

Tax Assessment Appeals and Practice in Collar Counties

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IICLE REAL ESTATE TAXATION PROGRAM

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I. INTRODUCTION

- A. Focus on Chicago metropolitan area (DuPage, Lake, Kane, Will)
- B. Same Principles apply for other counties too.
- C. Practice Varies By County and By Township within County

II. ALWAYS CHECK WEB SITES

At this point nearly all counties have web sites, which list important information (forms, rules, deadlines, contact information) that once required phone calls. These should always be checked regularly. These web sites either have, or can direct you to, the assessment information.

<u>County</u>	<u>Web Site</u>
DuPage	www.dupageco.org/soa
Lake	www.lakecountyil.gov/assessor
Kane	www.kanecountyassessments.org
Will	www.willcountysoa.com

III. PARTIES TO COLLAR COUNTY APPEAL

- A. Township Assessors
 - 1. Ex-Officio Deputy Assessors. Authorized to make Assessments in Township in which they are elected. 35 ILCS 200/3-65.
 - 2. Minimum Qualifications and Training, requiring familiarity with assessments. 35 ILCS 200/2-45(c)(1) through (c)(6).
 - 3. Most have good residential expertise. Commercial/Industrial expertise varies by township.
 - 4. Township Assessor transmits assessment books to Supervisor of Assessments. 35 ILCS 200/9-230.

B. Supervisor of Assessments

1. Appointed by County Board – Primary Assessment Officer. 35 ILCS 200/3-5.
2. More Qualifications and Training required than Township Assessor, needs to pass a test by Illinois Department of Revenue. 35 ILCS 200/3-5(1) to (4).
3. While county pays SA salary, if IDOR determines that the total assessed value of real property in the county, as equalized, is between 33-1/3% and 35-1/3% of the total fair market value of real property in the county, the State of Illinois will reimburse the County for 50 percent of supervisor’s salary. 35 ILCS 200/3-40(c). Main driver of that ratio is residential sales (more numerous).
4. SA is responsible for maintaining tax maps, up-to-date lists of property owners’ names and addresses, property record cards for all real estate in county, and securing information from county recorder regarding the transfer all of real property in the county. 35 ILCS 200/9-35.
5. SA is clerk of the board of review. 35 ILCS 200/3-30.
6. SA has authority to revise township assessor’s assessment books: 35 ILCS 200/9-75 and 9-80.

C. Board of Review.

1. Appointed by Chair of County Board- 3 members: 2 majority party; 1 minority party. 35 ILCS 200/6-5.
2. Reviews assessments set by SA or township assessor (typical case). 35 ILCS 200/16-65.
3. Expanded BOR in counties that experience a large numbers of complaints (Lake, DuPage, Will). The additional board members serve as deputies. 35 ILCS 200/6-25.
4. BOR must publish “reasonable and proper” rules for the guidance of persons doing business with it. 35 ILCS 200/9-5. Issues have arising as to whether a rule is “reasonable” or whether it denies the taxpayer due process and equal protection rights if used as a basis to dismiss a timely filed complaint.
5. BOR may modify an individual assessment on receipt of a valuation complaint or on its own motion at any time before the board completes its revision of assessments. 35 ILCS 200/16-25.
6. BOR may increase or reduce the assessment the property. 35 ILCS 200/12-40. BOR has broad powers to review the assessments made by the township assessor and/or the supervisor of assessments. 35 ILCS 200/16-55. The BOR shall review the assessment, and correct it, as “appears to be just”.
7. Some Boards of Review conduct as independent body. Majority will defer to township assessor. Some will seek intervenor input before making a decision.

D. Intervenors.

1. In all cases seeking an change in assessed value of \$100,000 or more (fair market value of \$300,000 or more), the BOR serves a copy of the complaint on all taxing districts as shown on the last available tax bill. 35 ILCS 200/16-55.

2. In collar counties, this is an important part of the appeal process. All taxing districts shall have an opportunity to be heard on the complaint. Most large taxing districts will have a representative at the BOR hearing.
3. Typically, an intervening attorney will not have any of their own evidence at the BOR, but are commenting on the taxpayer's evidence.

