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## Review of Real Estate Assessments - Cook County (Chicago) vs. Remainder of Illinois, 11 J. Marshall J. Prac. & Proc. 17 (1977)

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**REVIEW OF REAL ESTATE ASSESSMENTS—  
COOK COUNTY (CHICAGO) vs. REMAINDER  
OF ILLINOIS**

**CONTENTS**

I. Introduction .....	19
II. Review of Real Estate Assessments in Cook County .....	21
1. Classification of Real Property—1970 Illinois Constitution .....	21
2. Board of Appeals .....	23
(a) What is it? .....	23
(b) Complaints to the Board of Appeals .....	24
(i) Taxpayer Valuation Complaints .....	25
(ii) Third Party Valuation Complaints .....	26
(c) Hearing Before the Board of Appeals .....	27
(d) Workload of Assessor, Board of Appeals and Courts .....	30
(e) Judicial Review of Board of Appeals Action .....	33
3. Judicial Review of Real Estate Assessments .....	33
(a) Prerequisites and Nature of the Action .....	33
(b) The Doctrine of Constructive Fraud .....	37
(i) Bases for the Doctrine of Constructive Fraud ...	40
A. Judicial Abstention: The Illinois Constitution of 1870 .....	41
B. Constructive Fraud—A Manipulative Concept .....	45
(1) Assessments so Excessive as to Connote Dishonest Valuation .....	47
(2) Assessments Made Without the Exercise of Judgment .....	48
(3) Assessments Arbitrarily Made .....	49
C. Judicial Relief: Determination without a Mathematical Formula .....	49
(ii) Practical Stated and Unstated Reasons Underlying the Doctrine of Constructive Fraud	54
A. Judicial Review: An Impediment to the Collection and Distribution of Revenue? ...	54
B. Sales Data Records: Objective Evidence for Judicial Review .....	55
C. Judicial Review: An Examination of its Effect Upon the Volume of Litigation and the Uniformity of Taxation .....	56
D. Cook County: a De Jure Classification System .....	58
(iii) Judicial Review: A Persuasive Case for the Cook County Taxpayer .....	59
III. Judicial Review of Real Estate Assessments in Counties Other Than Cook .....	60
1. Level of Assessment .....	60
2. Appeals to the Property Tax Appeal Board .....	61
(a) Taxpayers .....	61
(b) Taxing Bodies .....	63
3. Hearings Before the Property Tax Appeal Board .....	65
(a) General Matters .....	65
(b) The Burden of Proof .....	69

4. Judicial Review of Property Tax Appeal Board Decisions	70
5. Workload of the Property Tax Appeal Board	73
6. Payment of Taxes Under Protest by Taxpayer	73
IV. Proposed Changes in the Cook County Real Estate Assessment Review System	74
1. Differences in Review Between Cook County and Downstate Counties	74
(a) Payment of Taxes	75
(b) Notice	75
(c) Hearing	75
(d) Securing Judicial Review	76
2. Possible Bases for Differing Treatment of Cook County and Downstate Taxpayers	77
3. Potential Changes in the Cook County Assessment System	78
(a) Major Legislative Changes	80
(b) Minor Legislative Changes	83
V. Conclusion	83

# REVIEW OF REAL ESTATE ASSESSMENTS—COOK COUNTY (CHICAGO) vs. REMAINDER OF ILLINOIS

By Alan S. Ganz\* and Dixie L. Laswell\*\*

“The art of taxation consists in so plucking the goose as to obtain the largest amount of feathers with the least possible amount of hissing.”†

## I. INTRODUCTION

Although much has been written in the area of real estate tax assessments,<sup>1</sup> there has been no discussion of the differing treatment afforded Cook County taxpayers, whose property is located within the City of Chicago and surrounding suburbs, and taxpayers in the remaining 101 counties of Illinois (“downstate taxpayers”) concerning review of their real estate assessments. The lack of comment in this area is surprising since real estate taxes are the largest single revenue producers in Illinois. Approximately \$1.5 billion in real estate taxes were collected in Cook County in 1975.<sup>2</sup> The downstate counties collected approx-

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† Jean Baptiste Colbert, Superintendent of Finance during the reign of Louis XIV, King of France.

1. Watling, *Taxation of Real Property in Cook County Under the Constitution of 1970*, 6 J. MAR. J. 87 (1973); Young, *Taxpayers' Remedies*, 1952 U. ILL. L.F. 248; Comment, *Application of Declaratory Judgment Act in Tax Cases*, 40 ILL. B.J. 535 (1952); Comment, *Real Property Taxation in Illinois*, 1974 U. ILL. L.F. 481; Comment, *Notice and Hearing Before Assessment Increases*, 1956 U. ILL. L.F. 150; Comment, *Classification for Purposes of Equalization of Assessments by Board of Review*, 1955 U. ILL. L.F. 343.

2. Real estate taxes collected in Cook County for the years 1970 through 1975 were as follows:

Tax Year	Gross Amount of Real Estate	
	Taxes Collected	Excluding Railroad Properties
1970	\$1,214,617,378	
1971	1,369,690,311	
1972	1,433,051,180	
1973	1,473,756,159	
1974	1,489,796,473	
1975	1,539,677,391	

(Subject to increase by delinquency collections in progress)

Oral communication from Walter Krawiec, Deputy County Treasurer, to Alan S. Ganz (Jan. 24, 1977) in response to letter from Alan S. Ganz to Walter Krawiec (Nov. 29, 1977).

imately \$682 million in 1973, the latest tax year for which this information is available.<sup>3</sup>

These figures are to be contrasted to the two other primary sources of revenue production, the income tax and the sales tax. In 1976 approximately \$1.7 billion in revenue was generated by the income tax for the entire State of Illinois.<sup>4</sup> The sales tax, for the calendar year 1975, generated approximately \$767 million

3. The most current information pertaining to the collection of real estate taxes in the downstate counties for the tax years 1971 through 1975 is as follows:

<u>Tax Year</u>	
1971	- \$569,259,322
1972	- 647,966,728
1973	- 682,177,027
1974	- Data not available due to incomplete compilation and submission of county abstracts.
1975	- Data currently unavailable for this tax year.

Letter from Jean H. Hostetler, Illinois Department of Local Government Affairs, to Alan S. Ganz (Dec. 13, 1976).

4. Information concerning the amount of income tax collected in each county is not available. The following table indicates the total amount of income tax collected for the years 1971 through 1976 with a breakdown by classification of taxpayer:

<u>YEAR</u>	<u>TAXPAYER</u>	<u>AMOUNT</u>	<u>STATE FISCAL YEAR TOTAL</u>
1971	Individual	\$827,045,000	\$1,010,193,000
	Corporate	183,148,000	
	Fiduciary		
	Adjustments		
1972	Individual	914,109,000	\$1,136,341,000
	Corporate	222,232,000	
	Fiduciary		
	Adjustments		
1973	Individual	996,389,000	\$1,249,700,000
	Corporate	249,357,000	
	Fiduciary	4,215,000	
	Adjustments	(261,000)	
1974	Individual	1,140,012,000	\$1,420,722,000
	Corporate	277,144,000	
	Fiduciary	4,002,000	
	Adjustments	(436,000)	
1975	Individual	1,248,156,000	\$1,570,559,000
	Corporate	319,681,000	
	Fiduciary	3,617,000	
	Adjustments	(896,000)	
1976	Individual	1,322,077,000	\$1,667,653,000
	Corporate	342,289,000	
	Fiduciary	3,945,000	
	Adjustments	(658,000)	

Letters from Thomas R. McGee, Illinois Department of Revenue to Alan S. Ganz (Dec. 7, 1976 and Dec. 13, 1976).

in the downstate counties and \$698 million in Cook County.<sup>5</sup> Thus it can be seen that real estate taxes in Cook County and the downstate counties, when considered either alone or in comparison with the other large revenue producing taxes, place a substantial burden on the Illinois taxpayer.

Currently there exists a dichotomy in the State of Illinois with respect to real estate assessment review procedures. Considered in light of the enormous dollar figures involved in the collection of real estate taxes and the concomitant burden on the taxpayer, it would seem appropriate that whatever the procedure used, it should incorporate a provision for meaningful judicial review. However, this is not the case in Cook County for which the Illinois General Assembly has enacted statutory procedures markedly distinct from the downstate counties. A comparison of the basic dissimilarities in the assessment procedures and access to judicial review will provide the focal point for this article. In addition, the doctrine of constructive fraud as it restricts judicial review of real estate assessments in Cook County and possibly for downstate taxpayers will be discussed extensively. Finally, suggestions will be made for changes in the existing Cook County real estate assessment review system.

## II. REVIEW OF REAL ESTATE ASSESSMENTS IN COOK COUNTY

### 1. *Classification of Real Property—1970 Illinois Constitution*

The 1970 Illinois Constitution provides in article IX, section 4:

#### REAL PROPERTY TAXATION

(a) Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law.

(b) Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or to [sic] continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class

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5. Combined receipts from the Retailers Occupation Tax, Service Occupation Tax, and Use Tax for the calendar years 1973 through 1975 were as follows:

Calendar Year	Cook County	Total of Remaining Counties
1973	\$607,568,818.42	\$619,316,114.94
1974	669,721,804.66	704,258,868.65
1975	698,113,323.91	767,393,082.11

Letter from Thomas R. McGee, Illinois Department of Revenue, to Alan S. Ganz (Dec. 7, 1976).

in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county. Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county.

(c) Any depreciation in the value of real estate occasioned by a public easement may be deducted in assessing such property.

It is noteworthy that counties which do not fall within the coverage of article IX, section 4(b) of the 1970 Illinois Constitution cannot classify property for purposes of taxation. The right of Cook County to classify real estate for purposes of taxation was challenged for five separate reasons including violations of the due process and equal protection clauses of the Federal and Illinois Constitutions. However, the Illinois Supreme Court has unanimously upheld Cook County's right to classify.<sup>6</sup>

Although the Cook County Board of Commissioners is the only body authorized by statute<sup>7</sup> to classify real estate, the Illinois Supreme Court, in *LaSalle National Bank v. County of Cook*,<sup>8</sup> held that in the absence of legislation the Assessor of Cook County could also classify real estate for taxation purposes. However, both the Assessor and the Board of Appeals of Cook County must comply with the present county ordinance<sup>9</sup> which has divided all county real estate into five assessment classifications and affixed a market value percentage for each classification.<sup>10</sup>

6. *People ex rel. Kutner v. Cullerton*, 58 Ill. 2d 266, 319 N.E.2d 55 (1974).

7. ILL. REV. STAT. ch. 120, § 501a (1975).

8. *LaSalle Nat'l Bank v. County of Cook*, 57 Ill. 2d 318, 312 N.E.2d 252 (1974).

9. The ordinance passed by the Cook County Board of Commissioners to be applied in 1974 provides in part: "Section 3. The Assessor shall assess, and the Board of Appeals shall review assessments on real estate in various classes at the following percentages of market value." Cook County, Ill., Real Property Assessment Classification Ordinance § 3 (originally enacted Dec. 17, 1973, amended Nov. 29, 1976, June 6, 1977).

10. The ordinance passed by the Cook County Board of Commissioners to be applied in 1974 provides in part:

Classes	Percentage of Market Value
Class 1: Unimproved real estate.	22%
Class 2: Real estate used as a farm, or real estate used for residential purposes when improved with a house, an apartment building of not more than six living units, or residential condominium, a residential cooperative or a government-subsidized housing project if required by statute to be assessed in the lowest assessment category.	17%
Class 3: All improved real estate used for residential purposes which is not included in Class 2.	33%
Class 4: Real estate owned and used by a not-for-profit corporation in furtherance of the purposes set forth in	

## 2. Board of Appeals

### (a) What is it?

Cook County real estate is initially assessed by the Assessor.<sup>11</sup> The next step in the assessment process is the Board of Appeals which consists of two commissioners, each elected for a four-year term.<sup>12</sup> The primary function of the Board of Appeals is to review taxpayer complaints which invariably allege overassessments.

Until 1932, Cook County had a Board of Review with powers significantly greater than the current Board of Appeals. Although a Board of Review still exists for downstate counties, a statutory amendment was passed in 1932 which eliminated the Board of Review for Cook County and established in its place the Board of Appeals. The legislative history of the Board of Appeals was traced by the Illinois Supreme Court in 1933 in *People ex rel. Thomas v. Nixon*.<sup>13</sup> This case involved a writ of mandamus against the Board of Appeals. Upon the complaint of a real estate owner, without a hearing and without notice to the Assessor, the Board of Appeals had entered an order directing the Assessor to reduce by 15% the base price on which assessments were made for all cottages, bungalows, residences and two and three-flat buildings. The relator contended that the Board of Appeals' order was illegal. The respondent argued that section 34 of the Revenue Act of 1898 allowed such action. The court awarded the writ concluding that although a Board of Review had the power to increase or reduce the entire assessment on its own, the Board of Appeals of Cook County could only, upon a complaint of a taxpayer, act upon the overassessment, underassessment or exemption of a particular parcel of property.<sup>14</sup> This interpretation was confirmed by the General Assembly during the 1933 Session by the addition of a paragraph to section 35a<sup>15</sup> which stated:

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	its charter unless used for residential purposes. If such real estate is used for residential purposes it shall be classified in the appropriate residential class.	30%
Class 5:	All real estate not included in any of the above four classes.	40%

Cook County, Ill., Real Property Assessment Classification Ordinance, §§ 2-3 (originally enacted Dec. 17, 1973, amended Nov. 29, 1976).

11. ILL. REV. STAT. ch. 120, §§ 487, 511 (1975).  
 12. *Id.* § 492.  
 13. 353 Ill. 556, 187 N.E. 650 (1933).  
 14. *Id.* at 564-65, 187 N.E. at 653. The present statutory section similar to the one quoted regarding Boards of Review can be found in ILL. REV. STAT. ch. 120, § 589(5) (1975). See also *People ex rel. Gill v. Jastrowb*, 367 Ill. 348, 11 N.E.2d 368 (1937).  
 15. Currently codified in ILL. REV. STAT. ch. 120, § 594 (1975).



The board of appeals shall hear complaints and revise assessments of any particular parcel of real property or the assessment of personal property of any person or corporation mentioned or described in a complaint filed with the board and conforming to the requirements of section 35b of this Act and shall make revisions in no other cases—<sup>16</sup>

The distinction between the powers of a Board of Review and the Board of Appeals is significant for a taxpayer, depending on which board he is subject to. A Board of Review, applicable to downstate taxpayers, can act on its own<sup>17</sup> or upon a complaint of a taxpayer regarding over or underassessed real estate.<sup>18</sup> Thus it can take into account its own ex parte investigation in arriving at an assessment.<sup>19</sup> However, the Board of Appeals cannot act on an alleged over or underassessment unless there is a complaint filed for that particular parcel of real property. Moreover, the Board of Appeals does not ordinarily make assessments but only reviews them.<sup>20</sup>

What then is the nature of the Board of Appeals? Although the precise nature remains uncertain it has been referred to as a quasi-judicial body.<sup>21</sup> One recent Illinois court opined: “. . . the legislature has vested appellants Board of Appeals . . . with the power to decide the property rights of others, a power which when exercised makes their official actions judicial. . . . However, when considered in relation to the circuit court, the Board of Appeals is an inferior tribunal. . . .”<sup>22</sup>

#### (b) *Complaints to the Board of Appeals*

A taxpayer could become involved with the Board of Appeals in three ways. First, the taxpayer could file a complaint with the Board of Appeals stating that his real estate is overassessed.<sup>23</sup> Second, he could request a certificate of correction of the Assessor and the certificate could be acted upon by the Assessor. Thereafter, if the Board of Appeals has not completed its work, it could approve the forwarded certificate of correction, for errors other than a mistake of judgment, and order the Assessor to cor-

16. *Id.* § 35(a) (1933) (emphasis added).

17. *Id.* §§ 508, 589(4) (5) (1975).

18. *Id.* § 589(4).

19. *Budberg v. County of Sangamon*, 4 Ill. 2d 518, 522, 123 N.E.2d 479, 482 (1955); *People ex rel. Bracher v. Millard*, 307 Ill. 556, 562, 139 N.E. 113, 116 (1923); *Earl & Wilson v. Raymond*, 188 Ill. 15, 59 N.E. 19 (1908).

20. *Goodfriend v. Board of Appeals*, 18 Ill. App. 3d 412, 305 N.E.2d 404 (1973). However, the Board of Appeals could assess real estate which had not been assessed at all. ILL. REV. STAT. ch. 120, § 602 (1975).

21. *Chicago Bar Ass'n v. Friedlander*, 24 Ill. App. 2d 130, 136, 164 N.E. 2d 517, 521 (1960); *Parker v. Kirkland*, 298 Ill. App. 340, 350, 18 N.E.2d 209, 214 (1939).

22. *Goodfriend v. Board of Appeals*, 18 Ill. App. 3d 412, 418, 305 N.E. 2d 404, 409 (1973).

23. ILL. REV. STAT. ch. 120, §§ 594(1), 597, 598 (1975).

rect the assessment books.<sup>24</sup> Finally, after the Board of Appeals completes its work and the assessment books are certified but before judgment is rendered on the County Collector's application for judgment to collect the taxes, a certificate of error may be initiated by the Assessor.<sup>25</sup> Of these three alternatives the taxpayer's valuation complaint is by far the most popular process by which grievances are brought before the Board of Appeals.

(i) Taxpayer's Valuation Complaints

A taxpayer can file a complaint that his real property is over-assessed, underassessed or exempt.<sup>26</sup> The complaint must be filed on the form prescribed by the Board of Appeals<sup>27</sup> with a separate complaint being filed for each parcel of real estate bearing a permanent real estate tax number.<sup>28</sup> In addition, a schedule of all beneficial owners of property held in a land trust must be attached to the complaint.<sup>29</sup> Should any of the information requested on the form not be furnished, the complaint may be dismissed.<sup>30</sup>

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24. *Id.* § 603.

25. ILL. REV. STAT. ch. 120, § 604 (1975) as amended by P. A. 80-158 (Aug. 1, 1977). Upon endorsement by the Assessor, or when endorsed by the Assessor and the Board of Appeals if the certificate was executed pursuant to a taxpayer complaint filed in the Board of Appeals for that tax year, the certificate may be received into evidence by the court.

26. ILL. REV. STAT. ch. 120, §§ 594(1), 597, 598 (1975).

27. Over Valuation Complaints, 1976 Board of Appeals of Cook County Official Rules (Sept. 13, 1976) provides in part:

RULE 1. The Board of Appeals shall receive and hold hearings on complaints of property owners who claim their property is over assessed by the Assessor of Cook County, when such complaints are filed in apt time on complete and correct official complaint forms prescribed by the Board.

RULE 2. The Board of Appeals does hereby adopt the complaint form inserted in the official minutes of the meeting of the Board held on September 13, 1976 as the official complaint form for over valuation complaints on real estate assessed valuations assessed for 1976 by the Assessor of Cook County and hereby authorizes its personnel to distribute and make available said form to qualified complainants and their attorneys.

28. Over Valuation Complaints, 1976 Board of Appeals of Cook County Official Rules (Sept. 13, 1976) provides in part:

RULE 7. A separate set of complaint forms must be filed for each Permanent Index Number on which a property owner desires to complain. Two or more Index Numbers cannot be combined on one set of complaint forms even though only one building may be involved.

29. Over Valuation Complaints, 1976 Board of Appeals of Cook County Official Rules (Sept. 13, 1976) provides in part:

RULE 11. Complaints may be signed by the property owner or his attorney. An individual property owner may act as his own attorney at the hearing on his complaint on his property only. A person who is not an attorney cannot represent complainants before the Board. Except for individual complainants all other complainants including corporations must be represented by an attorney. A schedule of all beneficial owners of property held in a land trust, signed by the trustee, must be attached to the complaint.

30. Over Valuation Complaints, 1976 Board of Appeals of Cook County Official Rules (Sept. 13, 1976) provides in part:

Taxpayers shall have at least twenty days to file their complaints after the Board of Appeals publishes notice;<sup>31</sup> however, a taxpayer should be able to file his complaint prior to the commencement of the twenty day period inasmuch as the statute provides for filing on or before the publication dates.<sup>32</sup> Furthermore, in proceedings conducted pursuant to a complaint, individual taxpayers may represent themselves but all others must be represented by an attorney.<sup>33</sup>

(ii) Third-Party Taxpayer Valuation Complaints

While any taxpayer may file a complaint on any parcel of real estate with the Board of Appeals contending that it is overassessed, underassessed or exempt,<sup>34</sup> a taxing body is precluded from similar recourse. This prohibition is based upon a statute which expressly limits the filing of complaints to *taxpayers* and not *taxing bodies*.<sup>35</sup> Thus taxing bodies are not at liberty to complain to the Board of Appeals with respect to cases involving underassessments.

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RULE 8. Complete and correct information required to complete the complaint form must be furnished and set forth on the form. Failure to comply with this rule may render a complaint void and unacceptable for filing.

31. ILL. REV. STAT. ch. 120, § 596 (1975).

32. *Id.* § 598. The Board of Appeals Rules are in conflict with the statute.

RULE 10. A complaint shall be filed with the Board of Appeals within the time specified in the official publication of the Board of Appeals for the township in which the property identified in the complaint is located. No complaints shall be accepted for filing either before or after the official filing period for the township. The Board shall also post in its office the opening and closing dates for filing for each of the 38 townships in Cook County as soon as such dates are determined and published and shall also make such information available to all interested persons.

Over Valuation Complaints, 1976 Board of Appeals of Cook County Official Rules (Sept. 13, 1976).

33. See note 29 *supra*.

34. *Id.* § 598. The use of underassessment complaints by taxpayers appears to be non-existent. No information is available as to the number of underassessment complaints filed with the Board of Appeals or as to the number of assessments increased as the result of an under assessment complaint. Letter from Donald Erskine, Chief Deputy of the Board of Appeals, to Alan S. Ganz (Nov. 19, 1976).

One of the reasons for the lack of underassessment complaints might be that the complaining taxpayer must conform with Rule 9 of the 1976 Official Rules of the Board of Appeals of Cook County on Under Assessment Complaints which states:

At the hearing the complainant shall have the burden of proof and of proceeding with his complaint by supporting the allegations set forth therein with acceptable facts and documentation. Only thereafter shall the respondent have the burden to rebut such facts and documentation. A complaint shall not be deemed to have been well taken unless so supported and shall be forthwith dismissed failing such offer of proof.

Under Assessment Complaints, 1976 Board of Appeals of Cook County Official Rules (Sept. 13, 1976).

35. *People ex rel. McDonough v. Marshall Field & Co.*, 355 Ill. 633,

(c) *Hearing Before the Board of Appeals*

A complainant has a right to a hearing on his complaint or one filed by a third-party taxpayer concerning complainant's real estate.<sup>36</sup> Should the Board of Appeals refuse to grant a hearing, a writ of mandamus will issue requiring a hearing to be held.<sup>37</sup> Regardless of whether the hearing is procured through standard procedure or by writ of mandamus, a taxpayer is entitled to notification in writing of the hearing.<sup>38</sup> Such hearings normally take place on the day indicated in the taxpayer's notification,<sup>39</sup> however, continuances are possible although not easily procured.<sup>40</sup>

Hearings of the Board of Appeals are open to the public<sup>41</sup> and the records of the Board pertaining to the hearing are public records with the exception of portions of income tax returns not relevant to the subject real estate.<sup>42</sup> In addition, copies of these public records will be furnished upon payment of a fee.

Although the hearings are conducted by commissioners of the Board of Appeals, a deputy member of the board may conduct

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636, 189 N.E. 885, 886-87 (1934); *People ex rel. Thomas v. Nixon*, 353 Ill. 556, 187 N.E. 650 (1933).

