



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

APPELLANT: Jeff & Chris Kowalkowski
DOCKET NO.: 15-05881.001-R-1
PARCEL NO.: 05-10-405-007

The parties of record before the Property Tax Appeal Board are Jeff & Chris Kowalkowski, the appellants, by attorney Jeffrey N. Kowalkowski, of Lanphier & Kowalkowski in Elmhurst; and the DuPage 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 **DuPage** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$26,830
IMPR.: \$57,600
TOTAL: \$84,430

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellants timely filed the appeal from a decision of the DuPage 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 one-story ranch dwelling of frame construction with 1,270 square feet of living area. The dwelling was constructed in 1955. Features of the home include a partial unfinished basement, a fireplace and a 238 square foot garage. The property has a 9,000 square foot site and is located in Glen Ellyn, Milton Township, DuPage County.

Appellant/Attorney, Jeffrey Kowalkowski, appeared before the Property Tax Appeal Board on behalf of both appellants, contending as a matter of law that section 10-20 of the Property Tax Code (35 ILCS 200/10-20) regarding repairs and maintenance of residential property applied to the subject improvement as an exemption from increasing the subject's assessment during a general reassessment period for the 2015 tax year. In support of this argument the appellants submitted a Memorandum of Law, a March 16, 1998 18th Judicial Circuit Court Order (Appellants' Exhibit "A-1") and a partial transcript (Appellant Exhibit "A18 – A21"), statutory

language and a 2015 Change of Assessment Notice issued by the DuPage County Board of Review.

At issue in this appeal is the applicability of section 10-20 of the Property Tax Code which states:

Repairs and maintenance of residential property. Maintenance and repairs to residential property owned and used exclusively for a residential purpose shall not increase the assessed valuation of the property. For purposes of this Section, work shall be deemed repair and maintenance when it (1) does not increase the square footage of improvements and does not materially alter the existing character and condition of the structure but is limited to work performed to prolong the life of the existing improvements or to keep the existing improvements in a well maintained condition; and (2) employs materials, such as those used for roofing or siding, whose value is not greater than the replacement value of the materials being replaced. Maintenance and repairs, as those terms are used in this Section, to property that enhance the overall exterior and interior appearance and quality of a residence by restoring it from a state of disrepair to a standard state of repair do not “materially alter the existing character and condition” of the residence. (35 ILCS 200/10-20).

The Memorandum of Law depicts the subject was purchased in 1994 and substantial repairs and maintenance were conducted on the property at that time. In 1995 the Milton Township assessor reassessed the subject property to its full value in 1995. The appellants appealed the 1995 and 1996 assessment increases based on the repair and maintenance language found in Section 10-20 of the Property Tax Code. The appeals were subsequently denied by both the DuPage County Board of Review and the Property Tax Appeal Board. The appellants then filed a lawsuit in DuPage County, Case Number 97 TX 0006, claiming the board of review and the Property Tax Appeal Board erroneously denied application of Section 10-20 of the Property Tax Code. On March 16, 1998, the circuit court ordered judgment be entered in plaintiffs’ favor and overturned the decisions of the DuPage County Board of Review and the Property Tax Appeal Board. The circuit court order further stated the repair and maintenance exemption (35 ILCS 200/10-20) applied to plaintiffs’ [taxpayers’] property. (Appellants’ Exhibit A-1). The appellants argue the repair and maintenance exemption does not contain a time limitation, and therefore, applies to the subject property as long as the taxpayers reside in the property as their primary residence.

At hearing, Jeffrey Kowalkowski testified that for 2015 the appellants stipulated that the assessment for the subject property is correct, however, the subject property is entitled to a repair and maintenance exemption pursuant to Section 10-20 of the Property Tax Code for repairs and maintenance performed on the subject property in 1995. The appellants agreed the subject property was underassessed at approximately 18% to 20% from 1995 and for the next 20 years in accordance with the court order of 1998. In 2015, the appellants received a Change of Assessment Notice for tax year 2015, from the DuPage County Board of Review based on a general reassessment period in which the subject property was assessed at 100% of its full market value. The appellants argued the repair and maintenance exemption was erroneously not applied to the subject’s 2015 assessment. Appellants further argue Section 10-20 of the Property Tax Code does not contain a time limit in its application, and therefore the circuit court order of 1998 should still be applied to the subject property. Based on this argument, the appellants

request an 18% reduction in the subject's 2015 assessment be reapplied for repair and maintenance that occurred in 1994/1995.

