

From: McGinnity, Maureen A. [MMcGinnity@foley.com]
Sent: Tuesday, March 25, 2008 6:44 PM
To: D'Amato, Michael; Bauman, Robert; Bohl, James; Murphy, Michael; Hamilton, Ashanti
Cc: glang@milwaukee.gov; Moschella, Vincent; Elmer, Linda
Subject: 3/27/08 Judiciary and Legislation Meeting - Opposition to Item 071290

Importance: High

From the Desk of: **Maureen A McGinnity**



Gentlemen:

I am a lawyer who represents taxpayers in challenging property tax assessments. I am also a Milwaukee resident. I am writing in both capacities to urge you **not** to recommend adoption of the ordinance described in the agenda for your March 27 meeting as "a substitute ordinance relating to the extension of deadlines for filing appeals with the board of review and the presentation of evidence at board of review hearings."

This description of the proposed ordinance does not disclose its true purpose and effect. The purpose of the ordinance is to implement 2007 Wis. Act 86, which was just signed into law on March 13. The primary effect of Act 86 is to permit municipalities to deprive property owners of important appeal rights -- i.e. the right to file claims for excessive assessment followed by de novo refund actions in court -- simply by enacting an ordinance that allows taxpayers to postpone their board of review hearings by 60 days.

The Wisconsin Supreme Court already has ruled that board of review hearings are no substitute for court trials. It therefore struck down as unconstitutional a prior statute that discriminated against Milwaukee County property owners by excluding them from the right to file de novo refund actions in court. Nankin v. Village of Shorewood, 2001 WI 92, 245 Wis. 2d 86, 630 N.W.2d 141 (copy attached). If the Milwaukee Common Council adopts the extension ordinance you are considering this week, the effect will be exactly the same as the statute found to be unconstitutional - Milwaukee property owners will be deprived of important appeal rights that are available to property owners in other Wisconsin municipalities. If, as the Supreme Court already determined, the legislature cannot constitutionally discriminate against Milwaukee property owners vis-a-vis property owners in other municipalities, it follows that the legislature cannot constitutionally delegate to municipalities the authority to discriminate against their property owners vis-a-vis property owners in other municipalities.

I urge you to hold a public hearing on the proposed ordinance pursuant to a notice that discloses its important ramifications. I also urge you to delay taking any action on the proposed ordinance until you have obtained a formal legal opinion regarding its constitutionality in light of the Nankin decision.

I plan to attend your meeting on March 27 and would be happy to address any questions you may have regarding the objections to the proposed ordinance.

Maureen A. McGinnity
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