

AGENDA

CITY OF MONONA
BOARD OF REVIEW
CITY HALL LARGE CONFERENCE ROOM
CITY HALL – 5211 SCHLUTER ROAD
THURSDAY, MAY 17, 2018
5:30 P.M.

- A. Call To Order
- B. Roll Call
- C. Approval of Minutes of May 31, 2017
- D. Confirmation of the Appointment of the Chairperson of the Board of Review
- E. Acknowledgement that the mandatory training requirements specified in §70.46(4), Wisconsin Statutes have been met (Members Jim Lampe and Richard Mastenbrook through April 11, 2020; Chris Coates through May 25, 2019)
- F. Assessor's Report
 - Approximate percentage of assessment change: Preliminary result is an overall increase of 5.11% (Residential 7.19%, Commercial 0.84%)
 - Assessment notices to all property owners: April 13, 2018
 - Assessment Roll available in City Hall: April 13, 2018
 - Open Book: April 23 and 24, 2018
- G. Discussion of recent legislation pertaining to property assessment
- H. Adjournment to 6:00 p.m. Wednesday, May 30, 2018 at the Library Municipal Room

NOTE: Upon reasonable notice, the City of Monona will accommodate the needs of disabled individuals through auxiliary aids or services. For additional information or to request this service, contact Joan Andrusz at (608) 222-2525 (not a TDD telephone number, Fax: (608) 222-9225, or through the City Police Department TDD telephone number 441-0399.

The public is notified that any final action taken at a previous meeting may be reconsidered pursuant to the City of Monona ordinances. A suspension of the rules may allow for final action to be taken on an item of New Business.

It is possible that members of and a possible quorum of members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information or speak about a subject, over which they have decision-making responsibility. Any governmental body at the above stated meeting will take no action other than the governmental body specifically referred to above in this notice.

BOARD OF REVIEW MINUTES
May 31, 2017

The hearing of the Board of Review for the City of Monona was called to order by Chairman Larsen at 6:02 p.m.

Present: Chairman Robert Larsen, Judy Lynn, James Hoelzel, Scott Warner, 1st Alternate Jim Lampe, and 2nd Alternate Chris Coates

Excused: Richard Mastenbrook

Also Present: City Assessor Jim Danielson from Accurate Appraisal and City Clerk Joan Andrusz

ROLL CALL

Chairman Larsen confirmed there was a quorum for tonight's hearing and excused 2nd Alternate Coates.

ASSESSOR OATH OF OFFICE

City Assessor Danielson swore his Oath of Office as administered by City Clerk Andrusz.

ACCEPTANCE OF ASSESSMENT ROLL

City Assessor Danielson signed the Assessor's Affidavit and the 2017 Assessment Roll was received by City Clerk Andrusz.

A motion by Ms. Lynn, seconded by Mr. Lampe to accept the 2017 Assessment Roll, was carried.

APPROVAL OF MINUTES

A motion by Mr. Warner, seconded by Mr. Hoelzel, to approve the minutes of the May 11, 2017 Board of Review meeting, was carried.

APPEARANCES BEFORE THE BOARD OF REVIEW

The first case was that of a Request for Waiver of Board of Review Hearing by Wal-Mart Real Estate Business Trust, represented by Brendan Douylliez, 2151 Royal Avenue, Parcel No. 0710-301-4175-2, with a 2017 assessed value of land - \$1,862,100, and improvements - \$26,707,500, for a total of \$28,569,600. City Assessor Danielson stated it is his position, along with the City Attorney, to accept their attempt to expedite the process. If there is a hearing, Wal-Mart's representation may use the Board's or Assessor's testimony against them. His opinion is that testimony should be saved for the Court.

Chairman Larsen stated this is a more complex case than usually heard with a high value. It should be handled at a more procedurally controlled environment. Mr. Hoelzel questioned whether the Walgreens case set a precedent for all big box businesses. City Assessor Danielson responded this is going on all over the state since Walgreens won their case in Madison. Last year Wal-Mart sent a representative from Arkansas, their case was waived, and they didn't follow up. This year they are being represented by a firm from Chicago and will probably follow through. He has had contact with this firm on all the Wal-Marts in communities he serves. Mr. Warner questioned why Wal-Mart wasn't required to appear in case

the waiver was denied. Chairman Larsen stated they requested a telephone appearance, which made sense, but because the waiver was going to be agreed to there was no reason to go through that.

