

**TESTIMONY BEFORE THE MILWAUKEE COMMON COUNCIL
JUDICIARY & LEGISLATION COMMITTEE REGARDING ITEM 071290**

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Chairman D'Amato and members of the Committee: I am Maureen A. McGinnity, a Milwaukee resident and an attorney with the law firm of Foley & Lardner LLP. I devote a significant portion of my practice to the representation of taxpayers in disputes regarding their property tax assessments. I am testifying today in my individual capacity in opposition to the proposed ordinance listed on your agenda for today's meeting as item 071290.

The innocuous title of the ordinance in your agenda is misleading. This ordinance, if enacted, would not in fact extend deadlines for filing board of review appeals. What it would do is allow Milwaukee property owners the option of postponing the hearing on their appeals for 60 days. This benefit comes at a tremendous price, however. *If the Common Council enacts the proposed extension ordinance, then all Milwaukee property owners will be deprived of important appeal rights, whether or not they take advantage of the 60-day extension option.*

The purpose of the proposed ordinance is to implement locally the provisions of 2007 Wis. Act 86 ('Act 86'). Act 86 purports to empower municipalities to modify both board of review procedures and appeal options in significant respects simply by enacting an extension ordinance of the type you are considering. Most importantly, in municipalities that enact such extension ordinances, property owners no longer will have the right to appeal their assessments to the Common Council by filing claims for excessive assessment, and no longer will have the right to have a court or jury take a fresh look at their assessments in a de novo refund action in which the parties have adequate time to prepare their cases, and the hearing is conducted by a trained legal professional according to the rules of evidence.

Act 86 has many positive features designed to improve board of review hearings. It is a mistake to condition those improvements on restricting property owners' appeal rights, however. The opportunity to file a de novo refund action provides an important check and balance that gives taxpayers protection in attempting to obtain a fair assessment. Moreover, some cases present complex valuation and legal issues that are more appropriately resolved in court than by a local board of review.

The Wisconsin Supreme Court already 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 today, 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.

If the flaws in the current board of review system were corrected, fewer de novo refund cases would be filed because taxpayers would have greater confidence in board of review determinations. De novo actions are expensive, and taxpayers would prefer to avoid that additional expense. The focus therefore should be on fortifying the board of review process rather than eliminating important taxpayer protections.

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.

Thank you.