



# Boards of Review

## Unsung Heroes in Maintenance of Fair and Equitable Property Taxes in Wisconsin

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Each year, spring brings a mix of showers and sunshine. Much like the weather, property taxes provide a healthy foundation for funding local government services. To ensure the effectiveness of this process, fair and equitable taxation is essential. An avenue to contest assessments is crucial for fairness and equity. In Wisconsin, local Boards of Review (hereinafter BOR) provide that opportunity for property owners.

In municipalities across the state, local citizens and municipal officials prepare to serve on BORs. While members of the board do not have capes or superpowers, these local heroes do provide a vital service in maintaining fair and equitable property taxes in Wisconsin and provide a good example of community involvement.

### Overview

The property owner's right to appeal a property tax assessment is part of their constitutional right to due process.<sup>1</sup> Article I, Section 9 of the Wisconsin Constitution declares that "every person is entitled to a certain remedy in the laws. They ought to obtain justice freely without being obliged to purchase it, promptly and without delay, conformably to the laws." State law, Wis. Stat. § 70.47, provides this process for appeal by creating a local BOR to consider and decide upon property tax assessment appeals. The BOR is a quasi-judicial body responsible for correcting errors on

the assessment roll and administering property tax assessment appeals.

The BOR is responsible for adjusting any assessments proven incorrect as well as correcting any errors in the assessment roll. The BOR's function is not to value property, but to decide whether the assessor's value is correct based on the facts presented to it. The BOR is the first step in the formal appeal process for an individual property owner who protests an assessment. The property owner cannot pursue subsequent avenues of appeal for an individual assessment unless a formal objection has first been made to the BOR.

The BOR has specific statutory duties set forth in Wis. Stat. § 70.47(6) including:

- (1) correcting all description and computation errors in the assessment roll;
- (2) checking the roll for omitted property and for double assessments (omitted property shall be placed on the roll and the owner notified); and
- (3) adjusting assessments when proven incorrect by sworn testimony.

The BOR is responsible for evaluating evidence in the form of sworn testimony regarding the accuracy of an assessed value. The BOR may not substitute its judgment or opinion of value for the assessor's. The assessor has sole responsibility for making assessments. Under the provisions of Wis. Stat. § 70.47(8)(i), the BOR is legally bound to

accept the assessor's assessment as correct unless there is a sufficient showing of evidence that the valuation is incorrect.

BOR membership depends on the type of municipality – town, village, or city (first-class or other).<sup>2</sup> In a town, the town supervisor, clerk, and other members by ordinance comprise the BOR. A village president, clerk, and other members by ordinance comprise a village's BOR.

In a city of the first-class, members of the BOR are appointed by ordinance and include five to nine residents of the city who cannot hold public office nor be publicly employed. Members are appointed by the mayor with approval by the common council holding office for staggered five-year terms. BOR membership in cities other than those of the first-class include: mayor, city clerk, and other members by ordinance. It is important to note that the assessor cannot be a member of the BOR.

In order to hold a valid BOR, at least one voting member must attend a training session approved by the Wisconsin Department of Revenue (hereinafter DOR) within two years of the board's first meeting. The municipal clerk provides an affidavit to DOR when the requirement has been fulfilled. While the law does not require it, DOR encourages all BOR members to attend training each year to ensure proper procedure is followed with consistent and equitable results.

1. *Milewski v. Town of Dover*, 2017 WI 79, 377 Wis. 2d 38, 899 N.W.2d 303

2. Wis. Stat § 70.46

A general timeline of events includes the following: the assessment roll is open and available for public review (open book), BOR's first meeting (adjournment if necessary to complete the roll), hearings, and final adjournment. In towns and villages, the BOR should meet in the Town or Village Hall or a place designated by the Town or Village Board. If this is not possible, the clerk's office is an option. In cities other than the first-class, the BOR should meet at the Council Chamber or a place designated by the council. For cities of the first-class, the BOR should meet at the place designated by the Commissioner of Assessments.

### **New Requirements**

Recent statutory changes and case law impact BORs in two areas: timing and access.

#### **Timing – New for 2018**

Under revised Wis. Stat. § 70.47(1), the BOR must meet annually during the 45-day period starting the fourth Monday of April. The BOR cannot meet sooner than seven days after the last day on which the assessment roll is open for examination (open book). During open book, a property owner has the opportunity to discuss their assessment directly with the assessor and provide any information that might affect the assessment.

The minimum seven-day interim between open book and BOR is a change from prior law, which allowed open book and BOR to occur on the same day. However, this practice did not provide ample time for a property owner to gather information for a BOR hearing if open book did not provide the desired outcome. The seven-day waiting period provides this opportunity for the property owner.

#### **Property Owner Access to the BOR**

Prior to 2017, property owners were required by statute to allow an assessor to conduct an interior inspection to appeal to the BOR. In a recent Wisconsin Supreme Court decision, *Milewski v. Town of Dover*,<sup>3</sup> the Court's lead opinion concluded the following: (1) property owners had a due process right to contest tax assessor's valuation of their real property as excessive; (2) a tax assessor entering a home to conduct an "interior view" for valuation purposes is entering private property for the purpose of obtaining information and is, therefore, conducting a Fourth Amendment search; and (3) the statutory procedure was unconstitutional because it required citizens to give up their Fourth Amendment right to be free from unreasonable government searches in their home in order to keep their Fifth Amendment due process right to challenge their property tax assessment at the BOR.