A motion by Mr. Lampe, seconded by Ms. Lynn to accept Wal-Mart Real Estate Business Trust's Request for Waiver of Board of Review Hearing on the assessment of 2151 Royal Avenue, Parcel No. 0710-301-4175-2. On a roll call vote, all members voted in favor of the motion.

City Clerk Andrusz stated she will send a Notice of Determination and other documents by certified mail tomorrow to the address provided by Paradigm Tax Group with a copy to Wal-Mart Real Estate Business Trust.

City Clerk Andrusz announced that the objections of Thomas Primano, 4502 Midmoor Road, Parcel No. 0710-171-5822-5, and Bank Mutual Corporation, 5320 Monona Drive, Parcel No. 0710-212-3362-6, were withdrawn.

Kevin Urso appeared before the Board stating he was confused by the holiday due date so didn't get his intent to object notification in on time. Chairman Larsen and the Board agreed this was a reasonable argument.

Chairman Larsen outlined the order of proceedings as follows: the Objector presents their case, followed by the Assessor's case presentation. The Objector may respond and ask questions of the Assessor and the Assessor may question the Objector, and both may provide summary statements prior to deliberations. Members ask questions of all those who testify. Deliberations and the Board's decision follows when the case is declared closed. The Assessor's value is presumed to be correct; it is up to the Objector to prove the assessment is incorrect.

City Clerk Andrusz swore in Mr. Kevin Urso and Assessor Danielson. Mr. Urso was present representing Urso Properties, Inc. to appeal the assessment on the property located at 412 Falcon Circle, Parcel No. 0710-204-5616-5, with a 2017 assessed value of land - \$114,300, and improvements - \$210,500, for a total of \$324,800. Members reviewed the objection forms provided.

Mr. Urso began testimony by stating the property was purchased through a sheriff's foreclosure sale. Very few improvements have been made besides a deck that had to be replaced for safety reasons. This is a 3-unit building and has been compared to the neighboring 4-unit buildings. The size of the buildings and lots are similar but the value is not the same. He presented documentation of the neighboring properties which have lower assessments. He wants the value set at \$200,000. Comparison documents provided by Mr. Urso were reviewed by members and City Assessor Danielson.

City Assessor Danielson began testimony. He was able to review a chart provided by the objector before the hearing began. The \$200,000 value, which was the sales price, cannot be used because this was not an arm's-length transaction. In comparing market value, none of the comparable properties were recently sold so he is only comparing assessments. The land value compares residential versus commercial. Residential, single-family property land is valued at a higher square foot rate than commercial land. He is looking at the total property value. There are not a lot of smaller apartments and duplexes in Monona and this may be the only 3-unit property. The property type is set at commercial for 4 or more units and at residential for 3 or less units.

One comparable is larger. A 42-unit building is the only sale so it can't be used to compare. Three duplex sales were used as comparables. There are less than 10 single-family homes valued at under \$100 per square foot. The subject property is valued at \$69 per square foot. The two 4-units next door were sold in 2012 for \$175,000 and are now valued at \$196,800. The subject property's value is right in line with those.

Members asked questions. Chairman Larsen stated the focus is on the building. The property owner is looking at land value comparisons but by law the Board can't split out land and improvements; they have to look at the total.

Mr. Urso stated his value should be compared to that of the 4-unit buildings right next door. They are the same type of building, used for the same business, but his 3-unit is assessed much higher. He can't do anything with the building except for its current use. It can't be a condominium. Chairman Larsen stated it is against the Assessor's manual to look at this property more as a commercial building rather than a residential building. City Assessor Danielson responded he can't change the classification.

Mr. Hoelzel stated the building value is correct but the land value appears to be an issue. City Assessor Danielson stated he reviewed duplex land prices and this property has extra land. The neighborhood was factored into the value. The 4-unit properties were looked at as a whole as commercial. He agrees this is an odd case but the value distinction is commercial versus residential.

