REPORT OF THE TASK FORCE ON REFORM OF THE COOK COUNTY PROPERTY TAX APPEALS PROCESS

III

PROPOSED AMENDMENTS TO THE PROPERTY TAX CODE AND COMMENTARY

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REPORT OF THE TASK FORCE ON REFORM OF THE COOK COUNTY PROPERTY TAX APPEALS PROCESS III

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I. Executive Summary

On March 13, 2000, the Property Tax Appeal Board (the PTAB) issued two decisions, *Appeal of Robert Bosch Corporation,* Nos.97-22106-I-3, 97-22107-I-3 (*Bosch*) and *Appeal of Corporate Lakes of Matteson, LLC*, Nos. 97-20271-C-3 through 97-20286-C-3 (*Corporate Lakes*). These decisions, and their potential impact both on taxpayers and taxing agencies, attracted the attention of The Civic Federation, whose long-standing involvement with Cook County's property tax system has included two previous Task Forces on Reform of the Cook County Property Tax Appeals Process. The Civic Federation's previous Task Forces have been closely associated with the introduction of the PTAB into Cook County. In 1996, the first Task Force's recommendations concerning the abolition of the doctrine of "Constructive Fraud" were adopted by the legislature. The legislature took the additional steps of restructuring the Cook County Board of Appeals and introducing the PTAB into Cook County. Later that year, a second Task Force was formed to address the issues surrounding these additional steps taken by the legislature. The second Task Force made several procedural recommendations to accommodate the inclusion of the PTAB in the Cook County property tax appeals process. The legislature adopted some of these recommendations. The first application by the PTAB in *Bosch* and *Corporate Lakes* of the three-year average median assessment level calculated from the Illinois Department of Revenue's (IDOR's) Assessment / Sales Ratio Study (sales ratio study), in non-Class 2 cases in Cook County, sent shock waves through the system. The Civic Federation recognized the potential threat to an orderly property tax appeals process in Cook County and formed Task Force III.

After several months of deliberation, in which many issues were discussed, the Task Force has concluded that both substantive and procedural changes need to be made to the practice of the PTAB in order to accommodate the unique nature of Cook County's property tax system. The substantive recommendation addresses the controversy surrounding the PTAB's use of the IDOR's sales ratio studies as the controlling assessment level in non-Class 2, i.e. non-residential, appeals. While the longstanding practice of the PTAB to use these studies on a countywide basis in other counties has not caused any significant controversy, the disagreement over these studies as applied to Cook County's separate classes of property is so contentious that a clear consensus on the substantive recommendation could not be reached; however, the majority sentiment was that something had to be done to address the dilemma.

The Task Force recommends that the following substantive change in procedure for the Property Tax Appeals Board be enacted by the legislature:

- Bar the use of the Illinois Department of Revenue's Assessment / Sales Ratio Study as evidence before the Property Tax Appeals Board in cases concerning property other than Class 2 property.

This approach has the following advantages over the status quo, and over other methods of addressing the issue:

- Protects the homeowners of Cook County by allowing them to continue to have the benefit of the studies.
- Protects the revenues of local taxing agencies.
- Prevents the PTAB from assigning *prima facie* validity to a piece of evidence generated by another government agency, but which is subject to considerable controversy in Cook County.
- Allows for the introduction of other forms of evidence by any taxpayer wishing to make a uniformity or equal protection argument.
- Is consistent with policies in other major metropolitan areas and with federal policies concerning *ad valorem* property taxes.
- Does not limit or interfere with the PTAB's jurisdiction in any way.

In addition, regardless of any solution to this particular substantive problem that the legislature chooses to enact, there are other, entirely procedural, changes that would provide for greater efficiency and fairness in the system. The current system can be improved by adopting minor changes that allow for a large volume of complex cases to be handled expeditiously. While the PTAB handles large and complex cases throughout the state of Illinois, the Cook County office of the PTAB will handle the majority of these cases. The Task Force nevertheless recommends that the following procedural changes for the PTAB be adopted statewide:

- Notification – within 30 days of receiving notice of docketing by the Property Tax Appeal Board, the *party filing the appeal* shall give notice of the appeal:
  - if filed by the taxpayer, then only in cases involving a change in assessed valuation of $300,000 or more, and only to municipalities, school districts, and community college districts in which such property is situated; and
  - if filed by a taxing agency, to the taxpayer of record (regardless of amount).
- Intervention – standing to intervene *should be limited* to municipalities, school districts, and community college districts in which such property is situated and only in cases involving an assessment reduction of $300,000 or more.
- Case Management – a *mandatory* case management hearing should be set within 90 days of completion of the submission of evidence in any appeal seeking a reduction in assessed valuation of $300,000 or more, for the purpose of determining the position of all parties and scheduling progress in the case.

These procedural recommendations represent a much clearer consensus of the Task Force. All members agree that a streamlined and formalized system is necessary in order to accommodate a high volume of complex cases. Whether or not there is a high volume of complex cases in an area, these recommendations would improve the way a single complex case is handled. However, the Task Force is cognizant of the PTAB's important role as an inexpensive and informal alternative to the courts. Therefore, these recommendations seek to provide a compromise between conflicting necessities. These recommendations have the following advantages over the current structure of the tax appeals process:

Notification

- Brings the tax appeals process throughout the state of Illinois in line with all other civil proceedings regarding the placement of the burden of notification.
- Provides notification to the taxing agencies with the most significant interest in the outcome of the appeal, and limited to cases of significant changes in assessed value.
- Provides that those taxing agencies with the most significant interest in the outcome of the appeal are notified of hearings directly, rather than through the State's Attorney's Office.
- Insures that a taxpayer receives notice of an assessment appeal filed by a taxing agency no matter what amount of change in assessed value is requested.

Intervention

- Maintains the ability of municipalities, school districts, and community college districts to intervene.
- Limits the number of potential interveners in order to allow cases to be settled quickly and efficiently.
- Maintains the right of all taxing agencies to appeal a decision of the Board of Review.

Case Management

- Guarantees that all interested parties are brought together to outline how the case will be either conducted or resolved.
- Allows for the more efficient commitment of resources by all parties.
- Rectifies the current problem of some parties reaching an agreement only to have that agreement rejected by a third party.
- Sets a clear timeline for the resolution of an appeal.
- Applies only to cases in which a significant change in assessed value is requested.

