



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

APPELLANT: Joseph Perrotta
DOCKET NO.: 14-00732.001-R-1
PARCEL NO.: 11-12-378-003

The parties of record before the Property Tax Appeal Board are Joseph Perrotta, the appellant, by attorney Laura Godek, of Laura Moore Godek, PC in McHenry, and the Kane 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 **Kane** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$27,983
IMPR.: \$97,004
TOTAL: \$124,987

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 2014 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 frame construction with 3,143 square feet of living area. The dwelling was constructed in 2002. Features of the home include a full unfinished basement, central air conditioning, a fireplace and a three-car garage. The property has a 12,502 square foot site and is located in Geneva, Blackberry Township, Kane County.

The appellant contends the basis of the appeal is a contention of law. In support of this argument the appellant through legal counsel submitted a brief outlining the legal issue and statutory citations along with an unsworn Affidavit executed by the appellant and additional documentation concerning the assessments of the property for tax years 2013 and 2014 along with a chart of equalization factors in Kane County.

The appellant contends that the subject's assessment for the 2013 tax year was reduced to \$124,987 by the Kane County Board of Review. A copy of the Notice of Findings issued by the Kane County Board of Review for tax year 2013 was included with the appeal; the document depicts a final total assessment for the subject of \$124,987 with a notation that the reason for change was "revalue per agreement between taxpayer and assessor." The Notice was dated February 13, 2014.

The appellant further asserted the subject dwelling is an owner occupied residence and reported that for the 2014 tax year Blackberry Township had an equalization factor of 1.00. A copy of the equalization factors issued in Kane County was provided with the appeal. Through counsel, the appellant further asserted that tax years 2013 and 2014 are within the same general assessment period (see 35 ILCS 200/9-215).

In the brief, the appellant further stated that there have been no substantial changes to the subject property from January 1, 2013 to January 1, 2014. Additionally, it was asserted that there has been no subsequent sale of the property and that the 2013 tax year decision of the Kane County Board of Review had not been reversed or modified. A copy of the Notice of Revised Assessment for tax year 2014 dated July 15, 2014 regarding the subject property was provided with the appeal; the document depicts a 2014 equalized assessed value of \$128,881 with the reason for assessment change stated as "revalue." After an appeal by the appellant of this revised assessment notice, the Kane County Board of Review issued its Notice of Findings on January 28, 2015 determining the subject's total assessment to be \$128,881.

Pursuant to Section 16-80 of the Property Tax Code (35 ILCS 200/16-80) the appellant argued that the decision of the Kane County Board of Review for the 2013 tax year should have been carried forward to the 2014 tax year subject to the equalization factor of 1.00.

Based upon the foregoing legal argument that the Kane County Board of Review erred by not applying the 2014 Blackberry Township equalization factor to the subject's 2013 tax year decision issued by the Kane County Board of Review, the appellant requested a reduction in the subject's total assessment to \$124,987.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$128,881. The subject's assessment reflects a market value of \$387,146 or \$123.18 per square foot of living area, land included, when using the 2014 three year average median level of assessment for Kane County of 33.29% as determined by the Illinois Department of Revenue.

In response to the appeal and in support of its contention of the correct assessment the board of review through the Blackberry Township Assessor submitted a memorandum, a grid analysis with information on three comparable sales and a grid analysis with "adjustments" to the base building value assessment of the subject and those three comparable sales reflecting the final assessments of each property.

The comparable dwellings consist of two-story homes of frame or brick and frame exterior construction that were of unreported ages. The homes range in size from 2,978 to 3,356 square feet of living area and feature unfinished basements. Two of the dwellings have central air

conditioning. Each dwelling has a fireplace and a garage ranging in size from 653 to 704 square feet of building area. The comparables sold between April 2013 and December 2013 for prices ranging from \$385,000 to \$465,000 or from \$129.28 to \$147.67 per square foot of living area, including land.

In the memorandum, the township assessor reported that he "revalued all residential neighborhoods of the Mill Creek subdivision for 2014." As a consequence, the township assessor revalued the subject property. In Attachment A.2 submitted by the township assessor, the Board finds that the subject and each of three comparable sales have differing downward adjustments identified under the category of "neighborhood factor"; the subject was given a neighborhood factor of .9763 and the comparables have neighborhood factors ranging from .9680 to .9825. The assessor did not explain why the neighborhood factors varied in the cost approach analysis.