Deliberations began. Mr. Lampe stated the 4-units are under-assessed or the subject property is over-assessed. Mr. Hoelzel stated the lot size is the difference and looking at overall value sets a high standard. He questioned whether the evidence is overwhelming to warrant a change. Mr. Warner agrees that it isn't and stated the issue is commercial versus residential. A duplex is more desirable. Unfortunately, there is no data to compare; he would consider City of Madison data. The foreclosure price can't be used to determine value. Mr. Lampe and Ms. Lynn agree the 3-unit subject property is more similar to 4-units than it is to a duplex and should be valued as commercial. Chairman Larsen stated this is a unique property with similarities to both classes; members can choose to agree to a similar value but must have a rationale.

After deliberations:

A motion by Mr. Hoelzel, seconded by Mr. Warner to sustain the assessment of 412 Falcon Circle, Parcel No. 0710-204-5616-5 as provided by the Assessor. On a roll call vote, Ms. Lynn and Mr. Lampe voted against the motion; Mr. Hoelzel and Mr. Warner voted in favor of the motion. Chairman Larsen voted in favor of the motion, thereby breaking the tie vote. The motion carries.

Chairman Larsen stated he just couldn't agree that the Assessor was incorrect.

City Clerk Andrusz gave Mr. Urso the Notice of Determination, referring to the explanation of next steps on the lower portion.

While there were no more scheduled hearings, the Board remained in session until the two-hour statutory requirement was met.

ADJOURNMENT

A motion by Mr. Warner, seconded by Mr. Lampe to adjourn, was carried. (8:00 p.m.)

Joan Andrusz
City Clerk

City of Monona, WI
Friday, May 11, 2018

Chapter 18. Boards, Commissions and Committees

Article I. Boards and Commissions

§ 18-3. Board of Review.

- A. **Composition.** The Board of Review shall consist of a Chairperson, four citizen members, and two alternates, all of whom shall be residents of the City and one of whom may be a Council member and one of whom may be employed by the City. The Chairperson shall not vote except in the case of a tie.
- B. **Appointment; term of office.**^[1]
- (1) **Council members.** If the Mayor chooses to appoint a Council member, the Mayor shall appoint the Council member for a one-year term commencing the third Tuesday of April. The appointment of the Council member shall be subject to confirmation by the Council.
 - (2) **Citizen members.** Members of the Board shall be appointed by the Mayor, subject to confirmation by the Council. The terms of the citizen members shall be three years beginning the third Tuesday of April and shall be staggered so that not more than two such regular appointments are made annually.
 - (3) **Alternates.** Alternates shall be appointed by the Mayor, subject to confirmation by the Council, for a term of one year, beginning the third Tuesday of April. The alternate members shall be designated "first alternate" and "second alternate" by the Mayor. Alternates shall act, with full power, only when a member of the Board refuses to vote because of conflict of interest or when a member is absent.
 - (4) **Chair.** The Mayor, subject to confirmation by the Council, shall appoint annually the Chair, who shall hold office for one year and until his or her successor is appointed and qualifies. The term of office of the Chair, except when appointed to fill a vacancy, shall commence on the third Tuesday of April of the year of appointment. The Chair shall have all qualifications, powers and duties of a Board member, but shall not vote except to break a tie.
- [1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
- C. **Functions and powers.**
- (1) **Meetings.** The Board shall meet annually at any time during the thirty-day period beginning on the second Monday in May at the City Hall. The Board, through its Clerk, shall establish its meeting hours pursuant to § 70.47(3)(b), Wis. Stats. A majority shall constitute a quorum, and a majority vote of a quorum shall be required to raise or lower the Assessor's valuation of any property. Two members may hold an evidentiary hearing, but no member may vote or constitute part of a quorum for purposes of determining an assessment unless the member attended the hearing of the evidence, or received a transcript or a mechanical recording of the hearing not less than five days prior to the meeting and read such

transcript or listened to such recording, or received a copy of a summary of the hearing and all exceptions thereto not less than five days prior to the meeting at which the determination is made.