During cross-examination, the appellant agreed section 10-20 of the Property Tax Code does not contain the word "exemption." Appellant further agreed that he drafted the Court Order of 1998 in accordance with the Judge's ruling. The appellant acknowledged the subject's assessment could increase each year, however, the assessment should exempt 18% to 20% of the subject's assessment for the repairs and maintenance to the subject property performed in 1995. Appellant agreed the local assessor assessed the subject property in 2015 at 100% of its full market value during the first year of the general assessment period. The appellant argued the assessment increase from 2014 to 2015 was caused by non-application of the repair and maintenance exemption which the subject was entitled to. The appellant argued the subject's assessment was increased more than the general reassessment increase of the subject's neighborhood of approximately 5%. During questioning, the appellant was unable to provide support for the claim that neighboring comparable properties increased from 2014 to 2015 by approximately 5%. The appellant testified the subject house was purchased in 1994; the roof and siding were replaced, electrical repairs were made, and the plaster ceilings were repaired. The appellant was then ordered by the hearing officer to produce the full transcript of the Court Order of 1998. The appellant responded that he was unable to produce same. Missing from the transcript is any indication of the length of application of the circuit court's order.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$84,430. The subject property has an improvement assessment of \$57,600 or \$45.35 per square foot of living area. In support of its contention of the correct assessment the board of review submitted information on five equity comparables. The comparables were one-story dwellings of frame construction ranging in size from 975 to 1,098 square foot of living area. The comparables were built from 1950 to 1957, had unfinished basements ranging from 975 to 1,098 square feet and one or two-car garages. The comparables had improvement assessments ranging from \$48,640 to \$55,780 or from \$47.02 to \$50.80 per square foot of living area.

The board of review called Mary Cunningham, the Milton Township Deputy Assessor, as its witness. Ms. Cunningham testified that the subject property was reassessed in 2015 based on a mass appraisal method and its assessment of the subject property represents 1/3 of the subject's fair market value. Cunningham testified that properties in the subject's neighborhood, approximately 100 properties, were assessed at 1/3 of their fair market value and any exemptions are then applied after that. Cunningham testified the subject was assessed fairly and uniformly with all other properties in the subject's neighborhood. Cunningham further testified that in 2015 the only exemption applied to the subject property was the residential homestead exemption. No credit was applied for the 1994/1995 repair and maintenance. Cunningham testified the subject is fairly assessed and is actually underassessed for similar type homes in the subject's neighborhood. The general 4-year assessment period in DuPage County began in 2015. (35 ILCS 200/9-215) Her office utilized a mass appraisal process to assess the subject's neighborhood in 2015 based on style, age, size and amenities, and applied this same standard to the subject property. Cunningham testified the subject's 2015 assessment was not based in any way or part on the subject's 1994/1995 repair and maintenance. Cunningham further testified

that some properties in the subject's neighborhood had received an assessment reduction based on structural issues, however, the subject has not requested nor received the same.

During rebuttal, the appellant testified that for 2015 there were no structural deficiencies for the subject property. The appellant testified that the repair and maintenance credit/exemption was removed when the subject was assessed at full market value in 2015 without removing or giving credit for the repairs and maintenance performed in 1994/1995.

Conclusion of Law

The taxpayer contends as a matter of law that Section 10-20 of the Property Tax Code (35 ILCS 200/10-20) applies to the subject property and therefore a reduction in the subject's assessment is applicable in 2015 based on repairs and maintenance performed on the subject property in 1994/1995 in reliance upon a cited circuit court ruling made in 1998.

The appellants appear to also argue equal treatment in the assessment process was improper as a basis of the appeal when the subject should have received an exemption/credit for repairs and maintenance. The rules of the Property Tax Appeal Board states inequity of the assessments must be proved by clear and convincing evidence. 86 Ill.Admin.Code §1910.63(e). Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property. 86 Ill.Admin.Code §1910.65(b). The Board finds the appellants did not meet this burden of proof and a reduction in the subject's assessment is not warranted on this asserted lack of equal treatment.

Section 9-145 of the Property Tax Code states in part:

Statutory level of assessment. Except in counties with more than 200,000 inhabitation which classify property for purposes of taxation, property shall be valued as follows:

- (a) Each tract or lot of property shall be valued at 33 1/3% of its fair cash value.
(35 ILCS 200/9-145)

Section 1-50 of the Property Tax Code states:

Fair cash value. The 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.
(35 ILCS 200/1-50)

Section 1-65 of the Property Tax Code states:

General Assessment. The general assessment of property under Sections 9-215, 9-220 and 9-225. (35 ILCS 200/1-65)

Section 9-215 of the Property Tax Code states:

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. (35 ILCS 200/9-215)

Section 9-155 of the Property Tax Code states in part.

Valuation in general assessment years. On or before June 1 in each general assessment year in all counties with less than 3,000,000 inhabitants, and as soon as he or she reasonably can in each general assessment year in counties with 3,000,000 or more inhabitants, or if any such county is divided into assessment districts as provided in Sections 9-125 through 9-225, as soon as he or she reasonably can in each general assessment year in those districts, the assessor, in person or by deputy, shall actually view and determine as near as practicable the value of each property listed for taxation as of January 1 of that year, or as provided in Section 9-180, and assess the property at 33 1/3% of its fair cash value (35 ILCS 200/9-155)

In Hall v. Property Tax Appeal Board of State of Illinois, 98 Ill.App.3d 824 (3rd Dist. 1981), a case involving Section 10-20 of the Code, the court stated in regards to the provision prohibiting an increase in assessed valuation due to maintenance and repairs that “the burden is on the person claiming the exemption to prove clearly and conclusively that he is entitled to one.” (Id. at 828, citing People ex rel. County Collector v. Hopedale Medical Foundation (1970), 46 Ill.2d 450).