These recommendations constitute the best efforts of the Task Force to reconcile the controversy surrounding the IDOR median level of assessment and balance the conflicting interests of taxpayers and taxing agencies. The Task Force's recommendations are based on the three following premises: (1) that the public welfare is best served by a property tax appeals system that is not mired in controversy, (2) that a speedy and efficient remedy to an incorrect assessment best serves the taxpayer, and (3) that an appeals process that does not threaten to create budget crises best serves taxing agencies. The report that follows details the Task Force's attempt to balance the public's interest in relief from improper taxes with its interest in stable property tax revenues for the support of local government.

II. History of the Property Tax Appeals Process

Prior to 1967, any taxpayer in the state of Illinois, dissatisfied with the assessment of his or her property for purposes of taxation, had only one recourse beyond the county board of review or board of appeals, namely Circuit Court. During this era, the doctrine of "Constructive Fraud" controlled judicial review of assessment appeals. This doctrine, modified through numerous opinions over the years, held that only upon showing that an assessment was "so grossly out of the way" that it could not be reasonably supposed to have been "honestly" made, could a taxpayer receive relief from the courts. *Pacific Hotel Co. v. Lieb*, 83 Ill. 602, 609-10 (1876).

Then in 1967, the Property Tax Appeal Board (PTAB) was created to provide taxpayers outside of Cook County with an alternative to the courts when appealing a property tax assessment. As the report of Task Force II explained:

> The PTAB was established in 1967 to provide *downstate* taxpayers with a forum for the appeals of property tax assessments beyond that which was provided at the county level. Its original purpose was to smooth out *intercounty* disparities of decision of the boards of review by establishing a fair tribunal at the state level.

Task Force II, Report at 6 (emphasis supplied). Implicitly, the PTAB's original mission was to provide uniformity among counties with similar systems of property tax assessment. Cook County's unique system of property tax assessment, codified in the 1970 Constitution of the State of Illinois, exempted it from the PTAB's original mission. Article 9 § 4 of the 1970 Constitution provides in part:

> (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 continue to classify real property for purposes of taxation.

To date Cook County is the only county in the state of Illinois to exercise this authority, thereby distinguishing it from the other 101 counties in Illinois. The General Assembly constructed sections of the Property Tax Code, in particular those dealing with the PTAB, to exempt counties that chose to classify from practices conducted in other parts of the state. Prior to the 89th General Assembly, § 16-160 of the Property Tax Code[1] read as follows:

> **Property Tax Appeal Board – Process.** *In any county other than a county with 3,000,000 or more inhabitants*, any taxpayer dissatisfied with the decision of a board of review as such decision pertains to the assessment of his or her property for taxation purposes, or any taxing body that

[1] Section 35 ILCS 200 of the Illinois Compiled Statutes.

> has an interest in the decision of the board of review on an assessment made by any local assessment officer, may, within 30 days after the date of written notice of the decision of the board of review, appeal the decision to the Property Tax Appeal Board for review.

(emphasis supplied). For a number of years, there was a dual property tax assessment appeals system in Illinois. In all counties except Cook, decisions of the Boards of Review could be appealed to either the PTAB or to Circuit Court. In Cook County, a decision of the Board of Appeals could be appealed only to the Circuit Court.

Then in 1989, the Illinois Supreme Court's modification of the doctrine of constructive fraud in *In Re Application of County Treasurer, etc. v. Ford Motor Company*, 131 Ill.2d 541, 546 N.E.2d 506 (1989) further narrowed a taxpayer's ground for challenging an assessment in court. The court in *Ford Motor Company* held that a taxpayer had to demonstrate misconduct or "dishonesty" by the assessing official in the assessment of the property. There was general agreement that this decision unnecessarily diverted attention away from a property's value and onto the conduct of public officials, which led to unsuccessful attempts to overrule this decision legislatively.

A panel was convened as The Civic Federation Task Force on Reform of the Cook County Property Tax Appeals Process to draft comprehensive and lasting statutory reform. The Task Force recommended that the doctrine of constructive fraud be expressly abolished. Instead, a taxpayer would be required to prove through "clear and convincing" evidence that the assessment was incorrect. The suggested reforms did not alter the scope of, conduct of, or prerequisites for, tax objection proceedings. Procedurally, the Task Force recommended changes in filing procedures, in the timing of the payment under protest, and that tax objections proceed as a straightforward civil complaint.

The legislature adopted all of these recommendations in H.B. 1465, which became effective July 11, 1995. In addition, the legislature made other changes to the property tax appeals process in Cook County. Most notably, the PTAB was introduced into Cook County.

In order to analyze these additional changes, which had not been considered by The Civic Federation prior to their enactment, a second Task Force was convened. The Task Force made several recommendations for revising HB 1465. The revisions focused on the procedural changes brought about by the transformation of the Cook County Board of Appeals into the Cook County Board of Review, and the process for conducting this transformation. A number of these recommendations were adopted by the legislature in SB 1516, also known as P.A. 89-671, which became effective August 14, 1996. With regard to the PTAB, the Task Force observed that, "there are basic, unresolved legal and valuation issues, relating to classification and median levels of assessment, that must be addressed and settled by carefully drawn rules or by legislation." See *Task Force II*, Report at 4.

The PTAB was gradually introduced into Cook County. HB 1465 (P.A. 89-126) added language to § 16-160 of the Property Tax Code providing that the PTAB would have jurisdiction

> In counties with 3,000,000 or more inhabitants, beginning with assessments made for the 1996 assessment year for residential property of 6 units or less and beginning with assessments made for the 1997 assessment year for all other property . . .

The predictions of what would happen, as the PTAB became part of the property tax appeals system in Cook County, have differed in many respects from the reality of the situation. Task Force II did not expect the PTAB to be able to handle the massive increase in its caseload as a result of its new jurisdiction in the state's largest county. On the other hand, the PTAB expected to be handling the appeals of 55,000 properties in the first year of its existence in Cook County.[2] Rather than pose any problems for taxpayers, the opportunity to appeal an assessment beyond the Board of Review, without the formality and cost of judicial review, is welcomed by many in Cook County. Furthermore, several Task Force members have expressed the opinion during the Task Force's proceedings that the availability of an alternative forum to the courts for the hearing of market value disputes is a welcome change. The reality is that integrating the longstanding practices of the PTAB concerning the use of the IDOR median level of assessment, which have been tailored to downstate property tax systems, into the unique environment of Cook County, which classifies property, has presented a larger than anticipated problem. The crux of the problem is the traditional use of the Illinois Department of Revenue's median level of assessment. As noted above, this is one of the issues concerning which Task Force II forewarned.

