

New BOR Laws
2013 Wis. Act 228

Effective 2015

Notice Requirement Change of Assessment

- Notice of changed assessment, s. 70.365
- Generally, if the assessor arrives at a different total assessment than the previous year, he or she must give notice to the person assessed.
- Notice must be in writing and sent by ordinary mail at least 15 days before the meeting of the board of review

New Law

- The notice for change of assessment in any year in which the taxation district conducts a **REVALUATION** under s. 70.05, Wis. Stat. is now required to be sent to the person being assessed at least **30 days before** the board of review.

Notice of BOR

- At least 15 days before the first session of the BOR the clerk must publish a Class 1 notice, post in 3 public places, and place on the town hall door a notice of the BOR that complies with s. 70.47(2), Wis. Stat.

New Law

- In any year when the town conducts a **REVALUATION**, the clerk must notice the BOR at least **30 days** in advance.

Testimony

- In the past, the law has been that the board of review shall hear upon oath all persons who **APPEAR BEFORE IT** in relation to the assessment. Section 70.47(8), Wis. Stat.
- Only ill or disabled persons were allowed to appear by telephone if they presented a letter from a physician, osteopath, physician assistant or advance practiced nurse confirming the illness or disability

New Law: Sworn Telephone or Written Testimony May Be Allowed

- A Board *may* decide to allow at the request of the property owner or their agent
 - That the owner or the owner's representative appear by telephone, under oath and testify
 - Submit written statements made under oath
 - Board's discretion to allow sworn telephone or written testimony (request is *not required* to be granted)
 - Facetime, Skyping, etc. still not allowed

Note:

- The assessor must still present sworn oral testimony *while present at the hearing*.
- Assessors are not permitted to appear via telephone or submit sworn written statements in lieu of being present at the hearing.

Should Telephone Or Written Testimony Be Allowed?

- Need to balance factors for and against
 - Where is the line drawn?
 - Will fairness become an issue?
- Benefits of sworn in person oral testimony
 - May observe witness conduct, appearance & demeanor to determine credibility;
 - May also impress on witnesses solemnity of hearing and need for truthfulness;
 - Have the ability to cross-examine witnesses

Factors to Consider When Deciding Whether to Grant the Request

- Will there be undue surprise or prejudice to any party?
- Was property owner, after due diligence, unable to procure in person oral testimony?
- Will cross examination be possible or effective?

More Factors to Consider

- Technical capacity for telephone testimony
 - Open Meeting Law compliance
 - Audibility
 - Ability to record testimony as required
 - Ability to identify speaker(s) for the record
- Written testimony:
 - No cross examination
 - Can be rebutted or attacked by other testimony without opportunity for witness to respond

Telephone or Written Testimony Procedure

- Allowing or denying a request is a Board of Review decision, not a chairperson decision
 - Request should be made prior to hearing
 - Suggest handling request(s) at first meeting of BOR
- Ask that the requester provide a reason or reasons for the request
- Make a record of the reason(s) for allowing or denying the request
 - Suggest requiring the request be in writing
 - DOR has prepared a form for requests/decision

Telephone or Written Testimony Procedure

- Suggestion: Create an ordinance or policy to:
 - Establish procedures for making the request to allow telephone or written testimony
 - Establish what information is required for application (or use DOR form)
 - Establish criteria for allowing telephone or written testimony

Telephone Testimony: Ill or Disabled Person

- REMEMBER
- The BOR shall hear telephone testimony of ill or disabled persons who present the board with a letter from a physician, osteopath, physician assistant or advance practice nurse that confirms their illness or disability—this requirement has not changed.

New Law: Hearing Waiver

- Under s. 70.47(8m), the Board *may* waive hearing on an assessment objection on request of:
 - Taxpayer
 - Assessor
 - At its own discretion
- If waiver granted, taxpayer allowed to seek certiorari circuit court review or make claim in circuit court for excessive assessment (de novo review) under s. 74.37(3)(d), Wis. Stat.

Procedure on Waiver

- Taxpayer must give notice of intent to file an objection as required under s. 70.47(7), Wis. Stat.
- Objection form must be completed and submitted as required by law (prior to filing of the Request for Waiver)
- Request for Waiver is presented before the commencement of the hearing

Procedure on Waiver

- Board decides whether to waive the hearing and provides taxpayer with copy of decision
- If granted, board still provides Notice of Decision (PR-302) to taxpayer
- Taxpayer's Assessment is the finalized amount
- Taxpayer must initiate process for Circuit Court review or making claim for excess taxes
 - No automatic next step into court

Waiver Considerations

- Benefits of Board of Review Process
 - Local knowledge of property and taxpayer
 - Experience with issues of taxpayer appeal
 - No direct cost to taxpayer for hearing vs. considerable cost of court proceedings
 - Equal treatment of all taxpayers
 - Create a complete record for court review

Waiver Considerations

- Taxpayer *may* be satisfied with BOR hearing result
- Waiver could be used as a means to address unduly burdensome BOR hearings
- Remember that Board of Review is the tool created by law for the job – *use it!*
- Consider what reasons, if any, may support waiving hearing

Questions?