

Court Preparation for Assessors

2020 League of WI Municipalities – Assessor's Institute



Reasons for Going to Court

- Property Owner files a Claim or Action under:
- **ss.74.37** – Claim on Excessive Assessment
 - DEFINITION. In this section, a “claim for an excessive assessment” or an “action for an excessive assessment” means a claim or action, respectively, by an aggrieved person to recover that amount of general property tax imposed because the assessment of property was excessive.
- **ss.74.35** – Recovery of Unlawful Taxes
 - DEFINITIONS. In this section “unlawful tax” means a general property tax with respect to which one or more errors specified in s. [74.33 \(1\) \(a\)](#) to [\(f\)](#) were made. “Unlawful tax” does not include a tax in respect to which the alleged defect is solely that the assessor placed a valuation on the property that is excessive.
 - Open issue – Can a taxpayer commence separate actions under §74.37 and §74.35 based on an assessor error overstating building square feet?



Order of Events on ss.74.37

No Waiver of Valuation Hearing

- Objector or Assessor may request or object to waiver
- BOR holds a scheduled (48 hrs. notice) valuation hearing
- BOR makes a valuation determination.
- On or before January 31st of the year in which the tax based upon the contested assessment is due files with the Municipal Clerk a Claim against the municipality.
- Municipality's governing body within 90 days of being served with the Claim accepts or denies the Claim.
- If denied, taxpayer files a Complaint in Circuit Court within 90 days after the Municipality's denial determination.
- Then, within 90 days of filing in Circuit Court the objector must serve upon the municipality the Summons and Complaint.
- Let the Fun begin.....

Waiver Request Granted

- BOR Waives the Objection Hearing (ss.70.47(8m))
- 60 days from the date that the BOR Hearing is waived objector must file a Complaint in Circuit Court
- Then, within 90 days of filing in Circuit Court the objector must serve upon the municipality the Summons and Complaint.
- And again.....Let the Fun begin...



Order of Events on ss.74.35 Exemption Claims

- In this case there is no BOR hearing as the BOR has no authority to decide exemption issues, this can only be done in Circuit Court.
- A Claim under this section must be filed by January 31st of the year in which the tax is due.
- Municipality's governing body within 90 days of being served with the Claim accepts or denies the Claim.
- If denied, taxpayer files a Complaint in Circuit Court within 90 days after the Municipality's denial determination.
- Let the Fun begin.....



Annual Preparation

- Type of Information to Request / Gather
- **Revaluation Year** (whether all commercial properties or identifiable submarkets)
 - Detailed 3-Year Income and Expense and Rent Rolls (Stabilized I&E)
 - Building Costs (if applicable), i.e. AIA G702 (Application and Certificate for Payment)
 - Request copy of the Books and Records of their Assets
 - Commercial Reports / Publications / Sold and For Sale Flyers
 - Research Mortgages – this may lead to a recent appraisal
- **Maintenance Year**
 - Sale Questionnaires – field all sales
 - Income and Expense on Existing Appeals, update New Sales
 - Actual Building Costs (if applicable), i.e. AIA G702 (Application and Certificate for Payment)
 - Commercial Reports / Publications / Sold and For Sale Offerings
 - Research Mortgages – this may lead to a recent appraisal
- **Frequent Flyers**
 - If you have property owners that do not comply with your requests for I&E, request I&E information annually. By doing this you can prevent them from going to BOR.
- **Market Segmentation**
 - Identifying the HBU (Highest and Best Use) in specificity. Consider markets and submarkets. Example -not just generic retail, what type of retail – grocery or home improvement or pharmacy, etc?
 - Gather Marketing and Commercial reports on the more specific sub-markets of commercial properties looking at supply/demand for the use of the property – not the *user*.



Respond to On-line Questions



BREAK – 15 MINS.



