



JANUARY 2012 - CLIENT ALERT

Appealing Real Estate Tax Assessments in a Declining Market

The recent decline in real estate values resulting from the “Great Recession”, particularly commercial and industrial properties, coupled with a recent Wisconsin Supreme Court decision, presents a unique opportunity to harvest significant savings in real estate property taxes by challenging assessed values.

In the several years prior to the so called “Great Recession”, real property assessments frequently lagged behind the increases in values of property. Since the peak of real estate property values of 2006-2007, assessed values, while declining somewhat, have not kept pace with real declining market values. Nationally, measured from their 2006-2007 highs, commercial office properties have decreased in value approximately 28%, commercial retail property 27%, industrial property 37% and apartments 26%.¹ Obviously, there are regional variations in values and individual properties may suffer from significantly greater decreases.

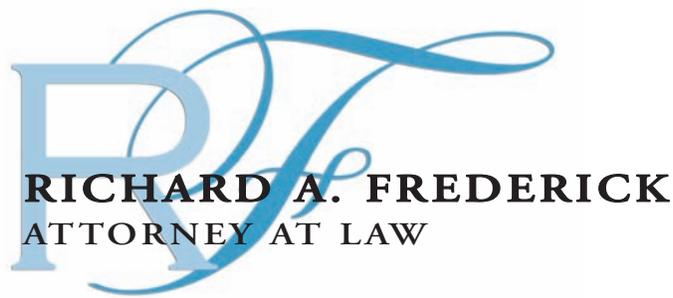
Notwithstanding these dramatic real declines in value, the economic change in assessed valuation of all real property in Milwaukee County decreased only 2.9% in 2009, 5.6% in 2010 and 3.9% in 2011. Waukesha County’s decrease was less at 2.7% in 2009, 4.3% in 2010 and 1.9% in 2011.² Both counties had only nominal decreases in 2008 after substantial increases in 2007.

Early on in the Great Recession, municipal assessors justified resistance to requests to lower assessed values by claiming that distressed sales such as foreclosure sales, bank sales and short sales of property at significantly reduced prices were not valid sales. The distressed sales were discarded by assessors in their analysis and they focused instead upon normal sales in determining assessed values. The result was assessed values in certain cases wildly out of line with values which could be realized in normal arms-length sales transactions between willing buyers and willing sellers.

As the recessionary decline in values continued, these so called distress sales became the market in many areas and in certain segments of the market. In this process, the differences in sales prices of normal and distressed sales decreased. Today, the gap between normal sales and distress sales is far less than in the past couple of years. This phenomenon is reflected in the convergence of asking and selling prices of property by all sellers, including bank sales and short sales.

Assessors have been reluctant to address the decline in value by making realistic reductions of assessed value. Assessors are influenced by municipal and State driven guidance to assess properties at values which are frequently significantly in excess of values which could be achieved in arms length sales. The obvious motivation for this top down guidance is so as not to erode the tax base and the revenues associated with it.

Given the decline in values and the reluctance of municipal assessors to address these values by reducing assessed values, challenging assessed values is now more likely than in the past to yield significant tax savings. In view of this larger potential cost savings, challenges to assessed values are more likely to be cost effective than in the past.



THE CHALLENGE PROCESS

The challenge to assessed value begins with filing an objection with the municipal assessor in the manner proscribed by the local assessor's office. This objection generally will be on a form provided by the municipality and include the reasons for and evidence supporting the reduced current value such as comparable sales.

The assessor will generally review the information provided in the owner's objection and study comparable sales of property. After this analysis, the assessor will do one of the following: sustain the assessment, reduce it or negotiate a resolution with the owner. As part of the process, the municipality may conduct so called "open book" sessions at which the owner and the assessor or the assessor's representative may meet face to face to discuss the assessment.

If the owner feels that the assessor has not adequately addressed the valuation concerns as expressed in the objection, the owner may appeal to the municipal board of review. A board of review in municipalities other than the City of Milwaukee is generally comprised of city officials who are appointed by the municipality's legislative body. In the City of Milwaukee, the board is comprised entirely of citizens who are not public officials and are not publicly employed but are appointed by the Mayor with approval of the Common Council.