The testimony herein indicates the subject’s assessment reflects the subject’s fair market value per the appellant and is equitable per the township assessor. The deputy assessor testified the subject’s assessed value was not increased in 2015 due to repairs and maintenance, but due to the beginning of the general assessment and is reflective of the property’s fair cash value. As to the repair and maintenance contention, the Board further finds the record is devoid of evidence establishing the subject property was completed with repairs and maintenance immediately prior to the 2015 tax assessment year. The appellant testified herein that in 2015 the subject was not deficient nor in deferred maintenance. The testimony herein by the local deputy assessor indicated the subject, along with the subject’s neighborhood, was reassessed in 2015 at 1/3 of its fair market value utilizing a mass appraisal method taking into account the subject’s design, size, construction and amenities. The appellant is not disputing that the subject’s 2015 assessment is correct reflecting its full market value. However, the appellants assert the subject’s assessment must receive credit of approximately 18% for repairs and maintenance performed on the subject in 1994/1995.

The evidence herein consists of a partial transcript from a 1998 court order which allows the repair and maintenance exemption for 1995/1996, but is missing the language which might have explained how long the exemption was to be applied. The appellants argue the exemption applies for as long as they reside in the subject as their primary residence. The Board finds Section 10-20 of the Property Tax Code (35 ILCS 200/10-20) states in part, “[m]aintenance and

repairs to residential property owned and used exclusively for a residential purpose shall not increase the assessed valuation of the property.” The Board finds the 1998 circuit court order applies the repair and maintenance exemption to the subject’s 1995 and 1996 taxes, but is silent regarding future tax years. The Board finds, based on the above cited case, the appellants must provide clear and conclusive proof that the subject’s 2015 assessment was increased based on repairs and maintenance which the appellants testified were made back in 1994/1995.

The record, on the other hand, depicts the subject’s 2015 assessment increased as a result of the general assessment period which began in 2015. The appellants claim the subject received a 2015 assessment greater than similar type properties within the subject’s neighborhood, however the record does not support this argument. The Change of Assessment Notice depicts the subject’s assessment increased from 2014 to 2015 in the amount of approximately \$4,430. The appellants failed to provide evidence establishing that the assessment increase from 2014 to 2015 of the subject property was greater than similar neighborhood properties from which a comparison could be made. The Board finds nothing in this record depicts the percentage of increase or decrease of assessments for neighboring properties from 2014 to 2015. Therefore, the Board is unable to compare the subject’s assessment increase with similar type properties within the subject’s neighborhood.

The appellant asserted a general assessment increase in 2015 of 5% for neighboring properties, however, the Board finds this claim is unsupported in this record. The 2015 Change of Assessment Notice depicts the subject’s 2015 assessment revision is based on sales occurring between January 1, 2012 to December 31, 2014. Further, the board of review submitted five comparables with features generally similar to the subject. The comparables had improvement assessments ranging from \$47.02 to \$50.80 per square foot of living area. The subject’s improvement assessment was depicted as \$45.35 per square foot of living area, which is below the established range on a per-square-foot basis. The Board finds nothing in this record indicates the subject’s assessment is inequitable when compared to similar dwellings.

Article IX, Section 4(a) of the Illinois Constitution states in relevant part:

- (a) Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law. (Ill.Const.Art.IX §4)

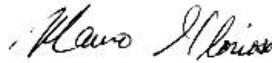
The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. The requirement is satisfied if the intent is evident to adjust the burden with a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly establishing the method of assessing real property in its general operation. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). Although the comparables presented by the board of review disclosed that properties located in the same area are not assessed at identical levels, all that the constitution requires is a practical uniformity, which appears to exist on the basis of the evidence presented.

Exemptions in the Property Tax Code are found in Article 15, section 15-5 thru 15-185. The provision at issue in this appeal, section 10-20 of the Property Tax Code, is found in Article 10,

Division 2 concerning Residential Property. Therefore, it is clear that section 10-20 is not an “exemption” as has been argued by the appellants and the Board does not find any merit in this contention, despite the mis-application of the term in Hall at 829. Section 10-20 is a provision which prohibits an assessing official from increasing a residence’s assessed value for merely maintaining the property to a standard state of repair.

Based on this record, the Board finds the appellants did not demonstrate with clear and convincing evidence that the subject's improvement was inequitably assessed nor establish by a preponderance of the evidence that the subject’s assessment was increased based on repair and maintenance that occurred in 1994/1995 and therefore a reduction in the subject's assessment is not justified.

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: November 20, 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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