Value Preparation



- Types of Documents to include in the Property File
 - All Requests of Information; Emails, Letters, Certified Mail Receipts...
 - Real Estate Transfer Returns and other sales verification
 - I&E Submissions
 - Market Analysis – Establishment of HBU
 - Any Information Provided to you by Owner/Tax Rep Supporting their OPV

- Types of Resource Data to include in the Property File
 - Applicable WPAM excerpts
 - Pertinent Court Decisions
 - SEC Filings
 - Earnings Call Reports

- Valuation Templates
 - I&E Workup and Reconciliation
 - Cost Approach
 - Mass Appraisal Land Conclusions



Production of Documents Through BOR Subpoena

- If no or insufficient information not provided during open book
 - Often times objector only gives assessor information to support their position
- If income/expense information is provided 7 days before 1st meeting of BOR but after open book is over.
 - May want more details if only summary is provided
 - May want to see a copy or copies of leases
 - May want more information on tenant vs. landlord buildout
 - May want more information on CAM or tax reimbursement income



Valuation Template-example

2020 CONFIDENTIAL DATA			
Parcel #	999-9999-99	Tenant Type/Name	Retail
Address	1234 Wauwatosa Ave		Village Promenade
Related Parcel(s)	N/A		
Land SF / AC	30,100	0.69	Acres
NBHD	906		
		HBU	Current Use

Lease Type	Mod Gross	\$/ SF	Rents (Mass)	Actual Rents	Actual \$/ SF
FAST FOOD SF				\$ 436,673	NA
RETAIL (34) SF					NA
OFFICE (82) SF					NA
Gross Area	18,080			\$ 436,673	\$ 24.15

5980 sf	Vacancy %	0	0.00
5750 x 2 = 11500 sf	3 Yr Actual		
600 sf bsmt office	3 Yr Avg Inc	\$ 436,673	
	3 Yr Avg Exp	\$ 85,451	Expense Ratio 19.6%

Income (Mass)		Actual Income	
(Gross) SF	\$ 18,080		
\$/ SF	\$ -		
Gross Income	\$ -	\$ 436,673	
Vacancy & Collection	5%		
Effective Gross	\$ -		
Expenses	15%	\$ 85,451	
Mgt		\$ 21,834	Mgt - 5%
Reserves		\$ 13,100	Reserves - 3% .72/sf
		\$ 316,288	
Tax Rate	0.0220	0.0220	
Base Rate	0.0800	0.0800	
Cap Rate	0.1020	0.1020	
		\$ 3,100,864	\$/ NSF
Rounded		\$ 3,100,900	\$ 171.51

2020 CONFIDENTIAL DATA			
Last Sale	\$ 2,500,000	Valid (Y/N)	Y
Sale Date	2/1/2017		
Income Provided?	Y/N	Y	4/30/2019
Permits = \$\$			
Permit - Date			

Appraisal	Date of Appr	Gross Area
		18,080
Sale of Subject	\$ 2,500,000	
Cost (MS+Land)	\$ 2,242,700	
Reported Cost	0.00	
Income (Mass)	\$ -	
Income (Actual)	\$ 3,100,900	
Reconciliation	\$ 3,100,900	
Value of other parcel	\$ -	
Total of all parcels	\$ 3,100,900	

2020 CONFIDENTIAL DATA	
Parcel #	999-9999-99
Address	1234 Wauwatosa Ave
Related Parcel(s)	N/A

HBU	Lease Type
Current Use	NNN
Other	Gross
Transition	Mod Gross
Dark	Owner Occ

Lease Types

APT (11) SF				
AUTO PARTS/SERVICE (47) SF				
AUTO SHOWROOM/OFC (46) SF				
BAR/LOUNGE/TAV (36) SF				
BASEMENT SF				
BOWLING CTR SF				
CAR WASH (74) SF				
DAYCARE SF				
DISC STORE (33) SF				
DWELLING (27) SF				
FAST FOOD SF				
HEALTHCLUB				
MEZZ OFC SF				
MEZZ STORAGE SF				
MULTI APT (81) SF	2017	2018	2019	
OFC/DWELLING (25) SF	433,971	421,122	454,927	436,673
OFFICE (82) SF				
RESTAURANT (31) SF				
RETAIL (34) SF				
SALES (83) SF				
SERV STATION W/ BAYS (70) SF				
				12,000 mgt fee
	2,223	2,328	2,302	landscape
	5,660	8,065	7,627	snow
	15,229	14,663	3,404	gas-elec
			10,278	gas-elec: offic
STORAGE (84) SF	36,771	33,180	32,741	pkg attendar
SUPERMARKET SF	12,747	13,739	15,998	sewer
SUPPORT (86) SF	75	173	376	fire
WAREHOUSE (45) SF	26	26	26	permits-fees
	1,897	2,273	2,480	insurance
	338	495	6,648	legal
	488	2,557	945	misc
	890	865	939	acctg