36. ILL. REV. STAT. ch. 120, § 594 (1975).

37. *People ex rel. Brittain v. Outwater*, 360 Ill. 621, 196 N.E. 835 (1935); *People ex rel. Ahlschlager v. Board of Review*, 352 Ill. 157, 185 N.E. 248 (1933); *Loewenthal v. People ex rel. Raymond*, 192 Ill. 222, 61 N.E. 462 (1901); *People ex rel. Courshon v. Hirschfield*, 43 Ill. App. 3d 432, 357 N.E.2d 673 (1976); *County Treasurer v. American Nat'l Bank & Trust Co.*, 26 Ill. App. 3d 753, 766, 326 N.E.2d 120, 129-30 (1975); *Korzen v. Hoffman*, 20 Ill. App. 3d 531, 534, 314 N.E.2d 593, 595 (1974).

38. ILL. REV. STAT. ch. 120, §§ 597, 599 (1975).

39. Over Valuation Complaints, 1976 Board of Appeals of Cook County Official Rules (Sept. 13, 1976) provides in part:

RULE 3. All complaints shall be filed and hearings on complaints shall be held in the office of the Board, Room 601, County Building, 118 No. Clark Street, Chicago, Illinois. Hearings on complaints shall be held at the times and on the dates set by the Board. The Board shall notify the complainant or his attorney of the time and date of the hearing.

RULE 4. A complainant or his attorney shall be ready to proceed to hearing at the time and on the date specified in the notice of hearing.

40. Over Valuation Complaints, 1976 Board of Appeals of Cook County Official Rules (Sept. 13, 1976) provides in part:

RULE 5. No continuance of a hearing will be granted except for good cause shown. Failure of a complainant or his attorney to appear as notified will result in the dismissal of the complaint unless good cause is shown.

RULE 13. Where special circumstances require, the Board may by public announcement made at the time and place of hearings continue hearings and all persons interested in such hearings shall take notice of such continuances without further notice.

41. ILL. REV. STAT. ch. 120, §§ 595, 599 (1975).

42. *Id.* § 595.

preliminary hearings.<sup>43</sup> In addition, witnesses may be put under oath<sup>44</sup> and since no court reporter is provided or official mechanical record kept of what transpires at the hearing by the Board of Appeals, a complainant may provide his own court reporter or mechanical record.

At the hearing, the initial document to be considered by the Board of Appeals is the taxpayer's complaint. The complaint may be supported by appraisals, photographs of the real estate or documentation pertaining to a recent sale of the property. More detailed information may be presented if income producing property is involved.<sup>45</sup> Normally the only evidence that will be heard will be that of the protesting taxpayer since the Assessor is not required to testify in the hearing before the Board of Appeals in connection with a complaint. However, the Assessor may be summoned to explain his method of ascertaining the assessed valuation<sup>46</sup> and in lieu of his presence, the Board of Appeals has access to a copy of his file for its information. In addition to the taxpayer and the Assessor, the Board of Appeals may also hear any taxpayer in opposition to a proposed reduction in any assessment.<sup>47</sup>

During the course of its review, the Board of Appeals must adhere to the same percentage levels of market value as the Assessor.<sup>48</sup> However, while both the Assessor and the Board of

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43. *Id.* §§ 599, 601. Over Valuation Complaints, 1976 Board of Appeals of Cook County Official Rules (Sept. 13, 1976) provides in part: RULE 12. As provided by statute a complainant may be assigned to a Deputy Member of the Board of Appeals for preliminary hearing. The Deputy will receive and examine the facts and the exhibits offered in support of the complainant.

44. ILL. REV. STAT. ch. 120, § 601 (1975).

45. Over Valuation Complaints, 1976 Board of Appeals of Cook County Official Rules (Sept. 13, 1976) provides in part:

RULE 15. In addition to the information required on the complaint form the following documents may be submitted to support complainants request for revision: (a) qualified appraisals, (b) photographs of property, (c) recent sale of property.

For income producing property, the complainants, in addition to the above, may present: (d) a written brief setting out complainant's theory for valuation adjustment, (e) financial statements setting out all income and expenses for the latest three years attested to by an accountant or auditor, (f) if (e) is not available, then income tax returns for the latest three years prior to the filing date, (g) any additional documentation that the complainant deems has a bearing on the fair market value of the property.

46. Information is unavailable as to the precise number of times, if any, that the Board has required anyone from the Assessor's Office to appear pursuant to proceedings under Chapter 120, Section 607, of the Illinois Revised Statutes during the past two tax years. Letter from Donald Erskine to Alan S. Ganz (Nov. 19, 1976).

47. ILL. REV. STAT. ch. 120, § 599 (1975).

48. The ordinance passed by the Cook County Board of Commissioners to be applied in 1974 provides in part: "Section 3. The Assessor shall assess, and the Board of Appeals shall review assessments on real estate in various classes at the following percentages of market value."

Appeals are required to jointly make and prescribe rules and regulations for the assessment of property,<sup>49</sup> only the Assessor has done so. It is noteworthy that the only rules pertaining to the Board of Appeals are those previously quoted and even these were not jointly proclaimed with the Assessor. The end result of this conspicuous absence of governing rules in a Board of Appeals proceeding is that the taxpayer's burden of proof is unknown.

On what then, should the Board of Appeals base its decision? Should it give presumptive weight to the Assessor's decision? Should it consider only the evidence presented by the taxpayer? Should it consider its own experience and possibly ex parte contacts?<sup>50</sup> One former member of the Board of Appeals opined that the Board could do anything it wanted with reference to its hearings.<sup>51</sup> However, the former member is wrong in his interpretation of court decisions involving Boards of Review which are cited as authority for his position. As previously discussed, the statutory powers of a Board of Review and the Board of Appeals are very different.

As has been stated, the Board of Appeals has been referred to as being quasi-judicial or judicial in nature. Does this status require the Board in conducting a hearing to comply with judicial standards? Rule 61 of the Illinois Supreme Court pro-

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Cook County, Ill., Real Property Assessment Classification Ordinance (Dec. 17, 1976).

49. ILL. REV. STAT. ch. 120, § 494 (1975).

50. In response to an inquiry by Alan S. Ganz as to the duties of "Pre-hearing Investigators" and "Field Investigators" (positions provided for by the 1976 budget of the Board of Appeals), Donald E. Erskine, Chief Deputy of the Board of Appeals furnished the following job summary:

Inspects and fully investigates, by physical examination and observation, real property, building constructions and construction cost to determine its neighborhood influences. Assesses the value of the real property and buildings for tax purposes. Evaluates neighborhood influences on the real property and buildings assessed. Compiles a comprehensive report to aid Board Personnel in adjudicating real estate valuations and exemption complaints or for purposes of re-evaluation for Board determination of fair and just assessment according to law.

Letter from Donald E. Erskine to Alan S. Ganz (Dec. 6, 1976). It thus seems that ex parte contacts of investigations are being used by the Board of Appeals in arriving at its decisions.

51. Keane, *Real Estate Assessment and Appeal Procedure*, 40 CHI. B. REC. 205-06 (1959).

The decisions of the Illinois Supreme Court and the Appellate Court relating to matters which came before the Board and came before those courts on appeal, would seem to give the Board of Appeals almost unlimited authority to do anything and everything that it wanted to do. The decisions have said that the Board of Appeals can make changes based purely upon its own knowledge and information, without any evidence; that the Board need not take evidence under oath; that the Board need not document the reasons that persuaded it to make a change; that it need not keep any records with respect to any change which has been made.

hibits *ex parte* communications;<sup>52</sup> however, the Board of Appeals continues in this practice. This may seem to indicate that the Board of Appeals is only judicial or quasi-judicial in nature for limited purposes such as appearances before it which constitute the practice of law<sup>53</sup> or for the very limited judicial review of its decisions. However, this is mere conjecture. The precise standards to which the conduct of the Board of Appeals must comport remain unknown because neither the courts nor the legislature have provided any guidance as to this subject.

A decision, whatever the standards used, must be made by both commissioners of the Board of Appeals. If an assessment is corrected, the Board of Appeals must make and sign a brief written statement containing the reason for such change and the manner in which the method used by the Assessor in making such assessment was erroneous.<sup>54</sup> The Board of Appeals will then notify the complainants of changes in assessments; however, no notification is sent with respect to unchanged assessments.

(d) *Workload of Assessor, Board of Appeals and Courts*

The beginning of an analysis of the complaint workload imposed on the various components of the real estate assessment review hierarchy starts with the Assessor. Before the assessment books are completed and verified, a taxpayer may file a complaint.<sup>55</sup> The Assessor publishes a schedule of dates on which he will hear complaints concerning real estate assessments from one or more townships or taxing districts after the assessment books have been completed.<sup>56</sup> Assessments can be revised pursuant to complaints until the Assessor completes his revisions and corrections, enters them in the assessment books and affixes his affidavit as required by law.<sup>57</sup> Approximately 10,000 complaints concerning real property assessments are received by the Assessor each tax year.<sup>58</sup>

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52. ILL. REV. STAT. ch. 110A, § 61(16) (1975). Supreme Court Rule 61 in pertinent part states:

(16) *Ex Parte Communications*. Except as permitted by law, a judge should not permit private or *ex parte* interviews, arguments or communications designed to influence his judicial action in any case, either civil or criminal.

A judge should not accept in any case briefs, documents or written communications intended or calculated to influence his action unless the contents are promptly made known to all parties.

53. *Chicago Bar Ass'n v. Friedlander*, 24 Ill. App. 2d 130, 164 N.E.2d 517 (1960).

54. ILL. REV. STAT. ch. 120, § 599 (1975). As a matter of practice, no written decision is rendered. Only a reduced assessment figure is given.

55. ILL. REV. STAT. ch. 120, § 578 (1975).

56. *Id.* § 579.

57. *Id.* § 578.

58. The number of complaints received by the Assessor for tax years

In addition to the complaint, two other methods by which a taxpayer can obtain relief are by means of either a certificate of correction or a certificate of error. The Assessor, for the tax year 1974, signed 524 certificates of correction before the Board of Appeals completed its work<sup>59</sup> and for the tax year 1975, signed 8,800 certificates of error after the Board of Appeals completed its work and before judgment was rendered on the Cook County Collector's Application for Judgment.<sup>60</sup>

If a taxpayer disagrees with the Assessor's decision concerning his assessment, his next step is to file a complaint with the Board of Appeals. The workload of the Board of Appeals in hearing taxpayer complaints is substantial. For example, in 1975, approximately 22,000 complaints were filed<sup>61</sup> resulting in reductions of approximately \$234 million.<sup>62</sup> The Board of Ap-

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1973 through 1976 were as follows: 1973-9,893; 1974-9,989; 1975-10,064; 1976-12,400. Letter from Theodore M. Swain, Chief Deputy Assessor, to Alan S. Ganz (Oct. 29, 1976). No records are maintained as to the number of complaints filed with respect to assessments on property in each of the five assessment classes. There is no available information on the total dollar amount of the real estate involved in the complaints or on the total dollar amount of any resulting assessment reductions for each class of property. The Chief Deputy Assessor has estimated that about 20% of the appeals are initiated by homeowners and that 60-70% of all appeals are successful in whole or in part. Letter from Theodore M. Swain, Chief Deputy Assessor, to Alan S. Ganz (Oct. 29, 1976).

59. The number of Certificates of Correction signed by the Assessor pursuant to ILL. REV. STAT. ch. 120, § 603 (1975) and the number of Certificates of Error signed by the Assessor pursuant to ILL. REV. STAT. ch. 120 § 604 (1975) for the tax years 1970 through 1975 is as follows:

Certificates of Correction		Certificates Error	
1970	- 1,446	1970	- 2,300
1971	- unknown	1971	- 1,800
1972	- 717	1972	- 11,800
1973	- 839	1973	- 15,700 Real Estate
1974	- 524		4,300 Homestead
1975	- unknown	1974	- 4,000 Real Estate
			5,800 Homestead
		1975	- 4,400 Real Estate
			(approx.)
			4,000 Homestead
			(approx.)

Letter from Daniel Peirce, Legal Counsel to the Cook County Assessor's Office, to Alan S. Ganz (Dec. 23, 1976).

60. ILL. REV. STAT. ch. 120, § 604 (1975). See note 59 *supra*.

61. The total number of complaints filed each year for the tax years 1970 through 1975 are as follows:

Tax Year	Complaints Filed
1970	- 13,496
1971	- 10,311
1972	- 16,306
1973	- 15,956
1974	- 20,090
1975	- 22,262

Reply from Donald E. Erskine, Chief Deputy of the Board of Appeals, to letter from Alan S. Ganz (July 27, 1976).

62. The total assessed value reductions rendered by the Board of



peals' decision with respect to these complaints is binding on the Assessor and determinative of the taxpayer's assessment for the tax year that the complaint relates to in the absence of action by the circuit court.<sup>63</sup> Unfortunately there is no breakdown of the number of complaints that received reductions or the type of real estate receiving assessment reductions. In addition, the Board of Appeals may also act on certificates of error. Inasmuch as the Board is comprised of only two commissioners and seven deputies who are charged with hearing this sizable number of complaints, it becomes readily apparent that the time demands upon this quasi-judicial instrumentality are great.

The final step of the taxpayer's preappellate review is the Circuit Court of Cook County wherein his objection to the Collector's Application for Judgment is heard. One judge is assigned to hear all Cook County taxpayers' objections based upon excessive assessed valuations of real estate. For the tax year 1975 there were approximately 1,000 of such objections filed.<sup>64</sup> Although no statistics are available as to the success of these objections,<sup>65</sup> this figure may be indicative of a disinclination on the part of Cook County taxpayers to resort to this procedure to remedy purported overvaluations.

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Appeals for each of the tax years 1970 through 1975 were as follows:

<u>Tax Year</u>	<u>Value Reductions</u>
1970	\$82,258,264
1971	73,620,455
1972	98,627,646
1973	121,268,078
1974	237,846,577
1975	234,102,218

Letter from Donald E. Erskine, Chief Deputy of the Board of Appeals, to Alan S. Ganz (July 27, 1976). It is interesting to note that while the total number of hours of hearing time spent in any one tax year is unavailable, the average cost per complaint was \$28.86 for the tax year 1975 of the Board of Appeals. Board of Appeals expenditures for the tax year 1975 were \$642,500.44, while 22,262 complaints were filed for 1975 taxes. Letter from Donald E. Erskine, Chief Deputy of the Board of Appeals, to Alan S. Ganz (Dec. 6, 1976).

63. ILL. REV. STAT. ch. 120, § 578 (1975).

<u>Tax Year</u>	<u>Complaints</u>
1975	951
1974	1,051
1973	756
1972	535
1971	336
1970	155 (approx.)
1969	80 (approx.)
1968	45 (approx.)

Interview with Judge Robert J. Dempsey, Circuit Court of Cook County, in Chicago, Illinois (July 6, 1976).

65. No statistics are available as to the number of objectors receiving reductions, dollar volume of assessment reductions, or the dollar volume of assessment reductions by class as set forth in the Real Property Assessment Classification Ordinance. Interview with Judge Robert J. Dempsey, Circuit Court of Cook County, Chicago, Illinois (Dec. 1, 1976).

(e) *Judicial Review of Board of Appeals Actions*

The Administrative Review Act<sup>66</sup> is not applicable to hearings before the Board of Appeals;<sup>67</sup> nor can Cook County under its home rule powers<sup>68</sup> provide for the method of judicial review. The only judicial review available to a Cook County taxpayer to correct actions of the Board of Appeals is a writ of certiorari, and this writ is only applicable in two very limited factual situations. The first situation is when the Board of Appeals exceeds its jurisdiction and the second situation is when the Board of Appeals has proceeded illegally.<sup>69</sup> The lack of taxpayer success through the use of this writ is reflected by the fact that there has been only one reported case wherein a writ was granted and this case concerned the illegal increase of assessments pursuant to a certificate of correction.

As a result of severely limited judicial review, the issue of the quality of a Board of Appeals' hearing and the type of evidence that can be heard is of philosophical interest but of no practical import except to the complainant. The Board of Appeals can give the most perfunctory hearing using ex parte contacts and the taxpayer has no way to correct the situation. Since there are no statutory provisions or judicial decisions prescribing standards for hearings, the taxpayer is totally reliant upon the good faith and competency of the members of the Board of Appeals rather than having statutory or decisional safeguards.

### 3. *Judicial Review of Real Estate Assessments*

(a) *Prerequisites and Nature of the Action*

Judicial review is concerned with the amount of the assessment in relation to the property's market value and the applicable assessment level. This can be an assessment fixed by the Assessor and not modified by the Board of Appeals or an assessment modified by the Board of Appeals. The review is thus of the assessment and tangentially of the Assessor's or Board of Appeals' actions.

In order to properly file a suit questioning an assessment, certain prerequisites must be met. The protesting taxpayer must file a complaint with the Board of Appeals, have a hearing and obtain a decision.<sup>70</sup> The Illinois Supreme Court, in a revenue

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66. ILL. REV. STAT. ch. 110, § 264 (1975).

67. *White v. Board of Appeals*, 45 Ill. 2d 378, 259 N.E.2d 51 (1970).

68. ILL. CONST. art. VII, § 6(a) (1970). See *Cummings v. Daley*, 58 Ill. 2d 1, 317 N.E.2d 22 (1974); *Paper Supply Co. v. City of Chicago*, 57 Ill. 2d 553, 317 N.E.2d 3 (1974).

69. *Goodfriend v. Board of Appeals*, 18 Ill. App. 3d 412, 418, 305 N.E.2d 404, 409 (1973).

70. *People ex rel. Korzen v. Fulton Mkt. Cold Storage Co.*, 62 Ill. 2d

case, has given as the rationale for this rule that (1) it allows full development of the facts before the agency; (2) it allows the agency an opportunity to utilize its expertise; and (3) the aggrieved party may succeed before the agency, rendering judicial review unnecessary.<sup>71</sup> Therefore, if the Board of Appeals fails or refuses to grant a taxpayer a hearing, he should mandamus it and obtain his hearing or suffer the denial of judicial review of his assessment.<sup>72</sup>

After the taxpayer has obtained a decision from the Board of Appeals, he next faces a second necessary step in his quest for judicial review. Real estate taxes are payable in two installments. For Cook County taxpayers, the first installment is an estimated one.<sup>73</sup> The taxpayer cannot pay this installment under protest except in two situations which are not relevant to this analysis.<sup>74</sup> A Cook County taxpayer must pay the second installment in full and at that time is required to file a written assessed valuation protest, the form of which is set forth in the statute.<sup>75</sup> The written protest need not be perfect in form to be legally sufficient.<sup>76</sup> The payment in full of the first and second installments, with the proper written protest being filed with the second payment are both preconditions to potential further successful judicial review of the assessment.<sup>77</sup>

After the payment under written protest with the second installment of real estate taxes, the taxpayer must wait for action by the Collector of Cook County. The Collector, at any time after the first day of September next after all of delinquent taxes on lands and lots shall become due in any year, or next after any taxes are paid under protest in any year, must publish an advertisement, giving notice of his intended application for judg-

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443, 343 N.E.2d 450 (1976); *In re County Treasurer*, 35 Ill. App. 3d 449, 342 N.E.2d 249 (1976); *In re County Treasurer*, 26 Ill. App. 3d 753, 326 N.E.2d 120 (1975); *In re Korzen*, 20 Ill. App. 3d 531, 314 N.E.2d 593 (1974).

71. *Illinois Bell Tel. Co. v. Allphin*, 60 Ill. 2d 350, 326 N.E.2d 737 (1975).

72. *People ex rel. Brittain v. Outwater*, 360 Ill. 621 (1935); *People ex rel. Ahlschlager v. Board of Review*, 352 Ill. 157, 185 N.E. 248 (1933); *Loewenthal v. People*, 192 Ill. 222, 61 N.E. 462 (1901).

73. ILL. REV. STAT. ch. 120, § 705.1 (1975).

74. *Id.* §§ 675, 705.3.

75. *Id.* § 675.

76. *People ex rel. Wisdom v. Chicago B. & Q.R.R. Co.*, 32 Ill. 2d 434, 206 N.E.2d 702 (1965); *People ex rel. Anderson v. Chicago E.I.R.R. Co.*, 399 Ill. 520, 78 N.E.2d 265 (1948); *People ex rel. Darr v. Alton R.R. Co.*, 380 Ill. 380, 43 N.E.2d 964 (1942); *In re County Collector*, 23 Ill. App. 3d 923, 320 N.E.2d 456 (1974).

77. *In re County Collector*, 42 Ill. App. 3d 895, 356 N.E.2d 844 (1976) (Payment under protest is a prerequisite to judicial review); *In re County Collector*, 23 Ill. App. 3d 923, 320 N.E.2d 456 (1974); *In re County Collector*, 5 Ill. App. 3d 694, 283 N.E.2d 905 (1972), *appeal dismissed*, 411 U.S. 912 (1973); *Burton v. Cain*, 63 Ill. App. 2d 183, 211 N.E.2d 289 (1965).

ment for sale of such delinquent lands and lots, and for judgment fixing the correct amount of any tax paid under protest, in the applicable newspaper. The advertisement must be published at least ten days previous to the day on which judgment is to be prayed and must state that the Collector will apply to the circuit court on a specified day for judgment against the lands and lots for the satisfaction of unpaid taxes or for a judgment fixing the correct amount of tax paid on any real estate under protest.<sup>78</sup> Currently the advertisement is published in approximately forty-three local papers. The Collector includes in this advertisement the date on which he intends to make the application for judgment. This date is initially targeted for October, but can be later if an October date is not feasible.<sup>79</sup> The Collector must transcribe into a record, known as the tax judgment, sale, redemption and forfeiture record, the list of delinquent lands and lots and of lands and lots upon which taxes have been paid under protest. This list is made out in numerical order at least five days before the day on which application for judgment is to be made, and contains all the information necessary to be recorded.<sup>80</sup> This record is in effect the complaint of the Collector and is commonly known as the Collector's Application for Judgment.<sup>81</sup>

After the Collector's Application for Judgment is filed, a taxpayer must file within the applicable time period a written specific objection, identifying the cause of the objection to the application<sup>82</sup> or his protest will be deemed waived.<sup>83</sup> Attached to the taxpayer's specific objection must be the original or a copy of the Collector's receipt showing that all taxes objected to were paid under protest.<sup>84</sup> Unfortunately, there are no statutory provisions or rules of the Circuit Court of Cook County regarding the time period during which an objection must be filed. The judge hearing the matter places in the order entering the Collector's Application for Judgment a time period in which the taxpayer must file his objection. For 1975 taxes, the order allowed eleven days in which to file an objection. It is apparent that counsel for a taxpayer must be extremely vigilant in following the Collector's Application for Judgment to avoid missing the filing period.

Within ninety days after the specific objection has been filed, the court must, unless the matter has been sooner disposed of,

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78. ILL. REV. STAT. ch. 120, § 706 (1975).

79. *Id.* § 710.

80. *Id.* § 713.

81. For an excellent discussion of the procedure, see *People ex rel. Thompson v. Clark*, 34 Ill. App. 3d 228, 338 N.E.2d 408 (1975).

82. ILL. REV. STAT. ch. 120, § 716 (1975).

83. *Id.* § 675.

84. *Id.* § 716.

hold a conference between the objector and the State's Attorney. If no agreement is reached at the conference, the court must, upon the demand of either the taxpayer or the State's Attorney, set the matter for hearing within ninety days of the demand.<sup>85</sup> Currently, however, this procedure is not adhered to in the Cook County Circuit Court.