The first year in which it heard assessment appeals, the PTAB proposed to adopt a rule that would allow it to use the IDOR's sales ratio study's median level of assessment in all cases.[3] In 1997 The Civic Federation issued a letter concerning these changes to Rule 1910.50 (c)(2), which read, in part, as follows:

> We would initially cite the lack of any statutory authority to [accommodate the Cook County classification system by employing the existing downstate procedure of applying the three year average of the Department of Revenue's assessment/sales ratio studies by class], in contrast with the downstate procedure, which is fully backed by language in the Property Tax Code and cases interpreting it.[4]

[2] Illinois State Budget 1997, Ch. 8-101.
[3] See Appendix A.
[4] The full text of this statement can be found in Appendix B.

The PTAB revised its proposed rule to limit it to Class 2 cases. In 1998, the PTAB once again proposed a rule to use the IDOR sales ratio study's median level of assessment into Cook County.[5] This amendment would have expanded the applicability of the IDOR's sales ratio studies to all classes of property. The Civic Federation issued a position statement on the adoption of this proposed amendment to Rule 1910.50 (c). The statement read in part:

> The principal legal flaw in the proposed expansion to the other classes of the Class 2 procedure is that it pre-judges what is certain to be a vigorously contested legal and factual issue, namely, the validity of the Department of Revenue ratio studies to establish the assessment levels of Cook County classes other than Class 2.[6]

The Joint Committee on Administrative Rules (JCAR) opposed the rule changes proposed by the PTAB, and again the PTAB rewrote the proposed rules. The fact that the PTAB wanted to use the IDOR median levels for each class of property in Cook County does not reflect negatively on either the PTAB or the IDOR studies. The presumption of correctness vested in the product of a government agency is a fact of life in the courts as well. The problem in this particular instance is that a study designed to accomplish the goal of inter-county equalization in the state is presumed correct for the purpose of providing uniformity *within a class of property* in a county that classifies. Compounding the problem is the inability of litigants to overcome the presumption of correctness, and the uneven playing field created when a highly contested piece of evidence cannot be effectively challenged.

The PTAB instead adopted a compromise version of Rule 1910.50 (c) offered by The Civic Federation, which indicated that the PTAB could consider, "competent evidence admitted pursuant to this Part, if any, which is relevant to the level of assessment applicable to the subject property under the Illinois Constitution, the Illinois Property Tax Code, and the Cook County Real Property Assessment Classification Ordinance, as amended."[7] At least two taxpayers then came forward and requested the median level of assessment based on the IDOR's sales ratio studies, which are conducted pursuant to § 17-10 of the Illinois Property Tax Code.

On March 13, 2000, the PTAB issued two decisions, each of which took notice of the median level of assessment and utilized it as the correct assessment level in cases outside of Class 2 property. These decisions assigned presumptive validity to the IDOR median level of assessment and effectively foreclosed any realistic opportunity to challenge the applicability of the IDOR median level of assessment for non-Class 2 properties in Cook County.

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[5] See Appendix A.
[6] The full text of this statement can be found in Appendix B.
[7] See Appendix B, page 35.

III. Substantive Recommendation

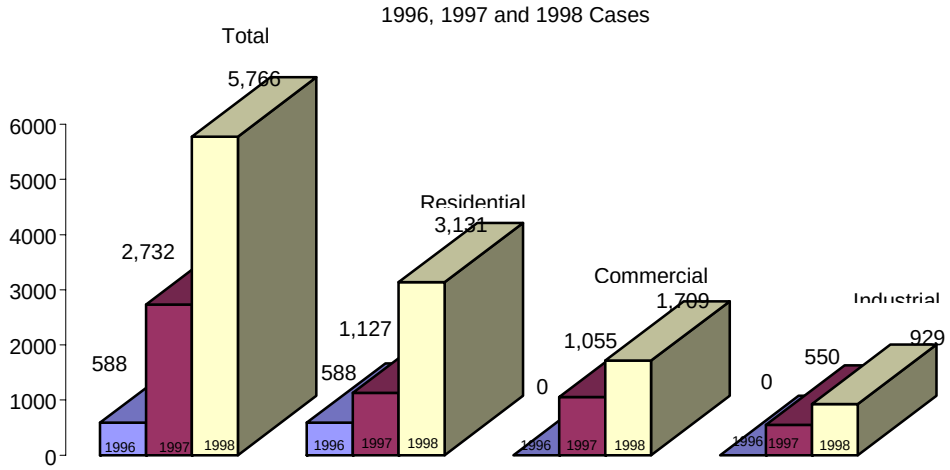
A. Significance of the *Bosch* and *Corporate Lakes* Decisions

The PTAB's decisions in *Bosch* and *Corporate Lakes*, granted assessment relief based on three-year average median assessment levels for specific classes calculated from the IDOR's sales ratio studies, which varied from the levels specified by county ordinance. These decisions set the IDOR median level as the precedent to be applied in Cook County, thus ending the PTAB's neutrality in the debate over the appropriateness of these studies, and initiating a series of lawsuits that threaten to tie up the appeals process for several years. The significance of the controversy, and the delays produced by these lawsuits, can be understood from several different perspectives.

1. The PTAB Perspective

Since the expansion of its jurisdiction into the state's most populous and diverse county, the PTAB has experienced significant growth in both its budget and caseload. In 1996, before introduction into Cook County, the PTAB had a budget of $736,000. In 2001, $2.9 million has been allocated, with 56% of that amount being spent in Cook County. Of the PTAB's 70 employees statewide, 42 work in Cook County. The fiscal year 2001 State of Illinois Budget reports that the PTAB had 5,745 assessments appealed in fiscal year 1997. The same budget projects 20,000 assessments to be appealed in fiscal year 2001.

The total number of cases handled by the PTAB in Cook County in 1996, the first year of its existence in Cook County, was 588. By tax year 1998, the number of cases had grown to 5,766 (see chart below).



Source: Cook County Board of Review. For more statistics on the property tax appeals process in Cook County see Appendix C.[8]

[8] These numbers are taken from Board of Review records which, for methodological reasons, differ slightly from the PTAB's internal records. Further explanation of this can be found in Appendix C.

The subject of those 5,766 cases was the individual assessment of 10,074 pieces of property. Although residential property constitutes 54% of the cases before the PTAB, commercial properties represent the largest number of tax parcels appealed and the largest amounts of assessment reductions.[9] Of these, commercial properties seeking a reduction in assessed value of $300,000, or more, constitute the majority of potential reductions in terms of value. In 1998, the total requested assessment reduction of all 10,074 pieces of property subject to an assessment appeal is $636 million. The vast majority of the requested assessment reduction ($422 million) comes from the commercial class of property. According to the Cook County Board of Review's statistics, as of January 2001, $109 million in assessment reductions had been granted by the PTAB for tax year 1998.

