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March 4, 2019

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

**Re: Proper Assessment of Adjoining Lots in the Same Ownership
Newly Adopted Wisconsin Statute Section 66.10015(4)
2017 Wisconsin Act 67**

Dear Ms. Lauber:

I am writing to advise regarding the impact of 2017 Wisconsin Act 67 on assessment of abutting lots in the same ownership. I previously advised regarding this issue by a general letter concerning this legislation on or about March 7, 2018. I am writing a follow up to emphasize one of the recommendations of that letter that may not yet be implemented by your members, but should be implemented in the 2019 tax year. The issue and my recommendations are as follows:

1. **Background.** In the 2017 U.S. Supreme Court decision of *Murr v. Wisconsin, et al.* our firm successfully defended St. Croix County in their enforcement of a “merger of title” ordinance. That ordinance stated that when two lots, one or both of which do not conform to the minimum size requirements of the Zoning Code, are contiguous and owned by the same party, the title to the land is deemed to have merged such that these lots cannot be sold separately, and a total of one principal structure can be located on the merged lots. The U.S. Supreme Court concluded that this treatment of the abutting non-conforming lots as one parcel did not constitute an unconstitutional taking.

In response to this decision, the State of Wisconsin enacted a law that requires the opposite result. 2017 Wisconsin Act 67 created Section 66.10015(4) of the Wisconsin Statutes which states the following:

“Notwithstanding the authority granted under ss. 59.69, 60.61, 60.62, 61.35, and 62.23, no political subdivision may enact or enforce an ordinance or take any other action that requires one or more lots to be merged with another lot, for any purpose without the consent of the owners of the lots that are to be merged.”

The new law also creates Section 66.10015(2)(e) which states the following:

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“Notwithstanding any other law or rule, or any action or proceeding under the common law, no political subdivision may enact or enforce an ordinance or take any other action that prohibits a property owner from doing any of the following:

1. Conveying an ownership interest in a substandard lot.
2. Using a substandard lot as a building site if all of the following apply:
 - a. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
 - b. The substandard lot or parcel is developed to comply with all other ordinances of the political subdivision.”

As noted in the statute, above, (1) adjoining non-conforming lots can be sold separately; and (2) buildings can be constructed on the lots if a structure has never existed on the adjoining lot line and the construction complies with all other ordinances.

2. Assessor's General Duties. Assessors in Wisconsin are required to value property in the manner described in Wisconsin Statutes Section 70.32 and the Wisconsin Property Assessment Manual. Wisconsin Statutes Section 70.32(1) indicates that the assessor's duty is as follows:

“In determining the value, the assessor shall consider recent arm's-length sales of the property to be assessed if according to professionally acceptable appraisal practices those sales conform to recent arm's-length sales of reasonably comparable property; recent arm's-length sales of reasonably comparable property; and all factors that, according to professionally acceptable appraisal practices, affect the value of the property to be assessed.”

That is not to say that the assessor has no discretion in the assessment of abutting lots. To the contrary, the assessor is given significant discretion on this issue pursuant to Section 70.23(2), Wisconsin Statutes which says:

“When 2 or more lots or tracts owned by the same person are considered by the assessor to be so improved or occupied with buildings as to be practically incapable of separate valuation, the lots or tracts may be entered as one parcel.”

Assessors also have the ability to assess parcels together by Wisconsin Statutes 70.28, as follows:

No assessment of real property which has been or shall be made shall be held invalid or irregular for the reason that several lots,

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tracts or parcels of land have been assessed and valued together as one parcel and not separately, where the same are contiguous and owned by the same person at the time of such assessment.

3. Assessor's Duties After 2017 Wisconsin Act 67. Clearly assessors can still assess two parcels as though they were one. Now, however, each lot must be assessed at full value. The Assessor may need to do some research to determine what is the full value. Part of that consideration may be whether the lots are buildable. Wisconsin Statutes Section 66.10015(2)(e) now allows each lot to be sold separately, and with the two exceptions noted above, all of the adjoining lots can be constructed upon separately. Such lots are buildable if no structure has ever existed on the adjoining lot lines and the local ordinances do not otherwise prevent construction. Merger of title ordinances cannot be enforced, so the ordinances that are relevant to the determination are primarily area and dimensional standards, such as setbacks, offsets, and open space requirements. The assessor must not assess the adjoining parcels as though they have merged, because by this new State law, they have not. Additionally, the assessor must not assess the adjoining parcels as a single parcel with additional land because, again, this is not what the new law says.
4. Implementation. I recommend that this change to assess each parcel at its full value should be implemented in the 2019 tax year, if it has not been implemented previously. This is a change that arises from new laws, not from new valuation information or sale of the property. In the latter situations it is normally most appropriate to wait to adjust the assessment until a revaluation is conducted of all of the municipality, to ensure uniformity of assessment. This is more akin to the change in law that occurred when Wisconsin Statutes Section 70.11(39) was adopted, which created an exempt for computers from personal property taxes. The change in State law takes effect and should be implemented immediately. Lastly, with this law change be advised that we may see more objections at open book and board of review this year.
5. Recommendation. I recommend that you refer these thoughts to your members' municipal assessor to advise of the situation. Nothing herein is intended to substitute my opinion for the assessor's own judgement as to the valuation of property. The Assessor must do their work in compliance with applicable laws.

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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