Assuming no settlement is reached between the State's Attorney and the taxpayer, the court shall hear and determine the case in a summary manner, without pleadings or a jury.<sup>86</sup> Although the Circuit Court of Cook County has not interpreted this provision to in any way limit a party's rights under the Illinois Supreme Court Rules or the Illinois Civil Practice Act, there are no appellate decisions on this issue. The court has allowed the records of the Assessor to be subpoenaed and his deposition to be taken; however, interrogatories served on the Assessor are routinely stricken because the Collector, not the Assessor, is the plaintiff. Furthermore, requests for the admission of facts are allowed concerning assessment practices, and facts and answers or lack thereof are binding on the Collector. In addition, all amendments may be made which, by law, could be made in any personal action. This applies both to the taxpayer's specific objection and to the tax list and assessment rolls. It is noteworthy, however, that the taxpayer cannot cure basic problems such as adding parcels for which objections have not been made.<sup>87</sup> Finally, if the taxpayer is successful, the court will order a refund;<sup>88</sup> however, the taxpayer will receive no interest on this refund.<sup>89</sup>

The tax objection method of attacking excessive real estate tax assessments, as described above, is legal in nature. Equitable relief which allows the enjoining of taxes payable is allowed as a matter of right only when the tax is unauthorized by law or the tax is levied on exempt property. However, a taxpayer cannot maintain that a tax is unauthorized by law simply by alleging as his reason a very high assessment.<sup>90</sup> In addition, equitable relief may also be granted if a fraudulently excessive assessment

85. *Id.* § 675(a).

86. *Id.* § 716.

87. See *People ex rel. Harding v. Morris*, 338 Ill. 335, 170 N.E.2d 216 (1930). An interesting issue which has never been the subject of appellate review is whether a taxing body could intervene in the specific objection proceeding. ILL. REV. STAT. ch. 110, § 26.1 (1975); see also *Will County Bd. of Review v. Property Tax Appeal Bd.*, 48 Ill. 2d 513, 517, 272 N.E.2d 32, 35 (1971).

88. ILL. REV. STAT. ch. 120, § 716 (1975).

89. *28 East Jackson Enterprises v. Cullerton*, 523 F.2d 439, 441 (7th Cir. 1975), cert. denied, 423 U.S. 1073 (1976); *Lakefront Realty Corp. v. Lorenz*, 19 Ill. 2d 415, 422-23, 167 N.E.2d 236, 240-41 (1960).

90. *LaSalle Nat'l Bank v. County of Cook*, 57 Ill. 2d 318, 324, 312 N.E.2d 252, 255 (1974).

exists and an adequate remedy at law is not available. For all practical purposes, the foregoing situation will seldom be found because the courts have regarded the legal tax objection remedy as adequate.<sup>91</sup>

An alternate source for equitable relief may initially seem to lie in the federal court system. This alternative is suggested by federal court decisions which have indicated that a lack of funds to pay real estate taxes should be grounds for equitable relief in the Illinois courts. While this rationale may be asserted as persuasive authority for equitable relief in state courts, recourse to the federal courts will probably be fruitless due to a federal statute precluding tax injunctions.<sup>92</sup>

(b) *The Doctrine of Constructive Fraud*

As previously stated,<sup>93</sup> judicial review of real estate tax assessments in Cook County is indirect. The Assessor's acts are not reviewed. Also, a decision of the Board of Appeals is not reviewable in the circuit court pursuant to the Administrative Review Act.<sup>94</sup> Rather, the taxpayer must pay the entire tax under protest and then file objections to the Collector's Application for Judgment attacking the assessment.<sup>95</sup>

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91. *Hoyne Sav. & Loan Ass'n v. Hare*, 60 Ill. 2d 84, 322 N.E.2d 833 (1974) (Equity relief allowed under very severe limitations); *LaSalle Nat'l Bank v. County of Cook*, 57 Ill. 2d 318, 312 N.E.2d 252 (1974); *Clarendon Assoc. v. Korzen*, 56 Ill. 2d 101, 306 N.E.2d 299 (1974).

92. 28 U.S.C. § 1341 (1970) provides: "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." For federal cases suggesting that lack of funds to pay real estate taxes should be grounds for equitable relief in Illinois courts, see *28 East Jackson Enterprises v. Cullerton*, 523 F.2d 439 (7th Cir. 1975), *cert. denied*, 423 U.S. 1073 (1976); *28 East Jackson Enterprises v. Rosewell*, 65 Ill. 2d 420, 358 N.E.2d 1139 (1976).

93. See text accompanying notes 70-89 *supra*.

94. In *White v. Board of Appeals*, 45 Ill. 2d 378, 381, 259 N.E.2d 51, 53 (1970), the court stated that, "[T]he legislature has not made the Administrative Review Act applicable to actions of the Board of Appeals. Thus, judicial review of a decision of the Board of Appeals is not to be had under the Administrative Review Act."

In all counties other than Cook County, the Property Tax Appeal Board may review decisions of the Board of Review, and final decisions of the Property Tax Appeal Board are subject to judicial review under the Administrative Review Act. ILL. REV. STAT. ch. 120, § 592.4 (1975). Decisions of the Board of Review are not directly reviewable under the Administrative Review Act, even though ILL. REV. STAT. ch. 120, § 592.1 (1975) makes Board of Review decisions directly appealable to the courts without prior appeal to the Property Tax Appeal Board. *Id.* ch. 110, § 264. Nowhere in the Board of Review's statutory authority are the provisions of the Administrative Review Act adopted and § 265 of that Act provides that it "shall apply to and govern every action to review judicially a final decision of any administrative agency where the Act creating or conferring power on such agency, by express reference, adopts the provisions of this Act." *Id.* § 265. Decisions of the Board of Review are reviewable by the specific objection to the Collector's Application for Judgment.

95. *Id.* ch. 120, § 716. The specific objection is a judicial remedy

The following example illustrates some of the problems facing a Cook County real estate taxpayer. Assume that he owns a parcel of prime vacant land and has received notice from the Assessor that the property was assessed for the year 1975 at \$150,000 for real estate tax purposes. Assume further that the taxpayer does not miss the publication by the Board of Appeals of the time in which complaints can be filed and that a complaint on the form prescribed by the Board of Appeals is filed within the twenty days after the date the Board of Appeals published notice.<sup>96</sup> Further assume that the Board of Appeals grants a hearing, that counsel for the taxpayer establishes that the market value of the property was not more than \$100,000 and that the difference in actual tax dollars which the taxpayer would pay as a result of such overassessment is in excess of \$6,000.<sup>97</sup> Then assume that the Board of Appeals refuses to reduce the assessment. The taxpayer must thereafter pay the taxes in full accompanied by the proper written protest.<sup>98</sup> Assuming that the taxpayer has paid the taxes under protest, the taxpayer still must watch that the date upon which a specific objection to the Collector's Application for Judgment must be filed is not missed or his protest will be deemed waived.<sup>99</sup> Assuming that the taxpayer does not miss the filing date and files a specific objection to the Collector's Application for Judgment, the *only* defenses the taxpayer has to the Collector's Application for Judgment are that his property was *fraudulently* overvalued or that the Assessor violated the applicable statutory or constitutional requirements.<sup>100</sup> Since the assumption has been that the taxpayer's property was overassessed, what must the taxpayer show to successfully defend against the Collector's Application for Judgment?

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available in all 102 counties. It is a defense to an action brought by the County Collector to enter judgment on taxes paid under protest. Section 716 provides:

[N]o person shall be permitted to offer such defense unless such writing specifying the particular cause of objection shall be accompanied by an official original or duplicate tax collector's receipt, showing that all taxes to which objection is made have been paid under protest to the provisions of section 194 of this Act.

The taxpayer pays his taxes under protest as provided in ILL. REV. STAT. ch. 120, § 675 (1975). The collector then prepares a record of all taxes paid under protest and all delinquent taxes. *Id.* § 713. Defenses to the payment of taxes are then heard by the court pursuant to § 716.

96. *Id.* §§ 594(1); 596-8; Over Valuation Complaints, 1976 Official Rules of the Board of Appeals of Cook County, Rules 1, 2, 8 (Sept. 13 1976). See also text accompanying notes 26-32 *supra*.

97. In Cook County the average tax rate is 12% of assessed value. Forde, *The Litigation of Real Estate Tax Assessments in Cook County*, 1972 Trial Law. Guide 209, 210.

98. See text accompanying notes 73-77 *supra*.

99. See text accompanying notes 78-84 *supra*.

100. Republic Life Ins. Co. v. Pollack, 75 Ill. 292, 295 (1874).

By case law, judicial review of the overvaluation of real estate for tax purposes in Cook County is available only in the case of actual or constructive fraud.<sup>101</sup> One commentator has classified the defenses to the Collector's Application for Judgment against lands for excessive valuations as follows:

- (a) Actual fraud;
- (b) Assessment so excessive it could not have been honestly made;
- (c) Assessment made by mere will without the exercise of judgment;
- (d) Assessment arbitrarily made in disregard of recognized elements of value;
- (e) Assessment made in violation of rules; and
- (f) Intentional and systematic discrimination.<sup>102</sup>

The usual defenses against excessive assessment valuations in the Collector's Application for Judgment will be the defenses set forth in (b), (c) and (d) above. The burden of proof to establish those defenses has been characterized by one commentator as "overwhelming."<sup>103</sup> Overvaluation alone is not enough.<sup>104</sup> Therefore, our taxpayer must not only demonstrate that the assessment was excessive, but also that it was made under one or more of the aforementioned conditions. Thus our taxpayer must show that the property was *fraudulently* assessed at too high a level before the court will afford any relief whatsoever.<sup>105</sup>

101. *People ex rel. Needham v. Abbott Estate*, 47 Ill. 2d 491, 265 N.E.2d 612 (1970); *People ex rel. Joseph v. Schoenborn*, 41 Ill. 2d 302, 242 N.E.2d 147 (1968).

102. Cushman, *The Judicial Review of Valuation in Illinois Property Tax Cases*, 35 ILL. L. REV. 689, 690 (1941).

103. Watling, *Taxation of Real Property in Cook County—The "Railroad Cases" and the Future of De Facto Classification*, 1 J. MAR. J. 212, 226 (1968).

104. 6922 *Jeffrey Apartment Bldg. Corp. v. Harding*, 347 Ill. 336, 179 N.E. 881 (1932); *Kinderman v. Harding*, 345 Ill. 237, 178 N.E. 71 (1931); *Hettler Lumber Co. v. County of Cook*, 336 Ill. 645, 168 N.E. 627 (1929); *People v. Elmwood Cemetary Co.*, 317 Ill. 547, 148 N.E. 273 (1925); *People ex rel. Thompson v. Bourne*, 242 Ill. 61, 89 N.E. 690 (1909); *Hulbert v. People ex rel. Raymond*, 189 Ill. 114, 59 N.E. 567 (1901); *Keokuk & Hamilton Bridge Co. v. People*, 145 Ill. 596, 34 N.E. 482 (1893); *East St. Louis Connecting Ry. Co. v. People ex rel. Stookey*, 119 Ill. 182, 10 N.E. 397 (1887); *Gage v. Evans*, 90 Ill. 569 (1878); *People v. Big Muddy Iron Co.*, 89 Ill. 116 (1878); *Pacific Hotel Co. v. Lieb*, 83 Ill. 602 (1876); *Republic Life Ins. Co. v. Pollak*, 75 Ill. 292, 294 (1874); *Spencer & Gardner v. People*, 68 Ill. 510 (1873).

105. *See, e.g., People ex rel. Frantz v. M.D.B.K.W., Inc.*, 36 Ill. 2d 209, 221 N.E.2d 650 (1966), where the Court stated:

When valuation has been fraudulently made it is subject to judicial review, but more is required for this purpose than merely showing an overvaluation.

. . . Before the conduct of the taxing authorities will be considered constructive fraud, the evidence must clearly establish that the assessment was made in ignorance of the value of the property, or on a judgment not based upon readily ascertainable facts, or on a designedly excessive basis.

. . . If property has been assessed higher than it should have



As is readily apparent from this factual scenario, the decisions of the Assessor and Board of Appeals cannot effectively be challenged by a taxpayer. The judicially developed rules delimiting review of real estate assessments have given the Assessor and Board of Appeals judgmental discretion virtually protected from judicial review. What are the reasons and bases for the creation of such unlimited decisional discretion?

i. Bases for the Doctrine of Constructive Fraud

The Illinois Supreme Court has decided that judicial review of excessive assessments in Cook County may only occur if the assessment is fraudulently excessive.<sup>106</sup> The bases for the court's refusal to review assessments absent fraud have never been explicitly explained by the court, and in its various opinions regarding the doctrine of constructive fraud, the doctrine is generally stated without persuasive elaboration.<sup>107</sup> The decisions espousing the doctrine therefore are not easily classified and no simple pattern appears.

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been through a mere error of judgment on the part of the officers making the valuation, the courts are powerless to rectify the error. They can relieve only against fraud.

*Id.* at 211, 221 N.E.2d at 652. *Accord*, *LaSalle Nat'l Bank v. County of Cook*, 57 Ill. 2d 318, 312 N.E.2d 252 (1974); *White v. Board of Appeals*, 45 Ill. 2d 378, 259 N.E.2d 51 (1970); *People ex rel. Joseph v. Schoenborn*, 41 Ill. 2d 302, 242 N.E.2d 147 (1968); *People ex rel. Nordlund v. S.B.A. Co.*, 34 Ill. 2d 373, 215 N.E.2d 233 (1966); *People ex rel. County Collector v. American Refrigerator Transit Co.*, 33 Ill. 2d 501, 211 N.E.2d 694 (1965); *People ex rel. Nordlund v. Lans*, 31 Ill. 2d 477, 202 N.E.2d 543 (1964).

106. *Hoyne Sav. & Loan Ass'n v. Hare*, 60 Ill. 2d 318, 312 N.E.2d 252 (1974); *Clarendon Assoc. v. Korzen*, 56 Ill. 2d 101, 306 N.E.2d 299 (1973); *Bistor v. McDonough*, 348 Ill. 624, 181 N.E. 417, *cert. denied*, 287 U.S. 641 (1932).

107. *People ex rel. Frantz v. M.D.B.K.W., Inc.*, 36 Ill. 2d 209, 221 N.E.2d 650 (1966); *People ex rel. Nordlund v. S.B.A. Co.*, 34 Ill. 2d 373, 215 N.E. 2d 233 (1966); *People ex rel. Nordlund v. Lans*, 31 Ill. 2d 477, 202 N.E.2d 543 (1964); *People ex rel. Dallas v. Chicago B. & Q.R.R.*, 26 Ill. 2d 292, 186 N.E.2d 335 (1962); *Chicago & N.W. Ry. v. Department of Revenue*, 6 Ill. 2d 278, 128 N.E.2d 722 (1955); *People ex rel. Johnson v. Robison*, 406 Ill. 280, 94 N.E.2d 151 (1950); *People ex rel. Tennyson v. Texas Co.*, 406 Ill. 120, 92 N.E.2d 142 (1950); *People ex rel. Schlaeger v. Allyn*, 393 Ill. 154, 65 N.E.2d 392 (1946); *People ex rel. Rhodes v. Turk*, 391 Ill. 424, 63 N.E.2d 513 (1945); *People ex rel. Hellyer v. Hendrickson*, 373 Ill. 99, 25 N.E.2d 507 (1940); *People ex rel. McGaughey v. Wilson*, 367 Ill. 494, 12 N.E.2d 5 (1937); *People ex rel. Harding v. Atwater*, 362 Ill. 546, 1 N.E.2d 46 (1935); *People ex rel. McDonough v. Chicago Union Lime Works Co.*, 361 Ill. 304, 198 N.E. 1 (1935); *People ex rel. McDonough v. Schmuhl*, 359 Ill. 446, 194 N.E. 731 (1935); *People ex rel. Wangelin v. Gillespie*, 358 Ill. 40, 192 N.E. 664 (1934); *People ex rel. Wangelin v. St. Louis Bridge Co.*, 357 Ill. 245, 191 N.E. 300 (1934); *People ex rel. Wangelin v. Wiggins Ferry Co.*, 357 Ill. 173, 191 N.E. 296 (1934); *Kinderman v. Harding*, 345 Ill. 237, 178 N.E. 71 (1931); *Aldrich v. Harding*, 340 Ill. 354, 172 N.E. 772 (1930); *People ex rel. Carr v. Stewart*, 315 Ill. 25, 145 N.E. 600 (1924); *People ex rel. Miller v. Chicago, B. & Q.R.R.*, 300 Ill. 399, 133 N.E. 325 (1921); *People ex rel. Thompson v. Bourne*, 242 Ill. 61, 89 N.E. 690 (1909).

A. *Judicial Abstention: The Illinois Constitution of 1870*

Judicial abstention from reviewing the action of assessors has its roots in the 1870 Illinois Constitution. Article IX, section 1 of the 1870 Illinois Constitution provided:

The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—*such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct and not otherwise.*<sup>108</sup>

In the earliest cases, the Illinois Supreme Court interpreted article IX, section 1 of the 1870 Constitution as a bar to judicial review of the action of assessors except in the case of an assessor acting fraudulently.<sup>109</sup> The Illinois Supreme Court, in *Spencer & Gardner v. People*,<sup>110</sup> reasoned that “the framers of the constitution could not have contemplated any such consequences as that a tax levy should be void, in case an assessor . . . should make an incorrect valuation of any property.”<sup>111</sup> The court went on to state:

The assessor is the officer who has been provided by the legislature for fixing the valuation of property for the purpose of taxation.

No appeal to any court is provided from the assessor's judgment in fixing the value of property for taxation, nor has any express authority been conferred upon a court to revise such valuation, or to correct an assessment, or order a new one, or to make a rebate of any tax.

And we are of the opinion that the power does not belong to any court to revise the assessment made by an assessor, and change or set aside any valuation of property made by him, where his judgment has been honestly exercised, and upon a right basis. To do so, would seem to be to arrogate the power of ascertaining the value of property for taxation, which ascertainment of value, the constitution declares, shall be by some

108. ILL. CONST. art. IX, § 1 (1870) (emphasis added).

ILL. CONST. art. VIII, § 20 (1818) provided “that the mode of levying a tax shall be by valuation, so that every person shall pay a tax in proportion to the value of the property he or she has in his or her possession.”

ILL. CONST. art. IX, § 2 (1848) provided:

The general assembly shall provide for levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his or her property; such value to be ascertained by some person or persons to be elected or appointed in such manner as the general assembly shall direct, and not otherwise.

109. See *Bistor v. McDonough*, 348 Ill. 624, 181 N.E. 417, cert. denied, 287 U.S. 641 (1932); *Pacific Hotel Co. v. Lieb*, 83 Ill. 602 (1876); *Chicago B. & Q.R.R. v. Cole*, 75 Ill. 591 (1874); *Republic Life Ins. Co. v. Pollak*, 75 Ill. 292 (1874).

110. 68 Ill. 510 (1873).

111. *Id.* at 512.

person or persons designated by the General Assembly, and not otherwise.<sup>112</sup>

Such a bar to judicial review, however, is not found on the face of the constitutional provision.<sup>113</sup>

The 1970 Illinois Constitution provided new language regarding the taxation of real property. Article IX, section 4 of the 1970 Constitution provides that "except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation as the General Assembly shall provide by law." In *LaSalle National Bank v. County of Cook*,<sup>114</sup> the taxpayers argued that the change in language reflected in the 1970 Constitution eliminated the restriction on judicial review of the action of the Assessor. The Illinois Supreme Court rejected the contention stating:

The plaintiffs contend that the doctrine of constructive fraud, which has restricted judicial review of real estate assessments, was eliminated by the 1970 Constitution. Plaintiffs argue that, by the elimination of the language from the 1870 Constitution upon which the doctrine of constructive fraud was based, the delegates intended to authorize the review of assessments in an action in equity.

Section 1 of article IX of the Constitution of 1870 provided:

The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—*such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise*; \* \* \* (Emphasis added.)

Section 4(a) of article IX of the Constitution of 1970 provides:

Except as otherwise provided in this Section taxes upon real property shall be levied uniformly *by valuation ascertained as the General Assembly shall provide by law*. (Emphasis added.)

The plaintiffs contend that by virtue of the difference in the italicized language in the two sections set out above the constitutional convention has eliminated the restrictive language of the 1870 Constitution which prohibited judicial review of assess-

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112. *Id.*

113. The limitation on judicial review is not readily apparent from a reading of article IX, § 1 of the 1870 constitution, and the limitation appears to be solely a self-imposed limitation by the court. See, e.g., *People ex rel. Thomas v. Nixon*, 353 Ill. 556, 573, 187 N.E. 650, 656 (1933); *Keokuk & H. Bridge Co. v. People*, 161 Ill. 132, 140, 43 N.E. 691, 694 (1896); *Spencer & Gardner v. People*, 68 Ill. 510, 512 (1873). However, the court failed to lift the self-imposed ban when given the opportunity to interpret the 1970 constitution in *LaSalle Nat'l Bank v. County of Cook*, 57 Ill. 2d 318, 312 N.E.2d 252 (1974). See text accompanying notes 114-17 *infra*.

114. 57 Ill. 2d 318, 312 N.E.2d 252 (1974).

ments other than on the basis of constructive fraud. We cannot accept this argument.

Under section 4(a) of article IX of the 1970 Constitution it is the General Assembly which has the authority to determine how and by whom the valuation of the property shall be ascertained. The constitutional debates contain only slight reference to the subject of judicial review of assessments. Delegate Karns, who had submitted the proposed amendment, was asked if he would be amenable to the insertion of some phrase or clause in his amendment which would make judicial review more likely. Delegate Karns indicated he would not. The discussion further indicated that judicial review under the proposed amendment would be limited to substantially the same areas that had previously been delineated by decisions of this court. (3 Proceedings 2023.) The difference in the language used in the 1970 Constitution, which is italicized above, has not altered the scope of judicial review of real estate tax assessments.<sup>115</sup>

Thus, the Illinois Supreme Court determined that the change in language between the 1870 Constitution and the 1970 Constitution did not alter the scope of judicial review of real estate tax assessments,<sup>116</sup> even though no constitutional base for judicial abstention had existed in the revenue article of the 1870 Constitution.<sup>117</sup>

In *People ex rel. Munson v. Morningside Heights, Inc.*,<sup>118</sup> the Illinois Supreme Court stated:

It is clear that courts, because of the separation of powers, in the absence of a showing of actual or constructive fraud, have no power to review, with a view to altering, the valuation of property which has been fixed for purposes of taxation by appropriate administrative officers.<sup>119</sup>

In fact, however, the court's reliance upon the separation of powers is simply restating the erroneous base originally delineated by the court. That is, that judicial review of excessive assessments is precluded because review would be exercising the discretion which the constitution has lodged in administrative officers. Clearly, article II, section 1 of the 1970 Constitution<sup>120</sup> does not mean that the powers of government must

115. *Id.* at 328-30, 312 N.E.2d at 257-58 (emphasis in original).

116. "The difference in the language used in the 1970 Constitution from that used in the 1870 Constitution . . . has not altered the scope of judicial review of real estate tax assessments." *Id.* at 330, 312 N.E.2d at 258.

117. See note 113 and accompanying text *supra*. Cf. *LaSalle Nat'l Bank v. County of Cook*, 57 Ill. 2d 318, 312 N.E.2d 252 (1974).

118. 45 Ill. 2d 338, 259 N.E.2d 27 (1970).

119. *Id.* at 340, 259 N.E.2d at 29.

The court's statement is a clear non sequitur. That the assessor has exclusive power to determine the value of property for real estate purposes does not prove that the court is without power to review the valuation which is allegedly excessive. Nothing in the Revenue Act withdraws the power of the court to review an assessor's action.

120. Article II, § 1 of the 1970 Constitution provides that, "[t]he legis-

be divided into rigidly separated compartments with judicial review of actions of the other two branches totally precluded. Rather, it means that "the whole power of two or more of the branches of government shall not be lodged in the same hands."<sup>121</sup> The court's reliance on the separation of powers to support its refusal to review excessive assessments absent fraud is misplaced. As was stated by Mr. Justice Powell in *United States v. Richardson*:

We should be ever mindful of the contradictions that would arise if a democracy were to permit general oversight of the elected branches of government by a nonrepresentative, and in large measure, insulated, judicial branch. . . . The irreplaceable value of the power articulated by Chief Justice Marshall [in *Marbury v. Madison*, 1 Cranch 137 (1803)] lies in the protection it has afforded the constitutional rights and liberties of individual citizens and minority groups against oppressive or discriminatory government action.<sup>122</sup>

The courts do have the power to review administrative decisions, and real property assessments are without doubt administrative decisions.<sup>123</sup> The court's function in reviewing administrative decisions is to determine if the decisions are supported by substantial evidence or the manifest weight of the evidence.<sup>124</sup> Assessments should not constitutionally receive any different treatment.<sup>125</sup>

Careful analysis reveals that review by the courts of alleged excessive assessments is not in conflict with section 1 of article II of the 1970 Constitution. A court in reviewing an assessment simply determines whether the assessment was based upon substantial evidence or the manifest weight of the evidence, as it does in reviewing any other administrative decision.<sup>126</sup> The court thus ensures that the person to whom the General Assembly has delegated the authority to ascertain the valuation of

lative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." ILL. CONST. art. II, § 1 (1970).