The assessor's memorandum continued that, while not an issue to be addressed by the assessor, the assessor provided a copy of a letter previously issued with a similar argument addressed by the Kane County Supervisor of Assessments, Mark Armstrong. In part, this letter asserted that neither the township assessor nor the Supervisor of Assessments were bound by 35 ILCS 200/16-80. Furthermore, in addressing a situation somewhat similar to the assertion of the appellant in this matter, Armstrong wrote the following:

In the specific situation at hand, the 0.9060 equalization factor for the 2012 taxable year that was applied to the property in question was developed under Section 9-210. The equalization referenced in Section 16-80 (a section that solely relates to the Board of Review) is found in Section 16-65. Therefore, the process described in Section 16-80 cannot be held to apply to the equalization process used by the Supervisor of Assessments in Section 9-210.

The letter continues that since the board of review did not value the property at issue nor equalize the value of the property for the tax year at issue, it was Armstrong's opinion that the Kane County Board of Review did not err in failing to apply Section 16-80 of the Property Tax Code. It was the opinion of Armstrong in the letter that Section 16-80 would only apply if a complaint on the property was filed with the board of review by the owner/taxpayer or a taxing body or upon the board of review's own motion (Sections 16-55, 16-25 and 16-30, respectively). If any of those events occurred "then the Board of Review must consider whether 'substantial cause' exists to change the valuation of the property from the prior year." Armstrong further opined in the letter that if the legislature had intended a more broad application, then the provision would not have been restricted to only the Board of Review in Section 16-20.

Additionally as part of the documentary submission made by the township assessor was a Memorandum prepared for the Kane County Board of Review by Armstrong which was dated October 10, 2013. The document specifically addressed Section 16-80 and at pages 2 and 3 noted that if a complaint was filed on homestead property where the board of review lowered the valuation in a prior year which decision has not been modified upon review and there is no intervening general assessment year then "**the Board of Review cannot alter the prior decision's valuation, except by equalization, UNLESS there is 'substantial' evidence to do so.**" (Emphasis added.)

In the memorandum, Armstrong proceeds to opine that such "substantial evidence" being limited to only the sale of the property is erroneous. Contrasting the language of Section 16-80 with Section 16-185 that applies to proceedings before the Property Tax Appeal Board, he opined that if only an arm's length sale were sufficient cause, the legislature would have used similar wording in Section 16-80. As such, Armstrong concludes that a different result was intended for decisions of the board of review. He additionally opined that if only physical changes (expansion or demolition) were the only bases for "substantial cause," this would similarly be incorrect since there is no language similar to that found in Section 9-180 of the Property Tax Code in Section 16-80.

Based on the foregoing sales evidence, the assessor's revaluation and legal argument, the board of review requested confirmation of the subject's 2014 assessment of \$128,881.

In written rebuttal, counsel for the appellant reiterated the contention that the board of review erred by not applying the 2014 equalization factor for Blackberry Township to the tax year 2013 decision made by the Kane County Board of Review for this owner-occupied dwelling. Counsel argued that the board of review has not provided evidence that "substantial cause" exists to alter the valuation of the subject property, the decision of the Kane County Board of Review was not reversed or modified and there has been no sale of the property. As to the sales data submitted by the board of review, the appellant requested that such evidence be found irrelevant since the appeal was based solely upon a contention of law.

Conclusion of Law

The appellant based this appeal upon a contention of law that the subject's 2014 assessment should reflect the subject's 2013 assessment, subject to the Blackberry Township equalization factor of 1.000 applied in tax year 2014. The appellant asserted and the board of review did not refute that the subject's assessment was reduced by the Kane County Board of Review in tax year 2013. In support of the legal argument, the appellant provided a brief and citation to Section 16-80 of the Property Tax Code (35 ILCS 200/16-80). Section 10-15 of the Illinois Administrative Procedure Act (5-ILCS 100/10-15) provides:

Standard of proof. Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence.

The rules of the Property Tax Appeal Board are silent with respect to the burden of proof associated with an argument founded on a contention of law. See 86 Ill.Admin.Code §1910.63. The Property Tax Appeal Board is mandated to determine "the correct assessment of the property which is the subject of an appeal." (35 ILCS 200/16-180) In this matter, the appellant contends that the correct assessment is derived from applying Section 16-80 of the Property Tax Code (35 ILCS 200/16-80) which the appellant contends was not properly applied by the Kane County Board of Review to the subject property.

Section 16-80 of the Property Tax Code (35 ILCS 200/16-80) states in relevant part:

Reduced assessment of homestead property. In any county with fewer than 3,000,000 inhabitants, if the board of review lowers the assessment of a particular parcel on which a residence occupied by the owner is situated, the reduced assessment, subject to equalization, shall remain in effect for the remainder of the general assessment period as provided in Sections 9-215 through 9-225, unless the taxpayer, county assessor, or other interested party can show substantial cause why the reduced assessment should not remain in effect, or unless the decision of the board is reversed or modified upon review.