Furthermore, the PTAB must now defend its use of the IDOR sales ratio study's median level of assessment in the Appellate Court. Although the *Bosch* and *Corporate Lakes* decisions were the trigger point of the current crisis, there are currently 38 cases being appealed by the Cook County State's Attorney's Office with different factual situations, all of which relate to the application of the IDOR's median level of assessment by the PTAB. In addition to resolving disagreements in relation to assessments, the PTAB is now a party in a number of legal disputes. As such, the PTAB faces the significant challenge of defending its use of the IDOR's median level for a number of years as the Cook County State's Attorney's Office challenges every application of the IDOR median level of assessment.

Finally, based on the potential revenue impact of the precedent set by the *Bosch* and *Corporate Lakes* decisions, taxing agencies are considering making the appeals process at the PTAB a more contentious process. The PTAB may soon face an increase in the number of taxing agencies intervening in cases. The defense of their tax base is a significant concern of these taxing agencies; and therefore, many taxing agencies have expressed the opinion that any settlement that decreases their tax base must be rejected. The implication is that the PTAB will not be able to settle as many cases without a hearing and a decision. The problem of backlog has the potential to be compounded by these same taxing agencies appealing assessments certified by the Cook County Board of Review on the grounds that a taxpayer was under-assessed. The potential for a seriously combative tax appeals process is addressed below.

2. The Cook County Perspective

The Cook County Board of Review and State's Attorney's Office are very concerned about the prospect of a protracted legal battle over the PTAB's use of the IDOR's median level of assessment within specific classes of property in a county choosing to classify. As a result they are currently appealing every decision of the PTAB that utilizes the sales ratio study. As noted above, this currently constitutes 38 different

[9] Residential cases generally involve a single parcel of property, while cases involving commercial property generally have multiple properties bundled together in a single case. Therefore, the number of *cases* involving residential properties is greatest, but the number of commercial *tax parcels* is greatest.

cases. Each of these 38 cases is unique and may require an individual appeal. However, it has been observed during the Task Force proceedings that these cases fall into four or five general categories based on the facts of each case and the potential strategy for appeal. As the PTAB continues to issue decisions that utilize the median level of assessment, these cases will continue to be appealed. The expectation, therefore, is that the 38 current appeals are only the harbinger of the impending judicial crisis. The sense of the Task Force is that absent legislative action the Illinois Supreme Court may be the only forum capable of providing a definitive resolution of the issue. If that prediction is indeed true, resolution of this issue is potentially years away, after a massive number of appeals becomes an excessive burden on all public offices involved.

The reasons for appealing these decisions are both legal and financial. The consequence of an assessment reduction by the PTAB is that the amount of taxes paid on the excess value must be refunded to the taxpayer and charged back to the affected taxing agencies. The Appellate Court has granted a stay on any refunds pursuant to the PTAB's decisions in the *Bosch* and *Corporate Lakes* decisions. If the PTAB's decisions should be upheld, the reductions in the assessed value of the property would trigger refund orders of $128,002 to the Robert Bosch Corporation and $278,555 to Corporate Lakes of Matteson, LLC. Of these refunds, the portion attributable to the PTAB's application of the median level of assessment rather than the ordinance level of assessment is $23,758 of the *Bosch* refund and $163,262 of the *Corporate Lakes* refund.[10]

The Task Force, recognizing that the actual consequences of the PTAB's actions in Cook County have often differed from predictions, is hesitant to extrapolate the revenue impact on local taxing agencies any further than this. However, the IDOR and the Cook County Assessor's Office have differing figures to quantify the revenue impact of the PTAB's use of the IDOR median level of assessment. The Assessor's Office stated that the revenue loss to all taxing agencies would be approximately $650 million. It made this estimate during its public statements in support of SB 747 and HB 3875, which would have required the use of the ordinance level of assessment by the PTAB. Conversely, the IDOR has estimated that the maximum revenue loss would range from $56 million to $79 million. The difficulty of accepting these numbers lies in the fact that an assessment appeal's success depends on the facts of each individual case. There is no way to predict with accuracy the success of an appeal without knowing the merits of the taxpayer's case. Additionally, there are factors such as the tenacity of the interveners and the willingness of the parties to settle that affect the outcome of individual cases in a multiplicity of ways.

The one fact beyond dispute in this matter is that the impact of assessment reductions granted by the PTAB is significantly different from the impact of assessment reductions granted by the Board of Review. The Board of Review hears assessment appeals before the final tax rate of a taxing agency is calculated. Any reduction granted by the Board is included in the final certification of the tax rolls, and is included in the final, net equalized assessed value (or tax base) used by the County Clerk to determine an agency's tax rate and final extension. Thus, any reduction granted by the Board of

[10] The calculations used to arrive at these figures can be found in Appendix D.

Review changes the tax rate of an agency (and, minimally, the distribution of the tax burden among taxpayers), but not necessarily its revenues. The PTAB, on the other hand, hears an appeal after the taxes have been extended. Any reduction granted by the PTAB therefore results in a refund by the taxing agency to the taxpayer, which represents a loss in its tax revenues. The IDOR has acknowledged that even if the revenue impact on the county as a whole may not be dramatic, certain districts may experience serious budget crises if large refund orders are issued to properties in their jurisdiction.

The significant dollar amounts at stake in the cases currently before the PTAB have gotten the attention of many taxing agencies, most notably school districts. The concerns of these taxing agencies are that the ability to provide government services could be jeopardized by large refund orders. Since most local taxing agencies rely heavily on the property tax, a large refund order has the potential to alter an agency's anticipated revenues drastically. Furthermore, the unpredictability of refund orders makes accurate budgeting for coming years nearly impossible; and for most agencies, tax caps and rate limits effectively limit their ability to make up significant losses in subsequent years. Therefore several school districts are currently intervening in every assessment appeal of interest to them before the PTAB. They are also exploring the possibility of filing under-valuation complaints against large numbers of properties in their jurisdiction. The potential for delays in the appeals system is thus quite significant. The delays will result not only from such a taxing agency objecting to a settlement that would result in a refund to a taxpayer, but also from a taxing agency increasing the number of under-valuation appeals before the PTAB, thus forcing a taxpayer to defend the assessment certified by the Board of Review. The result is a system that is less effective than it should be.

3. The Civic Federation Perspective

More than the number of appeals, the legal and philosophic approach of the PTAB represents a significant change in Cook County's property tax appeals process. The legislative instructions for the PTAB's creation of internal procedures also indicate a disjunction with longstanding practice in Cook County, specifically, §16-180 of the Property Tax Code, which in part provides:

> **Procedure for determination of correct assessment.** The Property Tax Appeal Board shall establish by rules an *informal* procedure for the determination of the correct assessment of property which is the subject of an appeal. The procedure, to the extent that the Board considers practicable, *shall eliminate formal rules* of pleading, practice and evidence, and except for any reasonable filing fee determined by the Board, may provide that costs shall be at the discretion of the Board.