121. *City of Waukegan v. Pollution Control Bd.*, 57 Ill. 2d 170, 174, 311 N.E.2d 146, 148 (1974); accord *Seifert v. Standard Paving Co.*, 64 Ill. 2d 109, 122-23, 355 N.E.2d 537, 542 (1976).

122. *United States v. Richardson*, 418 U.S. 166 (1974).

123. See, e.g., *Chicago Land Clearance Comm'n v. Quinn Home Builders*, 11 Ill. 2d 111, 142 N.E.2d 60 (1957), in which the court reviewed an administrative decision not subject to review under the Administrative Review Act.

124. *Id.*

125. See text accompanying notes 114-17 *supra*.

126. The Administrative Review Act provides that the "findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct." When subject to the Administrative Review Act, courts apply the substantial evidence or manifest weight of the evidence test. *Davern v. Civil Serv. Comm'n*, 47 Ill. 2d 469, 269 N.E.2d 713 (1970), cert. denied, 403 U.S. 918 (1971).

real estate for tax purposes is not abusing the discretion vested in him. In this manner the court performs the judicial function of determining whether the factors upon which the assessment is based are valid and substantial. Thus, the court's naked statements that judicial review of excessive assessments absent fraud would violate the separation of powers is simply not true. If it were, there would be no judicial review of any executive or legislative acts since each instance of review would constitute a violation of the separation of powers. Furthermore, the Illinois Supreme Court, by refusing to lift its self-imposed limitation on judicial review of excessive assessments,<sup>127</sup> has forced the taxpayer to look to the General Assembly as its sole source for relief.<sup>128</sup>

#### B. Constructive Fraud—A Manipulative Concept

One of the bases for the doctrine of constructive fraud is the court's refusal to ignore a truly gross overvaluation. When confronted with its self-imposed bar to the review of excessive assessments and with assessments clearly out of line with actual value, the court has found the assessment to be constructively fraudulent thereby opening the door to judicial relief. A closer look at this basis, which served as a foundation for the origination of the doctrine of constructive fraud, reveals that the court's stated reasons for application of the doctrine are merely a sham to cover the inadequacies of a system in which there would be no judicial review of assessments at all.

The Illinois Supreme Court in the earliest decisions refused to review allegedly excessive assessments unless the taxpayer could prove actual fraud, that is, that the assessor had a dishonest motive in making the assessment.<sup>129</sup> In later cases, the court was faced with grossly excessive assessments where no dishonest motive was proved.<sup>130</sup> The court, rather than

127. *LaSalle Nat'l Bank v. County of Cook*, 57 Ill. 2d 318, 312 N.E.2d 252 (1974).

128. See Part IV *infra*.

129. *New Haven Clock Co. v. Kochersperger*, 175 Ill. 383, 51 N.E. 629 (1898).

130. See *Hoyne Sav. & Loan Ass'n v. Hare*, 60 Ill. 2d 84, 322 N.E.2d 833 (1974); *LaSalle Nat'l Bank v. County of Cook*, 57 Ill. 2d 318, 312 N.E.2d 252 (1974); *Clarendon Assocs. v. Korzen*, 56 Ill. 2d 101, 306 N.E.2d 299 (1973); *White v. Board of Appeals*, 45 Ill. 2d 378, 259 N.E.2d 51 (1970); *People ex rel. Munson v. Morningside Heights Corp.*, 45 Ill. 2d 338, 259 N.E.2d 27 (1970); *People ex rel. Joseph v. Schoenborn*, 41 Ill. 2d 302, 242 N.E.2d 147 (1968); *People ex rel. Frantz v. M.D.B.K.W., Inc.*, 36 Ill. 2d 209, 221 N.E.2d 650 (1966); *People ex rel. Nordlund v. S.B.A. Co.*, 34 Ill. 2d 373, 215 N.E.2d 233 (1966); *People ex rel. County Collector v. American Refrigerator Transit Co.*, 33 Ill. 2d 501, 211 N.E.2d 694 (1965); *People ex rel. Nordlund v. Lans*, 31 Ill. 2d 477, 202 N.E.2d 543 (1964); *People ex rel. Schmulbach v. City of St. Louis*, 408 Ill. 491, 97 N.E.2d 252 (1951); *People ex rel. Johnson v. Robison*, 406 Ill. 280, 94 N.E.2d 151 (1950); *People ex rel. Tennyson v. Texas Co.*, 406 Ill. 120,

allow the assessment to stand, gave relief against the excessive assessment.<sup>131</sup>

The body of law with respect to judicial review of excessive assessments is less than inspiring. The law is made up largely of ad hoc decisions, often seemingly influenced by considerations other than those which strictly relate to the individual taxpayer's dilemma. Even the simple question of whether constructive fraud is governed by rule or by discretion has no clear answer. Perhaps the answer is that discretion plays the larger role, that mixtures of rule and discretion are common, and that such rules as exist are usually but not always unclear and commonly violated. This ad hoc approach has been adopted by the Illinois Supreme Court which seldom mentions explicitly its discretionary power to find or not find constructive fraud. However, the three most common situations in which the court has granted relief using as its basis the doctrine of constructive fraud are: (1) where the assessment is so excessive it could not have been honestly made; (2) where the assessment has been made by mere will without the exercise of judgment; and (3) where the assessment is arbitrarily made in disregard of the recognized elements of value.

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92 N.E.2d 142 (1950); *People ex rel. Tedrick v. Allied Oil Corp.*, 388 Ill. 219, 57 N.E.2d 859 (1944); *People ex rel. McDonough v. Chicago Union Lime Works Co.*, 361 Ill. 304, 198 N.E. 1 (1935); *People ex rel. McDonough v. Schmuhl*, 359 Ill. 446, 194 N.E. 731 (1935); *People ex rel. Wangelin v. Gillespie*, 358 Ill. 40, 192 N.E. 664 (1934); *People ex rel. Nash v. Norton*, 358 Ill. 272, 193 N.E. 129 (1934); *People ex rel. McDonough v. Grand Trunk W.R.R.*, 357 Ill. 493, 192 N.E. 645 (1934); *People ex rel. Wangelin v. St. Louis Bridge Co.*, 357 Ill. 245, 191 N.E. 300 (1934); *People ex rel. Wangelin v. Wiggins Ferry Co.*, 357 Ill. 173, 191 N.E. 296 (1934); *Bistor v. McDonough*, 348 Ill. 624, 181 N.E. 417 (1932); *Kinderman v. Harding*, 345 Ill. 237, 178 N.E. 71 (1930); *Aldrich v. Harding*, 340 Ill. 354, 172 N.E. 772 (1930); *People ex rel. Carr v. Stewart*, 315 Ill. 25, 145 N.E. 600 (1924); *People ex rel. Miller v. Chicago, B. & Q.R.R.*, 300 Ill. 399, 133 N.E. 325 (1921); *People ex rel. McCallister v. Keokuk & Hamilton Bridge Co.*, 287 Ill. 246, 122 N.E. 467 (1919); *People's Gas Light Co. v. Stuckart*, 286 Ill. 164, 121 N.E. 629 (1919); *Calumet & Chicago Canal & Dock Co. v. O'Connell*, 265 Ill. 106, 106 N.E. 452 (1914); *First Nat'l Bank v. Holmes*, 246 Ill. 362, 92 N.E. 893 (1910).

131. See *People ex rel. County Collector v. American Refrigerator Transit Co.*, 33 Ill. 2d 501, 211 N.E.2d 694 (1965); *People ex rel. Rhodes v. Turk*, 391 Ill. 424, 63 N.E.2d 513 (1945); *People ex rel. McGaughey v. Wilson*, 367 Ill. 494, 12 N.E.2d 5 (1937); *People ex rel. McDonough v. Schmuhl*, 359 Ill. 446, 194 N.E. 731 (1935); *People ex rel. Wangelin v. Gillespie*, 358 Ill. 40, 192 N.E. 664 (1934); *People ex rel. McDonough v. Grand Trunk W.R.R.*, 357 Ill. 493, 192 N.E. 645 (1934); *People ex rel. Wangelin v. St. Louis Bridge Co.*, 357 Ill. 245, 191 N.E. 300 (1934); *People ex rel. Wangelin v. Wiggins Ferry Co.*, 357 Ill. 173, 191 N.E. 296 (1934); *Aldrich v. Harding*, 340 Ill. 354, 172 N.E. 772 (1930); *People ex rel. Carr v. Stewart*, 315 Ill. 25, 145 N.E. 600 (1924); *People ex rel. Miller v. Chicago, B. & Q.R.R.*, 300 Ill. 399, 133 N.E. 325 (1921); *People ex rel. Little v. St. Louis Elec. Bridge Co.*, 290 Ill. 307, 125 N.E. 280 (1919); *People ex rel. McCallister v. Keokuk & Hamilton Bridge Co.*, 287 Ill. 246, 122 N.E. 467 (1919).

## (1) Assessment So Excessive as to Connote Dishonest Valuation

In *Pacific Hotel Co. v. Lieb*, one of the first cases in which the Illinois Supreme Court granted relief from an excessive assessment not actually fraudulent, the court reasoned:

[S]ince the value of property is matter of opinion, upon which different minds, with equal opportunities of knowledge, and actuated by the same honest desire to arrive at the truth, are liable widely to differ, it has always been held, in this court, that a court of equity will never interfere to enjoin the collection of a tax, merely because the property has been assessed at a greater valuation than the court would have fixed upon it. Where, however, the valuation is so grossly out of the way as to show that the assessor could not have been honest in his valuation—must reasonably have known that it was excessive—it is accepted as evidence of fraud upon his part against the taxpayer, and the court will interpose.<sup>132</sup>

Subsequent cases have reaffirmed the reasoning of this court.<sup>133</sup> For example, where the taxpayer's property was assessed at 60% of full value while other property in the state was assessed at not more than 37% of its full value, the court found the disparity too great to have been mere error, and determined that the assessor could not have been honest in his valuation.<sup>134</sup> Thus the court held the assessment invalid because the rate was too high in comparison with the rate used for other like property.<sup>135</sup> Because the court had previously held that it had no

132. *Pacific Hotel Co. v. Lieb*, 83 Ill. 602, 609-10 (1876).

133. *Accord*, *People ex rel. Munson v. Morningside Heights Corp.*, 45 Ill. 2d 338, 259 N.E.2d 27 (1970); *People ex rel. Frantz v. M.D.B.K.W., Inc.*, 36 Ill. 2d 209, 221 N.E.2d 650 (1966); *People ex rel. Nordlund v. S.B.A. Co.*, 34 Ill. 2d 373, 215 N.E.2d 233 (1966); *People ex rel. Rhodes v. Turk*, 391 Ill. 424, 63 N.E.2d 513 (1945); *People ex rel. Tedrick v. Allied Oil Corp.*, 388 Ill. 219, 57 N.E.2d 859 (1944); *People ex rel. Hellyer v. Hendrickson*, 373 Ill. 99, 25 N.E.2d 507 (1940); *People ex rel. McGaughey v. Wilson*, 367 Ill. 494, 12 N.E.2d 5 (1937); *People ex rel. McDonough v. Schmuhl*, 359 Ill. 446, 194 N.E. 731 (1935); *People ex rel. Wangelin v. Gillespie*, 358 Ill. 40, 192 N.E. 664 (1934); *People ex rel. Nash v. Norton*, 358 Ill. 272, 193 N.E. 129 (1934); *People ex rel. Wangelin v. St. Louis Bridge Co.*, 357 Ill. 245, 191 N.E. 300 (1934); *People ex rel. Wangelin v. Wiggins Ferry Co.*, 357 Ill. 173, 191 N.E. 296 (1934); *Aldrich v. Harding*, 340 Ill. 354, 172 N.E. 772 (1930); *People ex rel. Carr v. Stewart*, 315 Ill. 25, 145 N.E. 600 (1924); *People ex rel. Little v. St. Louis Elec. Bridge Co.*, 290 Ill. 307, 125 N.E. 280 (1919); *Peoples Gas Light & Coke Co. v. Stuckart*, 286 Ill. 164, 121 N.E. 629 (1919).

134. *People ex rel. McDonough v. Illinois C.R.R.*, 355 Ill. 605, 190 N.E. 82 (1934). *Accord*, *People ex rel. Ross v. Chicago M. St. P. & P.R.R.*, 381 Ill. 58, 44 N.E.2d 566 (1942); *People ex rel. McDonough v. Schmuhl*, 359 Ill. 446, 194 N.E. 731 (1935); *People ex rel. McDonough v. Grand Trunk W.R.R.*, 357 Ill. 493, 192 N.E. 645 (1934); *Peoples Gas Light Co. v. Stuckart*, 286 Ill. 164, 121 N.E. 629 (1919); *State Bd. of Equalization v. People ex rel. Goggin*, 191 Ill. 528, 61 N.E. 339 (1901); *Pacific Hotel Co. v. Lieb*, 83 Ill. 602 (1876); *Chicago, B. & Q.R.R. v. Cole*, 75 Ill. 591 (1874).

135. *People ex rel. McDonough v. Illinois C.R.R.*, 355 Ill. 605, 190 N.E. 82 (1934).



power to review or determine the value of property fixed for purposes of taxation by the proper officers and that an assessment is not fraudulent merely because it is excessive, the court was forced to find the excessive assessments to be evidence that the assessor was acting with improper motives and on this basis was able to grant relief to the burdened taxpayer.<sup>136</sup>

(2) Assessments Made Without the Exercise of Judgement

In *People ex rel. Carr v. Stewart*,<sup>137</sup> the taxpayers' real estate in Cook County was valued for tax purposes at 150% of actual value while all other property was assessed at 60% of its actual value. The court stated:

Even if this overvaluation, great as it is, might not alone be evidence of fraud sufficient to impeach the assessment, the other circumstances appearing in evidence, that the board refused to consider sales of property in determining the value, and stated that it did not consider them material in the case, is evidence of an intention to fix the value arbitrarily, without the exercise of judgment as to circumstances that ought to have been taken into consideration.<sup>138</sup>

The reason given for sustaining the objections was not that the property assessment was grossly excessive but that the overvaluation was grossly excessive when viewed in light of the taxpayer's supporting evidence. As was stated by the court: "taken in connection with the other circumstances in the case, requires the conclusion that it did not arise from error in the exercise of honest judgment but was arbitrarily and intentionally made."<sup>139</sup>

136. For example, in *People ex rel. Frantz v. M.D.B.K.W., Inc.*, 36 Ill. 2d 209, 221 N.E.2d 650 (1966), the court observed:

The law requires assessment of property at its fair market value. The ascertainment of such value for purposes of taxation is primarily for the administrative officers to whom this function is delegated, and except for cases of fraud, courts will not undertake to review the determination. When valuation has been fraudulently made it is subject to judicial review, but more is required for this purpose than merely showing an overvaluation. It is only where the property has been grossly overvalued, the assessed valuation being reached under circumstances showing either lack of knowledge of known values or a deliberate fixing of values contrary to the known value, that fraud in law will be inferred. Before the conduct of the taxing authorities will be considered constructive fraud, *the evidence must clearly establish that the assessment was made in ignorance of the value of the property, or on a judgment not based upon readily ascertainable facts, or on a designedly excessive basis.*

137. 315 Ill. 25, 145 N.E. 600 (1924).

138. *Id.* at 30, 145 N.E. at 602. (The property was assessed at \$2,250 and \$1,871, indicating a full value of \$3,750 and \$3,100, respectively).

139. *Id.* *Accord*, *First Nat'l Bank v. Holmes*, 246 Ill. 362, 92 N.E. 893 (1910); *Keokuk & Hamilton Bridge Co. v. People ex rel. Bertschi*, 161 Ill. 514, 44 N.E. 206 (1896).

### (3) Assessments Arbitrarily Made

The court granted relief from an excessive assessment in *People ex rel. McGaughey v. Wilson*<sup>140</sup> where it was shown that the excessive assessment was arbitrarily made in disregard of the well recognized elements entering into the valuation of property. The court stated:

Where the evidence clearly establishes that a gross over-valuation of property has been made under circumstances showing that the actual value of the property was not considered, and that the recognized standards by which the value of the property is determined were not taken into consideration or applied in fixing the valuation of the property, the valuation for assessment so fixed is subject to review by the courts.<sup>141</sup>

It can clearly be discerned from a close evaluation of the case law that the court when reviewing allegedly excessive assessments finds any excuse it can to right an obvious wrong. Thus, there is no real "base" for the court's review other than its determination that each particular assessment is unjust—the result being a classification of reviewable assessments not governed by rule but by discretion. Even a cursory analysis of the cases reveals the great harm to the Cook County taxpayer resulting from the fact that he cannot objectively know under what circumstances his overassessment will be reviewed. This subjective approach adopted by the court warrants change.

#### C. Judicial Relief: Determination Without a Mathematical Formula

In *People ex rel. Nash v. Norton*,<sup>142</sup> the court stated: "In the present case appellant has not shown by clear and convincing proof that the assessment was so grossly excessive as to shock the conscience or to be evidence of fraud or that it was made with some corrupt, dishonest or illegal motive."<sup>143</sup> The court thus hinted that there might be excessive assessments which would "shock the conscience" and for which the court would grant relief. However, the court stated in *People ex rel. McDonough v. Chicago Union Lime Works Co.*<sup>144</sup> that relief for excessive assessments will only be granted when the excess valuation is "so grossly excessive as to create a constructive fraud."<sup>145</sup>

Currently there exists no mathematical guideline to distinguish between when an excessive assessment is not fraudulent

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140. 367 Ill. 494, 12 N.E.2d 5 (1937).

141. *Id.* at 496, 12 N.E.2d at 6.

142. 358 Ill. 272, 193 N.E. 129 (1934).

143. *Id.* at 275, 193 N.E. at 130.

144. 361 Ill. 304, 198 N.E. 1 (1935).

145. *Id.* at 308, 198 N.E. at 3.

and when it is so grossly excessive as to amount to a fraudulent assessment. Thus the burdened taxpayer has no benchmark to use in judging when the overassessment of his property for real estate tax purposes is "constructively fraudulent."<sup>146</sup>

It is noteworthy, however, that the court has rejected taxpayer contentions that overvaluations were so excessive as to result in a finding of a per se fraudulent assessment. As was stated by the court in *People ex rel. Harding v. Atwater*: "Constructive fraud is shown where the overvaluation is grossly excessive, and it is proved that the assessment was made either in ignorance of the value of the property or that it was not based upon readily obtainable facts."<sup>147</sup> It is apparent that the court is unwilling to bind itself to a rule solely based upon grossly excessive valuation.<sup>148</sup> It will only consider proof that the assessment is so grossly excessive as to amount to fraud. Whether the taxpayer has established that the assessed value upon his real estate is so excessive as to amount in law to a fraud upon the part of the taxing authorities becomes a question of fact. In deciding this factual question, the circumstances surrounding the overvaluation will be considered. Because the court determines the constructive fraud question in this manner, the taxpayer is at a loss to know what constitutes a valuation so gross as to amount to a constructive fraud.

The unpredictability of what the court will do with an overvaluation question may be emphasized by contrasting *People ex rel. Johnson v. Robison*<sup>149</sup> with *People ex rel. Carr v. Stewart*.<sup>150</sup> The fundamental attitudes of these two courts toward overvaluation seem to be at opposite ends of the spectrum. The taxpayer in *Stewart* was allowed to recover on overassessments of 134.4% and 138.4%;<sup>151</sup> however, the taxpayer in *Robison* did not recover

146. For an in depth survey of the cases in which an excessive valuation percentage was alleged but constructive fraud was not found see Appendix A-I, p. 85 *infra*. For a survey of those cases in which constructive fraud was found see Appendix A-II, p. 87 *infra*.

147. 362 Ill. 546, 552, 1 N.E.2d 46, 49-50 (1936) (emphasis added).

148. *Id.* Accord, *People ex rel. Tedrick v. Allied Oil Corp.*, 388 Ill. 219, 57 N.E.2d 859 (1944) (personal property).

149. 406 Ill. 280, 94 N.E.2d 151 (1950).

150. 315 Ill. 25, 145 N.E. 600 (1924).

151. The figures used by the court in considering the allegations of overvaluation on two blocks of taxpayer's property were as follows:

North Block

\$3,750 per front foot—Assessed Valuation

1,600 per front foot—Fair Cash Value

\$2,150 difference

Excessive Valuation Percentage:  $\frac{\$2,150}{\$1,600} = 134.4\%$

on an overassessment of between 229% and 370.7%.<sup>152</sup> These two contrasting cases are representative of the current state of the law as to when an excessive valuation is constructively fraudulent.<sup>153</sup> Clearly, this area is as devoid of objective legal principles as any subject on which judicial opinions have been written.

Where property in a private voluntary sale brought \$25,000 and that same property was assessed for tax purposes at \$82,500, over three times the fair market value, the court granted relief to the aggrieved taxpayer by inferring fraud in law and held

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South Block

\$3,100 per front foot—Assessed Valuation	
<u>1,300 per front foot—Fair Cash Value</u>	
\$1800 difference	
Excessive Valuation Percentage: $\frac{\$1,800}{\$1,300} =$	<u>138.4%</u>

152. The figures used by the court in *Robison* were as follows:

\$ 273 per front foot — Assessed Valuation	
<u>58-83 per front foot — Fair Cash Value</u>	
\$190-215 difference	
Excessive Valuation Percentage $\frac{215}{58} =$	<u>370.7%</u>
Excessive Valuation Percentage $\frac{190}{83} =$	<u>229.0%</u>

153. See note 146 *supra*. There are few guidelines as to how excessive a valuation of real estate must be before a court will declare it discriminatory and, therefore, constructively fraudulent. A 25% difference between the county assessor's assessment and the taxpayer's appraisal was held not to be constructively fraudulent but rather a mere "difference of opinion" in valuation. *People ex rel. Nordlund v. S.B.A. Co.*, 34 Ill. 2d 373, 215 N.E.2d 233 (1966). A valuation of twice the fair market value was held not so excessive as to be fraudulent *per se*. *People ex rel. Harding v. Atwater*, 362 Ill. 546, 1 N.E.2d 46 (1936). However, in *People ex rel. County Collector v. American Refrigerator Transit Co.*, 33 Ill. 2d 501, 504-05, 211 N.E.2d 694, 697 (1965), the court held as a matter of law that an overassessment of 78% or more constituted constructive fraud.

It is clear that fraud, either actual or constructive, must be proved in order to sustain the judgment. However, we do not think it necessary that there be an express finding of fraud if the evidence supports such a conclusion. Here, the evidence clearly shows that appellee's property, after application of the multiplier, was assessed at \$158,500 and that its actual fair market value was \$161,000. Thus, appellee's property was assessed at approximately 98% of its full fair market value, while other locally assessed property was assessed at only 55% of full fair market value. This, in our opinion, was tantamount to constructive fraud. . . .

