



ILLINOIS STATE
BAR ASSOCIATION

EDUCATION LAW

The newsletter of the ISBA's Section on Education Law

Objecting to tax objections

By *Walter J. Zukowski and Jacob J. Frost

With the economy slowing, taxpayers are looking for non-traditional ways to reduce costs. One technique, which is growing with alarming frequency, is to file a tax objection in an effort to lower local real estate taxes. While the effect of an individual objection will frequently be minimal, the burgeoning number of objections in many parts of the state can collectively have a significant adverse financial impact on a school. This article summarizes the most common issues associated with tax objections and strategies for protecting schools in this regard.

By way of background, real estate tax is based on fair cash value ("FCV"). Assessment is the process of placing a value on real estate for taxation. The County or Township Assessor (depending upon whether the property is commercial or residential or whether the Township Assessor is qualified to assess commercial properties), identifies parcels, values each at FCV, assesses each parcel including land and improvements at 33.33 percent, and provides notice of assessments to landowners. If the landowner has an objection and requests a reduction of \$100,000 or more, the County sends a notice of the Board of Review hearing to the interested taxing districts, including schools. If the taxing districts wish to intervene, they may send a representative to the hearing.

There are a number of issues involved with tax objections. However, the two central issues are: (1) whether

the improvements are taxable real property or untaxed personal property; and (2) what is the proper fair cash value of the property.

Whether improvements are taxable real property or not is determined by conducting a like-kind analysis to determine whether the improvements at issue are of "like-kind" to similar types of improvements that are or are not taxed throughout the county. There are a number of factors to determine whether property is like-kind to other types of property, including whether the property: (1) performs the same function; (2) produces the same product; (3) has similar portability and manner of attachment; and (4) replaces existing assessed property.

Determining the proper fair cash value of the property is similarly essential and most tax objections arise from a dispute about the fair cash value of the property. While appraisals are sometimes filed by the taxpayer in support of its claim for reduction, appraisals are not strictly essential to a taxpayer's case. Fair cash value is the theoretical sales price in an arm's length transaction between a willing buyer and willing seller who are unrelated and otherwise have no other attachments to each other. If the property has not been sold recently or the recent sale was not at arm's length, then the Assessor may use one of three approaches to estimate the fair cash value of the property if it were to be sold on the open market at the present time. The three approaches are: (1) the sales comparison approach; (2) the income approach; and (3) the cost approach.

The sales comparison approach is the preferred approach of the three. The Assessor reviews recent sale prices of comparable properties as an estimation of the fair cash value of the property at issue, if it were sold on the open market. In order to determine whether a

property is comparable it is important to consider: (1) use, (2) square footage, (3) acreage, (4) location, (5) condition and age of the building, (6) environmental concerns, and (7) anything else that could determine market value (such as whether the property is in a TIF district).

In collecting this information it is sometimes useful to contact the City or County Building or Zoning Inspector and the Township or County Assessor. Assessments can be reviewed over most county Web sites, provided you have PINs for the properties you wish to check or know with certainty the name of the person or entity who receives the tax bill. If you do not have that information then you must review maps at the Assessor's Office to obtain that information for the parcels you wish to review.

While the sales comparison approach is preferred, a lack of comparable properties and the difficulty in justifying the properties that are deemed to be "comparable" leads the Assessor to utilize the other assessment approaches, particularly when commercial properties are involved. The sales comparison approach lends itself to sometimes fruitful cross-examination questions.

The income approach is used for rental properties. This approach capitalizes the expected net rental income of the property. It is important to request evidence from the taxpayer of actual rental income from the property. While this evidence only shows the actual rental income, it may be used to estimate the expected rental income of the property, which in turn may be used to determine the fair cash value of the property for the purposes of assessment.

Lastly, the cost approach is the least favored approach under the law and should only be used when the property is of such a special use that there would be no real market price for the property. This approach is frequently used by the

IN THIS ISSUE

- Objecting to tax objections 1
- Case update 3

Assessor with regard to commercial properties that have unique qualities that make finding solid comparable properties in the County difficult or impossible. One advantage of this approach is that it is easy to justify and there is little room for dispute regarding the numbers involved. The cost approach takes the value of the land plus the cost to construct the improvements minus depreciation.

Busy County and Township Assessors will frequently resort to the cost approach because it requires the least amount of research. Taxpayers also favor the cost approach because depreciation is easily applied to often result in a lower assessment than would be obtained under the sales comparison or income approach. Therefore, a taxing district wishing to preserve its tax base would do well to cite the Court's general disfavor for applying the cost approach and include documentation indicating the market value of a battery of comparable properties with its evidence submission to the Board of Review.