35 ILCS 200/16-180 (emphasis supplied). The PTAB has fulfilled the instructions of the legislature. In describing its creation and authority, the PTAB states:

> Hearings are set in the county seat of each county throughout the year and are open to the public. They are conducted according to rules established by the Board. The rules are less formal than those in a courtroom, and the Board is considered by many to be a "poor man's court" where a taxpayer can get a fair hearing without hiring an attorney or paying filing fees.

(http://www.state.il.us/agency/ptab/board/creation.htm). However, in its practice outside of Cook County the PTAB has also handled very complex cases, involving large properties and significant assessment level reductions. Most notably, a PTAB decision involving the assessment of a nuclear power plant was upheld by the appellate court in *Oregon Community Unit School District #220, et al. v. the Property Tax Appeal Board, et al.*, 285 Ill.App.3d 170, 674 N.E.2d 129 (2d Dist. 1996), appeal allowed 172 Ill.2d 554 (1997) (note: the case was settled prior to S.Ct. decision). The Civic Federation recognizes that the current problem stems from the introduction of an institution, which has a viable approach to tax appeals in other parts of Illinois, into a county that is remarkably different (most notably in its unique classification system) and that has historically been exempt from its jurisdiction.

More importantly, the PTAB exists as a tribunal to grant relief from improper assessments. Taxpayers, both homeowners and large business taxpayers, see the PTAB as a way to decrease the burden of the property tax. The Civic Federation has historically called for systematic, rather than piecemeal, approaches to solving the problem of the property tax burden. Seeking relief through the PTAB is appropriate in cases where the full market value of a piece of property is erroneous, but the PTAB's use of the IDOR median levels of class assessments, which merely decreases the taxes already paid, is overly disruptive to the system and counterproductive to efforts for comprehensive reform. Simply put, it is in no one's interest for the system to break down. The court delays will postpone taxpayers' refunds indefinitely; and the appeals may potentially be resolved in such a way that even homeowners in Cook County no longer have access to the IDOR's median level of assessment.

The last and most significant concern is that the current application of the IDOR's median level of assessment is provoking taxing agencies into not only intervening in all major taxpayer appeals, but also filing under-valuation complaints and independently appealing decisions of the Board of Review. This effectively forces taxpayers to defend their current assessment against an increase requested by the taxing agency. These taxing agencies are essentially trying to protect themselves against wholesale refunds unrelated to valuation questions. The practical effect of this strategy is to increase the tax burden of some taxpayers to offset refunds to other taxpayers. The PTAB could therefore become a forum in which taxpayers and taxing agencies become ever more contentious and hostile. The taxing agencies should be focusing on the effective delivery of public services, rather than being forced by budgetary necessity to expend public funds on tax appeals. Similarly, taxpayers should have confidence that if they are satisfied with their

assessment, there is no risk that the assessment will be increased as a result of a taxing agency's appeal.

As with previous Civic Federation efforts, this Task Force is concerned with balancing the interests of both taxpayers and taxing agencies. Many members of the Task Force expressed the view that the PTAB provided an important stimulus for improvement in Cook County assessment appeals. This observation was generally balanced by the view that the PTAB's strength was in expeditious determinations of full, fair market value, rather than in addressing uniformity and other legal issues. Therefore, The Civic Federation, motivated by its concerns, offers these changes in order to improve the efficiency and fairness of the tax appeals process, without significantly changing the PTAB's jurisdiction, and by streamlining the process.

B. The Controversy Over IDOR Class Median Assessment Levels

Although any semblance of a complete discussion of this controversy is beyond the scope of the present outline, the following will give some indication of how the issue has been framed. The focal point of the current crisis is the appeal of the *Bosch* decision, and eight other similar cases, consolidated in Docket No. 00-1183 *Cook County Board of Review v. Illinois Property Tax Appeal Board et al. #97-22106-I-3 and #97-2207-I-3* (April 12, 2000). The contentions of each party, as perceived by the Task Force are listed below.

1. The PTAB's Position

In *Bosch* and *Corporate Lakes*, and similar decisions, the PTAB has taken official notice of the three-year average median assessment levels, *by class*, given in the IDOR ratio studies. E.g. *Bosch*, PTAB Opin. at 10. These differ significantly from the assessment levels prescribed by the Cook County Classification Ordinance.

Citing to its own rules, to the use of the studies for inter-county equalization throughout Illinois under cases such as *Airey v. Department of Revenue*, 116 Ill.2d 528, 508 N.E.2d 1058 (1987) and *Advanced Systems, Inc. v. Johnson*, 126 Ill.2d 484, 535 N.E.2d 797 (1989), and to its history of applying the IDOR medians downstate under cases such as *Commonwealth Edison v. PTAB*, 102 Ill.2d 443, 468 N.E.2d 948 (1984), *Board of Review of Grundy County v. Property Tax Appeal Board*, 201 Ill.App.3d 999, 559 N.E.2d 504 (3d Dist. 1990), and *Will County Board of Review v. PTAB*, 100 Ill.App.3d 506, 426 N.E.2d 1238 (3d Dist. 1981), the PTAB accorded *prima facie* validity to the IDOR three-year average class medians. *Bosch*, PTAB Opin. at 10. This amounted to an endorsement of the IDOR class medians as a matter of law since no evidentiary hearing was conducted by the PTAB regarding the validity of the ratio studies on which the medians are based. (During the Task Force meetings it has been suggested by both adherents and detractors of the *Bosch* and *Corporate Lakes* rulings that evidentiary hearings to test the validity of the ratio study assessment level class medians in each PTAB hearing may present an excessive burden to all involved.)

