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Appealing Real Estate Assessments in Wisconsin

“In this world, nothing can be said to be certain, except death and taxes.” – Benjamin Franklin

In January, property owners in Wisconsin paid all or a significant portion of their real estate taxes for 2013. Although determinations of the 2013 taxes are now complete, the 2014 property tax cycle is just beginning. For property owners interested in appealing their 2014 real estate assessments, this article provides an overview of the real estate taxation process in Wisconsin and opportunities owners have to reduce their property tax obligations.

Distinguishing “Taxes” and “Assessments”

As a preliminary matter, when discussing “tax appeals” we are really talking about an appeal of one’s real property assessment. Real estate taxes are the product of two components, the assessed value of a parcel multiplied by the millage (or “mill”) rate. Both components are determined by the municipality in which the parcel is located. The millage rate—in essence, a fraction derived by dividing the municipality’s budget by the total assessed value of all property in the municipality as of January 1 of that year—is applied uniformly to all parcels in the municipality and may not be appealed. Assessments of individual properties, on the other hand, are appealable.

How the Assessment Is Determined

In establishing a parcel’s assessed value, municipalities will first determine a parcel’s fair market value as of January 1 of each year. In the next step, the municipality may vary the fair market value determination up to 10% (either up or down), to be applied uniformly across all parcels in the jurisdiction.¹ Assessed values, therefore, are the fair market values, as adjusted by this uniform multiplier.

For the most part, a municipal or county assessor determines the fair market value for each parcel.² The assessor uses what has come to be called in Wisconsin as the “Markarian hierarchy,” a progressive series of three analytical approaches to valuation.³ Under that hierarchy, the assessor first determines whether there has been a recent arm’s-length sale

¹This “variance” procedure is the reason why “equalized values” for property are necessary. Since municipalities may assess properties at different percentages of fair market value, the Department of Revenue normalizes such values to equalized values that more accurately reflect fair market value for the purposes of allocating the tax burden across such municipalities (e.g., county property taxes, school taxes, etc.).

²The Wisconsin Department of Revenue determines the assessed value for all parcels used for manufacturing purposes.

³This refers to the case of *State ex rel. Markarian v. City of Cudahy* (45 Wis. 2d 683 (1970)), which synthesized existing laws regarding principles for determining fair market value of property. These principles have more recently been incorporated into the Wisconsin Property Assessment Manual for Wisconsin Assessors, which assessors are required to follow pursuant to Wis. Stats. §70.32(1).

of the parcel at issue; if so, then the assessor must use this sales information to determine fair market value. If there have been no recent sales of the subject parcel, then the assessor must review recent sales of comparable parcels to extrapolate a fair market value determination for the subject parcel. If there are neither recent sales of the subject parcel nor comparable sales available to review, then the assessor may utilize alternative appraisal methods to determine fair market value, including but not limited to the income approach, replacement value, or even construction costs. In the recent case of *Allright Properties, Inc. v. City of Milwaukee*, 767 N.W.2d 570 (Wis. Ct. App. 2009), the court held that, in the third tier of analysis, assessors may use the following factors to determine fair market value: “cost, depreciation, replacement value, income, industrial conditions, location and occupancy, sales of like property, book value, amount of insurance carried, value asserted in a prospectus and appraisals produced by the owner.” *Id.* at 577 (citing a passage from the *Wisconsin Property Assessment Manual for Wisconsin Assessors*).

Except where there has been a recent sale of the actual parcel at issue, each of the methods assessors use to determine fair market value necessarily requires an assessor to exercise some judgment. For example, much discretion is involved in an assessor’s selection of properties that are “comparable” to the subject property. An assessor may use comparable sales data that is too old or fails to take into account certain aspects of the subject property or the underlying sale transactions (e.g., a “friendly” sale between related entities that does not accurately represent fair market value). In such cases, an owner may want to propose alternative “comparables” that better approximate a parcel’s fair market value. Alternatively, a property owner may want to dispute the

income or replacement value analyses used by an assessor in determining fair market value. Other opportunities for disagreement abound.⁴

A parcel’s classification is another factor that may affect assessed value. There are eight recognized property classifications in Wisconsin, which are based upon a parcel’s predominant use.⁵ Each of the property classifications are assessed at their full fair market value, with the exceptions of (i) the “undeveloped” and “agricultural forest” classifications,⁶ which are assessed at 50% of fair market value, (ii) the “agricultural” classification, which is based on the value of the land as used solely for agricultural purposes, and (iii) manufacturing properties (as discussed in additional detail below). If a parcel that would otherwise be classified as “undeveloped”, “agricultural forest” or “agricultural” has been incorrectly classified, the assessed value for such parcels will be overstated.

