

**From:** Gordon, Robert L (14936) [RLGORDON@michaelbest.com]  
**Sent:** Wednesday, March 26, 2008 2:34 PM  
**To:** D'Amato, Michael; Bauman, Robert; Bohl, James; Murphy, Michael; Hamilton, Ashanti  
**Cc:** Elmer, Linda; Moschella, Vincent  
**Subject:** 3/27/08 Jud-Leg Meeting - Opposition to Item 071290  
**Dear Chairman D'Amato and Members of the Judiciary–Legislative Committee:**

I am writing to the Committee in opposition to Item 071290 on the Committee's agenda for March 27.

I am an attorney in private practice in Milwaukee who was directly involved in the constitutional litigation which forms the basis of the assessor's current request for enactment of this ordinance. On that basis, I would strongly urge the Committee to defer consideration of the proposed ordinance until at least the next Committee meeting, for two reasons.

First, enactment of the ordinance will likely invite an additional round of constitutional litigation involving issues on which the City has already twice fought and lost. For this reason, I believe the Committee should solicit a formal opinion of the City Attorney before proceeding any further, on the constitutionality of the ordinance and the hazards to the City if the Council proceeds to enact the ordinance despite the appellate rulings adverse to the City in the earlier litigation.

Second, the vague description of the ordinance in the Committee's agenda does not disclose to the City's property owners the true purpose for which the assessor requested this ordinance, which is to effectively repeal for all Milwaukee property owners the right to a de novo appeal of their property tax assessments. This is the same right which the City has already twice asked the Wisconsin appellate courts to deny to the City's property owners, and which the courts have already twice ordered the City to provide to all its property owners. In fairness, Milwaukee property owners should be told in advance of a public hearing exactly what the assessor is asking the Common Council to take away from them, and they should have a full and fair opportunity to apprise this Committee of their objections.

Let me briefly expand on the constitutional issues since I was directly involved in the earlier litigation, and I believe this Committee should be aware of the full background before proceeding on the assessor's request to enact this ordinance. In Nankin v. Village of Shorewood, 2001 WI 92, 245 Wis. 2d 86, 630 N.W.2d 141, the Wisconsin Supreme Court rejected Milwaukee's arguments and held that it was unconstitutional to deny de novo appeal rights to property owners in Milwaukee County. Despite how emphatic the Supreme Court was in Nankin, the City again tried to deprive the City's property owners of the same de novo rights in a second suit, only to have the Court of Appeals be even more emphatic in rejecting the City's position. U.S. Bank v. City of Milwaukee, 2003 WI App 220, 267 Wis. 2d 718, 673 N.W.2d 492.

The current attempt by the Legislature to sidestep Nankin in Wisconsin Act 86 does not solve the fundamental constitutional problem which the Supreme Court resolved in Nankin. All it does is permit municipalities to selectively discriminate against property owners, but that recreates the same constitutional deficiency which the Supreme Court struck down in Nankin.

Before this Committee and the Council commit the City to what will likely be a third round of constitutional litigation over issues on which the City has already lost twice, I would respectfully urge this Committee to hear from its property owners, and ask the City Attorney for a formal constitutional opinion.

I will be attending the March 27 Committee hearing and would appreciate the opportunity to speak to these issues.

Respectfully,

**Robert L. Gordon**



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