

Date: Tuesday, February 3, 2015
Time: 7:10 pm
Place: City Hall

CLAIMS COMMITTEE

- A. CALL TO ORDER & ROLL CALL
- B. CORRECTION OF MINUTES
- C. BUSINESS: OPEN
 - 1. ACT ON CLAIM OF EXCESSIVE ASSESSMENT FROM DAVID DEININGER ON BEHALF OF EMILIE'S HOUSE, LLC

Individual Requesting Item	City Clerk/Director of General Government
Expected Length of Discussion	10 min.

Documents: [Emails from RAE on Deininger Claim.pdf](#)

- D. BUSINESS BY MEMBERS
 - May make brief informative statements or bring up items to be discussed at a future meeting
- E. ADJOURNMENT

Request from persons with disabilities who need assistance to participate in this meeting, including need for an interpreter, materials in alternate formats, or other accommodations, should be made to the Office of the City Clerk at (608) 329-2564 with as much advance notice as possible so that proper arrangements can be made.

Members: Chairperson Louis Armstrong, Michael Boyce, Chris Beer, and Alternate, Richard Thoman

From: [Rex A. Ewald](#)
To: "Carol Stamm"
Cc: ["ryana.apraz@gmail.com"](mailto:ryana.apraz@gmail.com)
Subject: RE: claims of excessive assessment
Date: Wednesday, January 14, 2015 4:29:00 PM

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Carol,

I have researched this as far as I can go. I believe that Mr. Deininger is correct in his interpretation of the case he cited and I also believe that had the circumstances related to this property been presented to the Board of Review [that the sale price was the product of an arms-length transaction that closed on February 28, 2014] the Board would have been compelled to reduce the assessment to the sale price. However, as I indicated in my prior email I believe the validity of Mr. Deininger's claim hinges on the law relating to where the notice of changed assessment must be sent. There was no change of ownership in the case cited by Mr. Deininger. I can find no cases that address this issue under the circumstance presented here.

Any interpretation of a statute must start with the statute itself. In this case the relevant statute is Section 70.365 of the Wisconsin Statutes which reads as follows [emphasis added]:

70.365 Notice of changed assessment. *When the assessor assesses any taxable real property, or any improvements taxed as personal property under s. 77.84 (1), and arrives at a different total than the assessment of it for the previous year, the assessor shall notify the person assessed if the address of the person is known to the assessor, otherwise the occupant of the property. If the assessor determines that land assessed under s. 70.32 (2r) for the previous year is no longer eligible to be assessed under s. 70.32 (2r), and the current classification under s. 70.32 (2) (a) is not undeveloped, agricultural forest, productive forest land, or other, the assessor shall notify the person assessed if the assessor knows the person's address, or otherwise the occupant of the property, that the person assessed may be subject to a conversion charge under s. 74.485. Any notice issued under this section shall be in writing and shall be sent by ordinary mail at least 15 days before the meeting of the board of review or before the meeting of the board of assessors in 1st class cities and in 2nd class cities that have a board of assessors under s. 70.075, except that, in any year in which the taxation district conducts a revaluation under s. 70.05, the notice shall be sent at least 30 days before the meeting of the board of review or board of assessors. The notice shall contain the amount of the changed assessment and the time, date, and place of the meeting of the local board of review or of the board of assessors. However, if the assessment roll is not complete, the notice shall be sent by ordinary mail at least 15 days prior to the date to which the board of review or*

board of assessors has adjourned, except that, in any year in which the taxation district conducts a revaluation under s. 70.05, the notice shall be sent at least 30 days prior to the date to which the board of review or board of assessors has adjourned. The assessor shall attach to the assessment roll a statement that the notices required by this section have been mailed and failure to receive the notice shall not affect the validity of the changed assessment, the resulting changed tax, the procedures of the board of review or of the board of assessors or the enforcement of delinquent taxes by statutory means. After the person assessed or the occupant of the property receives notice under this section, if the assessor changes the assessment as a result of the examination of the rolls as provided in s. 70.45 and the person assessed waives, in writing and on a form prescribed or approved by the department of revenue, the person's right to the notice of the changed assessment under this section, no additional notice is required under this section. The secretary of revenue shall prescribe the form of the notice required under this section. The form shall include information notifying the taxpayer of the procedures to be used to object to the assessment. The form shall also indicate whether the person.

Though I am sympathetic to Mr. Deininger, I believe that the plain meaning of Section 70.365 is clear where it states that "the assessor shall notify the person assessed if the address of the person is known to the assessor, otherwise the occupant of the property." All assessments are made as of January 1. Therefore, in my opinion the person assessed is the person who held title to the property on January 1. The property in question was conveyed to Mr. Deininger's entity, Emilie's House LLC, on February 28, 2014. Assuming that the notice of changed assessment was sent to the owner of record on January 1, 2014 I believe the notice complied with Section 70.365.