IV. DEALING WITH TOWNSHIP ASSESSORS

1. Familiarity Disadvantage. In larger collar county jurisdictions, most township assessors will be more familiar with your property than you are. They will seek some sort of uniformity among similar types of properties as your client's property. That is why it is important to have a very fact specific case for your property.
2. Importance of Communication with Assessor. Given we are in a down real estate market, it is recommended that you try to speak to Township Assessor prior to his listing of the property for the year. The Assessor prepares assessments for land, building, and total. If you are engaged to represent a property after those assessments have been posted, try to engage the township assessor in a discussion before you file at the Board of Review. If that does not resolve it, when you file at the Board of Review, stay in communication with the Assessor to see if they would be willing to work out a stipulation with you. Ultimately, the Township Assessor is a critical part of this process. Most will have someone assigned to just commercial/industrial properties.
3. 2011 was quadrennial reassessment year for most collar counties. Appeal can be filed every year, but if a 2011 or 2012 appeal has been filed, most township assessors will want to see new evidence.
4. Assessment Level all at 33-1/3% of Fair Cash Value. Outside of Cook County, residential and commercial/industrial treated at the same level of assessment. For this reason, residential appeals are a significant part of the collar county docket.
5. January 1 lien date – post activities. Some jurisdictions will consider events occurring subsequent to the January 1 lien date (such as a sale of the property). You will need to come up with an argument that something that happened during the current year nonetheless impacts on a January 1 valuation. For example, lease expiring or property for sale.
6. New Construction – Notify township assessor of completion of construction and must request reassessment within 30 days of issuance of occupancy permit or completion of improvements. 35 ILCS 200/9-180. Many township assessors will want building plans and costs to build. This is an opportunity to get a lower assessment from the beginning. The best appeal is no need for appeal.
7. Destruction of Improvements – Notify township assessor of buildings/improvements destroyed and rendered uninhabitable or otherwise unfit for occupancy or customary use. 35 ILCS 200/9-180. This is particularly true in the case of a vacant building.

V. DEALING WITH BOARD OF REVIEW – IN GENERAL

1. Know the Board Rules and Deadlines. For larger counties, make a practice of checking web site for mailing dates and Board of Review deadlines. Some collar county boards of review have harsh rules with short time frames.
2. Information Advantage is Much Narrower Now. Most Boards of Review now have much better aerial and street level photos, available for their use at hearing. Most will now check the Recorder's office web site while the hearing is being conducted.
3. Know the Appeal History. If you are taking over a property from a prior owner or attorney in a new year, admissions made previously in an earlier year can be held against you. Make sure that you have familiarized yourself with the appeal history. For example, if the 2011 year was settled for \$100 (1st year of the quadrennial), and you are arguing for \$90 as a value in a later year, you must come up with a good argument.
4. Know how the BOR Conducts Hearings. Some counties will want the appraiser to be there in attendance. Others will want specific evidence, or they will not reduce the assessment.

VI. DEALING WITH BOARD OF REVIEW – PROBLEMS

1. Sometimes a deadline in current year is missed or no appeal was filed at all in a previous year. The scenario raises a common problem with distressed properties. What are the options for the attorney to recover?
2. Missed Current Year Filing Date- Board Still in Session? If your deadline is missed in a current year still open at the Board of Review, some township assessors will work with you and make a recommendation to the Board of Review. Board of Review can revise an individual assessment on its own motion, and act on its own knowledge, information, and judgment. 35 ILCS 200/16-30.
3. Missed Current or Past Year Filing- Board Not in Session? The Property Tax Code has a provision for Certificates of Error outside of Cook County. 35 ILCS 200/14-20. This would allow for an individual assessment to be revised. This requires the cooperation of both the Assessor and the BOR. In recent times, this typically comes up in the foreclosure situation where the bank takes over a property, and the prior owner had not done anything about the property tax assessment and a high tax burden is chasing away potential buyers.
4. Use as Basis for Dialogue with Township Assessor. In practice, generally speaking, most collar county jurisdictions will not grant valuation certificates of error, and narrowly define what is an "error or mistake in the assessment". An "error of judgment" or an "error of valuation" will not be considered sufficient for a certificate of error. If you are unsuccessful at getting relief for a prior year, use this as an opportunity to get the next year's taxes as low as possible.

VII. IICLE SEMINAR – SCENARIO

1. The IICLE Seminar at the front of your materials has issues that come up fairly regularly. However, each collar county will handle them slightly differently, and this can vary by township even within a county
2. The potential for a successful assessment reduction appeal depends on the following topics: “sale”, “income”, and “occupancy”. Each will be discussed, in order.