Contesting the Assessed Value of Real Estate – Starting the Process

From January to March or April of each year, assessors update the assessed values of property for the current tax year. If a parcel’s classification and/or assessed value have changed from the previous year, assessors are required to issue written notices of the assessed values to each property owner, which generally occurs in late April or early May.⁷ Since assessors are not always required to send yearly assessment notices, it is a good idea for property owners that have not received any notices by early May to inquire with the local assessor’s office to verify whether the assessment valuations for the current year have been determined.⁸

Once property owners receive their notices of assessment (or are otherwise made aware of an assessment valuation),

they must act promptly to evaluate an assessment’s accuracy and determine whether it should be contested. Depending upon the municipality in which the parcel at issue is located, deadlines for filing a formal objection vary. Certain municipalities (notably, the City of Milwaukee) have, in addition to a Board of Review (discussed below), a Board of Assessors that receives and acts upon assessment complaints. For municipalities with a Board of Assessors, the deadline to file a written notice of objection (using the Board published form) is the third Monday in May. Most municipalities in Wisconsin do not use a Board of Assessors, but employ only a Board of Review. For such “Board of Review” municipalities, the deadline to file the notice of objection is 48 hours before the first scheduled meeting of the Board of Review in the taxing year. Wisconsin law requires a

⁴Recently, there has been a fair amount of litigation regarding the valuation of property-related intangibles in establishing fair market values (e.g., value of leases in a shopping mall, value of licenses for a landfill).

⁵The recognized property classifications in Wisconsin are: (1) residential, (2) commercial, (3) manufacturing, (4) agricultural, (5) undeveloped, (5) agricultural forest, (6) productive forest land, and (7) other.

⁶The “undeveloped land” classification includes, among other things, bogs, marshes, ponds and land that will not support agricultural purposes. The “agricultural forest” classification is defined narrowly, but includes land that produces or is capable of producing commercial forest products and satisfies a number of other factors.

⁷Please note, however, that a property owner’s failure to receive a notice of assessment will not invalidate the assessment or the obligation to pay taxes.

⁸It is unclear under current law whether a municipality’s failure to provide an assessment notice waives a taxpayer’s obligation to protest the valuation. Under the case of *Reese v. City of Pewaukee*, 642 N.W.2d 596 (Wis. Ct. App. 2002), however, the taxpayers did not have to appear before the Board of Review to pursue a claim for excessive assessment because they did not receive an assessment notice.

Board of Review to first meet within the 30-day window after the second Monday in May. Since there is a short window of time between the notice of assessment and the deadline to formally protest the assessment, taxpayers interested in protesting an assessment must act quickly.

During the period of time between an owner's receipt of an assessment notice and the deadline to file a formal notice of objection, an owner considering a challenge should schedule a meeting with the assessor, on an informal basis, to discuss and review the assessment. Such informal meetings may allow the parties to resolve problems, errors or misunderstandings contained in the assessment without the need for a formal appeal. Owners should first determine what methodology was used by the assessor to determine the valuation of the property at issue. Property owners may be in a better position to present more reliable or up-to-date information than data utilized by the assessor, such as information from any recent sales of the subject property. Similarly, evidence of recent sales of comparable property should be presented to the assessor for consideration. If a property owner has a professionally prepared appraisal of the subject property, it may also be worthwhile to share such appraisal with the assessor. If a property owner elects not to arrange an informal meeting with the assessor, then the owner's options are limited to the formal objection process described below.

Manufacturing Properties in Wisconsin

For assessment purposes, property in the "manufacturing" classification falls under the jurisdiction of a division in the Wisconsin Department of Revenue (WDOR). To encourage manufacturers to locate in Wisconsin, Wisconsin

law provides that any machinery and equipment used in the manufacturing process will be exempt from taxes and not included in the fair market valuation of the property. Although the WDOR determines the assessed values for manufacturing properties, actual taxes are collected by the applicable unit of local government.

Just as with non-manufacturing property, valuations are determined as of January 1 of the current year; however, WDOR bases valuations from site visits and a review of certain manufacturing property report forms, or "M-forms," that manufacturing users must submit to WDOR each year. Notices of assessments are sent by WDOR in June of each year.

Formal Objection Process for Real Estate Assessments

If a municipality has a Board of Assessors, a written notice of objection must be timely filed. The Board of Assessors will review the matter and issue a finding. There are typically no hearings in the Board of Assessors stage. If the owner disagrees with the finding of the Board of Assessors, the owner has the option of continuing the objection process through a hearing before the Board of Review (detailed below).

