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April 13, 2018

Renee Lauber, DCTA Planner  
Dane County Towns Association  
1252 Morrison Court  
Madison, WI 53703

**Re: 2018 Board of Review  
New Laws**

Dear Ms. Lauber:

As you prepare for Board of Review this year, please note that there are several new laws that will affect this year's proceedings. I am writing to provide an update regarding key changes in the law, as follows. I recommend that you provide this update to the members of your Board of Review.

1. **Board of Review Dates.** There are two important changes to the applicable Board of Review timeline:
  - a. The first meeting of the Board of Review now must occur at any time during the 45-day period beginning on the 4<sup>th</sup> Monday of April. Under prior law this meeting was required to be held during the 30-day period beginning on the 2<sup>nd</sup> Monday of May, so in effect the window of time has been extended, primarily to allow the first meeting to be held earlier in the year than under prior law.
  - b. The first meeting of the Board of Review must be no sooner than 7 days after open book. It will be important to coordinate with the Assessor to ensure that open book is complete at least 7 days before the first meeting of the Board of Review, therefore.
2. **Denial of Entry and Right of Appeal.** Whether a taxpayer is able to appeal their assessment if they deny the Assessor an opportunity to view the property was an issue last year, and continues to be an issue. I will describe some details below, but my general recommendation I will say up front: I recommend that you never deny a property owner the right to file an objection and appear before the Board of Review based solely on a property owner refusing to allow the Assessor to enter either the

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interior of their home or the exterior of their property. The law has changed in this regard as follows:

- a. *Interior View.* The Wisconsin Supreme Court issued a decision in July 2017, entitled, *Milewski v. Town of Dover* (377 Wis. 2d 36), which found State law to be unconstitutional. At the time State law prevented a taxpayer from appearing before the Board of Review if they refused a reasonable written request by certified mail of the Assessor to view the property. A property owner refused such a request, was denied the opportunity to be heard before the Board of Review accordingly and brought this action which reached the State Supreme Court. The Court held that the taxpayer had a constitutional due process right to be heard, and a constitutional freedom from unreasonable searches, and could not be required to forego the latter in order to exercise the former. In the Court's view, the property owner has the due process right to contest their tax assessment even if they refuse to let the Assessor into their property, so the statute could not be enforced. The State legislature has now revised this part of the State law that previously prohibited a taxpayer from getting a hearing under such circumstances. Therefore, even if the Assessor reasonably requests to view the interior of a property and the request is denied, that denial does not prevent the taxpayer from filing an objection and appearing before the Board of Review.
- b. *Exterior View.* In response to the Supreme Court decision, the State legislature modified the statute so that it only applies to exterior views of the property. That State law now reads:

"No person shall be allowed to appear before the Board of Review, to testify to the Board by telephone or to contest the amount of any assessment of real or personal property if the person has refused a reasonable written request by certified mail of the Assessor to enter onto property to conduct an exterior view of the real or personal property being assessed." (§70.47(7)(aa), Wis. Stats.)

Despite the ability described in this statute, the Department of Revenue, however, has recommended that you allow such a taxpayer the opportunity to be heard before the Board of Review. The Department of Revenue is concerned that the Wisconsin Supreme Court would find this statute to be unconstitutional for the same reasons that it found the prior statute to be unconstitutional. If the taxpayer has a due process right to be heard, the property owner should not be required surrender their freedom against unreasonable searches in order to exercise their right to appeal. Entry onto the property, even if it is only onto the exterior of the property, can constitute a search in many circumstances and the same analysis would apply. I recommend that you follow the Department of Revenue's advice in this regard.

- c. *Practical Consequences.* I want to take a moment to note the practical consequences of the foregoing and offer some recommendations. If a

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taxpayer denies entry to the Assessor and the property owner appears before the Board of Review for a hearing, the property owner still has the burden of proof, and the Assessor's valuation is still presumed to be correct absent adequate proof presented from the taxpayer. Also, the best evidence of value will still arise from what is known as the Markarian hierarchy, namely a sale of the subject is the best evidence, followed by sales of comparable properties, followed by other factors. For most hearings, therefore, the procedure and analysis will likely be the same as it would otherwise be. In the situation where a taxpayer testifies as to a condition of the property that the Assessor could not view because the taxpayer denied entry, the Department of Revenue has suggested that the Board of Review consider asking several questions, which I will summarize as follows.

- i. What impact does this evidence have to the overall value?
- ii. Is the taxpayer's evidence well documented? Are there photos? Does it show anything relevant?
- iii. Has the taxpayer presented evidence of a recent sale of the property?
- iv. Has the taxpayer presented evidence of recent sales of comparable properties?
- v. Has the taxpayer made reasonable adjustments to the comparable properties, in relation to the subject property?
- vi. Was an independent appraisal conducted, and what was the result?

The Department of Revenue suggests that the inability of the Assessor to view the property, when this is properly analyzed, is unlikely to affect outcomes before the Board of Review.

3. **Income Method Procedures.** The recent amendments to State law establish a time deadline for property owners to present income and expense information to the Assessor. For many years, State law has required taxpayers to provide income and expense information to the Assessor if the assessment is based on the income method. The new law states that this information must be provided to the Assessor no later than 7 days before the first meeting of the Board of Review.
4. **First Meeting Agenda.** I regularly recommend that the Board of Review's first meeting agenda include an agenda item concerning review of changes in the law, to ensure that the Board of Review knows its current responsibilities and has an opportunity to discuss those issues and be well advised before hearing any objections. This year, I recommend that you consider showing the Department of Revenue video that describes these new laws as part of that agenda item. The video can be reached at this link:

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<https://www.youtube.com/watch?v=OPG4Q6GwEWk&t=59s>

This is an easy way to ensure that the Board is well advised on these changes in the law.

If you should have any questions or concerns regarding these matters, please do not hesitate to contact me.

Yours very truly,  
MUNICIPAL LAW & LITIGATION GROUP, S.C.

*Eric J. Larson*

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