirstMerit Bank is factually distinguishable from the instant case. In that case, the mortgagor defaulted on the mortgage, and the mortgagee commenced foreclosure proceedings, resulting in the mortgagee purchasing the mortgaged property at a sheriff's sale. FirstMerit Bank at ¶¶ 4-5, 7, 21. On appeal, the mortgagor argued, *inter alia*, that, in determining the deficiency

owed by the mortgagor, the trial court used the purchase price at the sheriff's sale in determining the mortgaged property's value. Id. at 38. The court then pronounced that:

[w]here the plaintiff in the foreclosure action is the high bidder at the judicial sale of the foreclosed property, the transaction is not an arm's-length transaction. Thus, although the price paid by a willing buyer to a willing seller is generally a sound indication of an item's value when the sale is at arm's length—see Walsh v. Property Tax Appeal Board, 181 Ill.2d 228, 230 (1998)—it would be error to use this measure in a situation in which the plaintiff controlled both the offer and the acceptance and thus could set any price it liked.

Id. at 39. Unlike the mortgagor in FirstMerit Bank, the sale price at the sheriff's sale is not the sale price relied upon by the appellant in the instant case. The appellant, instead, relies upon the sale price from the sale subsequent to the sheriff's sale. It is the sheriff's sale that the court found to be not at arm's-length, and not the subsequent sale, which the appellant relies upon. Thus, even if FirstMerit Bank were precedential authority, it is factually distinguishable from the instant case.

The board of review also submitted four sale comparables to show that the subject's sale price was below its fair market value, and, thus, was not an arm's length transaction. The appellant submitted the appraisal and residential real estate sale contract to rebut the board of review's argument.

In Calumet Transfer LLC v. Property Tax Appeal, Bd., 401 Ill.App.3d 652 (1st Dist. 2010), the court upheld the Board's decision, wherein the Board allowed the intervenor to challenge the arm's-length nature of the sale of the property, through the submission of sale comparables, pursuant to Section 1910.65(c)(4) of the Official Rules of the Property Tax Appeal Board. Calumet Transfer, 401 Ill.App.3d at 655-56; 86 Ill.Admin.Code § 1910.65(c)(4) (“[p]roof of the market value of the subject property may consist of the following: 4) documentation of not fewer than three recent sales of suggested comparable properties together with documentation of the similarity, proximity and lack of distinguishing characteristics of the sales comparables to the subject property.”). Like the board of review here, the intervenor in Calumet Transfer argued that the seller was under duress to sell the property, and therefore, the purchase price was below fair market value as evidenced by the comparable sales. Id. at 656. The court stated that, “There is no provision in the Property Tax Code that restricts [the Board's] authority to consider such evidence. To the contrary, paragraph (4) of section 1910.65(c) specifically allows evidence of comparable property sales to prove fair market value.” Id. Thus, based on Calumet Transfer, the Board may consider the sale comparables submitted by the parties to determine whether the sale of the subject was an arm's length transaction at its fair market value.

In the instant appeal, the appellant submitted information on four sale comparables (found in the sales comparison approach in the appraisal), and the board of review submitted information on four sale comparables. The Board finds appellant comparables #2, #3, and #4 found in the sales comparison approach in the appraisal, and board of review comparables #3 and #4 to be most similar to the subject. These comparables sold for prices ranging from \$203.05 to \$468.42 per square foot of living area, including land. The subject's sale price reflects a market value of \$238.79 per square foot of living area, including land, which is within the range established by

the best comparables in this record. Therefore, the Board finds that the sale of the subject in January 2016 for \$636,850 was an arm's length transaction and at the subject's fair market value, and that this sale represents the best evidence of market value for the subject. 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. Based on this record the Board finds the subject property had a market value of \$636,850 as of January 1, 2017. Since market value has been determined the 2017 statutory level of assessment for class 2 property under the Cook County Real Property Assessment Classification Ordinance of 10.00% 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. Pursuant to Section 1910.50(d) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.50(d)) 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

Member



Member

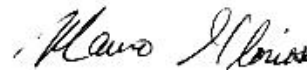
Member

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: June 18, 2019



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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