If a municipality does not have a Board of Assessors, then, to initiate the formal objection process, a written notice of objection must be timely filed with the Board of Review (Board). In most cases, the notice of objection must be completed on the Board's specified forms. It is important for the property owner (or the property owner's representative) to appear at the first meeting of the Board. Once the notice of objection is timely filed, the Board, at its first meeting, will schedule a hearing date to review the objection.⁹

During the objection process, the assessor's opinion of value is presumed

to be correct, and any objecting property owner has the burden of proof to show that such opinion of value is in error. This means that a property owner must prepare and present compelling evidence why the assessment is wrong and affirmatively demonstrate what the assessment should be. The strongest evidence is, of course, a recent arm's-length sale of the subject property. The next best thing is information from recent arm's-length sales of comparable properties. In this regard, a professionally prepared appraisal, while helpful and persuasive, is not absolutely necessary. Moreover, the costs to obtain a professional appraisal must be considered in the context of any potential tax savings that may be achieved through the formal objection process.

At the hearing, the owner goes first and presents its case to the Board. The Board has the right to question and challenge the owner's position and supporting documentation under oath.¹⁰ The assessor goes second, and both the Board and the owner have the opportunity to ask questions and challenge the assessor's conclusions.

After hearing evidence from both sides, the Board will discuss the merits of each position in open session. After discussions are complete, the Board will vote on the matter, also in open session. For an owner to prevail in its objection, a majority of votes is required; if the vote results in a tie, the assessed value is upheld.

⁹Please note, however, that in some smaller communities, the Board, at its first meeting, will take evidence and hear testimony from taxpayers and their representatives in challenge of an assessment. It is always a good idea to contact the municipal's clerk before the Board meeting to understand your community's specific protocol.

¹⁰Accordingly, if a professional appraisal is the basis for the objecting party's evidence, then the appraiser must be present at the hearing to respond to any questions regarding the appraisal.

Contesting Manufacturing Assessments

Property owners that wish to contest their manufacturing assessment must file a formal objection with the WDOR Board of Assessors within 60 days from the date of the notice of assessment. Prior to filing or during the pendency of a formal objection, property owners are encouraged to meet with the applicable WDOR personnel to better understand the basis for the assessment, and, if necessary, provide WDOR with any information or documentation to substantiate the owner’s valuation claims. The Board of Assessors generally meets once a month to review assessment appeals and has until April 1 of the following year to take action with respect to each appeal.

Appealing a Determination by the Board

If the Board upholds the assessor’s determination of assessed value, an objecting property owner may appeal such decision by choosing one of three potential options. First, an owner may commence what is called an “action for certiorari” (in essence, an appeal) with the applicable Circuit Court within 90 days of the Board’s decision. No new evidence may be submitted in this proceeding, and only the evidence presented in the Board proceeding is reviewed for error under a standard of review that heavily favors the Board’s determination. Second, under certain circumstances, the owner may file a notice of appeal with the Department of Revenue within 20 days of the Board’s decision. This second option is not

available if (i) the value of the parcel at issue is in excess of \$1,000,000 and/or (ii) the parcel is located in the City of Milwaukee. The third and final option is filing a claim with the clerk of the applicable municipality for an “excessive assessment.” Such claim must be filed by January 31 of the year in which the taxes are due and payable, and requires, as a prerequisite, that the owner has timely paid the taxes at issue. If the “excessive assessment” claim is disallowed,¹¹ the taxpayer has 90 days within which to commence an action in the applicable Circuit Court. This avenue allows the Circuit Court to decide the issue independently (or “*de novo*”), without deference to the Board’s determination.

Conclusion

The limited opportunity that taxpayers in Wisconsin have to appeal their 2014 real estate assessments will be here shortly. You should watch closely for notice of this year’s assessment. If you feel it is materially overstated, you may wish to contact a member of our Real Estate team to better assess whether the pursuit of such appeals may be advisable.

The information contained herein is based on a summary of legal principles. It is not to be construed as legal advice. Individuals should consult with legal counsel before taking any action based on these principles to ensure their applicability in a given situation.

¹¹Pursuant to Wis. Stats. 74.37(3), a municipality has 90 days to allow or disallow a claim for excessive assessment. If there is no response from the municipality within the 90 day period, the presumption is that the claim is disallowed, and a claimant’s 90 day time period to file a lawsuit commences.

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