The general assessment years for Kane County are based upon Section 9-215 of the Property Tax Code (35 ILCS 200/9-215):

General assessment years; counties of less than 3,000,000. Except as provided in Sections 9-220 and 9-225, in counties having the township form of government and with less than 3,000,000 inhabitants, the general assessment years shall be 1995 and every fourth year thereafter. In counties having the commission form of government and less than 3,000,000 inhabitants, the general assessment years shall be 1994 and every fourth year thereafter.

There is no dispute on this record that tax years 2013 and 2014 are within the same general assessment period in Kane County in accordance with the foregoing provision.

For this 2014 assessment appeal before the Property Tax Appeal Board, the appellant included a copy of the Notice of Findings issued by the Kane County Board of Review for tax year 2014. This document sets forth the "Assessed value prior [to] Board of Review action," the "Assessed value after Board of Review action" and the "Assessed value after Board of Review equalization." Each of these respective columns for assessment data reflect unchanged land, improvement and total assessments with a total assessment for the subject property of \$128,881. Therefore, it is evident that the board of review did not apply its own equalization factor to the subject's assessment (see 35 ILCS 200/16-65). The Notice of Findings also sets forth the reason for change issued by the Kane County Board of Review as "confirmed based on evidence submitted." There is no assertion in the record whether the data for revaluing the subject property as provided by the Blackberry Township Assessor was the "evidence submitted" that resulted in the changed 2014 assessment for the subject property.

Based upon Section 9-80 and in the absence of substantial cause, the Property Tax Appeal Board finds the board of review is bound to its decision issued for the 2013 assessment year of the subject property, subject only to equalization.

While the phrase "substantial cause" is used in the Property Tax Code, neither the Code itself nor case law/court decisions have rendered a standard or definition for what constitutes substantial cause as stated in Section 9-80. On this record, while it is not explicitly stated, the Board has presumed that the Kane County Board of Review contends that the revaluation by the Blackberry Township Assessor of "the Mill Creek subdivision for 2014" was substantial cause to alter the subject's assessment for tax year 2014.

In light of the record, the Property Tax Appeal Board has closely examined the three comparable sales presented by the board of review. The Board finds that the comparables have varying degrees of similarity to the subject property. It is also noted that the assessor's grid analysis reports that the subject property was purchased in July 2012 for a price of \$375,000, a date approximately one and one-half years prior to the assessment date at issue of January 1, 2014. Moreover, the Board finds that the recent purchase price was below the sales prices of the three comparables, but the subject's 2014 assessment as determined by the township assessor falls in the middle of the assessments of the comparable properties. On this record, the Property Tax Appeal Board finds that the sales do not support a revaluation of the subject property and therefore do not present "substantial cause" to not maintain the reduced assessment of the subject property as previously rendered by the Kane County Board of Review.

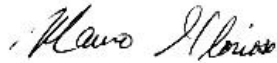
Moreover, to address one of the points of the Armstrong memorandum, asserting that Section 16-80 concerns the application of equalization by the board of review as called for within Section 16-65 of the Property Tax Code (35 ILCS 200/16-65), the Property Tax Appeal Board finds no merit whatsoever to this argument. As noted by Armstrong in his discussion, there is a somewhat parallel statutory provision under procedures established for the Property Tax Appeal Board in Section 16-185 (35 LCS 200/16-185). When applying Section 16-185 to maintain the prior assessment decision issued by the Property Tax Appeal Board for owner-occupied property, "subject to equalization," the Property Tax Appeal Board for such properties located in Kane County always applies the equalization issued by the Supervisor of Assessments for the applicable township as determined by Armstrong which he established in accordance with Section 9-210 (35 ILCS 200/9-210). The Property Tax Appeal Board has not sought out nor been supplied with an equalization factor that was issued by the Kane County Board of Review in accordance with Section 16-65 of the Property Tax Code.

In addition, as part of the appeal, the appellant asserted that no substantial changes had occurred to the subject property to justify an increase in assessment from January 1, 2013 to January 1, 2014. The Board finds that the board of review did not refute this factual assertion in any substantive manner beyond the township assessor's "revaluation" of the subdivision. The Property Tax Appeal Board further finds that Section 16-80 would become meaningless if all that were necessary for "substantial cause" were the assessor's decision to "revalue" an area.

The documentation filed by the appellant reflects that the subject's 2013 assessment was \$124,987 and increased in 2014 to \$128,881. The Board finds that the board of review also did not refute this factual assertion of the appellant's argument or otherwise, as previously discussed, show substantial cause why the reduced assessment should not remain in effect, subject to equalization. The record depicts a 1.0000 equalization factor was applied in Blackberry Township in 2014 and the board of review also did not dispute this factual assertion.

Based on the above facts and argument, the Property Tax Appeal Board finds a reduction in the subject's assessment is warranted to reflect the subject's 2013 assessment of \$124,987 with application of the Blackberry Township equalization factor of 1.0000.

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

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: July 22, 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.