The board of review will conduct a hearing on the owner's objection. At this hearing, the owner may testify about value. The owner may also retain an appraiser or other experts to testify about value. At this hearing, the owner must overcome a presumption of correctness which attaches to the assessor's assessment. In other words, the owners bears the burden of proving the assessment is incorrect. At the conclusion of the hearing, the board of review will deliberate and either sustain the assessor's assessment of the property or arrive at a new value.

If the owner still feels aggrieved by the value determined by the board of review, the owner may appeal the board's decision.

A recent decision of the Wisconsin Supreme Court, *Metropolitan Associates v City of Milwaukee*, 2011 WI 20, significantly changed the landscape for appeals for property in the City of Milwaukee. Historically, one of the options for owners in municipalities other than those in Milwaukee County was to pay the real property taxes, file a claim for a refund and proceed to Circuit Court if dissatisfied with the decision of the board of review. In pursuing this option for appeal, the owner received a de novo hearing (a new evidentiary hearing before a circuit court judge). Prior to *Metropolitan*, only a limited form of this type of review was available to owners in the City of Milwaukee and certain other municipalities in Milwaukee County. Based upon an analysis of the constitutional principal of equal protection, the *Metropolitan* court eliminated this disparity in appellate rights in Milwaukee.

After the *Metropolitan* decision, appeals of the board of review's decision in all municipalities, now including the City of Milwaukee and other municipalities in Milwaukee County, may take one of three forms:

1. A complaint in circuit court for a de novo hearing on value by the court provided that the taxes have been timely paid and a claim for refund is filed. In this type of appeal, while the court must presume that the assessor's valuation is correct, the court does not presume that the decision of the board of review is correct. It may take new evidence in reaching its decision on valuation.
2. A petition for certiorari may be filed in circuit court if the board of review committed certain legal errors. This type of appeal is predicated only upon legal errors the board of review may have made in reaching its decision. A petition for certiorari asks a court to deliver the record of the board of review to the court so it can review the record for errors.
3. A direct appeal to the Wisconsin Department of Revenue if the assessed value of the property is not in excess of \$1,000,000 and the assessed value is radically out of proportion to the general level of assessment of all other property in the district.



UNDER WHAT CIRCUMSTANCES SHOULD AN OWNER APPEAL

Some of the potential circumstances under which an owner might want to consider appealing the current assessment of revaluation are:

1. The owner believes that the property is assessed at a value in excess of the owner's estimate of value.
2. The property has lost tenants, thereby decreasing income.
3. There has been a revaluation or other change in assessment by the assessor.
4. There has been a partial or complete destruction or demolition of improvements on the property.
5. The improvements on the property are in poor condition.
6. The property is experiencing functional obsolescence.
7. Neighboring properties are assessed lower than the owner's property.

WHAT STEPS TO TAKE TO INITIATE AN APPEAL

If an owner believes that their property is over assessed, they should seek professional legal *and* valuation assistance in order to determine the likelihood of success and whether an appeal can be mounted on a cost effective basis.

Every property is assessed as of January 1st of each year. The tax bill for the assessment year is received in December of that year. The taxes for that year are due by January 31st of the following year or may generally be paid in three or more installments over the course of the year as determined by the municipality.

If the assessment changes from the prior year, the owner will receive a notice of reassessment together with information about an appeal. If there is no change from the prior year, the owner will not receive a notice. *It is important to note that an owner may still appeal an assessment and can do so each year even though the property is not reassessed and no notice is received.*

The time to begin planning for an appeal is as early as possible in the new year. Most municipalities require receipt of an objection form which is usually submitted in the spring of the assessment year. In Milwaukee, it must be submitted by the third Monday in May. Each municipality may have a different form or manner of objecting so it is wise to determine early in the year on the specific procedures to follow.

CONCLUSION

The information contained in this letter is general and while it is intended to provide useful background information to our clients, it is not legal advice and should not be relied upon in any specific instance or for any specific matter. Please obtain legal advice prior to taking any action in respect to the matters discussed in this letter.

We hope that you have found this information helpful. If you have any questions or need assistance with matters relating to the subject matter of this letter or other tax, real estate or business matters, we would be pleased to assist you.

¹ Special Report: Moody's / Real Commercial Property Price Indexes, November 2011.

² Wisconsin Department of Revenue Statement of Equalized Values by Class and Item "Amount of Economic Change."