The court's formula in determining the percentage of overassessment was as follows: 98%-55% = 43% (valuation percentage in excess of other locally assessed property); 43%-55% = 78.2% (percentage of excess assessment). See also *People ex rel. Dallas v. Chicago B. & Q.R.R.*, 26 Ill. 2d 292-94, 186 N.E.2d 335, 335-36 (1962), where the court indicated that an overassessment of 81.8% would constitute constructively fraudulent discrimination. See Gale, *Assessment and Collection of Taxes*, 1952 U. ILL. L.F. 102, 196; Wattling, *Real Property Taxation in Cook County Under the Constitution of 1970*, 6 J. MAR. J. 87, 91, n.13 (1972); Comment, *The Illinois Constitutional Requirement of Uniformity in Taxation*, 33 ILL. L. REV. 57, 67, n.60 (1938). See also *Hoynes Sav. & Loan Ass'n v. Hare*, 60 Ill. 2d 84, 322 N.E.2d 833 (1974).

that the taxpayer had shown excessive assessed value upon which he was entitled to relief.<sup>154</sup> However, where property was assessed at \$20,998 for tax purposes and the taxpayer introduced evidence that its fair market value was only \$7,100, the court refused to grant relief because the taxpayer's property had a lower assessment than surrounding properties.<sup>155</sup>

Another example discloses that where the disparity in value for the taxpayer's two tracts of land was 5% and 25%, respectively, the court found that this disparity amounted to a mere difference of opinion as to value.<sup>156</sup> The court stated:

The taxpayer urges this court to define the concept of constructive fraud on the basis of a grossly excessive assessment. Unfortunately this concept, as other legal concepts, is not susceptible to precise definition. Our system of jurisprudence requires that these inexact criteria be dealt with on a case-to-case basis.<sup>157</sup>

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154. *People ex rel. Rhodes v. Turk*, 391 Ill. 424, 63 N.E.2d 513 (1945).  
 \$82,500 Assessed Valuation  
 25,000 Fair Cash Value  
 \$57,000 Difference  
 Excessive Valuation Percentage:  $\frac{\$57,500}{\$25,000} = 230.0\%$
155. *People ex rel. Nash v. Norton*, 358 Ill. 272, 193 N.E. 129 (1934).  
 \$20,998 Assessed Valuation  
 7,100 Fair Cash Value  
 \$13,898 Difference  
 Excessive Valuation Percentage:  $\frac{\$13,898}{\$7,100} = 194.3\%$
156. *People ex rel. Nordlund v. S.B.A. Co.*, 34 Ill. 2d 373, 215 N.E.2d 233 (1966).  
 TRACT I  
 \$183,700 Assessed Valuation  
 173,500 Fair Cash Value (taxpayer)  
 \$ 10,200 Difference  
 Excessive Valuation Percentage:  $\frac{\$ 10,200}{\$173,500} = 5.9\%$   
 \$183,700 Assessed Valuation  
 177,000 Fair Cash Value (trial court)  
 \$ 6,700 Difference  
 Excessive Valuation Percentage:  $\frac{\$ 6,700}{\$177,000} = 3.8\%$
- TRACT II  
 \$ 57,500 Assessed Valuation  
 43,000 Fair Cash Value (taxpayer)  
 \$ 14,500 Difference  
 Excessive Valuation Percentage:  $\frac{\$ 14,500}{\$ 43,000} = 34.0\%$   
 \$ 57,500 Assessed Valuation  
 47,800 Fair Cash Value (trial court)  
 \$ 9,700 Difference  
 Excessive Valuation Percentage:  $\frac{\$ 9,700}{\$ 47,800} = 20.3\%$
157. *People ex rel. Nordlund v. S.B.A. Co.*, 34 Ill. 2d 373, 378, 215 N.E. 2d 233, 236 (1966).

Similarly, in *People ex rel. Frantz v. M.D.B.K.W., Inc.*,<sup>158</sup> the court opined:

The record in the case at bar shows at most that these properties were merely assessed somewhat higher than they should have been. There is nothing to indicate that the assessor was not actuated by good faith, or that the assessments were not made in the exercise of an honest, if erroneous, judgment. The objectors have not satisfied their burden of showing that the assessments were so grossly excessive as to amount to constructive fraud . . . .<sup>159</sup>

The court in *People ex rel. Schmulbach v. City of St. Louis*,<sup>160</sup> in addressing the taxpayer's sole contention that the assessed valuation was so excessive as to constitute constructive fraud, stated that "the mere fact of overvaluation will not of itself establish fraud."<sup>161</sup> It went on to review the facts and concluded with the statement "that the evidence in this case is sufficient to warrant the conclusion that the final assessment of the city's property for taxation purposes is so grossly excessive that it constitutes constructive fraud."<sup>162</sup>

Thus under certain circumstances known only to the court overvaluation may be so excessive as to justify the conclusion

158. 36 Ill. 2d 209, 221 N.E.2d 650 (1966).

159. *Id.* at 211-12, 221 N.E.2d at 652-53.

*HOTEL - 1961*

\$ 36,150 Assessed Valuation  
 17,200 Fair Cash Value

\$ 18,950 Difference

Excessive Valuation Percentage:  $\frac{\$18,950}{\$17,200} = 110.2\%$

*HOTEL - 1962*

\$ 38,662 Assessed Valuation  
 17,200 Fair Cash Value

\$ 21,462 Difference

Excessive Valuation Percentage:  $\frac{\$21,462}{\$17,200} = 124.8\%$

*FARM*

\$128,440 Assessed Valuation  
 86,000 Fair Cash Value

\$ 42,440 Difference

Excessive Valuation Percentage:  $\frac{\$42,440}{\$86,000} = 49.3\%$

160. 408 Ill. 491, 97 N.E.2d 252 (1951).

161. *Id.* at 499-500, 97 N.E.2d at 256.

162. *Id.* at 503, 97 N.E.2d at 257.

\$6,439,935 Assessed Valuation  
 4,830,000 Fair Cash Value

\$1,609,935 Difference

Excessive Valuation Percentage:  $\frac{\$1,609,935}{\$4,830,000} = 33.0\%$

that it was not honestly made and is therefore constructively fraudulent. A close review of the cases fails to reveal any objective criteria by which to measure the requisite "circumstances," or the amount by which property must be overassessed to be considered "disproportionately" higher than other similar property.<sup>163</sup> The affected taxpayer, therefore, can only guess whether the court will review either a 5% overassessment or a 500% overassessment—clearly an unconscionable, additional burden to place on an already overburdened taxpayer.

ii. Practical Stated and Unstated Reasons Underlying the Doctrine of Constructive Fraud

As can be readily discerned from the preceding material, the authors find that none of the bases for judicial abstention from reviewing assessments of real estate for tax purposes as stated by the Illinois Supreme Court dictate its existence. Thus, the true reasons behind the doctrine of constructive fraud must be inferred from the implications bearing upon the wisdom of employing the doctrine.

A. *Judicial Review—An Impediment to the Collection and Distribution of Revenue?*

The court, in *Republic Life Insurance Co. v. Pollak*,<sup>164</sup> stated: [I]f every tax payer might appeal to the courts, either before or after the warrant comes to the hands of the collector, the greater portion of the revenue could be tied up and delayed for years, and the very existence of the government endangered, as its life depends upon the requisite amount of revenue for its support.<sup>165</sup>

While this quotation addresses the primary objection to a judicial review of assessments, the rationale of this court is no longer viable today. In *Clarendon Associates v. Korzen*,<sup>166</sup> the Illinois Supreme Court held that a taxpayer protesting his real estate tax assessment must pursue his statutory remedy.<sup>167</sup> That remedy requires the payment of the tax in full as a prerequisite to contesting the assessment. Collection and distribution of taxes therefore are no longer impaired by judicial review, and this reason no longer supports judicial abstention from reviewing alleged overvaluations of real estate for tax purposes.

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163. *People ex rel. County Collector v. American Refrigerator Transit Co.*, 33 Ill. 2d 501, 211 N.E.2d 694 (1965).

164. 75 Ill. 292 (1874).

165. *Id.* at 296.

166. 56 Ill. 2d 101, 306 N.E.2d 299 (1974).

167. ILL. REV. STAT. ch. 120, §§ 675, 716 (1975).

B. Sales Data Records: Objective Evidence for Judicial Review

The doctrine of constructive fraud was expounded in Illinois in 1874.<sup>168</sup> At that time there were neither machine records systems nor sophisticated data storage capabilities. Knowledge of the sale of real estate could be difficult, if not impossible to obtain. This lack of basic sales data could have been an unexpressed reason for the courts allowing the determination of the assessing official to stand except under very extenuating circumstances for the taxpayer.

Approximately 100 years later, the technology of records keeping has changed drastically along with certain statutory provisions. Cook County has a sophisticated machine records system<sup>169</sup> which is used by the Assessor in conducting sales studies. Indeed such studies should routinely be subpoenaed by taxpayers filing excessive valuation objections to the Collector's Application for Judgment.

Allied with machine records technology are statutory aids. Each parcel of real estate in Cook County has a permanent real estate tax number.<sup>170</sup> This number is used primarily for the billing of real estate taxes; however, its use in tracing the sale of real estate is invaluable. Additionally, in 1970 the General Assembly revolutionized the gathering of real estate sales information<sup>171</sup> through the passage of the Real Estate Transfer Tax Act. This act calls for a tax to be imposed of \$.50 per \$500 of consideration for real estate transferred. Of more importance to assessment practices, however, is the requirement of a declaration to be executed which not only reflects payment of the tax but also contains other information:

At the time a deed is presented for recordation there shall also be presented to the Recorder of Deeds or Registrar of Titles, a declaration signed by at least one of the sellers and also signed by at least one of the buyers in the transaction or by the attorneys or agents for the sellers or buyers, *which declaration shall state the full consideration for the property so transferred, the permanent real estate index number of the property, if any; the legal description of the property; the date of the deed; the type of deed; the address of the property; the type of improvement, if any, on the property conveyed; information as to whether the transfer is between relatives or is a compulsory transaction; and the lot size or acreage. . . . The declaration form shall be prescribed by the Department of Local Government Affairs and shall include an appropriate place for the inclusion of special facts or circumstances, if any. . . . The Recorder of Deeds or Registrar of Titles shall not record such declaration, but shall*

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168. Republic Life Ins. Co. v. Pollack, 75 Ill. 292 (1874).

169. ILL. REV. STAT. ch. 34, § 1104.6 (1975).

170. *Id.* ch. 120, § 511.

171. *Id.* ch. 34, § 1002.



insert thereon the Document Number assigned to the deed, and shall then transmit such declaration to the Supervisor of Assessments, assessor or Board of Assessors of the county, as the case may be, who shall insert on such declaration the most recent assessed value for each parcel of the transferred property, and, at least once during every month, shall transmit all such declarations to the Department of Local Government Affairs. *The supervisor of assessments, assessor or board of assessors of the county may also copy and retain any information relating to the property transferred to assist his office in determining the proper assessed valuation of the property transferred and other properties in his county.*<sup>172</sup>

These declarations are public records available for inspection.<sup>173</sup> In addition, as public records they are admissible into evidence at any trial.<sup>174</sup> Finally, it should be pointed out that it is a criminal offense to falsify the consideration on such a declaration.<sup>175</sup>

The end result of a machine records system, a permanent real estate tax number system and the mandatory filing of declarations in connection with the sale of real estate is to give both the public<sup>176</sup> and the Assessor the best possible evidence as to sales of real estate. Although this information alone will not assure exact assessments, it goes a long way to furnish objective facts to back up the judgments of both the taxpayer and the Assessor as to what the proper value should be. Since assessments in Cook County are now a percentage of market value,<sup>177</sup> sales of the property itself or comparable properties should be of great weight in determining the assessed value of real estate. The means now available negate the underlying problem of objective fact accumulation which was present in 1874 or as late as 1970. To the extent the problem is gone, the basis for the doctrine of constructive fraud no longer exists.

C. *Judicial Review: An Examination of Its Effect upon the Volume of Litigation and the Uniformity of Taxation*

One of the court's unstated reasons for avoiding review of assessments was quite possibly the fact that it felt that the judi-

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172. *Id.* § 1003 (emphasis added).

173. *Id.* § 1005.

174. *Id.* ch. 110A, § 216(d).

175. *Id.* ch. 34, § 1005.

176. *People v. Peller*, 34 Ill. App. 2d 372, 181 N.E.2d 376 (1962); ILL. REV. STAT. ch. 116, § 43.103 (1975). See also *People ex rel. Hamer v. Board of Educ.*, 130 Ill. App. 2d 592, 264 N.E.2d 420 (1970); ILL. REV. STAT. ch. 120, § 579.1 (1975); *Weinstein v. Rosenbloom*, 59 Ill. 2d 475, 482, 322 N.E.2d 20, 24 (1975).

177. See notes 9 & 10 *supra*. Market value is defined as "that value, estimated at the price it would bring at a fair voluntary sale." Cook County, Ill., Real Property Assessment Classification Ordinance, § 1(b) (2) (originally enacted Dec. 17, 1973, amended Nov. 29, 1976, June 6, 1977).

ciary would be overly burdened by cases alleging excessive assessments for real estate tax purposes and that if it were to undertake this added burden, uniformity of taxation would be lost.<sup>178</sup> It appears clear to the authors, however, that even if the aforementioned reasons for judicial abstention from review of alleged overvaluations for real estate tax purposes were at one time valid, they are no longer valid today.

It is especially apparent from the decisions of the depression years that the court had wearied of the ever-present tax cases.<sup>179</sup> That amount of litigation, however, must be contrasted with the number of excessive assessment cases before the courts in the downstate counties in which there is judicial review under the Administrative Review Act. There have been very few.<sup>180</sup> It is the authors' belief that the reason for this disinclination on the part of the downstate taxpayer to resort to the courts is because most questions of valuation are equitably resolved in the appeal proceedings before the Property Tax Appeal Board.<sup>181</sup> Perhaps the reason for this equitable resolution at the board stage is due to the fact that judicial review of the decisions of the Property Tax Appeal Board is available under the Administrative Review Act, albeit infrequently used, and thus provides added impetus for the Property Tax Appeal Board to be very scrupulous in its treatment of taxpayer complaints.<sup>182</sup> It has

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178. The cardinal principle of uniformity of taxation is found in the constitution which provides that "taxes upon real property shall be levied uniformly." ILL. CONST. art. IX, § 4 (1970). *People ex rel. Bracker v. Orvis*, 301 Ill. 350, 133 N.E. 787 (1922).

This rule of uniformity requires that one person shall not be compelled to pay a greater proportion of the taxes, according to the value of his property, than another. . . . Uniformity in taxing implies equality in the burden of taxation; and this equality cannot exist without uniformity in the basis of assessment, as well as in the rate of taxation.

*Bistor v. McDonough*, 348 Ill. 624, 629, 181 N.E. 417, 419, *cert. denied*, 287 U.S. 641 (1932).

179. In *People ex rel. Nash v. Norton*, 358 Ill. 272, 275, 193 N.E. 129, 130 (1934), the court took judicial notice of the fact that the legal machinery set up to hear assessment complaints had been "swamped with thousands of like petitions from distressed property owners during the past few years." See also, *People ex rel. Sweitzer v. Orrington Co.*, 360 Ill. 289, 195 N.E. 642 (1935).

180. See note 277 and accompanying text *infra*.

181. See notes 276-77 and accompanying text *infra*.

182. In 1967, the Illinois General Assembly provided:  
The [Property Tax Appeal] Board shall make a decision in each appeal or case heard by it, and such decision shall be based upon equity and the weight of the evidence and not upon constructive fraud, and shall be binding upon appellant and officials of government.

Final administrative decisions of the Property Tax Appeal Board are subject to review under the provisions of the Administrative Review Act.

ILL. REV. STAT. ch. 120, § 592.4 (1975). Thus for the other 101 counties in Illinois, the doctrine of constructive fraud no longer exists if the taxpayer selects the Property Tax Appeal Board route for objecting to his exces-

therefore been proven in practice that the availability of review will not open the floodgates of litigation and will not substantially increase the work load of the judiciary.

Furthermore, judicial review will not adversely affect the uniformity of taxation. As was stated in the previous section,<sup>183</sup> the mechanization of the real estate sales records provides clear objective evidence upon which assessments may be based. In addition, section 501 of the Revenue Act<sup>184</sup> specifically enumerates how real property shall be valued for purposes of taxation. Cook County property is assessed at a percentage of its fair market value.<sup>185</sup> In valuing property, the Assessor may compare the same characteristics in order to formulate a correct assessment.<sup>186</sup> Because objective evidence is now available upon which this decision may be based, there is no longer a valid reason for barring judicial inquiry in the valuation of property for real estate tax purposes. It therefore appears that opening Cook County assessments for real estate tax purposes to direct judicial review would neither over-burden the judiciary nor upset uniformity of taxation.

#### *D. Cook County: A De Jure Classification System*

Perhaps one of the most overwhelming reasons behind the court's refusal to directly review Cook County assessments for real estate tax purposes was the judiciary's unstated desire to not upset the de facto classification system of Cook County.<sup>187</sup> The viability of the Cook County system of de facto classification depended upon the inability of a taxpayer, who by virtue of the system was subject to an above average assessment, to obtain judicial relief from the overvaluation of his property.<sup>188</sup> The

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sive assessed valuation. The doctrine mandatorily exists in Illinois only for Cook County real estate taxpayers. For Cook County, decisions of the Board of Appeals are not directly appealable under the Administrative Review Act. *Id.* ch. 110, § 264. Section 265 of the Administrative Review Act provides that the Act shall apply "where the Act creating or conferring power on such agency, by express reference, adopts the provisions of this Act." *Id.* § 265. The provisions of the Administrative Review Act are not expressly adopted in the statute creating or conferring power on the Board of Appeals.

183. See text accompanying notes 168-77 *supra*.

184. ILL. REV. STAT. ch. 120, § 501 (1975).

185. See notes 9 & 10 *supra*.

186. ILL. REV. STAT. ch. 120, § 501 (1975).

187. Classification of real property for purposes of taxation is a system wherein real estate is grouped into classes which are then taxed at varying rates. See generally Watling, *Taxation of Real Property in Cook County—The "Railroad Cases" and the Future of De Facto Classification*, 1 J. MAR. J. 212 (1968). See also *Aldrich v. Harding*, 340 Ill. 354, 172 N.E. 772 (1930).

188. The doctrine of constructive fraud operates to protect the Assessor and Board of Appeals from judicial review except under narrowly circumscribed conditions, and thus also protected Cook County's system of de facto classification.

classification of property in Cook County was, prior to 1970, de facto, as no constitutional or statutory provision sanctioned the classification system.<sup>189</sup> The system did, however, serve to maximize tax revenues.<sup>190</sup> Thus it is not surprising for the judiciary to avoid litigation in which the validity of the classification system would be directly contested.

This is not the case today. With the advent of the 1970 Constitution, the de facto classification system became de jure. Article IX, subsection 4(b) of the 1970 Constitution provides for independent classification by Cook County as well as some five other counties with populations of more than 200,000.<sup>191</sup> Therefore, if the unexpressed reason for past judicial abstention from the review of Cook County tax assessments was the fear of upsetting the de facto system of classification, it can only be stated that this reason no longer exists.

### iii. Judicial Review: A Persuasive Case for the Cook County Taxpayer

Returning to the Cook County taxpayer whose property was overvalued for real estate tax purposes, assume for the moment that he is in court.<sup>192</sup> At trial he is faced with the burden of proving fraud—either actual or constructive. Assuming that there has been no actual fraud in the assessment, what must the taxpayer demonstrate in order to prove that the assessment was constructively fraudulent? As discussed previously, there are no benchmarks by which the taxpayer can measure whether his excessive assessment is reviewable, albeit indirectly. He is faced

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189. ILL. CONST. art. IX, § 1 (1870), provided that "the general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property." Section 1 authorized only a general, unclassified property tax. The Revenue Act provides that real property shall be valued at its fair cash value. ILL. REV. STAT. ch. 120, § 501 (1975). Thus, classification of real property for purposes of taxation was precluded, and any classification for those purposes existing in Cook County was de facto.

190. The percentages of actual value used in the assessment of real property vary from class to class and the result is a maximization of tax revenues.

191. Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or to [sic] continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county. Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county.

ILL. CONST. art. IX, § 4(b) (1970). See *People ex rel. Kutner v. Cullerton*, 58 Ill. 2d 266, 319 N.E.2d 55 (1974).

192. See text accompanying notes 96-100 *supra*.

with a doctrine governed by no rules, regulations or mathematical formula. His attorney will be unable to advise him regarding the possibility of having his excessive assessment reviewed by the court.<sup>193</sup> Clearly, in no other area is a public official granted such broad discretion. Overvaluations of from 3.8% to 1584% have gone unreviewed. Such discretion is not the case for valuations for any other tax purposes.<sup>194</sup>

The authors have failed to find any substance to the judiciary's stated bases for its refusal to review alleged overvaluations. Similarly, any reasons for refusing review which could possibly be inferred from the decisions have been found to be groundless. It is the authors' conclusion therefrom that judicial review of real estate tax assessments should not be barred for any reason and should be available so that the Cook County real estate taxpayer, such as the hypothetical taxpayer discussed above, need not flail in waters muddied by a dearth of rules and unfettered administrative discretion.

### III. JUDICIAL REVIEW OF REAL ESTATE ASSESSMENTS IN COUNTIES OTHER THAN COOK

#### 1. *Level of Assessment*

Although a number of counties have populations in excess of 200,000 and, therefore, are allowed under the 1970 Illinois Constitution<sup>195</sup> to classify real estate for purposes of taxation, only Cook County has adopted a classification system. In the other 101 counties, assessments are subject to statutory review procedures that are not available in Cook County.

After receiving a decision from the local Board of Review, the downstate taxpayer has two alternative courses to choose from in seeking review of his assessment. Without paying the taxes in question under protest, he may appeal to the Property Tax Appeal Board;<sup>197</sup> however, unpaid taxes can be sold at a tax sale.<sup>198</sup> Alternatively, he may pay the taxes under protest and

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193. See text accompanying notes 132-62 *supra*.

194. See note 286 *infra*.

195. ILL. CONST. art. IX, § 4(b) (1970).

196. ILL. REV. STAT. ch. 120, § 501 (1975). *Hamer v. Kirk*, 65 Ill. 2d 211, 357 N.E.2d 506 (1976).

197. ILL. REV. STAT. ch. 120, § 592.1 (1975).

198. There is no delay on the extension of taxes on any assessment appealed to the Property Tax Appeal Board. ILL. REV. STAT. ch. 120, § 592.4 (1975). The county clerk extends the taxes on the collectors books based on the assessment pursuant to ILL. REV. STAT. ch. 120, §§ 639-654 (1975), and issues a collector's warrant, *id.* § 651, commanding the collector to collect the taxes. Delinquent taxes are subject to sale pursuant to ILL. REV. STAT. ch. 120, § 706.

file objections to the Collector's Application for Judgment as is required of a Cook County taxpayer. From the downstate taxpayer's viewpoint, the far more favorable choice is to appeal to the Property Tax Appeal Board.

## 2. Appeals to the Property Tax Appeal Board

### (a) Taxpayers

Established in 1967,<sup>199</sup> the Property Tax Appeal Board consists of three members appointed by the governor with the advice and consent of the Senate.<sup>200</sup> To commence an appeal to the Property Tax Appeal Board, the taxpayer must file a petition with its clerk within thirty days after the date of the written notice of the Board of Review's decision. A copy of the taxpayer's petition must be mailed by the clerk of the Property Tax Appeal Board to the Board of Review whose decision is being appealed.<sup>201</sup> This petition must set forth specifically the facts upon which the taxpayer bases his objection to the decision of the Board of Review, together with a statement of the contentions of law which he desires to raise, and the relief he requests.<sup>202</sup>

In order to be able to present a petition for review to the Property Tax Appeal Board, the taxpayer must have had a decision from his local Board of Review from which he is complaining.<sup>203</sup> Thus in the absence of the taxpayer or taxing bodies filing complaints or any action by the Board of Review initiated by it concerning his assessment, it is doubtful that a taxpayer could appeal to the Property Tax Appeal Board. A dismissal of a complaint by a Board of Review for want of prosecution would also seem to preclude review by the Property Tax Appeal Board. Furthermore, the doctrine of exhaustion of administrative remedies<sup>204</sup> could arguably be applicable and require the tax-

199. Will County Bd. of Review v. Property Tax Appeal Bd., 48 Ill. 2d 513, 514, 272 N.E.2d 32, 34 (1971); ILL. REV. STAT. ch. 120, § 592.1 (1975).