The PTAB distinguished the Illinois Supreme Court's decision in *In Re Application etc. v. U.S. Steel Corporation*, 106 Ill.2d 311, 478 N.E.2d 343 (1985), (in which the IDOR studies had been found invalid for purposes of a Cook County tax objection case), by pointing out that the Supreme Court indicated it did not mean to imply that the studies could not be used as evidence of valuation in Cook County "in any circumstances at all." *Bosch*, PTAB Opin. at 11, citing 106 Ill.2d at 348. Additionally, the PTAB relied on the doctrine that "an administrative agency may rely on its own 'experience, technical competence, and specialized knowledge,'" and it asserted such technical knowledge in relation to the IDOR ratio studies. *Id*. at 11-12 [citation omitted]. The PTAB noted that the Illinois Supreme Court had approved the use of the ratio studies in what are commonly called the "Railroad Cases" during the 1960s, as well as the inter-county multiplier cases (*Airey* and *Advanced Systems*) noted above. *Bosch*, PTAB Opin. at 12, citing *People ex rel. Hillison v. Chicago, Burlington and Quincy R.R. Co.*, 22 Ill.2d 88, 174 N.E.2d 175 (1961), *People ex rel. Wenzel v. Chicago and Northwestern Railway Co.*, 28 Ill.2d 205, 190 N.E.2d 780 (1963), and *People ex rel. Musso v. Chicago, Burlington and Quincy R.R. Co.*, 33 Ill.2d 88, 210 N.E.2d 196 (1965). Finally, the PTAB held that its decision was consistent with another case cited by the Board of Review, *In Re Application of County Treasurer etc. v. Twin Manors West of Morton Grove Condominium Association*, 175 Ill.App.3d 564, 529 N.E.2d 1104 (1st Dist. 1988), in which the Appellate Court held that for a uniformity claim to justify a departure from the statutorily authorized ordinance assessment level, the assessment level proven by the taxpayer must be a countywide average. The PTAB found that the *Twin Manors* standard was satisfied since the IDOR medians apply to the various classes throughout the county. *Id.* at 12.

2. The Cook County Board of Review's Position

Those opposing the PTAB's *Bosch* and *Corporate Lakes* rulings respond that the agency has misapplied the law, specifically, § 9-145 of the Property Tax Code, which provides:

> **Statutory level of assessment**. *Except in counties with more than 200,000 inhabitants which classify property for purposes of taxation*, property shall be valued as follows:
> (a) Each tract or lot of property shall be valued at *33⅓%* of its fair cash value . . .

35 ILCS 200/9-145 (emphasis supplied). The exception clause of this statute, together with § 9-150, expressly requires assessments to be made according to a classification ordinance in counties which classify, i.e. in Cook County. All property in downstate counties, which do not classify, must be assessed at "33⅓%" under § 9-145(a).

The statutory requirement to assess property in non-classifying counties at "33⅓%" is binding on assessors, boards of review, and the PTAB. See *Commonwealth Edison v. PTAB*, 102 Ill.2d 443, 455-57, 468 N.E.2d 948, 952-54 (1984). By legislative

declaration, the required assessment level of "33⅓%" in these counties does not mean that numerical percentage. Rather, it means:

> One-third of the fair cash value of property, as determined by the [IDOR's] sales ratio studies for the 3 most recent years preceding the assessment year, adjusted to take into account any changes in assessment levels implemented since the data for the studies were collected.

35 ILCS 200/1-55. Thus, the statutory assessment level in counties which do not classify is the three-year average of the IDOR's studies of the *de facto* median assessment level.

The IDOR conducts the annual sales ratio studies referred to in this definition pursuant to § 17-10 of the Property Tax Code, for purposes of inter-county equalization under §§ 17-5 and 17-20. Section 17-5 requires the IDOR to "use property transfers, property appraisals, and other means as it deems proper and reasonable," and § 17-20 requires the IDOR to set an equalization factor "so as to represent [its] considered judgment." 35 ILCS 200/17-5, 17-10, 17-20. Based on the breadth of the "proper and reasonable" clause of § 17-5, the IDOR studies have been upheld for purposes of setting the inter-county equalization factor or "multiplier" by the Illinois Supreme Court. *Airey v. Department of Revenue*, 116 Ill.2d 528, 508 N.E.2d 1058 (1987); *Advanced Systems, Inc. v. Johnson*, 126 Ill.2d 484, 535 N.E.2d 797 (1989).

In Commonwealth *Edison v. PTAB*, 102 Ill.2d 443, 455-57, 468 N.E.2d 948, 952-54 (1984), the Supreme Court relied expressly on the provisions now codified as §§ 9-145(a) and 1-55 of the Property Tax Code, in directing the PTAB to apply the three-year average median assessment levels from the IDOR ratio studies in a downstate assessment appeal. As noted above, however, these statutes expressly apply only to counties which do not classify under the 1970 Constitution. Moreover, *Commonwealth Edison* appears to foreclose any application by PTAB of IDOR assessment levels other than the three-year "33⅓%" average based on the PTAB's power to determine a "correct" assessment. There, the Supreme Court expressly rejected the PTAB's practice at the time (previously endorsed by the Appellate Court in cases such as *Board of Review of Grundy County v. PTAB*, *supra*) of applying a one-year IDOR ratio study median rather than the three-year average. 102 Ill.2d at 456-57, 468 N.E.2d at 953-54. The same analysis which in *Commonwealth Edison* required the application of the statutory "33⅓%" three-year average ratio to a downstate property may be read to require application of the statutorily authorized ordinance level of assessment to a Cook County property.

The remaining issue is whether the constitutional principle of uniformity or equal protection may justify a departure from the statutorily authorized ordinance level of assessment in Cook County. This uniformity principle is also cited to by the PTAB in its assessment level decisions. E.g. *Bosch*, PTAB Opin. at 10-12. However, in the only cases where judicial consideration has been given to alternative assessment levels based on IDOR studies in Cook County, extensive expert testimony concerning the validity or invalidity of the studies was received by the court. Additionally, upon consideration of

that evidence, the studies were rejected as insufficient to justify a departure from statutory assessment levels on grounds of constitutional uniformity. *In Re Application etc. v. U.S. Steel Corporation*, 106 Ill.2d 311, 478 N.E.2d 343 (1985); In *Re Application of the County Collector etc. v. American Can Company*, 1978 Obj. No. 959 and 1979 Obj. No. 984 (July 14, 1989, Cir. Ct. Cook Cty., Barth, J.). While the Supreme Court pronounced the IDOR studies as valid for purposes of calculating the inter-county multiplier in *Airey v. Department of Revenue*, 116 Ill.2d 528, 508 N.E.2d 1058 (1987), and *Advanced Systems, Inc. v. Johnson*, 126 Ill.2d 484, 535 N.E.2d 797 (1989), it quite properly distinguished but did not overrule its decision in *U.S. Steel* in those cases. *Airey*, 116 Ill.2d at 543-48.