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3. 2017 WI 79, 377 Wis. 2d 38, 899 N.W.2d 303

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For circumstances in which available sources do not allow the assessor to develop a constitutionally sound value for the property, the Court highlighted the option of a special inspection warrant for gaining access to an interior view of the home under Wis. Stat. § 66.0119. While the Court did not discuss what specific facts would merit a warrant for interior view, factors to consider include, but are not limited to, whether information from a prior improvement inspection is available and recent and the amount of information provided by the property owner.

The outcome of this case affects the BOR process. A property owner may now deny an assessor interior entry to a residence and still appeal to the BOR. However, this does not preclude the assessor from seeking the special inspection warrant, if

appropriate. Additionally, the property owner must still comply with all other requirements for appealing to the BOR under state law, such as submission of an objection form in writing and provision of other required materials.

A new statute, Wis. Stat. § 70.47(7)(aa), does allow the BOR to deny a hearing to a property owner who does not allow the assessor to complete an exterior view of the home. However, the Wisconsin Supreme Court expressed due process concerns regarding a similarly worded statute in *Milewski v. Town of Dover*.<sup>4</sup> It is therefore unclear whether the Court would uphold the new statute against a due process challenge. This potential legal issue may be avoided entirely by granting a BOR hearing even if the property owner denied an exterior view. The lack of access to information gained from view,

and the credibility of evidence offered can be managed as an evidentiary issue at a BOR hearing, rather than denying access to the BOR.

### Hearings

BOR hearings are open to the public.<sup>5</sup> The hearings should have the following attendees: Assessor, Property Owner or Agent (duly authorized), BOR Members, Municipal Attorney (optional), Property Owner's Attorney (optional), Assessor's Attorney (optional), and the Municipal Clerk (optional – if not a member of BOR). A record is created of all proceedings. The property owner or representative is heard first and is examined under oath.

The BOR is a quasi-judicial body allowing an adversarial party's witness the right to cross-examination. Property

4. *Id.*

5. Wis. Stat § 70.47



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owners and assessors can ask each other questions. Members of the BOR may also ask questions. The assessor is not a member of the BOR. The assessor is a witness for the municipality. The BOR chairperson must manage the hearing to keep all parties focused on the specific objection to valuation.

The BOR must evaluate the weight of evidence and its impact on the presumption that the assessor is correct. A property owner may present information to the BOR that had not been provided to or known by the assessor. A property owner may appeal a land classification or valuation.

State law requires the assessor to classify land on the basis of use.<sup>6</sup> There are eight statutory classifications for real property: residential, commercial, manufacturing, agricultural, undeveloped, agricultural forest, productive forest land, and other. Classification impacts assessed value. For example, the standard for assessing agricultural land in Wisconsin is use-value. In use-value assessment, the use of the land is the most important factor in determining its assessed value. Use-value requires that the assessed value of farmland is based on the income that could be generated from its rental for agricultural use. A property owner who would like to be classified as agricultural would need to provide evidence that the land is devoted primarily to agricultural use.

For valuation objections, the BOR looks first to whether or not there is a recent sale of the property and then to whether sales of reasonably comparable property are available, as required by the Wisconsin Supreme Court case, *State ex rel. Markarian v. City of Cudahy*,

45 Wis.2d 683, 173 N.W.2d 627 (1970). The Markarian case confirmed a hierarchy of evidence as the best indicator of value and held that only in the absence of a recent, arm's length sale of the property in question and sales of reasonably comparable property, can the assessor, in determining fair market value, consider all factors collectively which have bearing on the value of property. With this guidance, the BOR can ask the following when evaluating the credibility and relevance of evidence provided: (1) What impact does the evidence offered have to overall valuation?; (2) If the evidence submitted was viewed solely by the property owner, can the evidence offered be documented or corroborated? For example, if it is testimony – are verifiable photos or recordings available?; (3) Is there a recent sale of the property?; (4) If not, are there sales of comparable properties to justify the change to the assessor's valuation?; (5) What adjustments were made to the comparable sales?; and (6) Was an independent appraisal conducted? If so, what was the result?

Property owners should be prepared to answer these questions with credible evidence to prove the assessed value is in error. State law provides the BOR with the option to subpoena more evidence or ask further questions if provided with evidence showing an assessment may be in error.<sup>7</sup> Based upon the evidence, the BOR then makes a determination about classification or value.<sup>8</sup>

### Conclusion

The unsung heroes of the BOR serve to provide a fair and equitable system of property taxation in Wisconsin. The position is not well paid nor offered

with great fanfare; however, the BOR is essential to protecting our constitutional rights in a fundamentally sound system. While no one is excited to receive their property tax bill, comfort can be derived from the knowledge that Wisconsin has a system guaranteeing access to due process to ensure a fair and equitable tax assessment.

### Resources

The following resources are available for municipalities, BOR members, property owners, and their representatives:

- BOR Training
- BOR Guide
- Appeal Guide
- WPAM (Wisconsin Property Assessment Manual)

### Taxation 1054

About the author:

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Michelle Drea is an attorney who serves in the public arena as the Wisconsin Property Assessment Manual and Guides Editor for the Wisconsin Department of Revenue (DOR). Prior to her time at DOR, Michelle held another public position as a City of Denver prosecutor. She transitioned to the private arena with Thomson Reuters as an author of legal textbooks and Bar Review instructor, and a corporate attorney for a mid-sized company based in Wisconsin. Michelle's outside interests include running, writing, and spending time with her family. Contact Michelle at [MichelleM.drea@wisconsin.gov](mailto:MichelleM.drea@wisconsin.gov)

6. Wis. Stat. § 70.32(2)(a)

7. Wis. Stat. § 70.47(8)(d)

8. Wis. Stat. § 70.47(9)(a)