200. *Id.* § 592.1.

201. *Id.* § 592.2.

202. *Id.* § 592.1. Property Tax Appeal Board Rule 3 in pertinent part provides:

#### PETITIONS—APPLICATION

A. Petitions for appeal must be filed within 30 days after receipt of written notice of the decision of the Board of Review. Petitions sent by mail shall be considered as filed on the date post-marked. . . .

E. Every petition for appeal shall state the facts upon which the appellant bases his objection to the decision of the Board of Review, together with a statement of the contentions of law which he desires to raise and the relief he requests.

Official Rules of the Property Tax Appeal Board, Rule 3 (Nov. 15, 1975) [hereinafter Appeal Board Rules].

203. ILL. REV. STAT. ch. 120, §§ 590.1, 592.1 (1975).

204. The doctrine of exhaustion of administrative remedies applies to

payer's participation in hearings before the Board of Review as a prerequisite to filing a proper appeal to the Property Tax Appeal Board. In this light, let us consider three separate factual situations in which the Board of Review could make a decision and a taxing body does not appeal that decision to the Property Tax Appeal Board.

In the first situation, the taxpayer files a complaint before the Board of Review alleging his property is incorrectly assessed.<sup>205</sup> His participation in the hearing would be considered an exhaustion of his administrative remedies.<sup>206</sup> Thereafter, the Board of Review must give the taxpayer written notice of its decision.<sup>207</sup> The notice is most helpful to laymen in that it must contain the following: "You may appeal this decision to the Property Tax Appeal Board by filing a petition for review with the Property Tax Appeal Board within thirty days after this notice is mailed to you or your agent, or is personally served upon you or your agent."

In the second situation, the Board of Review increases all assessments of a class of real estate.<sup>208</sup> The taxpayer must be given notice, but let us assume that he does not appear at the hearing and that he later appeals the "decision" to the Property Tax Appeal Board within the proper time period. Under these circumstances, two interesting issues arise. Would the taxpayer receive notice of the Board of Review's decision? The statute provides:<sup>209</sup>

If a final decision of a Board of Review may be the subject of an appeal to the Property Tax Appeal Board, as provided in Sections 111.1 through 111.5 of this Act, written notice of its decision shall be given by the board of review to the taxpayer affected. . . .

The taxpayer is affected by the Board of Review's decision. If he does receive a notice, is this an approval to pursue a proper appeal? Moreover, the statute governing appeals to the Property Tax Appeal Board speaks in general terms. It states:<sup>210</sup>

[A]ny taxpayer dissatisfied with the decision of a board of review as such decision pertains to the assessment of his property for taxation purposes, . . . may, within 30 days after the date of written notice of the decision of the board of review, appeal such decision to the Property Tax Appeal Board for review. . . .

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all Cook County taxpayers and requires them to file a complaint, have a hearing and receive a decision from the Board of Appeals.

205. ILL. REV. STAT. ch. 120, § 589(4) (1975).

206. *In re* County Collector, 11 Ill. App. 3d 290, 296 N.E.2d 361 (1973); *People ex rel. Needham v. Abbott Estate*, 47 Ill. 2d 491, 497, 265 N.E.2d 612, 616 (1970); *Shappert Eng'r Co. v. Weitmeyer*, 34 Ill. 2d 97, 213 N.E.2d 530 (1966).

207. ILL. REV. STAT. ch. 120, § 590.1 (1975).

208. *Id.* § 589(5).

209. *Id.* § 590.1 (footnote omitted).

210. *Id.* § 592.1 (emphasis added).

The rules of the Property Tax Appeal Board also use the same terminology and do not require any appearance of the taxpayer before the Board of Review as a prerequisite to an appeal.<sup>211</sup>

In the third situation, a taxing body initiates and files a complaint before the Board of Review.<sup>212</sup> Notice is given to the taxpayer, but he does not appear at the hearing. Once again, we have the problems of notice and the proper construction of the statute and Property Tax Appeal Board Rules. It is the authors' opinion that a taxpayer need not appear before the Board of Review in either the second or the third situation. However, prudent advice by a taxpayer's attorney would require appearances before the Board of Review until a court decision clarifies the issue of exhaustion of administrative remedies.

A taxpayer could become involved in an appeal from a Board of Review's decision in yet another situation. Assume that the taxpayer, after looking on and without participating in the hearing, is satisfied with the Board of Review's decision in factual situations two or three. However, affected taxing bodies are not satisfied, and they appeal to the Property Tax Appeal Board.<sup>213</sup> Rule 6 of the Property Tax Board allows intervention by the taxpayer.<sup>214</sup> The rule does not require the exhaustion of administrative remedies before the Board of Review.

### (b) Taxing Bodies

For every taxpayer, there are taxing bodies interested or potentially interested in the amount of his assessment. There

211. Property Tax Appeal Board Rules 6 and 7 provide:

Rule No. 6

#### INTERESTED PARTIES—INTERVENTION

A. Any taxpayer dissatisfied with the decision of a Board of Review as such *decision* pertains to the assessment of his property for taxation purposes or any taxing body that has an interest in the *decision of the Board of Review* on an assessment made by any local assessment officer, may become a party to the appeal.

Rule No. 7

#### REPRESENTATION AT HEARINGS

A. For purposes of this rule only a taxpayer dissatisfied with the *decision of a Board of Review* as such *decision* pertains to the assessment of his property for taxation purposes, or a taxing body that has a tax revenue interest in the *decision of the Board of Review* on an assessment made by any local assessment officer, may file an appeal.

Appeal Board Rules, *supra* note 202, at Rules 6 & 7 (emphasis added).

212. ILL. REV. STAT. ch. 120, § 589.2 (1975).

213. *Id.* § 592.1.

214. Property Tax Appeal Board Rule 6 in pertinent part provides:

C. An appeal commenced by an interested taxing body shall comply with paragraph (J) of Rule No. 3. The taxpayer/owner of the property shall be notified by the Property Tax Appeal Board of the appeal so that the taxpayer may have an opportunity to intervene in the proceedings. Should the taxpayer desire to intervene, he shall file a Request to Intervene within 30 days after being notified by the Property Tax Appeal Board of the appeal.

Appeal Board Rules, *supra* note 202, at Rule 6.



are three factual situations in which a taxing body could become involved in an appeal to the Property Tax Appeal Board concerning a taxpayer's assessment.

In the first situation the taxing body initiates and files a complaint with the Board of Review concerning the assessment of a particular taxpayer's property. A taxing body can commence such a review by filing a written complaint with the Board of Review within twenty calendar days after the assessment books are delivered to it. The Board of Review cannot increase the amount of an assessment without first giving due notice and an opportunity to be heard to the taxpayer affected.<sup>215</sup> Notice of the Board of Review's decision is given to a taxing body in the same form as is given to a taxpayer.<sup>216</sup> A taxing body must then appeal to the Property Tax Appeal Board within the same thirty days as is given to a taxpayer.<sup>217</sup>

In the second situation a taxpayer files a complaint with the Board of Review, the taxing body does not appear and the board renders a decision favorable to the taxpayer.<sup>218</sup> This assumes that the Board of Assessors, Assessor or Supervisor of Assessments, as the case may be, who received a copy of the taxpayer's complaint, does not sufficiently protect the taxing body's interests.<sup>219</sup> Must the taxing body exhaust its administrative remedies and appear before the Board of Review? The statute provides that "any taxing body that *has an interest* in the decision of the board of review on an assessment made by any local assessment officer, may . . . appeal such a decision to the Property Tax Appeal Board for review."<sup>220</sup> The statute is worded in the broadest possible fashion. Based upon the wording, it is the authors' opinion that a taxing body need not appear before the Board of Review as a prerequisite to a proper appeal. No court, however, has decided this issue.

In the third situation the taxpayer appeals to the Property Tax Appeal Board.<sup>221</sup> Notice of the taxpayer's petition to all interested bodies shall be deemed to have been given when served upon the State's Attorney of the county from which the appeal has been taken.<sup>222</sup> This notice is proper and binding on taxing bodies.<sup>223</sup> The taxing bodies, after receipt of the notice, can in-

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215. ILL. REV. STAT. ch. 120, § 589.2 (1975).

216. *Id.* § 590.1.

217. *Id.* § 592.1.

218. *Id.* § 589(4).

219. *Id.*

220. *Id.* § 592.1 (emphasis added).

221. *Id.*

222. *Id.* § 592.3.

223. *Will County Bd. of Review v. Property Tax Appeal Bd.*, 48 Ill. 2d 513, 518, 272 N.E.2d 32, 36 (1971).

tervene in the proceeding and become parties thereto.<sup>224</sup>

### 3. Hearings Before the Property Tax Appeal Board

#### (a) General Matters

The original parties to the controversy before the Property Tax Appeal Board when the taxpayer appeals from a Board of Review decision are the taxpayer and the Board of Review.<sup>225</sup> Statutory provisions have been enacted which provide for prompt hearings of all such appeals.<sup>226</sup>

An appeal can be determined on the basis of the material submitted, without a formal hearing, if none of the parties to it has requested one.<sup>227</sup> Assuming there is a decision without a hearing, what evidence will be before the Property Tax Appeal Board? The property card from the Board of Review is procured and becomes part of the record.<sup>228</sup> Appraisals, values of comparable properties and other written evidence may be submitted.<sup>229</sup> For commercial or income producing properties, income and ex-

224. *Id.* Property Tax Appeal Board Rule 6 in pertinent part provides:

B. Such taxpayer or taxing body may become a party to the appeal by filing in triplicate with the Clerk of the Board a Request to Intervene, signifying his or its intention to become a party to the appeal. Any interested taxing body desiring to become an intervening party in an appeal shall make its application to intervene within 30 days after notice has been given as provided in paragraph (A) of Rule No. 3.

Appeal Board Rules, *supra* note 202, at Rule 6.

225. Will County Bd. of Review v. Property Tax Appeal Bd., 48 Ill. 2d 513, 517, 272 N.E.2d 32, 35 (1971).

226. ILL. REV. STAT. ch. 120, § 592.2 (1975).

227. *Id.* § 592.3 (1975). Property Tax Appeal Board Rule 5 in pertinent part provides:

A. A hearing shall be granted if any party to the appeal so requests, and, upon motion of any party to the appeal or by direction of the Property Tax Appeal Board, any appeal may be set down for a hearing. . . . A decision may be written by the Property Tax Appeal Board without a public hearing based on the material submitted by the county and the appellant provided both parties waive their right to a public hearing.

Appeal Board Rules, *supra* note 202, at Rule 5.

228. Property Tax Appeal Board Rule 4 in pertinent part provides:

A. Upon receipt of the appellant's petition, the Clerk of the Property Tax Appeal Board shall secure Form PTAB-6 and a copy of the property record card of the subject property from the local Board of Review showing the assessed valuation for the year and for the property under appeal and cause such assessment record to become a part of such appeal proceeding and record.

*Id.* at Rule 4(A).

229. Property Tax Appeal Board Rule 5 in pertinent part provides:

I. The appellant, the County Board of Review, interested taxing bodies or intervenors planning to present appraisals of the subject property, proof of the value of allegedly comparable properties, property record cards or other written evidence including exhibits shall forward in duplicate, copies of such material or other written evidence to the Property Tax Appeal Board before a hearing can be set. Upon receipt of exhibits from either party, a copy will be sent to all other interested parties by the Property Tax Appeal Board.

*Id.* at Rule 5(I).

pense figures can be submitted.<sup>230</sup> The county median level of assessments will also be considered.<sup>231</sup> In addition, stipulations may also be offered; however, these are not binding on the Property Tax Appeal Board.<sup>232</sup>

The Property Tax Appeal Board, on its own, can call for more evidence.<sup>233</sup> A rule of the Property Tax Appeal Board would seem to indicate that the Board could go outside the record made by the parties for facts upon which to base its decision.<sup>234</sup> Other rules of the Board indicate that a decision will be made only on the facts in the record made by the parties.<sup>235</sup> Since the Property Tax Appeal Board's hearings are

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230. Property Tax Appeal Board Rule 5(E) in pertinent part provides: Should the owner of commercial or income producing property elect to submit income and expense figures, such figures shall be the actual income and expense figures audited from actual records.

*Id.* at Rule 5(E).

231. Property Tax Appeal Board Rule 4(D) in pertinent part provides:

The county median level of assessments will be considered where sufficient probative evidence is presented indicating the estimate of full market value of the subject property on the relevant real property assessment date of January 1 or personal property assessment date of April 1.

*Id.* at Rule 4(D).

232. Property Tax Appeal Board Rule 5 in pertinent part provides:

M. If a stipulation is agreed to by all interested parties, it may be taken into consideration by the Property Tax Appeal Board. The Board reserves the right to write their own decision based on the facts, evidence and exhibits in the record.

*Id.* at Rule 5(M).

233. ILL. REV. STAT. ch. 120, § 592.3 (1975). Property Tax Appeal Board Rule 5 in pertinent part provides:

E. The Board, any Member, or Hearing Officer may require the production of any books, records, papers or documents that may be material or relevant as evidence in any matter pending before the Property Tax Appeal Board and necessary for the making of a just decision.

K. At any stage of the hearing, or after all parties have completed the presentation of their evidence, the Property Tax Appeal Board or Hearing Officer may call upon any party for further material or relevant evidence upon any issue.

Appeal Board Rules, *supra* note 202, at Rule 5(E) & (K).

234. Property Tax Appeal Board Rule 4(C) provides that "the Property Tax Appeal Board may order a hearing continued for additional testimony, evidence or exhibits or it may make such investigation concerning the appeal on its own initiative as it deems proper." *Id.* at Rule 4(C).

235. Property Tax Appeal Board Rules in pertinent part provide:

1A. The Property Tax Appeal Board shall determine the correct assessment of any parcel of real property or any personal property which is the subject of an appeal, based upon facts, evidence and exhibits submitted and/or elicited and presented at an open hearing.

5M. If a stipulation is agreed to by all interested parties, it may be taken into consideration by the Property Tax Appeal Board. The Board reserves the right to write their own decision based on the facts, evidence and exhibits in the record.

Appeal Board Rules, *supra* note 202, at Rules 1(A) & 5(M).

subject to review under the Administrative Review Act,<sup>236</sup> any ex parte contacts by it are reversible error.<sup>237</sup>

Should a hearing on the taxpayer's petition be requested it must be granted.<sup>238</sup> Such hearings may be held in Springfield<sup>239</sup> but are more commonly held in the county in which the property is located.<sup>240</sup> The hearing may be conducted by either the entire Property Tax Appeal Board, a single member, or a designated hearing officer.<sup>241</sup> These hearings are open to the public<sup>242</sup> and the records of the hearings are public records open to inspection.<sup>243</sup> However, it should be noted that it is the appellant who may be required to furnish a court reporter. This imposed burden is nondiscretionary in all cases in which the appellant is seeking a reduction of \$50,000 or more in assessed valuation.<sup>244</sup>

236. ILL. REV. STAT. ch. 120, § 592.4 (1975).

237. *Hazelton v. Zoning Bd. of Appeals*, 48 Ill. App. 3d 348, 363 N.E.2d 44 (1977); *North Shore Sanitary Dist. v. P.C.B.*, 2 Ill. App. 3d 797, 277 N.E.2d 754 (1972); *Gigger v. Board of Fire & Police Comm'rs*, 23 Ill. App. 2d 433, 163 N.E.2d 541 (1960).

238. ILL. REV. STAT. ch. 120, § 592.3 (1975). Property Tax Appeal Board Rule 5 in pertinent part provides:

A. A hearing shall be granted if any party to the appeal so requests, and, upon motion of any party to the appeal or by direction of the Property Tax Appeal Board, any appeal may be set down for a hearing. The Board shall give notice to the interested parties of the time, date and place of the hearings at least 20 days prior to the hearing unless the 20 day period is specifically waived by all the parties to the appeal.

Appeal Board Rules, *supra* note 202, at Rule 5(A).

239. Property Tax Appeal Board Rule 5(C) provides that "any hearing may be conducted by the Property Tax Appeal Board at its offices in Springfield or at any other location in Illinois selected by the Board."

240. Interview with Joseph F. Miller, Counsel to the Property Tax Appeal Board (July 29, 1976).

241. ILL. REV. STAT. ch. 120, §§ 592.3, 592.5 (1975). Property Tax Appeal Board Rule 5 in pertinent part provides:

C. Hearings may be held before less than a majority of the Members of the Board, and the Chairman may assign Members or Hearing Officers to hearings. . . . or the Board may cause its Hearing Officer to conduct such hearing and report his findings for affirmation or rejection.

H. Hearing Officers shall have the authority to administer oaths and to examine, under oath, the petitioner appearing for the hearing, or anyone else appearing at the hearing to testify or to offer evidence.

Appeal Board Rules, *supra* note 202, at Rule 5(C) & (H).

242. ILL. REV. STAT. ch. 102, § 41-6, ch. 120, § 592.3 (1975). Property Tax Appeal Board Rule 5(D) provides that "hearings shall be open to the public and shall be conducted in accordance with such rules of practice and procedure as the Board may make and promulgate."

243. *Id.* § 592.4.

244. Property Tax Appeal Board Rule 5 in pertinent part provides:

L. At a hearing, the Property Tax Appeal Board shall, at its own discretion, require the appellant to furnish a court reporter on any appeal. In all cases where the appellant is seeking a reduction of \$50,000 or more in assessed valuation, the appellant must provide a court reporter at his own expense. The original certified transcript

In the hearing, the appellant proceeds first followed by other parties to the appeal who may also offer evidence. All parties are entitled to present rebuttal evidence. Unless advance permission is given, parties are only allowed thirty minutes for the presentation of evidence and ten minutes for cross-examination.<sup>245</sup> The same Property Tax Appeal Board Rules apply to evidence admissible in an appeal in which no hearing was requested or given as apply to an appeal in which a hearing is conducted. The Property Tax Appeal Board has the same powers to request additional evidence. In addition, the statute provides that "formal rules of pleading, practice and evidence" shall be eliminated.<sup>246</sup>

The decision of the Property Tax Appeal Board must be made by the majority of the board.<sup>247</sup> No findings of fact are necessary beyond fixing the assessed value of the property.<sup>248</sup> The decision of the Property Tax Appeal Board must within ten days thereafter, be certified to the appellant and to the proper authorities, including the Board of Review whose decision was appealed, the County Clerk who extends taxes upon the assessment in question, and the County Collector who collects property

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of such hearing shall be forwarded to the Springfield Office of the Property Tax Appeal Board and shall become part of the Board's official record of the proceedings on appeal. The court reporter's certified transcript should be forwarded as soon as possible but no later than thirty days without communicating the basis for the delay to the Clerk of the Property Tax Appeal Board.

Appeal Board Rules, *supra* note 202, at Rule 5(L).

245. Property Tax Appeal Board Rule 5 in pertinent part provides:

J. At the hearing, the appellant shall first introduce his case into evidence, followed by the evidence of other parties to the appeal, in the order directed by the Property Tax Appeal Board or Hearing Officer. All parties are entitled to rebuttal after all evidence of all the parties has been introduced. Unless more time is granted in advance by the Board or the Hearing Officer, no party to the hearing shall be allowed more than 30 minutes for the presentation of evidence nor more than 10 minutes for cross-examining the evidence presented by any other party to the proceeding. Evidence submitted to the Board in documentary form may be made a part of the record without time being taken for the document to be read into the record if the Board or the Hearing Officer so orders.

*Id.* at Rule 5(J).

246. ILL. REV. STAT. ch. 120, § 592.2 (1975).

247. Property Tax Appeal Board Rule 4(F) provides that "a majority of the Members of the Board is required to make a decision of the Board." *Id.* at Rule 4(F).

248. In *People ex rel. Thompson v. Property Tax Appeal Bd.*, 22 Ill. App. 3d 316, 317 N.E.2d 121 (1974), the court stated:

The findings of fact of the Property Tax Appeal Board are sufficient, having consideration for the very limited nature of its inquiry, viz., the correct assessment of the property subject to appeal. The decision of the Property Tax Appeal Board (record at 186) correctly states the Board's function and jurisdiction and finds the correct assessed valuation on the property here involved is \$13,650 for land and \$22,580 for improvements, or a total of \$36,230. No further detailed finding of facts by the Property Tax Appeal Board was necessary.

*Id.* at 323, 317 N.E.2d at 121.

taxes upon such assessment.<sup>249</sup> It is noteworthy that the extension of real estate taxes is not delayed by the Property Tax Appeal Board's action.<sup>250</sup>

(b) *The Burden of Proof*

Of critical importance to a taxpayer is the burden of proof he must satisfy to convince the Property Tax Appeal Board of the justice of his complaint. The statute, specifically dealing with the burden of proof problem between the taxpayer and the Board of Review or taxing bodies, in pertinent part provides that "the Board shall make a decision in each appeal or case heard by it, and such decision shall be based upon equity and the weight of evidence and not upon constructive fraud, and shall be binding upon appellant and officials of government."<sup>251</sup> Although the statute is clear, the Property Tax Appeal Board has contended that the assessed valuation of the Board of Review was prima facie correct and that the taxpayer had the burden of overcoming that presumption. The courts, however, have specifically held to the contrary.<sup>252</sup>

In *Western Illinois Power Co-op v. Property Tax Appeal Board*, the court considered the assessment of power lines which were personal property. It reversed the Property Tax Appeal Board and stated:<sup>253</sup>

The opinion of the Property Tax Appeal Board contains the following: "In the consideration of appeals by this Board, the decision of the Board of Review is accorded a prima facie presumption of correctness. It is incumbent upon the appellant to prove such decision to be erroneous and to further offer sufficient evidence to allow this Board to determine the correct valuation for the subject property. \* \* \* We do not believe that the appellant has borne its burden of proof with relation to any of the assessment years in question."

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249. ILL. REV. STAT. ch. 120, § 592.4 (1975). Property Tax Appeal Board 4(E) provides:

Whether a hearing is held in the appeal proceeding or not, the proceeding shall be terminated before the Property Tax Appeal Board by the Board's making of a decision. The decision or order of the Property Tax Appeal Board in any such appeal shall, within 10 days after being made and entered, be certified to every party to the proceeding and to the proper authorities, including the Board of Review whose decision was appealed, the County Clerk who extends taxes upon the assessment in question, and the County Collector (Treasurer) who collects property taxes upon such assessment.

Appeal Board Rules, *supra* note 202, at Rule 4(E).

250. ILL. REV. STAT. ch. 120, § 592.4 (1975).

251. *Id.*

252. *Western Ill. Power Co-op v. Property Tax Appeal Bd.*, 29 Ill. App. 3d 16, 331 N.E.2d 286 (1975); *People ex rel. Thompson v. Property Tax Appeal Bd.*, 22 Ill. App. 3d 316, 324-25, 317 N.E.2d 121, 127-28 (1974).

253. *Western Ill. Power Co-op v. Property Tax Appeal Bd.*, 29 Ill. App. 3d 16, 22-23, 331 N.E.2d 286, 291 (1975) (emphasis added).

No authority has been cited for the proposition that the decision of the Board of Review is entitled to a "prima facie presumption of correctness" in appeals to the Property Tax Appeal Board, nor have we found any authority which supports the proposition which, of course, imports the further concept that the Property Tax Appeal Board will only disturb the findings and conclusions of fact of the Board of Review unless they are shown to be against the manifest weight of the evidence. *We hold that the findings and conclusions of fact of the Board of Review are not to be afforded prima facie weight by the Property Tax Appeal Board.*

It seems clear, from the provisions of section 111.4 of the Revenue Act of 1939 (Ill. Rev. Stat. 1973, ch. 120, § 592.4) that the legislature has specifically stated the standard to be applied by the Property Tax Appeal Board, and that standard must be followed and applied by the Board. Where the statute creating an agency prescribes the burden of proof to be applied by it in the discharge of its duties, the standard must be the measure by which its decisions are judged. . . .