3. Summary

In technical legal terms, the claimed inconsistency in the Supreme Court decisions on the IDOR studies can be reconciled based on the court's allocation of the burden of proof. The taxpayer faces a heavy burden to show systematic inequality in challenging original assessments in an appeal or tax objection, and in *U.S. Steel* the undisputed evidence that the IDOR studies were non-random, insufficiently representative of property within the county, and insufficiently edited rendered the studies insufficient to meet that burden. 106 Ill.2d at 321-24. On the other hand, the taxpayers challenging the IDOR multiplier in *Airey* and *Advanced Systems* also bore the burden of proof. Moreover, the court held that the IDOR was vested with considerable discretion under the statutory provisions now codified as §§ 17-5 through 17-20 of the Property Tax Code, which are used in computing the multiplier. E.g. *Airey,* 116 Ill.2d at 542-544. *Advanced Systems*, 535 N.E.2d at 801-805. Thus it was coherent for the court to find the IDOR studies insufficient for purposes of a uniformity challenge which sought to redistribute the tax burden *within* a county, yet also to find the studies sufficient for purposes of equalization *among* counties.

In *U.S. Steel* the Supreme Court ruled that the IDOR studies failed to show intentional and systematic undervaluation of properties other than the complainant's, and this, it stated, precluded a finding of "constructive fraud" in the assessment. 106 Ill.2d at 321-24. The requirement to prove "constructive fraud" was generally removed from Illinois law in P.A. 89-126, eff. July 11, 1995, amending 35 ILCS 200/23-15. However, this change could not have affected the standard of proof required under the state and federal constitutions, since constitutional principles may not be altered by statutes. Any constitutional equal protection challenge to tax assessments on the basis of alleged departures from uniformity must be supported by proof of intentional or quasi-intentional, systematic conduct by the taxing authorities. *Allegheny Pittsburgh Coal Co. v. Webster County, West Virginia*, 488 U.S. 336, 343-45 (1989). This is essentially the same standard applied in *U.S. Steel*, albeit while using the now-outmoded language of "constructive fraud," and it is the same standard which must govern future challenges.

As noted above, no evidentiary hearings on the assessment level issue comparable to those in *U.S. Steel* and *American Can* occurred in *Bosch* and *Corporate Lakes.* The Cook County Board of Review had submitted for the record a copy of an analysis of the

IDOR's ratio study methodology on two of the principal Cook County property classes: *Final Report, The Illinois Ratio Study for Commercial and Industrial Properties: Review and Recommendations*, by Robert J. Gloudemans and Alan S. Dornfest (May 6, 1998). This was rejected as unpersuasive by the PTAB. E.g. *Bosch*, PTAB Opin. at 11. Many of the criticisms of the IDOR methodology in the Gloudemans-Dornfest *Final Report*, including inadequate sample size and non-representative samples in the IDOR studies of commercial and industrial property, mirrored points which the Supreme Court found controlling in *U.S. Steel*. This report was the only evidence of record which attempted to address the issue of the IDOR studies' validity for purposes of an assessment appeal.

C. Alternatives Considered by the Task Force

In its deliberations over the past several months, the Task Force has considered potential responses to the issue raised by the PTAB's decisions in *Bosch* and *Corporate Lakes*. In both cases, the PTAB granted assessment relief based on three-year average median assessment levels by class calculated from the sales ratio studies by the IDOR, rather than the levels prescribed by county ordinance. *Bosch* and *Corporate Lakes* are now pending on appeal in the Illinois Appellate Court, which has granted the Cook County Board of Review's motion for a stay of any refunds pursuant to the PTAB's decisions. Similar decisions have meanwhile been issued in a substantial number of other cases, and these have been appealed as well. In the public debate which has followed, opinions have differed as to the precise effects which would be expected if these decisions are allowed to stand. However, all observers appear to agree that whatever the effects, they would represent a radical change from prior assessment appeals practices.

The Civic Federation is on record expressing support for at least one attempt to reverse the rule established by the PTAB decisions by legislation introduced in the closing days of the Spring, 2000, session of the General Assembly.[11] This was amended Senate Bill 747, advocated by the Cook County Assessor, which attempted to direct PTAB to base Cook County decisions exclusively on the assessment levels specified in the Real Property Assessment Classification Ordinance for any property falling outside Class 2. Amended House Bill 3875, supported by various interested parties, including the Taxpayers' Federation of Illinois, contained a similar provision but limited its scope to assessment years 1997, 1998, and 1999. This was effectively an attempt to buy time for further debate. As such, The Civic Federation supported the proposal so as to allow further study of the issues raised by Task Force II. Although SB 747 passed the House and HB 3875 passed the Senate, neither bill passed both houses before the close of the session. Since that time, the Task Force has attempted to consider whether such legislative measures, or any other measures, should be urged upon the General Assembly or any other department of government.

The Task Force has considered several general directions that its potential recommendations might follow. These range from (1) refraining from taking action, thus leaving the issue to the courts; to (2) supporting the theory of the *Bosch* and *Corporate Lakes* rulings, and thus reversing the Federation's prior endorsement of amended SB 747;

[11] See Appendix B.

to (3) suggesting some further legislation effectively overruling *Bosch* and *Corporate Lakes*. The Task Force has reached a general consensus on these general directions which it might take, as follows.

The first alternative, refraining from taking action, thus leaving the issue to the courts, is rejected as too disruptive of the orderly processing of tax appeals over a protracted period of time. The treatment of similar issues in the courts suggests an adjudicative process ranging from two to five years. See, e.g. *In Re Application of Rosewell etc. v. United States Steel Corp.*, 106 Ill.2d 311, 478 N.E.2d 343 (1985), involving objections for tax years 1975-1979, ultimately decided by the Illinois Supreme Court in 1985; *In Re Application of the County Collector etc. v. American Can Company*, 1978 Obj. No. 959 and 1979 Obj. No. 984 (July 14, 1989, Cir. Ct. Cook Cty.), involving objections for tax years 1978-1979, ultimately decided by the *Circuit Court* in 1989; and *People ex rel. Devine v. Murphy*, 181 Ill.2d 522, 693 N.E.2d 349 (1998), an expedited proceeding in which the trial court was nonetheless shut down for two years awaiting the decision by the Supreme Court. The first appeal on the present issue in *Bosch*, the only case to date in which the appellant has filed a brief, may itself take several years to resolve. Moreover, the sense of the Task Force is that there is a strong likelihood of a merely procedural decision by the Appellate and Supreme Courts after this time has passed. In the meantime, taxpayers, taxing officials, and the PTAB will have no further guidance regarding definitive construction of the law.

Moreover, the Task Force perceives that the factual controversy over this issue is unlikely ever to produce consensus on the key point. This too suggests that the only possible solution to the issue raised by the PTAB's recent rulings is one legislatively imposed. The intractability of the factual question, namely, whether the IDOR studies are valid for purposes of assessment appeals, is readily apparent in the differing reactions of the PTAB, the Cook County taxing authorities, and the practicing bar to analyses by the courts in cases such as *U.S. Steel* and *American Can*, and to professional analyses such as the Gloudemans-Dornfest *Final Report*.

