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Florida Cost of Sale Adjustment Challenged

By Bill Coleman, Orlando

Florida real property is assigned a fair market value for tax assessment purposes based on the perspective of the seller in an arm's length transaction. Therefore, costs of sale items such as real estate commissions, appraisals, financing, and attorney fees are customarily deducted from a property's appraised value. The practice is universally followed by property appraisers throughout the state.

In a series of legal actions, Bay County Property Appraiser Dan Sowell has disputed the cost of sale reduction. The case, *Sowell v. Bay County VAB, Bay Co Cir Ct Case No.2015-1152-CP*, is awaiting trial as the region recovers from the devastation of Hurricane Michael.

"All eyes will be watching the results of this trial," explained Ben Phipps, CMI and Special Counsel to the Bay County Value Adjustment Board. "The law has been challenged in many forms the past couple of decades but has been repeatedly upheld."

CASE BACKGROUND

In 2012, 19 property owners in Bay County, Florida were granted a 15% assessment reduction for cost of sale under [Florida Statute 193.011 \(1\) \(8\)](#). The statute allows for a deduction of the usual and reasonable items paid in the sale of a property.

Claiming that the 15% deduction represented an unfair loss of tax revenue, Sowell went before the local VAB to contest its recommendations. At the time, Sowell was quoted as saying, "I'm sure every property owner in the county would like to have an additional 15% reduction. It's just not fair that these 19 were granted. We are simply asking that the 15% be reinstated, and they will be back-taxed for the difference."

The VAB refuted Sowell's claim and stood by the 15% cost of sale reduction, which led the appraiser to file a written assertion against the VAB with the Florida Department of Revenue (FDOR). The FDOR responded saying there was no probable cause that

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the VAB had been in “consistent and continuous violation” of the law so the property appraiser would not be authorized to file suit.

Sowell then filed a notice of appeal within 30 days of the issuance of the probable cause review and ultimately took his case to the District Court of Appeals, which ordered the FDOR to find the requisite probable cause so that the appraiser could take the matter up with the VAB in court.

COST OF SALE IS ONE PIECE OF THE PUZZLE

The defending argument in the case is that the cost of sale reduction is Florida law and not really different than what every property appraiser does to determine assessed value. It’s just one piece of the puzzle.

The same due diligence process occurs when a special magistrate or judge makes a determination that an assessed value is incorrect; they go back through all the steps to arrive at market value and if there is a cost of sale, the deduction is applied. Similarly, when the Department of Revenue conducts a compliance audit, adjustments for cost of sale are derived from an assessment ratio that samples different property types and a thorough examination of sales prices the previous year compared with assessed values.

Some authorities believe the 15% figure is unrealistically high and advocate for a more modest cost of sale reduction. That’s why some counties use a smaller percentage like 12%. “Whichever number is used, it’s applied to all properties within a county and therefore meets the test of fairness. It’s an apples-to-apples comparison,” Phipps said. “If one individual in Bay County is successful in getting the courts to agree with his argument that the cost of sale adjustment is illegal, it could have major ramifications statewide.”