- (2) Duties. The Board shall have the functions and duties prescribed by the Wisconsin Statutes, particularly § 70.47 thereof.
- D. Clerk. The City Clerk shall serve as Clerk of the Board. The Clerk may not vote. The Clerk shall keep an accurate record of all Board proceedings.
- E. Income and expense records.
[Added 5-15-2017 by Ord. No. 5-17-687]
- (1) Requirement to supply information. No person may appear before the Board of Review, testify to the Board by telephone or object to a valuation if that valuation was made by the Assessor or the objector using the income method, unless the person supplies to the Assessor all of the information about income and expenses, as specified in the manual under § 73.03(2a), Wis. Stats., that the Assessor requests.
 - (2) Confidentiality of information. Whenever the Assessor, in the performance of his or her duties, requests and obtains income and expense information pursuant to § 70.47(7)(af), Wis. Stats., or any successor statute thereto, such income and expense information that is provided to the Assessor shall be held confidential by the Assessor; except, however, that such information may be disclosed to and used by persons in the discharge of duties imposed by law; in the discharge of duties imposed by office, including, but not limited to, use by the Assessor in performance of official duties of the Assessor's office and use by the Board of Assessors and Board of Review in performance of their official duties; or pursuant to order of a court. Income and expense information provided to the Assessor under § 70.47(7)(af), Wis. Stats., unless a court determines that it is inaccurate, is, pursuant to § 70.47(7)(af), Wis. Stats., not subject to the right of inspection and copying under § 19.35 (1), Wis. Stats.



Board of Review Member Training Affidavit

This affidavit confirms that one or more Board of Review (BOR) voting members attended training before the BOR met, satisfying state law (sec. 70.46(4), Wis. Stats.).

STATE OF WISCONSIN

County of DANE
Co-muni code 13258

I, JOAN ANDRUSZ, the clerk for the CITY OF MONONA,
swear the following BOR voting member(s), who represent(s) the municipality's chief executive officer or the officer's designee(s), attended a Wisconsin Department of Revenue approved BOR training program within two years of the BOR's first meeting. (sec. 70.46 (4), Wis. Stats.)

BOR member(s) and attendance date:

<u>JIM LAMPE</u>	<u>04/11/2018</u>
Name	Date
<u>RICHARD MASTENBROOK</u>	<u>04/11/2018</u>
Name	Date

05-07-2018 03:48 PM
Date electronically filed
JANDRUSZ@CI.MONONA.WI.US
Clerk email



Board of Review Member Training Affidavit

Preparer Information

Name JOAN ANDRUSZ	Title CITY CLERK
Email JANDRUSZ@CI.MONONA.WI.US	Phone 608-222-2525

Signature Statement

Under penalties of law, I declare this form and all attachments are true, correct and complete to the best of my knowledge and belief.

Do you agree with the statement above?

YES NO

Submission Information

You successfully submitted your report. Print a copy for your records.

Comuni code: 13258
Submission date: 05-07-2018 03:48 PM
Confirmation: PA1072018039201525726007445
Submission type: ORIGINAL

City of Monona
Information Sheet-2018

<u>Assessments</u>		<u>TOTALS</u>
Residential	2017	\$796,050,800
	2018	\$853,253,300
	% Change	7.19%
Commercial	2017	\$385,947,200
	2018	\$389,175,800
	% Change	0.84%
Totals	2017	\$1,181,998,000
	2018	\$1,242,429,100
	% Change	5.11%
Overall Community Change		
	% Change	5.11%
<u>Equalized Value</u>		
Residential	2017	\$822,527,000
	2018	\$853,500,000
	% Change	4.00%
Est. Residential Equalized Value		
	% Change	4.00%
Commercial	2017	\$402,826,500
	2018	\$402,500,000
	% Change	-0.08%
Est. Commercial Equalized Value		
	% Change	-0.08%
Residential Assessment Ratio 2017		
		96.78%
Residential Assessment Ratio 2018 Est.		
		99.97%
Commercial Assessment Ratio 2017		
		95.81%
Commercial Assessment Ratio 2018 Est.		
		95.89%
Residential New Construction		
		\$1,786,900
Commercial New Construction		
		\$1,701,200

Joan Andrusz

From: Wisconsin Department of Revenue <webmaster@revenue.wi.gov>
Sent: Monday, December 11, 2017 2:27 PM
To: Joan Andrusz
Subject: 2017 Act 68 - Summary

12/11/17

**To: Assessors, Primary Assessors
County Clerks, Real Property Listers & Treasurers
Municipal Clerks & Treasurers**

The Wisconsin Department of Revenue would like to inform you of the [2017 Wisconsin Act 68 \(AB 480\)](#) that was published on November 28, 2017, and how it impacts property assessment.