The taxpayer, Board of Review and taxing bodies now stand on an equal footing regarding the burden of proof. No longer can the public officials rely on the authority of their office without any substantive evidence to back up their assessments. The Property Tax Appeal Board appears to have taken cognizance of these decisions, as its rules are now in accord with the court's pronouncement.<sup>254</sup>

#### 4. *Judicial Review of Property Tax Appeal Board Decisions*

Notice of the Property Tax Appeal Board's decision is given to the parties within ten days of its rendition.<sup>255</sup> This decision is reviewable by the courts pursuant to the Administrative Review Act.<sup>256</sup> A complaint for administrative review must be filed within thirty-five days from the date that a copy of the decision sought to be reviewed was served upon the party affected thereby.<sup>257</sup> The circuit court hearing the matter under the Administrative Review Act will normally be the one sitting in the county in which the hearing was held.<sup>258</sup> The Property Tax Appeal

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254. ILL. REV. STAT. ch. 120, § 592.4 (1975). Property Tax Appeal Board Rule 4(B) provides that "all proceedings before the Property Tax Appeal Board are de novo." Rule 4(D) provides that "the decision of the Property Tax Appeal Board will be based on equity and the weight of the evidence." Appeal Board Rules, *supra* note 202, at Rule 4(B), (D).

255. ILL. REV. STAT. ch. 120, § 592.4 (1975). See note 249 *supra*.

256. ILL. REV. STAT. ch. 120, § 592.4 (1975). Property Tax Appeal Board Rule 4(G) provides that "final administrative decisions of the Property Tax Appeal Board are subject to review under the provisions of the Administrative Review Act." Appeal Board Rules, *supra* note 202, at Rule 4(G).

257. ILL. REV. STAT. ch. 110, § 267 (1975).

258. *Id.* § 268. The circuit court of the county wherein the subject matter is situated or wherein any part of the transaction occurred may also hear the matter.

Board attempted by rule to charge the plaintiff with the cost of the record.<sup>259</sup> A recent court decision, however, declared the rule invoked as being beyond the board's statutory powers.<sup>260</sup>

The parties to the hearing are originally the parties that appeared before the Property Tax Appeal Board.<sup>261</sup> However, taxing bodies which did not participate in the Property Tax Appeal Board hearing can intervene in the administrative review action.<sup>262</sup> It seems only proper that the same rule of allowing intervention should equally apply to taxpayers who did not participate in hearings conducted by the Property Tax Appeal Board.<sup>263</sup>

The extent of the review of the Property Tax Appeal Board's decision by a circuit court is specifically set forth in the Administrative Review Act. It states:<sup>264</sup>

The hearing and determination shall extend to all questions of law and of fact presented by the entire record before the court. No new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court. The findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct.

The first case to consider the standard to be used by a circuit court in examining a Property Tax Appeal Board decision was *Will County Board of Review v. Property Tax Appeal Board*.<sup>265</sup>

259. *Id.* ch. 120, § 592.4. Property Tax Appeal Board Rule 4(H) provides:

The required number of copies of all documents in an appeal file necessary to complete the certification of the Property Tax Appeal Board proceedings in answer to a complaint for Administrative Review will be prepared by the Property Tax Appeal Board at a cost to the plaintiff of 25 cents per page. From the original certification of proceedings, which will be filed with the Clerk of the Circuit Court, copies of the proceedings will be prepared and forwarded to the Attorney General, State's Attorney, the plaintiff in the Administrative Review and one copy will be retained as a permanent record for the Property Tax Appeal Board. An estimate of the cost of preparing a certified record will be mailed to the plaintiff. Upon receipt of the necessary payment, the Property Tax Appeal Board will prepare certification of the proceedings.

Appeal Board Rules, *supra* note 202, at Rule 4(H).

260. *Champaign City Bd. of Review v. Property Tax Appeal Bd.*, 30 Ill. App. 3d 29, 331 N.E.2d 333 (1975).

261. ILL. REV. STAT. ch. 110, § 271 (1975).

262. *Will County Bd. of Review v. Property Tax Appeal Bd.*, 48 Ill. 2d 513, 317, 272 N.E.2d 32, 35 (1971).

263. *Compare Anundson v. City of Chicago*, 44 Ill. 2d 491, 256 N.E.2d 1 (1970) (intervention allowed for adjoining landowner in declaratory judgment action in building ordinance violation case) *with* *Wheeling Trust & Sav. Bank v. Village of Mt. Prospect*, 29 Ill. App. 3d 539, 331 N.E.2d 172 (1975) (intervention allowed for neighbors in declaratory judgment action regarding zone ordinance) *and* *City of Chicago v. Harris Trust & Sav. Bank*, 12 Ill. App. 3d 808, 299 N.E.2d 57 (1973) (intervention allowed by tenants in case involving demolition of their building due to building ordinance violations).

264. ILL. REV. STAT. ch. 110, § 274 (1975).

265. 48 Ill. 2d 513, 518, 272 N.E.2d 32, 35-36 (1971).



The Board of Review attacked the Property Tax Appeal Board decision stating "there is no competent substantial evidence to support the findings and orders of the Property Tax Appeal Board."<sup>266</sup> The court did not agree and upheld the Property Tax Appeal Board's decision. However, the court did not indicate what evidence evaluation test it used. This lack of precision has been the subject of some critical comment.<sup>267</sup>

The question of the proper standard of review is still unsettled. A recent decision has mentioned a number of standards in weighing the evidence and the Property Tax Appeal Board's decision in an administrative review hearing.<sup>268</sup> It has mentioned tests of "against the manifest weight of the evidence," "whether there is competent evidence to support the judgment of the lower court," "that an opposite conclusion be clearly evident" and "amply supported by competent evidence."<sup>269</sup> In a totally erroneous interpretation of the applicable statutes, one court has resurrected the constructive fraud doctrine as the proper test to review the Property Tax Appeal Board's decision.<sup>270</sup>

The findings by the circuit court upholding the Property Tax Appeal Board's decision in an administrative review proceeding can be extremely simple. It has been held that the court may merely find that the Property Tax Appeal Board's determination is warranted from the record, without stating any findings of fact or propositions of law upon which the court's decision is based.<sup>271</sup> If the Property Tax Appeal Board committed error, the court cannot set an assessed valuation but must send the case back to the Property Tax Appeal Board for its decision.<sup>272</sup>

266. *Id.* at 519, 272 N.E.2d at 36 (1971).

267. 23 DE PAUL L. REV. 96, 102-04 (1972).

268. *People ex rel. Thompson v. Property Tax Appeal Bd.*, 22 Ill. App. 3d 316, 317 N.E.2d 121 (1974).

269. *Id.* at 323, 317 N.E.2d at 126-27. Cf. *Western Ill. Power Co-op v. Property Tax Appeal Bd.*, 29 Ill. App. 3d 16, 331 N.E.2d 286 (1974).

270. *Consolidated Coal Co. v. Property Tax Appeal Bd.*, 29 Ill. App. 3d 465, 469, 473, 331 N.E.2d 122, 126 (1975).

271. In *People ex rel. Thompson v. Property Tax Appeal Bd.*, 22 Ill. App. 3d 316, 317 N.E.2d 121 (1974), the court stated:

Plaintiff contends the trial court erred in not following her motion that the court make findings of fact and state propositions of law upon which its opinion was based, referring to section 12(3) of the Administrative Review Act (Ill. Rev. Stat. 1973, ch. 110, par. 275(3)). We believe, however, that the court's finding "that the Property Tax Appeal Board in making its determination is supported by the evidence adduced before it and that its determination is warranted by the entire record" is sufficient in this case and that the failure to make any further definitive findings or to recite any propositions of law in this case is not reversible error.

*Id.* at 324, 317 N.E.2d at 127-28.

272. *Western Ill. Power Co-op. v. Property Tax Appeal Bd.*, 29 Ill. App. 3d 16, 23, 331 N.E.2d 286, 291 (1975); *Consolidated Coal Co. v. Property Tax Appeal Bd.*, 29 Ill. App. 3d 465, 473-74, 331 N.E.2d 122, 129-30 (1975).

### 5. Workload of the Property Tax Appeal Board

The staff of the Property Tax Appeal Board consists of three persons who act as hearing officers, two clerks and three stenographers. The eight staff members and three Property Tax Appeal Board members operated on a total budget of \$187,060 for fiscal year 1977.<sup>273</sup> The total number of petitions received by the Property Tax Appeal Board for the 1975 tax year was 3,465<sup>274</sup> requiring administrative expenditures by the Board of approximately \$137,000.<sup>275</sup> Thus, the average cost to process the 1975 petitions was \$39.53. Due to a lack of personnel, detailed statistics are available only for the tax years 1970-1972; however, these statistics indicate a substantial workload being carried on by the Property Tax Appeal Board.<sup>276</sup> Surprisingly, petitioners sparingly use their rights under the Administrative Review Act to challenge the Property Tax Appeal Board's adverse decisions.<sup>277</sup> This fact may be indicative of a feeling on the part of most petitioners that they have received a fair hearing.

### 6. Payment of Taxes Under Protest by Taxpayer

A downstate taxpayer has a second possible method of having his assessment reviewed after receiving a decision from the Board of Review. He may pay the taxes under protest and

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273. Oral reply of Joseph L. Miller of the Property Tax Appeal Board (Jan. 3, 1977) to letter of Alan S. Ganz (Dec. 8, 1976).

274. The total number of petitions received by the Property Tax Appeal Board for tax years 1970 through 1975 were as follows:

1970	—	739
1971	—	5742
1972	—	1858
1973	—	760
1974	—	1811
1975	—	3465

Letter of Joseph L. Miller of the Property Tax Appeal Board to Alan S. Ganz (Sept. 10, 1976).

275. *Id.*

276. *Id.* See Appendix B, p. 89 *infra*.

277. The number of administrative review appeals filed for tax years 1970 through 1975 is as follows:

1970	—	11
1971	—	29
1972	—	45
1973	—	27
1974	—	31
1975	—	23

Letters from Joseph L. Miller of the Property Tax Appeal Board to Alan S. Ganz (Sept. 10, 1976 & Feb. 14, 1977).

From the number of decisions certified to the appellants, it appears that on a percentage basis, the number of administrative reviews may be higher on 1975 decisions. The trend seems to be up because there is no longer any cost for filing an appeal. Virtually all of the decisions of the Property Tax Appeal Board are upheld. There have been remandments from the appellate court in the *Consolidation Coal* case and the *Chrysler* case.

file objections to the Collector's Application for Judgment. A recent statutory amendment makes it clear that a taxpayer must make an election between the two possible methods. The amended statute in pertinent part provides:<sup>278</sup>

*If a petition is filed by a taxpayer, the taxpayer is precluded from filing objections based upon valuation, as may otherwise be permitted by Sections 194, 195 and 235 of this Act. (Chap. 120, Secs. 675, 676, 716, Ill. Rev. Stat.) . However, any taxpayer not satisfied with the decision of the board of review as such decision pertains to the assessment of his property for taxation purposes, need not appeal such decision to the Property Tax Appeal Board for review before seeking relief in the courts.*

While a taxpayer paying his taxes under protest may obtain judicial review without going to the Property Tax Appeal Board, an election for such review would subject the taxpayer to all the uncertainties of the constructive fraud doctrine. It is doubtful that any knowledgeable attorney would advise a taxpayer to proceed in this manner. Furthermore, the taxpayer who does not appear before the Board of Review is precluded from filing a tax objection for failure to exhaust his "administrative remedies."<sup>279</sup> On the other hand, a taxpayer may fail to appear before the Board of Review and yet be able to file his complaint with the Property Tax Appeal Board.

#### IV. PROPOSED CHANGES IN THE COOK COUNTY REAL ESTATE ASSESSMENT REVIEW SYSTEM

##### 1. *Differences in Review Between Cook County and Downstate Counties*

Cook County real estate taxpayers have a three-step system which consists of the Assessor, Board of Appeals and circuit court. Downstate taxpayers have a four-step system consisting of (a) Assessor, Supervisor of Assessments, Board of Assessors or Township Assessor, (b) Board of Review, (c) Property Tax Appeal Board and (d) the circuit court. Downstate taxpayers may also make a binding election to file tax objections to the Collector's Application for Judgment or to proceed before the Property Tax Appeal Board. If the tax objection route is chosen, there is no difference between the review procedure for downstate taxpayers and Cook County taxpayers. The difference in rights of Cook County and downstate taxpayers arises when the

278. ILL. REV. STAT. ch. 120, § 592.1 (1975) (emphasis added; footnote omitted).

279. *People ex rel. Needham v. Abbott Estates*, 47 Ill. 2d 491, 497, 265 N.E.2d 612, 616 (1970); *Shappert Engineering Co. v. Weitmeyer*, 34 Ill. 2d 97, 213 N.E.2d 530 (1966); *People ex rel. Nordlund v. Lans*, 31 Ill. 2d 477, 202 N.E.2d 543 (1964); *In re County Collector*, 11 Ill. App. 3d 290, 296 N.E.2d 361 (1973).

Property Tax Appeal Board is chosen as the reviewing authority by downstate taxpayers. The following comparison is between the tax objection route afforded the Cook County taxpayer and the downstate taxpayer's rights under the Property Tax Appeal Board system.

*(a) Payment of Taxes*

The downstate taxpayer need not worry about payment of his taxes under protest and whether his protest form or the amount paid is proper. The Cook County taxpayer must pay the proper amount of his taxes under protest accompanied by a legally sufficient protest form. If the Cook County taxpayer does not do so, he can obtain no judicial review.

*(b) Notice*

It is required by statute that a downstate taxpayer be given clear notice that he may appeal to the Property Tax Appeal Board from an unsatisfactory decision of the Board of Review. The Assessor of Cook County, however, has no statutory duty to give notice that his decision may be appealed to the Board of Appeals. Furthermore the Assessor does not give any notice whatsoever as to his decisions concerning complaints. Thus, the Cook County real estate owner is left in the dark as to when or how he can contest his assessment. His need for counsel at the very outset is apparent.

The downstate taxpayer, after receiving notice of his right to appeal to the Property Tax Appeal Board, has definite knowledge of the commencement of a thirty day period during which he may file his complaint with the Property Tax Appeal Board. The Cook County taxpayer, however, must be ever vigilant in watching for the legal advertisements of the Board of Appeals or must personally contact the board to find out the time period during which the Board of Appeals will accept his complaint. If he misses the date, his case for judicial review is lost. Moreover, there is some question as to whether the Board of Appeals should be accepting complaints before the board's published filing dates.

*(c) Hearing*

The downstate taxpayer at his Property Tax Appeal Board hearing has definite rights. A decision must be made on the evidence presented, which is recorded by a court reporter, and without any ex parte contacts by the Board. The downstate taxpayer and the assessing authorities stand on an equal footing in proving the assessed valuation of the property. The Board's decisions are to be based upon equity and the weight of the evidence and not

upon constructive fraud. Moreover, the Board's decision is subject to review under the Administrative Review Act.

A Cook County real estate owner, on the other hand, is faced with a hearing before the Board of Appeals. The status of the Board as a judicial body for all purposes is questionable. In addition the Board does not make a mechanical recording of what transpires. Its decisions can be based upon the evidence presented, upon ex parte contacts, upon its own investigators' testimony, upon its own experience or upon the Assessor's assessment. For this reason the taxpayer is not able to cross-examine witnesses or non-parties who might have influenced the Board in its decision. Furthermore the Assessor cannot be called as a witness as a matter of right by the taxpayer, and as a matter of practice, the Assessor seldom if ever presents testimony. Of greatest importance, however, is the fact that the taxpayer's burden of proof is unknown, a systemic problem created in part by the failure of the Board to publish rules setting forth its methods of determining market value.

As to third parties, any Cook County taxpayer may attack an underassessment or participate in a hearing but no taxing body may do so. This is to be contrasted to third party downstate taxpayers who cannot participate in a Property Tax Appeal Board hearing; however, taxing bodies *may* do so.

(d) *Securing Judicial Review*

The downstate taxpayer and proper public officials receive notice of the Property Tax Appeal Board's decision within ten days after it is rendered. The Cook County taxpayer, however, receives no notice from the Board of Appeals if there is no change in his assessment. In addition the taxpayer is not advised of the basis of any change made by the Board of Appeals but only that a change has been made. However, notice is sent by the Board of Appeals to the Assessor if there is a change, giving the reason for the change and the errors of the Assessor.

The downstate taxpayer need not keep alert to the time in which he must file an objection to the Collector's Application for Judgment, which time is not in any statute or court rule. His timetable for an appeal from the Property Tax Appeal Board is clearly set forth in the Administrative Review Act. The Cook County taxpayer, on the other hand, must be ever vigilant to determine the provisions of the court's order regarding the filing of objections to the County Collector's Application for Judgment. The timing of the decision of the Board of Appeals is in no way related to the time period during which objections must be filed by a Cook County taxpayer to the County Collector's Application for Judgment.

Finally, the downstate taxpayer's burden of proof in setting aside the Property Tax Appeal Board's decision is also clearly set forth in the Administrative Review Act. The Cook County taxpayer, in his objection to the Collector's Application for Judgment, is faced with the doctrine of constructive fraud with all of its uncertainties and unfairness. The Cook County taxpayer has no real method of effectively obtaining direct judicial review of any procedural or substantive abuses by the Board. Although he can secure a writ of certiorari when the Board of Appeals exceeds its jurisdiction or proceeds illegally, this writ is worthless to a taxpayer in the average case.

## 2. Possible Bases for Differing Treatment of Cook County and Downstate Taxpayers

There are dramatic differences between the review of real estate assessments in Cook County and the remainder of Illinois. Are such disparities supported by differing facts? The population of Cook County for 1975 was 5,365,400 whereas the population for the rest of the state was 5,779,600.<sup>280</sup> Cook County, for the tax year 1975, had 1,287,490 parcels of real estate with a valuation, as assessed by the Assessor of Cook County, of \$13,602,793,113.<sup>281</sup> These figures do not contain any railroad property.<sup>282</sup> The remainder of the State of Illinois, other than Cook County, for the tax year 1974 had 2,796,711 parcels of assessable real estate, excluding railroad parcels, with an assessed valuation of \$22,988,989,184.<sup>283</sup> Unfortunately, statistics that compare the classes of

280. Population figures based on BUREAU OF THE CENSUS POP. REP., Series P-26, No. 75-13 (Aug., 1976).

281. The breakdown by the Cook County assessment ordinance passed December 17, 1973, applicable to the 1974 tax year and thereafter, for the 1975 tax year is as follows:

Class	Number of Parcels	Assessed Valuation
1	177,603	\$ 469,134,780
2	992,935	5,992,254,989
3	44,852	1,420,631,000
4	(exempt property)	(exempt property)
5	63,463	5,573,366,854
Special - unable to classify from assessor's information	8,687	147,404,490
<b>TOTALS</b>	<b>1,287,540</b>	<b>\$13,602,792,113</b>

There were 51,587 parcels of exempt properties. Reply of Theodore M. Swain, Chief Deputy Assessor, (Oct. 29, 1976) to letter from Alan S. Ganz (July 27, 1976).

282. The Illinois Department of Local Government Affairs assessed 6,155 parcels of railroad property in Cook County. ILL. REV. STAT. ch. 120, § 498 (1975). See letter from Mr. Theodore M. Swain, Chief Deputy Assessor, to Alan S. Ganz (Oct. 29, 1976).

283. Letter from Jean H. Hostetler, Research and Standard Supervisor, Department of Local Government Affairs, to Alan S. Ganz (Aug. 6, 1976).

real estate in Cook County with the remainder of the state are unavailable.<sup>284</sup>

As between the Board of Appeals and the Property Tax Appeal Board, statistics are available. Cook County taxpayers file many more complaints with the Board of Appeals than downstate taxpayers do with the Property Tax Appeal Board.<sup>285</sup> This propensity could be due to the ease of filing and prosecuting complaints before the Board of Appeals without a full hearing requiring the presentation of witnesses by the taxpayer.

Cook County taxpayers have substantially fewer legal rights than downstate taxpayers. In comparison with other major taxes of Illinois, the Cook County real estate tax is the *only* one not covered by the Administrative Review Act.<sup>286</sup> Is this difference constitutionally discriminatory? The facts do not seem to justify the difference. Taxpayer's counsel raised the issue of the constitutionality of the differing review systems in the *LaSalle Bank* case.<sup>287</sup> However, the court chose to ignore it.

### 3. *Potential Changes in the Cook County Assessment System*

It is the authors' opinion that the Cook County system for reviewing real estate assessments is unconscionable and without any rational factual basis. This system has no institutional checks upon the Assessor of Cook County or the Board of Appeals. Since their actions cannot be effectively challenged in the courts, the taxpayer is totally dependent on their good will, honesty and competency. The Cook County taxpayer should not

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284. *Id.*

285. According to the 1976 budget the Board of Appeals has a staff of 44 people while the Property Tax Appeal Board has 10 people. The budget of the Board of Appeals in 1976 was \$664,784 while the Property Tax Appeal Board had a 1977 budget of \$187,060 and a 1976 budget of \$137,000. In 1970, 13,496 complaints were filed with the Board of Appeals, 10,311 complaints in 1971, 16,306 complaints in 1972, 15,956 complaints in 1973, 20,090 complaints in 1974 and 22,262 complaints in 1975. Meanwhile, in 1970, 739 complaints were filed with the Property Tax Appeal Board, 5,742 complaints in 1971, 1,858 complaints in 1972, 760 complaints in 1973, 1,811 complaints in 1974 and 3,465 complaints in 1975. The average cost per complaint in the 1975 tax year for the Board of Appeals was \$28.86 while it was \$39.53 for the Property Tax Appeal Board.

286. See Appendix C, p. 90, *infra*.

287. 57 Ill. 2d 318, 319, 312 N.E.2d 252, 255 (1974). See also, Brief of Plaintiff-Appellant at Point III, *id.*, in which it was argued that "Chapter 120, Pars. 593-607, ILL. REV. STAT. (which established the Cook County Board of Appeals) are invalid as applied by reason of repugnancy to the federal and state equal protection and due process clauses and Article IV, Section 13 (special legislation) and Article IX, Section 4(b) of the 1970 Illinois Constitution." The chances of the court accepting such an argument are slim. *Lenhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973); *Williams v. City of Chicago*, 66 Ill. 2d 423, 362 N.E.2d 1030 (1977).

be treated any less favorably than downstate taxpayers or payers of other major Illinois taxes. Statutory restrictions on taxing official's conduct is a necessity for a civilized society.

There are three institutions which could possibly change the Cook County system. The first is the Illinois Supreme Court. The court could redefine the constructive fraud doctrine to make it a mathematical concept and reduce the percentage differences between the Assessor or Board of Appeals and the taxpayer to a minimal amount. For example, if there were a 10% difference between the Assessor's assessed valuation and the taxpayer's, then the doctrine of constructive fraud would be satisfied and the circuit court could hear the matter *de novo* on the preponderance of the evidence without any presumptive weight being given to the Assessor's or Board of Appeals' assessment figure.

The court could also redefine the doctrine of exhaustion of administrative remedies as it relates to the Board of Appeals. The rationale could be that the exhaustion doctrine only applies to administrative bodies that conduct "on the record" hearings. Since the Board of Appeals' decisions are not determined on any record but possibly on extraneous matter which the taxpayer's counsel has not been able to subject to cross-examination, its decisions should not come within the rule of exhaustion of administrative remedies. Unfortunately, the record of the Illinois Supreme Court in tax cases does not indicate that the court would be receptive to any argument favoring a change in the current review procedures in Cook County.