Accurate income data can also be difficult to obtain from an unwilling taxpayer. However, a recalcitrant taxpayer's case may successfully be damaged by pointing out to the Board that the taxpayer has refused to make income data available upon request. Of course, any income data obtained from a taxpayer should not be taken at face value and may be thoroughly questioned at the hearing.

Board of Review hearings are informal proceedings. The taxpayer or its representative, assessor, members of the Board of Review, and any taxing district representatives are present and given an opportunity to review and impeach evidence and cross-examine testimony. A taxing district wishing to intervene should file an intervention letter with the Board of Review well in advance of the hearing. If any party attempts to submit evidence at the hearing which was not previously filed with its complaint or intervention letter, Boards routinely grant continuances upon the oral motion of a prejudiced party. The chairperson of the Board of Review controls the flow and procedure of the hearing. Decisions on the assessment are rarely made at the conclusion of the hearing, and normally are mailed to the parties several days or weeks after the hearing.

After the Board of Review hearing, the Board gives notice of its decision to the taxpayer. If a reduction is to be

applied, the taxing district's representative is given the opportunity to voice further objections to the Supervisor of Assessments regarding that decision. The taxpayer has two options to pursue an appeal: (1) the Illinois Property Tax Appeal Board; or (2) the Circuit Court in the County in which the property sits.

The taxpayer has thirty (30) days from the date of the notice of the Board's decision to appeal to the Illinois Property Tax Appeal Board ("PTAB"). After PTAB receives the appeal, it issues a notice to the County Board of Review, which, in turn, notifies the interested taxing districts of the appeal. Any interested taxing district may file a Request to Intervene, along with the taxing district's governing body's resolution authorizing its filing, within 60 days of the date of PTAB's notice to the County Board of Review. Extensions tend to be liberally granted for late-filing authorizing resolutions, if a written request for such extension is made.

PTAB's rules of practice require written evidence to be submitted with the Request to Intervene, unless: (1) the taxing district requests in writing that it be granted an extension of time to do so; and/or (2) the taxing district notifies the PTAB of its intention to adopt the evidence filed by the County Board of Review. If the taxing district does not request an extension of time to file written evidence, but merely notifies PTAB that it wishes to adopt whatever evidence is filed by the County Board of Review, then the taxing district is barred from submitting its own evidence at a later date and must accept whatever decision is made by the County Board of Review with regard to settlement. If the taxpayer wishes to appeal a Board of Review decision to the Circuit Court, it must file its complaint within 75 days of the first penalty date for failure to pay its first real estate tax installment.

In conclusion, many school districts have not historically fought efforts to reduce real estate taxes. This practice in the long run could have significant adverse consequences for a District. Those Districts who routinely challenged tax objections eventually encountered not only a significantly lesser impact of tax objections on the District finances, but also experience increasing reluctance of taxpayers to file marginal tax objections.

*The authors are with the Zukowski Law Firm in Peru, IL. Mr. Zukowski is a member of the ISBA Education Law Section Council.

Education Law

Published at least four times per year.

Annual subscription rate for ISBA members: \$20.

To subscribe, visit www.isba.org or call (217)525-1760

Office

Illinois Bar Center
424 S. 2nd Street
Springfield, IL 62701

Phones: (217) 525-1760 OR 800-252-8908

Web site: www.isba.org

Co-Editors

Philip C. Milsik
328 E. Maple, Ste. B
P.O. Box 757
New Lenox, IL 60451

Laurence H. Weiner
515 N. State St., 28th Floor
Chicago, IL 60610

Marcilene Dutton
2020 Timberbrook Dr.
Springfield, IL 62702

Managing Editor/Production

Katie Underwood
kunderwood@isba.org

Education Law Section Council

Brian D. Schwartz, Chair
Mary Kay Klimesh, Vice-Chair
Everett E. Nicholas, Secretary
Raquel G. Martinez, Ex-Officio

Shayne L. Aldridge	Hector Lareau
Aaron G. Allen	Robert P. Lyons
Rhett T. Barke	Philip C. Milsik
Michael W. Burnett	Deborah Pergament
Marcilene Dutton	Peter H. Ruger
Vickie A. Gillio	Respicio F. Vasquez
Garrett P. Hoerner	Lawrence J. Weiner
Stephen G. Katz	Walter J. Zukowski
Allan V. Kickertz	

Dion U. Davi, Board Liaison
Thomas C. Speedie, Staff Liaison

Disclaimer: This newsletter is for subscribers' personal use only; redistribution is prohibited. Copyright Illinois State Bar Association. Statements or expressions of opinion appearing herein are those of the authors and not necessarily those of the Association or Editors, and likewise the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

Articles are prepared as an educational service to members of ISBA. They should not be relied upon as a substitute for individual legal research.

The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

Postmaster: Please send address changes to the Illinois State Bar Association, 424 S. 2nd St., Springfield, IL 62701-1779.