The following provides a summary of the changes. The 2018 Wisconsin Property Assessment Manual (WPAM) will provide additional details.

Summary of Changes

- **Amended 70.05 (4m) – assessor property access**
 - Property owner may deny assessor interior entry
 - Denial to enter interior shall not prevent owner from appearing at Board of Review (BOR) to object
 - Assessor may not increase the value solely on the property owner's refusal to allow entry
- **Created 70.05 (4n) – assessor property access**
 - If requesting view of interior, assessor shall provide written notice that includes property owner rights
 - Statute provides notice language assessor must provide:
PROPERTY OWNER RIGHTS
You have the right to refuse entry into your residence pursuant to section 70.05 (4m) of the Wisconsin Statutes. Entry to view your property is prohibited unless voluntarily authorized by you. Pursuant to section 70.05 (4m) of the Wisconsin statutes, you have the right to refuse a visual inspection of the interior of your residence and your refusal to allow an interior inspection of your residence will not be used as the sole reason for increasing your property tax assessment. Refusing entry to your residence also does not prohibit you from objecting to your assessment pursuant to section 70.47 (7) of the Wisconsin statutes. Please indicate your consent or refusal to allow an interior visual inspection of your residence.
- **Amended 70.47(1) – Board of Review Time and Place of Meeting**
 - Current law – meet annually during 30-day period starting 2nd Monday of May
 - New law – meet annually during 45-day period starting 4th Monday of April, no sooner than seven days after the last day which the assessment roll is open for examination under 70.45
- **Amended 70.47(7)(aa) – Board of Review Appearances**
 - No person can appeal to the BOR if refused reasonable written request of assessor to view exterior of property
- **Amended 70.47(7)(af) – Board of Review and Property Appealed Using the Income Method to Value**
 - No person can appeal to the BOR if the value was made by assessor using the income method unless no later than seven days before the first meeting of the BOR, the person supplies to the assessor all information about income and expenses
 - Information provided under this paragraph is not subject to right of inspection and copying unless a court determines before the first meeting of the BOR that information is inaccurate

Request to View Property Process

2017 Act 68 requires the assessor to provide property owners with written notice if requesting an interior view:

1. Send state prescribed letter* for properties requiring view through regular mail. It is a best practice to send whether an interior or exterior view or both are required. Allow 14 calendar days to respond.
*NOTE: DOR is posting the new state prescribed letter with the 2018 WPAM. Assessors may use a different version when approved by DOR.
2. For property owners who do not respond, consent or denial may be obtained in person. If the property owner is unavailable, leave a door hanger with contact information.
3. For remaining unresponsive property owners, send the state prescribed letter via certified mail. Allow 14 calendar days to respond.
4. If property owners do not respond with an affirmative consent or denial to the request for view, the following options are available:
 - o Consider using the next best information available (see 2018 WPAM Chapter 9) to establish a supportable valuation
 - o Use the special inspection warrant (see 2018 WPAM Appendix for warrant template) to gain view if next best information is insufficient to develop a supportable valuation
 - o Note the lack of response at the BOR, if applicable

Board of Review – Recommended Practice

2017 Act 68 allows the BOR to deny a hearing to a property owner who does not allow the assessor to complete an exterior view. However, the Wisconsin Supreme Court expressed due process concerns regarding a similarly worded statute in *Milewski v. Town of Dover*, 2017 WI 79, 377 Wis. 2d 38, 899 N.W.2d 303. It is DOR's recommendation to allow a BOR hearing even if the property owner denied an interior or exterior view. The lack of access to 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.

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State of Wisconsin
Department of Revenue

Open Book and Board of Review Information

March 29, 2018

To: Municipal Clerks, Treasurers, County Listers, Clerks, Treasurers and Assessors

The Wisconsin Department of Revenue (DOR) is providing Open Book and Board of Review (BOR) information in response to questions we are receiving.