1/1/2019 Value	
Calc Land	\$ 1,324,400
Calc Impr	\$ 1,776,500
Calc Total	\$ 3,100,900
	\$/ SF
Rnd Land	\$ 1,324,400 \$ 44.00
Rnd Impr	\$ 1,776,500 \$ 98.26
Rnd Total	\$ 3,100,900 \$ 171.51
Total / Gross Bldg SF	171.51



Discovery When In Circuit Court

- Requests for Responses to Written Interrogatories
 - Signed by assessor
 - Can be overbroad and unduly burdensome
- Requests To Admit
 - Signed by counsel
 - Generally refer to legal issues
- Requests For Production of Documents
 - Asked to provide copies of all documents considered, reviewed or relied upon
 - Cannot require assessor to generate new documents



Integration of Resources and Supporting Assessment in Trial

- Case Law
 - See list of recent court decisions
- State Statutes
- WI Property Assessment Manual
- IAAO Publications and Guidelines
 - IAAO Position Paper on Big Box Valuation
 - IAAO Position paper on Fee Simple
- Expert Appraisers
 - Retained to show assessment is not excessive
- Appraisals



Respond to On-line Questions



BREAK – 15 MINS.



Mock Deposition/Court Hearing

- How to Prepare
- What to Expect
- How to Answer
- Potential Pitfalls and Tips



HOW TO PREPARE

- Review discovery responses provided to taxpayer.
- If no discovery, review the assessment workpapers and PRC.
- Familiarize yourself with the legal issues in the case and how each side is using facts to support their legal position.
- Talk to counsel about perceived strengths and weakness in the case.
(protected by attorney client privilege)



WHAT TO EXPECT

- Trick questions
 - Your deposition transcript will be taken out of context at trial
 - Example – Do you agree with the Manual? Do you agree with the Supreme Court in Walgreen vs. Madison?
- Asking you to answer from memory
 - Insist on seeing the document before answering.
 - Insist on seeing the excerpts from the Manual before answering.
- Incomplete hypotheticals
- Asking the assessor to comment on other assessor's work
- Don't be afraid to say – I don't know or I don't understand the question.



HOW TO ANSWER

- Be wary of:
 - “You would agree with me that ...”
 - “All things being equal” ?
 - “What is the market rent in your community for a big box store?”
- Being forced to provide a yes or no answer when the question does not lend itself to a yes or no response.
- Hypothetical or incomplete hypothetical questions when you do not have enough facts to answer.
- Multiple questions embedded in one question that will distort the response.
- Rendering an opinion of the spot.



TIPS

- Always answer honestly
- Do not lose your temper
- Cooperate to the best of your ability – but if you do not know – say so.
- You are not expected to have all the answers.
- Opposing counsel does not want to be surprised at trial - so do not hold back on pertinent information.
- Do not go off on unrelated tangents.
- Use examples to help illustrate your point.
- Do not go beyond your role as the assessor in providing the factual background about what you looked at and what you did in setting the assessment.



- 1. Which statutory action is used in Court to appeal the determination of property tax exemption?
 - ss.74.37
 - **ss.74.35**
- 2. What municipal department are ss.74.35 or ss.74.37 claims served to?
 - Attorney
 - **Clerk**
- 3. Can the Board of Review make exemption determinations?
 - Yes
 - **No**
- 4. During a maintenance year should income and expense questionnaires be sent to all commercial properties?
 - Yes
 - **No**
- 5. Market segmentation is important to establish a property's
 - **Sale comps**
 - **Highest and Best Use**



- 6. When collecting information in preparing and defending a value, can SEC filings and mortgages be valuable documents to include keep in the property record file?
 - **Yes**
 - No
- 7. When being deposed, is it proper to ask plaintiff's attorney to restate their question?
 - **Yes**
 - No
- 8. A common trap by attorneys during testimony is to agree with them when they state, "You would agree with me if..."
 - **Yes**
 - No
- 9. When testifying, it is always a good idea to ask for actual document(s) to view before replying to a question?
 - **Yes**
 - No
- 10. If a woodchuck could chuck wood, how much would a woodchuck chuck, if a woodchuck could chuck wood?
 - One courtroom bench
 - Two courtroom chairs



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QUESTIONS?????