A second institution which could change the current system is the Cook County Board of Commissioners. An argument could be made that by the ordinance setting the assessment at a fixed percentage of market value the doctrine of constructive fraud has been abolished. The argument is based on the premise that once the taxpayer demonstrates that his assessment is in excess of the fixed percentage of market value, he has proven the assessment to be in violation of the ordinance. However, in order for the taxpayer to do so, he must of course establish fair market value. There is little reason to believe that the courts would not require the taxpayer to carry the burden of proving constructive fraud to establish a fair market value with its allowable "margin of error" given to the Assessor in his determination of fair market value. The Board of Commissioners might also, under the county's home rule powers, make some improvements in the system.<sup>288</sup> Such an analysis, however, is beyond the scope of this article.

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288. ILL. CONST. art. VII, § 6 (1970).



The third institution is the Illinois legislature. The legislature has already acted in establishing the Property Tax Appeal Board. It could similarly act in changing the Cook County system.<sup>289</sup> The only real hope of Cook County taxpayers is for changes from the legislature.

(a) *Major Legislative Changes*

Of prime importance is the abolition of the doctrine of constructive fraud which prevents effective judicial review of real estate assessments in Cook County. This doctrine is inconsistent with any sense of fair play for the burdened taxpayer. The rule is unclear and unfair. As has been previously demonstrated, there are no reasons for continuing the bar to review of Cook County real estate tax assessments posed by the doctrine of constructive fraud. Judicial review of excessive assessments would not violate the separation of powers, would not encroach on a legislative function and is not barred by the Illinois Constitution.<sup>290</sup> Clearly the legislature can and should abolish the doctrine of constructive fraud. All the following suggested changes to the assessment system presuppose the abolition of the doctrine of constructive fraud.

Another possible solution would be to require the Board of Appeals to act as an administrative tribunal subject to the Administrative Review Act. This would be the same type of review now had by downstate taxpayers. Assessed valuation complaints would then be taken out of the Collector's Application for Judgment. Under the present system requiring the payment of all taxes in advance of any complaint being filed, the Collector's Application for Judgment makes no sense for assessed valuation complaints. The Application for Judgment deals with delinquent taxes. Assessed valuation complaints do not logically belong in the action since all taxes are paid.

Direct judicial review would serve to remedy the injustice currently imposed upon the Cook County taxpayer. Instead of having to meet the almost impossible burden of having to prove fraud, whether actual or constructive, before the taxpayer can obtain relief from an excessive assessment, the taxpayer would be able to present his case fully, and the decision of the Board of Appeals would be subject to attack if it was against the manifest weight of the evidence or not supported by substantial evidence.

The main argument against applying the Administrative Review Act to the assessed valuation complaints of Cook County

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289. ILL. CONST. art. IX, § 4(b) (1970).

290. See text accompanying notes 108-28 *supra*.

taxpayers is based upon the volume of those complaints. For the 1975 tax year, 22,262 complaints were filed with the Board of Appeals. Could the Board of Appeals handle such a case load? Could the Assessor furnish enough personnel to testify? Could the Circuit Court of Cook County handle the Administrative Review Act appeals? The Circuit Court of Cook County had approximately 1,000 excessive assessed valuation constructive fraud cases for the tax year 1975. The fear has been expressed that if the Administrative Review Act is made applicable to assessed valuation complaints, the volume of such complaints would increase to an intolerable level.

There are two arguments against such fears. First, the quality of justice for Cook County taxpayers should not be determined by the workloads of public officials or the courts. Since the taxpayers are paying \$1.5 billion in taxes, a small increase in the expenditures of the various system components to insure justice is reasonable. Secondly, there is no assurance that the Board of Appeal's case load and that of the courts would be excessive. If complainants had to prove up a case before the Board of Appeals rather than just filing complaints and having perfunctory hearings, the number of complaints filed might drop. Moreover, the experience of the Property Tax Appeal Board indicates that very few taxpayers file appeals under the Administrative Review Act. The dearth of cases under the Administrative Review Act in the 101 counties outside Cook County serves as support for the authors' conclusion that the availability of judicial review will result in excessive assessments being cured at the administrative level. Finally, the courts in Cook County have shown no difficulty in handling the many other Administrative Review Act appeals coming up under other state taxes in Cook County.

It has been suggested that review under the Administrative Review Act is essentially the same as review by a court applying the doctrine of constructive fraud.<sup>291</sup> There are, in fact, major differences in the burdens carried by the taxpayer under the two systems of review.

If a downstate taxpayer chooses the Property Tax Appeal Board as the reviewing authority, he is guaranteed a hearing complete with procedural safeguards. The downstate taxpayer and the assessing authority are on equal ground in proving the correct assessed valuation of the property. The Board's decision must be based upon the manifest weight of the evidence and upon equity. Further, the decision of the Board is subject to review under the Administrative Review Act. The standard of review

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291. Comment, *Real Property Taxation in Illinois*, 1974 U. ILL. L.F. 481, 489.

under the act is whether the Board's decision is based upon the manifest weight of the evidence adduced at the hearing, and there must be substantial evidence to support the administrative findings.

The Cook County taxpayer, on the other hand, has his only "hearing" before the Board of Appeals. At this hearing there are no procedural safeguards. The Cook County taxpayer is afforded no direct judicial review. He must pay his taxes, in full, under protest and file a specific objection to the Collector's Application for Judgment. The Cook County taxpayer's defense of overvaluation is only heard if he can prove fraud, either actual or constructive. As has been fully demonstrated earlier, proving fraud is no easy matter, and the Cook County taxpayer is never on equal footing with the assessing authorities.

Therefore, even though the downstate taxpayer does not have a *de novo* hearing in the circuit court, the hearing afforded at the administrative level is clearly efficacious. The overwhelming burden which must be met by the Cook County taxpayer in proving fraud is much greater than the "manifest weight of the evidence" burden carried by the downstate taxpayer. Absent proof of fraud, the Cook County taxpayer will *never* be afforded a hearing on what is the correct assessed valuation of his real estate. The General Assembly should act.

A second alternative would be to maintain the Board of Appeals as a place for a quick, inexpensive hearing for complaints. The Board would continue its present practice of not affording a full due process hearing with complete evidence and cross-examination. In effect, the Board would be a rough sieve giving relief to some taxpayers. However, any requirement of exhaustion of administrative remedies before the Board should be abolished because of the Board's lack of a full hearing. The taxpayer should be given the opportunity to either go to the Board or seek review of the Assessor's assessment in a trial *de novo* in the circuit court wherein the defendant would be the Assessor.

A third solution would be the abolition of the Board of Appeals. It is functioning at the present time as an administrative body as distinguished from a judicial body. The decisions of the Board of Appeals are not subject to judicial review. The Board of Appeals reviews the actions of the Assessor of Cook County. In effect an administrative body, the Board of Appeals, is reviewing the determination of an administrative officer, the Assessor. A trial *de novo* could be had in the Circuit Court of Cook County directly from the Assessor's decision regarding the assessment without any intervening body hearing the matter.

(b) *Minor Legislative Changes*

Some changes should also be made in other areas. Taxpayers should receive reasonable interest on any real estate tax refund obtained as a result of their assessments being lowered by court action. Thus, the burden of waiting for the refund could be alleviated by interest. The imposition of interest on refunds paid by the county may also provide an impetus for the county to expedite the review process. Currently, taxing bodies pay no interest on refunds and, therefore, unjustly benefit from an "interest-free loan." Furthermore, the Assessor and Board of Appeals should, by statute, be required to give notice to taxpayers of their rights similar to the notice given to downstate taxpayers.

At the present time, there is a waste of judicial and assessing officials' energies. Real estate is assessed routinely once every four years in Cook County. Assume that the taxpayer challenges his quadrennial assessment before the Assessor and the Board of Appeals at the earliest possible time. Later he takes the matter to the circuit court and prevails. The court's judgment is not *res judicata* for the remaining three years of the quadrennial assessment even though there has been no physical change in the property.<sup>292</sup> This result should be changed.

Finally, the various components of the assessing and review system should be required to keep meaningful statistics. What types of property owners are appealing? Who is getting relief? What is the average amount of relief given? These and many other statistics should be public knowledge.

## V. CONCLUSION

To paraphrase Jean Baptiste Colbert, the Cook County real estate taxpayer is being plucked to the tune of approximately 1.5 billion dollars per tax year and cannot even HISS! The doctrine of constructive fraud prevents the Cook County real estate taxpayer from obtaining any meaningful judicial review of the Assessor's or Cook County Board of Appeals decisions concerning the Cook County taxpayer's real estate tax assessment. Proof of assessment overvaluations from 1584% to 3.8% according to Illinois Supreme Court decisions, was insufficient to prove constructive fraud so as to permit the court to review the real estate tax assessment. Since the Illinois Supreme Court has not and will not act to remedy this injustice, Cook County taxpayers

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292. *People ex rel. County Collector v. Bostwick*, 33 Ill. 2d 74, 78, 210 N.E.2d 189, 191 (1965).

must and should take their case for reform to the Illinois General Assembly.

Downstate taxpayers already have an excellent system for administrative and judicial review of their real estate tax assessments. They are given notice by statute of important times and places to file appeals regarding their real estate tax assessments as distinguished from Cook County taxpayers who receive no notice. Downstate taxpayers are entitled as a matter of right to a full hearing before the Property Tax Appeal Board concerning their real estate tax assessments, with statutorily guaranteed rights to a full due process hearing without *ex parte* contacts by the Board. Downstate taxpayers then are able to have the decision of the Property Tax Appeal Board reviewed pursuant to the Administrative Review Act, which review is governed by statutorily prescribed standards.

Cook County taxpayers have no real substantive rights regarding the judicial review of their real estate tax assessments. A radical solution to the Cook County taxpayer's dilemma would be the abolition by the General Assembly of the Cook County Board of Appeals and the requirement that the circuit court decide assessments *de novo* with the Assessor's valuation being given no presumptive weight. Alternatively, decisions of the Board of Appeals could be made subject to the Administrative Review Act. In any system, the correct assessed valuation should be proven by either the Assessor or taxpayer by a preponderance of the evidence.

Whatever format is adopted, the Assessor should be made a mandatory party. At present, when the Cook County taxpayer files an objection to the Collector's Application for Judgment, only the Collector, not the Assessor, is the party plaintiff. This procedure, to a certain degree, insulates the Assessor from the proceedings. For example, interrogatories may not be served on the Assessor. The taxpayer should have the right to proceed directly against the Assessor who is the cause of his grievance.

There is no reason for the present Cook County system to exist. It is an invitation to proceedings summary in nature and arbitrary in result. The Cook County real estate taxing system further breeds disrespect in taxpayers because of the system's obvious injustice. Change in the Cook County real estate assessment system must and should be accomplished by the Illinois General Assembly.

## APPENDIX A-I

Survey of cases in which an excessive valuation percentage was alleged but constructive fraud was not found\*

	Assessed Valuation	Fair Cash Value	Difference	Excessive Valuation Percentage
<i>Morningside Hts.</i> <sup>1</sup>	\$ 36,000**	\$ 21,000**	\$ 15,000	71.4%
<i>M.D.B.K.W., Inc.</i> <sup>2</sup>				
Hotel - 1961	36,150	17,200	18,950	110.2
Hotel - 1962	38,662	17,200	21,462	124.8
Farm	128,440	86,000	42,440	49.3
<i>S.B.A. Co.</i> <sup>3</sup>				
Tract I				
(taxpayer)	183,700	173,500	10,200	5.9
(trial court)	183,700	177,000	6,700	3.8
Tract II				
(taxpayer)	57,500	43,000	14,500	34.0
(trial court)	57,500	47,800	9,700	20.3
<i>Lans</i> <sup>4</sup>	385,000	127,500	157,500	120.4
<i>Gulf M. &amp; O.R.R.</i> <sup>5</sup>	827,453,141	496,471,885	330,981,256	67.0
<i>Chicago &amp; N.W. Ry.</i> <sup>6</sup>	86,750,000	50,000,000	36,750,000	73.5
<i>St. Louis</i> <sup>7</sup>	6,439,935	4,830,000	1,609,935	33.0
<i>Robison</i> <sup>8</sup>				
Land & building	38,830	17,000	21,830	128.4
Land	32,913	12,000	20,913	174.3
Front footage	274	58-83	216-191	372.4-230.1
<i>Texas Co.</i> <sup>9</sup>				46.7
<i>Allyn</i> <sup>10</sup>				147.0
<i>Allied Oil Corp.</i> <sup>11</sup>	100,008	60,005	40,003	67.0
<i>Hendrickson</i> <sup>12</sup>				
Taxpayer value #1	162,000	113,550	48,450	42.7
Taxpayer value #2	162,000	92,000	70,000	76.0
Taxpayer value #3	162,000	68,000	94,000	138.3
<i>Atwater</i> <sup>13</sup>	217,290	108,644	108,646	100.0
<i>C.U. Lime Wks.</i> <sup>14</sup>	215,526	12,800	202,726	1584.0
<i>Norton</i> <sup>15</sup>	20,998	7,100	13,898	194.3
<i>Harding</i> <sup>16</sup>	257,731	200,400	57,331	28.6
<i>Bourne</i> <sup>17</sup>	108,550	75,000	33,550	44.7

\* For those cases in which the only figure referred to by the court was the excessive valuation percentage, the assessed valuation figure and the fair cash value figure are omitted.

\*\* Debased to 55%

1. *People ex rel. Munson v. Morningside Heights, Inc.*, 45 Ill. 2d 338, 259 N.E.2d 27 (1970).

2. *People ex rel. Frantz v. M.D.B.K.W., Inc.*, 36 Ill. 2d 209, 221 N.E. 650 (1966).

3. *People ex rel. Nordlund v. S.B.A. Co.*, 34 Ill. 2d 373, 215 N.E.2d 233 (1966).

4. *People ex rel. Nordlund v. Lans*, 31 Ill. 2d 477, 202 N.E.2d 543 (1964).

5. *People ex rel. Callahan v. Gulf, Mobile & O.R.R.*, 8 Ill. 2d 66, 132 N.E.2d 554, cert. denied, 352 U.S. 832 (1956).

6. *Chicago & N.W. Ry. v. Department of Revenue*, 6 Ill. 2d 278, 128 N.E.2d 722 (1955), *cert. denied*, 351 U.S. 950 (1956).
7. *People ex rel. Schmulbach v. City of St. Louis*, 498 Ill. 491, 97 N.E.2d 252 (1951).
8. *People ex rel. Johnson v. Robison*, 406 Ill. 280, 94 N.E.2d 151 (1950).
9. *People ex rel. Tennyson v. Texas Co.*, 406 Ill. 120, 92 N.E.2d 142 (1950).
10. *People ex rel. Schlaeger v. Allyn*, 393 Ill. 154, 65 N.E.2d 392 (1946).
11. *People ex rel. Tedrick v. Allied Oil Corp.*, 388 Ill. 219, 57 N.E.2d 859 (1944).
12. *People ex rel. Hellyer v. Hendrickson*, 373 Ill. 99, 25 N.E.2d 507 (1940).
13. *People ex rel. Harding v. Atwater*, 362 Ill. 546, 1 N.E.2d 46 (1936).
14. *People ex rel. McDonough v. Chicago Union Lime Works Co.*, 361 Ill. 304, 198 N.E. 1 (1935).
15. *People ex rel. Nash v. Norton*, 358 Ill. 272, 193 N.E. 129 (1934).
16. *Kinderman v. Harding*, 345 Ill. 237, 178 N.E. 71 (1931).
17. *People ex rel. Thompson v. Bourne*, 242 Ill. 61, 89 N.E. 690 (1909).

## APPENDIX A-II

Survey of cases in which an excessive valuation percentage was alleged and constructive fraud was found.\*

	Assessed Valuation	Fair Cash Value	Difference	Excessive Valuation Percentage
<i>Anderson</i> <sup>1</sup>	\$	\$	\$	59.5%
<i>Belt Ry.</i> <sup>2</sup>				100.0
<i>Am. Refrig.</i> <sup>3</sup>	288,181	161,000	127,181	76.5
<i>Chicago B. &amp; Q.R.R.</i> <sup>4</sup>				108.0-94.5
<i>Chicago B. &amp; Q.R.R.</i> <sup>5</sup>				100.0
<i>Gulf M. &amp; O.R.R.</i> <sup>6</sup>				100.0
<i>Chicago &amp; N.W. Ry.</i> <sup>7</sup>				
1956-58				134.2
1959				82.0
<i>Chicago B. &amp; Q.R.R.</i> <sup>5</sup>				82.0
<i>Gulf M. &amp; Q.R.R.</i> <sup>9</sup>				100.0
<i>Chicago B. &amp; Q.R.R.</i> <sup>10</sup>				82.0
<i>Turk</i> <sup>11</sup>	82,500	25,000	57,500	228.4
<i>Chicago M. St. P. &amp; P.</i> <sup>12</sup>				42.9
<i>Wilson</i> <sup>13</sup>	43,200	15,360	27,840	181.2
<i>Schmuhl</i> <sup>14</sup>				575.7
<i>Gillespie</i> <sup>15</sup>				
55' Lot	70,500	35,000	35,500	101.4
25' Lot	20,000	12,500	7,500	60.0
<i>Grand Trunk</i> <sup>16</sup>	3,486,520	2,150,018	1,336,502	62.2
<i>St. Louis Bridge</i> <sup>17</sup>	7,875,000	2,877,080	4,997,920	173.7
<i>Wiggins Ferry</i> <sup>18</sup>	339,910	157,120	182,790	116.3
<i>Ill. Cent. R.</i> <sup>19</sup>				62.2
<i>Harding</i> <sup>20</sup>				262.5
<i>Stewart</i> <sup>21</sup>				
North Block	3,750	1,600	2,150	134.4
South Block	3,100	1,300	1,800	138.4
<i>Chicago B.&amp;Q. R.R.</i> <sup>22</sup>				100.0
<i>St. Louis Elec. Bridge</i> <sup>23</sup>				
Construct. costs	1,551,428	1,064,333	487,095	45.8
Replacement costs	1,551,428	885,704	665,724	75.2
Income	1,551,428	1,010,312	541,116	53.5
<i>K.&amp;H. Bridge</i> <sup>24</sup>				150.0

\* For those cases in which the only figure referred to by the court was the excessive valuation percentage, the assessed valuation figure and the fair cash value figure are omitted.

1. *People ex rel. Skidmore v. Anderson*, 56 Ill. 2d 334, 307 N.E.2d 391 (1974).

2. *People ex rel. Korzen v. Belt Ry.*, 37 Ill. 2d 158, 226 N.E.2d 265 (1967).

3. *People ex rel. County Collector v. American Refrigerator Transit*, 33 Ill. 2d 501, 211 N.E.2d 694 (1965).

4. *People ex rel. Musso v. Chicago, B. & Q.R.R.*, 33 Ill. 2d 88, 210 N.E.2d 196 (1965), *appeal dismissed for want of jurisdiction*, 384 U.S. 213 (1966).

5. *People ex rel. Korzen v. Chicago, B. & Q.R.R.*, 32 Ill. 2d 554, 209 N.E.2d 649 (1965).

6. *People ex rel. Enrietta v. Gulf, Mobile & O.R.R.*, 29 Ill. 2d 605, 195 N.E.2d 174 (1963).

7. *People ex rel. Schmulbach v. City of St. Louis*, 498 Ill. 491, 97 N.E.2d 780 (1963).



8. *People ex rel. Dallas v. Chicago, B. & Q.R.R.*, 26 Ill. 2d 292, 186 N.E.2d 335 (1962).
9. *People ex rel. Kohorst v. Gulf, Mobile & O.R.R.*, 22 Ill. 2d 104, 174 N.E.2d 182 (1961).
10. *People ex rel. Hillison v. Chicago, B. & Q.R.R.*, 22 Ill. 2d 88, 174 N.E.2d 175 (1961).
11. *People ex rel. Rhodes v. Turk*, 391 Ill. 424, 63 N.E.2d 513 (1945).
12. *People ex rel. Ross v. Chicago, Minneapolis, St. Paul & Peoria R.R.*, 381 Ill. 58, 44 N.E.2d 566 (1942).
13. *People ex rel. McGaughey v. Wilson*, 367 Ill. 494, 12 N.E.2d 5 (1937).
14. *People ex rel. McDonough v. Schmuhl*, 359 Ill. 446, 194 N.E. 731 (1935).
15. *People ex rel. Wangelin v. Gillespie*, 358 Ill. 40, 192 N.E. 664 (1934).
16. *People ex rel. McDonough v. Grand Trunk W.R.*, 357 Ill. 493, 192 N.E. 645 (1934).
17. *People ex rel. Wangelin v. St. Louis Bridge Co.*, 357 Ill. 245, 191 N.E. 300 (1934).
18. *People ex rel. Wangelin v. Wiggins Ferry Co.*, 357 Ill. 173, 191 N.E. 296 (1934).
19. *People ex rel. McDonough v. Illinois Cent. R.*, 355 Ill. 605, 190 N.E. 82 (1934).
20. *Aldrich v. Harding*, 340 Ill. 354, 172 N.E. 772 (1930).
21. *People ex rel. Carr v. Stewart*, 315 Ill. 25, 145 N.E. 600 (1924).
22. *People ex rel. Miller v. Chicago, B. & Q.R.R.*, 300 Ill. 399, 133 N.E. 325 (1921).
23. *People ex rel. Little v. St. Louis Elec. Bridge Co.*, 290 Ill. 307, 125 N.E. 280 (1919).
24. *People ex rel. McCallister v. Keokuk & Hamilton Bridge Co.*, 287 Ill. 246, 122 N.E. 467 (1919), *appeal dismissed for want of jurisdiction*, 258 U.S. 613 (1922).

APPENDIX B  
Workload of the Property Tax Appeal Board for the tax years 1970-1972

Year	Number of Cases	Number of Parcels*	Number of Cases in which No Relief Given	Number of Cases in which Relief Given	Total PTAB Assessment Reductions	Valuation Reduction Per Successful Appeal	Increase in Assessed Valuation Due to 3rd Party Complaints
1970	717	718	94	445	\$ 8,124,054	\$18,256.30	(36 cases) 45,370
1971	5723	5731	2763	1547	\$26,032,845	\$16,827.95	(24 cases) \$1,123,324
1972	1827	1819	476	920	\$17,102,512	\$18,589.69	(4 cases) \$ 43,522

\*These totals do not include cases pending court decisions of previous years. Interview with Joseph L. Miller of the Property Tax Appeal Board (Jan. 3, 1977).

## APPENDIX C

Major Illinois taxes subject to review under the provisions of the Administrative Review Act\*

Tax	Amount	Percentage of total State Revenue Raised by State Taxes	Tax Statutory Provisions of Ill. Rev. Stat.	Administrative Review Act Provisions
Income	\$1,572,271,057	35.5%	Chap. 120, Par. 1-101 <i>et seq.</i>	Par. 12-1201 <i>et seq.</i>
Cook County Real Estate Taxes	1,539,697,391			None
Occupation & Use (Retailers' Occupation, Use, Service Occupation, and Service Use)	1,487,996,163	33.6%	ROT-Chap. 120, Par. 440 <i>et seq.</i> SO-Chap. 120, Par. 439,101 <i>et seq.</i> Use-Chap. 120, Par. 439.1 <i>et seq.</i>	Par. 451 Par. 439.112 Par. 439.12
Non Cook County Real Estate Taxes	682,177,027 (1973-latest date available)			Chap. 120, Par. 592.4
Motor Fuel	393,916,187	8.9%	Chap. 120, Par. 417 <i>et seq.</i>	Par. 434a
Public Utility	241,931,854	5.5%	Chap. 120, Par. 468	Par. 478
Cigarette Revenue	171,591,913	3.9%	Tax Chap. 120, Par. 453.1 <i>et seq.</i> Use Tax Chap. 120, Par. 453.31	Par. 453.8 Par. 453.51
Liquor	76,609,912	1.7%	Chap. 43, Par. 158 <i>et seq.</i>	Par. 163c

\* Illinois Department of Revenue Report to the taxpayers (fiscal 1975).