New Start Date – 7 Day Interim

State law (sec. 70.47(1), Wis. Stats.) requires the BOR to meet annually during a 45-day period, starting the fourth Monday of April; no sooner than seven days after the last day the assessment roll is open for examination, under sec. 70.45, Wis. Stats.

- Example: an Open Book occurs on a Tuesday. The earliest the BOR can be scheduled is the following Tuesday.
- During this seven-day period, an assessor can elect not to sign the affidavit and continue to make changes and sign the affidavit on the day of the BOR's first meeting. Alternately, the assessor can elect to sign the affidavit immediately after the Open Book meeting and make no changes during the seven-day period before the BOR begins.

Notices

The new requirements may impact notices:

- Open Book (sec. 70.45, Wis. Stats.)
 - Assessment roll is complete and delivered to the clerk (or when a date is anticipated)
 - Publish a Class 1 notice or post notice (verify requirements in your municipality) at least 15 days before the first day the assessment roll is open for examination

Note: The notice requirement is a minimum standard – publishing earlier than that date is compliant with state law.

- BOR (sec. 70.47(2), Wis. Stats.)

- Clerk must publish a Class 1 notice, place the notice in at least three public places and place a notice on the door of the town hall (or village hall, council chambers, city hall) with the time and place of the BOR's first meeting
- Notice must be posted at least 15 days (maintenance year) or 30 days (reevaluation year) before the BOR's first meeting

Note: The notice requirement is a minimum standard – publishing earlier than that date is compliant with state law.

- BOR – Meet to Adjourn (sec. 70.47(3)(aL), Wis. Stats.):
 - Assessment roll will not be completed during the 45-day period beginning the fourth Monday in April
 - BOR must hold an initial meeting and adjourn – initial meeting notice requirements listed above must be met
 - BOR clerk posts a written notice on the outer door of the meeting place when the BOR will resume. The dates provided in the notice must take into account the required seven-day period between Open Book and BOR. Further, the date the roll is (or is anticipated) to be completed determines when the clerk needs to provide notice to the Open Book.

Note: The Notice of Assessment (PR-301) must contain the same dates provided in the meeting notice.

2018 Legal Update Available: BOR Legal Update Video

- There are significant updates impacting 2018 BORs
- DOR recommends all BOR members review this 30-minute video update
- The update alone does not qualify for formal BOR training credit. DOR recommends viewing to ensure new processes are followed.

BOR Training

- Attend a 2018 training session for current information
- BOR training options: BOR Training
- Provide BOR Training Affidavit (Form PA-107) as required by law

BOR Access

- Under [§ 2017 Act 68](#), the BOR may deny a hearing to a property owner who does not allow the assessor to complete an exterior view
- However, the Wisconsin Supreme Court expressed due process concerns regarding a similarly worded statute in *Milewski v. Town of Dover*, 2017 WI 79, 377 Wis. 2d 38, 899 N.W.2d 303.

Best Practice

- It is DOR's recommendation to allow a BOR hearing even if the property owner denied an interior or exterior view. The lack of access to 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.

Exemptions

- BOR conducts the appeal process for valuation and does not review exemption claims
- Property owner who claims a property is exempt follows the Recovery of Unlawful Taxes, under state law (sec. 74.35(2m), Wis. Stats.)
 - This claim process also applies to the recent exemption of Schedule C "Machinery, Tools, and Patterns" (sec. 70.111(27), Wis. Stats.)

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State rules homeowners don't have to let assessors in to challenge taxes

Posted: Jul 07, 2017 2:39 PM CDT

Updated: Jul 07, 2017 3:20 PM CDT

MADISON, Wis. (AP) – Wisconsin homeowners don't have to let assessors inside as a condition for challenging their property taxes, the state Supreme Court ruled Friday.

The court said in a 5-2 decision that such visits amount to unreasonable searches and that assessors need to get warrants if they can't obtain the homeowner's consent. The ruling involves Vincent Milewski and Morganne MacDonald, who own a home in the Town of Dover in Racine County. According to court documents, they tried to challenge their 2013 property tax assessment in front of a town review board.

The board refused to hear the challenge because Milewski and MacDonald wouldn't let an assessor inside their home. Under state law, people who refuse an assessor's request to view their property can't contest the assessment to local review boards.