VIII. MARKET DATA APPROACH – IN GENERAL

1. When there is a sale of the property under appeal itself, the following issues will be raised by the collar county appeal process.
2. Voluntary Sale? Is there a “Willing Seller” – is there a “voluntary sale”, i.e., when is an owner ready, willing and able to sell, but not compelled to do so? The sales transaction must be considered to be at “arm’s length”, to be argued as the fair cash value for property tax purposes.
3. Transfer Declarations – Usually prepared part of closing paperwork, without consideration of property tax impact. Most counties have that information readily available. Need to see how that paperwork was completed, i.e., what value was recorded as the “full actual consideration” for the transaction, and whether the seller took one of the exemptions listed on PTAX-203, the Illinois Real Estate Transfer Declaration. 35 ILCS 200/31-25.
4. Mortgages – Recorded number is usually determined by a bank, without consideration of property tax impact. Most counties have that information readily available. Even if there was a low sale price, a high mortgage undermines that the argument that the sale is a “good” sale.
5. Compulsory Sales. This has been a topic of contention, with a recent law change. There has been a lack of consistent review of such sales. In reviewing and correcting assessments, BOR is now required to review sales submitted to taxpayer to see if it reflects the same property characteristics and condition as those originally used to make the assessment. BOR is now also required to consider whether the compulsory sale can be considered an arm's length transaction. 35 ILCS 200/16-55.

IX. MARKET DATA APPROACH – DOING THE APPEAL

1. Sale of Subject – Most Boards of Review will require the following evidence of value of a current sale: deed, contract, closing statement, and/or title report. In the case of the scenario, there should be some evidence of the bidding to show market forces.
2. Using Comparable Sales – If the subject has not sold recently, using known sale prices of comparable properties is an effective appeal approach.

3. However, many township assessors have access to and use raw sales data from Comps (sale price per square foot), some of which supports high assessments, even with the market decline. A practitioner needs to be able to respond.
4. Highlight Differences between Sales Comps and the Subject. For industrial and commercial, there are few identical property sales – adjustments to the sale prices to reflect value of subject property.
5. Identify Sales that are Fee Simple versus Leased Fee – need to distinguish between sales of properties that are vacant and sales of properties subject to lease.

X. INCOME APPROACH – IN GENERAL

1. For property subject to leases, an assessor will consider income data when data is available: looks to property's income producing capacity. Most Boards of Review will use a direct capitalization approach:

$$\text{Net Income} \div \text{Capitalization Rate} = \text{Market Value}$$

2. Some Township Assessors and BOR still will look at sales, even for straight income stream properties like apartments.
3. Some Township Assessors and BOR will come up with a “market” rental study in which they will respond that the subject property's lower market contract rents or higher than market expenses is merely the result of “bad management”.

XI. INCOME APPROACH – DOING THE APPEAL

1. For commercial properties where income is of prime importance, need to be able to present the specific facts concerning the property to the Board of Review.
2. Typically, you will need to identify the market rents. Currently, it is likely that on the back end of current leases in place these days, those contract rents are now above market rents. Thus, in the scenario, it is likely that the book seller chain was paying rents above the current market.
3. Most Boards of Review (and Township Assessors) will typically require that you present: gross leasable area, base rent, base rent per square foot, term of lease, tax clauses, and common area maintenance clauses.
4. You will typically need to show a January of the current year rent roll, and the past 3 years of income and expenses. In the scenario, given the ownership change, not all of this information will be available, and will not be relevant since the ground floor tenant vacated, and this income reflects that lease.

XII. OCCUPANCY

1. Most collar counties will apply a market level of occupancy in reviewing a current year value. Thus, if the property is 50% vacant, they may work it up as being 15% vacant (if that is the market), and come up with a stabilized value based on market rents.
2. Thus, in the scenario for 2012, the property is 33% vacant in 2012, with only one floor occupied. In most collar counties, the Board of Review would not merely apply a 33% occupancy factor to the improvements.
3. There are isolated township assessors (usually in areas with significant industrial bases), that will give one year relief based on current year occupancy. If you represent a vacant building, you should contact the local township assessor, who likely is already aware of the vacancy, and see what sort of relief they are willing to provide while the property is vacant.
4. At the board of review, the lack of occupancy needs to be documented with offering literature and information from realtors. Some assessors will want to view the property. Board of Review would find it helpful to review interior photographs, although most will not question the reason given by a taxpayer that a property is vacant.

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