I do not know if the record resulting from the February 28, 2014 transfer reached the City's assessor before the notice of changed assessment was mailed. I spoke with a representative from the Wisconsin Department of Revenue who indicated that transfer information is not always processed quickly and it is possible the information had not reached our assessor when notices were mailed. Frankly, I don't believe it is legally relevant if the transfer was known to the assessor. I can imagine the risks inherent with assuming a responsibility to notify someone other than the person to whom the statute directs that notice be sent. The representative I spoke with at the Department of Revenue concurs with my conclusion that Section 70.365 required that the notice be sent to owner of record on January 1.

Though I am quite sympathetic with Mr. Deininger and understand his frustration, I believe that his claim should be denied.

Rex

From: Rex A. Ewald
To: ["Carol Stamm"](#)
Cc: ["ryana.apraz@gmail.com"](mailto:ryana.apraz@gmail.com)
Subject: Deininger Claim based on alledge illegal tax
Date: Friday, January 16, 2015 3:23:00 PM
Attachments: [D28 Deininger Claim - relevant statutes.pdf](#)

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Carol,

I believe that Section 70.10 of the Wisconsin Statutes further supports the interpretation of the law I expressed in my January 14 email. The text of Section 70.10 is included in the attachment. This section requires the assessor to assess all real and personal property as of the close of January 1 of each year. It follows that the person holding title on January 1 is the "person assessed" to whom Section 70.365 requires that the notice of changed assessment be sent.

I understand Mr. Deininger's frustration and how the unique circumstances present in his case fuel that frustration. However, the procedural law appears clear with respect to the assessor's duty and, assuming that the notice was actually sent to the person or entity that held title on January 1, 2014, I believe the assessor complied with the law with respect to Mr. Deininger's property.

Rex

70.10 Assessment, when made, exemption. The assessor shall assess all real and personal property as of the close of January 1 of each year. Except in cities of the 1st class and 2nd class cities that have a board of assessors under s. 70.075, the assessment shall be finally completed before the first Monday in April. All real property conveyed by condemnation or in any other manner to the state, any county, city, village or town by gift, purchase, tax deed or power of eminent domain before January 2 in such year shall not be included in the assessment. Assessment of manufacturing property subject to s. 70.995 shall be made according to that section.

70.365 Notice of changed assessment. When the assessor assesses any taxable real property, or any improvements taxed as personal property under s. 77.84 (1), and arrives at a different total than the assessment of it for the previous year, the assessor shall notify the person assessed if the address of the person is known to the assessor, otherwise the occupant of the property. If the assessor determines that land assessed under s. 70.32 (2r) for the previous year is no longer eligible to be assessed under s. 70.32 (2r), and the current classification under s. 70.32 (2) (a) is not undeveloped, agricultural forest, productive forest land, or other, the assessor shall notify the person assessed if the assessor knows the person's address, or otherwise the occupant of the property, that the person assessed may be subject to a conversion charge under s. 74.485. Any notice issued under this section shall be in writing and shall be sent by ordinary mail at least 15 days before the meeting of the board of review or before the meeting of the board of assessors in 1st class cities and in 2nd class cities that have a board of assessors under s. 70.075, except that, in any year in which the taxation district conducts a revaluation under s. 70.05, the notice shall be sent at least 30 days before the meeting of the board of review or board of assessors. The notice shall contain the amount of the changed assessment and the time, date, and place of the meeting of the local board of review or of the board of assessors. However, if the assessment roll is not complete, the notice shall be sent by ordinary mail at least 15 days prior to the date to which the board of review or board of assessors has adjourned, except that, in any year in which the taxation district conducts a revaluation under s. 70.05, the notice shall be sent at least 30 days prior to the date to which the board of review or board of assessors has adjourned. The assessor shall attach to the assessment roll a statement that the notices required by this section have been mailed and failure to receive the notice shall not affect the validity of the changed assessment, the resulting changed tax, the procedures of the board of review or of the board of assessors or the enforcement of delinquent taxes by statutory means. After the person assessed or the occupant of the property receives notice under this section, if the assessor changes the assessment as a result of the examination of the rolls as provided in s. 70.45 and the person assessed waives, in writing and on a form prescribed or approved by the department of revenue, the person's right to the notice of the changed assessment under this section, no additional notice is required under this section. The secretary of revenue shall prescribe the form of the notice required under this section. The form shall include information notifying the taxpayer of the procedures to be used to object to the assessment. The form shall also indicate whether the person assessed may be subject to a conversion charge under s. 74.485.