Milewski and MacDonald sued. A judge dismissed the lawsuit and a state appellate court upheld his decision. The state Supreme Court reversed that ruling.

Writing for the majority, Justice Dan Kelly said Milewski and MacDonald were faced with a difficult decision: relinquish their constitutional right to be free of unreasonable searches so they could challenge the assessment or exercise their rights and forfeit their ability to contest the assessment.

Kelly said an assessor's visit without consent is a search as defined in the U.S. Constitution's Fourth Amendment, which protects people from unreasonable searches and seizures. The town failed to show how assessing taxes is such a special need that the Fourth Amendment doesn't apply, which means assessors must obtain search warrants to enter without consent, he wrote. Assessors can use other means to gather information about the property, he said. Milewski and MacDonald can challenge the assessment without an interior inspection, he concluded.

He said the law isn't unconstitutional on its face. But it can't be read to require a property viewing that violates the Fourth Amendment in order to allow a challenge, he wrote.

The town's attorney, Jason Gehring, didn't immediately respond to a voicemail seeking comment.

The court's conservative-leaning majority handed down the decision. Shirley Abrahamson and Ann Walsh Bradley, the only two liberal-leaning justices, dissented.

Abrahamson wrote in a joint dissent with Bradley that such choices are common in the law and are seen as constitutionally valid. She also complained the majority opinion is overly complex and intricate – even though her dissent goes on for 47 pages compared with Kelly's 53 pages – and doesn't say what should happen next.

The Wisconsin Institute for Law and Liberty, a conservative law firm that represents Milewski and MacDonald, issued a statement calling the decision "a victory for private property rights."

The Wisconsin Realtors Association, the state Department of Justice and the Institute of Justice, a law firm specializing in constitutional protections, all filed friend-of-the-court briefs urging the Supreme Court to strike down the law.

If you have a property owner that did not allow an interior or exterior view of their property, it is still the Property Owners' responsibility to prove an error on the part of the Assessor. If the owners are arguing a difference in the valuation, ask these questions:

1. What impact does the evidence offered have to overall valuation?

2. If the evidence viewed by property owner only, can the evidence offered be documented?
*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 comparables?

6. Was an independent appraisal conducted? If so, what was the result?

State of Wisconsin
Department of Revenue

Board of Review (BOR) - Removal of Members

1. Can a property owner request removal of more than one BOR member?
2. Can an alternate BOR member be removed?
3. How can the BOR conduct business if a Board member cannot attend a regularly scheduled meeting, and at that meeting, a property owner requests removal of a board member(s)?
4. What is the impact on the BOR's authority if a trained member is removed from a specific case?
5. Can the assessor request the removal of a BOR member, referring to any of the reasons the property owner is allowed to cite?

1. **Can a property owner request removal of more than one BOR member?**

- Yes. However, only one member can be removed without identifying a reason if there is a timely request (sec. 70.47(6m)(a)1, Wis. Stats.).

Note: This option is not available in 1st and 2nd class cities.

- Other member(s) can be removed for bias under sec. 70.47(6m)(a)3, Wis. Stats.

2. **Can an alternate BOR member be removed?**

Yes. An alternate member can be removed for bias if the property owner follows state law (sec. 70.47(6m)(a)3, Wis. Stats.).

3. **How can the BOR conduct business if a Board member cannot attend a regularly scheduled meeting, and at that meeting, a property owner requests removal of a board member(s)?**

If a BOR member cannot attend the meeting, the municipality must have an alternate member(s) in place to attend.

4. **What is the impact the BOR's authority if a trained member is removed from a specific case?**

There is no impact as long as a quorum (a majority of BOR members) of the BOR decides the case. The requirement is that the BOR (as a body) includes a trained member, but it is not necessary to have a trained member hear a specific objection if the trained member is removed. The trained member may remain in the room and is allowed to offer procedural advice to the BOR.

5. Can the assessor request the removal of a BOR member, referring to any of the reasons the property owner is allowed to cite?

The assessor may only request removal of a BOR member for bias under state law (sec. 70.47(6m)(a)3, Wis. Stats.). Only the property owner may request removal without identifying a reason. (sec. 70.47(6m)(a)1, Wis. Stats.)

For more property assessment information, visit the property tax home page.

February 8, 2018

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