The second alternative, supporting the theory of the *Bosch* and *Corporate Lakes* rulings, is also rejected, as the Task Force believes that the rulings represent too radical an alteration of the current property tax policy in Cook County, reflected in the historical assessment review practices developed under the 1970 Illinois Constitution, the Property Tax Code, and the Classification Ordinance. The reasons for this conclusion are essentially the same as those which direct the Task Force toward the third alternative: suggesting further legislation effectively overruling *Bosch* and *Corporate Lakes*. These reasons culminate in the Task Force's perception that the issue of whether IDOR median assessment levels should be substituted for the statutory assessment levels in property tax appeals may be mired in legal controversy for a long time to come, absent legislation.

The third alternative, in effect overruling the PTAB's decisions in *Bosch* and *Corporate Lakes*, took two forms: a jurisdictional limitation and an evidentiary exclusion.

The jurisdictional limitation would simply remove from the PTAB all assessment level issues which do not involve the smaller residential properties. This would mean that sole jurisdiction for trying major assessment level disputes would remain with the Circuit Court, where that option has always existed. See *In Re Application of the County Collector etc. v. American Can Company*, 1978 Obj. No. 959 and 1979 Obj. No. 984 (July 14, 1989, Cir. Ct. Cook Cty.). The rationale for this suggestion was that the handling of these cases by the PTAB could potentially impose a heavy burden on its docket and strain its resources with extensive hearings. At the same time, some taxpayer's representatives have suggested that what their clients most valued in the PTAB alternative was simply the opportunity to get a speedy resolution of valuation questions without regard to assessment level issues.

If such an alternative were the Task Force's recommendation, it would propose to add the following new section 16-186 to the existing provisions of the Property Tax Code:

> **§ 16-186. Limitation on Assessment Level Claims in Counties Which Classify.** (a) Notwithstanding any other provision of this Code, except as otherwise provided in this Section, in appeals arising in counties which classify property for purposes of taxation pursuant to an ordinance adopted in accordance with Section 9-150, the Property Tax Appeal Board shall have no jurisdiction to consider whether a level of assessment other than the level specified in the classifying ordinance should apply to the property which is the subject of the appeal. Such issues shall not be considered by the Property Tax Appeal Board in its determination of the correct assessment under Sections 16-180 and 16-185.
> (b) The limitation provided in this section shall not apply in cases where the subject of the appeal is a property assessed within any classification which includes single family residences under the ordinance adopted in accordance with Section 9-150. Provided, that nothing in this subsection shall be construed to accord presumptive validity to Department ratio studies of property within any classification which includes single family residences, nor shall this subsection be construed as prohibiting the introduction of evidence or argument by any party disputing the methodology or conclusions of such studies.

With the exception of these non-Class 2 assessment level claims, the PTAB would, under this alternative, retain full jurisdiction to consider all other questions which it is presently empowered to consider for all classes of property, including issues of neighborhood uniformity.

However, before deciding between the limiting alternatives, the Task Force considered an evidentiary limitation to reverse the impact of the *Bosch* and *Corporate Lakes* decisions. Described in greater detail below, this recommendation protects the homeowners of Cook County by allowing them to continue to have recourse to their median level of assessment, while preventing the PTAB from assigning *prima facie* validity in other cases to this particular evidence generated by a fellow government agency. It allows for the introduction of any other forms of evidence pertaining to the median level of assessment by any taxpayer wishing to make a uniformity argument. It is also consistent with policies in other major metropolitan areas, as well as federal policies, concerning *ad valorem* property taxes.

D. Recommendation: Evidentiary Exclusion

Therefore, the Task Force has concluded (though not unanimously) that although the most effective solution would be to limit PTAB's jurisdiction in Cook County to Class 2 appeals (where the practice of applying the ratios is relatively non-controversial), such a jurisdictional restriction is too much at odds with the fundamental intent of the 1995 legislation which brought the PTAB to Cook County.

Nonetheless the Task Force believes that by some measure short of this jurisdictional restriction, this particular issue presented by the IDOR ratio studies should be removed from debate at the PTAB. However, such a measure must also preserve the taxpayer's right to challenge his or her assessment under the constitutional principle of uniformity or equal protection.

In response to these criteria, the Task Force proposes to add the following new section 16-186 to the existing provisions of the Property Tax Code:

> **§ 16-186. Limitation on Assessment Level Evidence in Counties Which Classify.** (a) Notwithstanding any other provision of this Code, except as otherwise provided in this Section, in appeals arising in counties which classify property for purposes of taxation pursuant to an ordinance adopted in accordance with Section 9-150, no ratio studies conducted pursuant to any provision of this Code by the Department shall be admitted in evidence by the Property Tax Appeal Board. The studies by the Department, and any conclusions based on such studies, shall not be considered by the Property Tax Appeal Board in its determination of the correct assessment under Sections 16-180 and 16-185.
> (b) The limitation provided in this section shall not apply in cases where the subject of the appeal is a property assessed within any classification which includes single family residences under the ordinance adopted in accordance with Section 9-150. Provided, that nothing in this subsection

> shall be construed to accord presumptive validity to Department studies of property within any classification which includes single family residences, nor shall this subsection be construed as prohibiting the introduction of evidence or argument by any party disputing the methodology or conclusions of such studies.
> (c) Nothing in this Section shall be construed to preclude the introduction in evidence before the Property Tax Appeal Board of ratio studies conducted by persons other than the Department, provided that they are shown to be made in conformity with accepted statistical principles applicable to such studies and are supported and explained by the introduction of competent statistical testimony.

This approach would permit taxpayers and the Property Tax Appeal Board to continue to have recourse to the IDOR studies in Class 2 appeals in Cook County, where, as noted, they have been non-controversial. However, it would bar the use of the IDOR studies or their results in all PTAB appeals for property in other classes. Thus, the studies for those other classes would be used for inter-county equalization only, the only purpose for which the IDOR itself has used them. Finally, a taxpayer who wished to make uniformity or other constitutional arguments regarding non-Class 2 properties would be free to support these arguments by any other assessment level evidence, provided that it was properly qualified through expert testimony.

Confining state-conducted ratio studies designed for equalization purposes to use in assessment appeals for property which is either outside of the state's major metropolitan area, where no classification has been adopted, or which falls within the relatively homogenous class of property consisting primarily of single family residences, is comparable to the approach taken in New York. See N.Y. RPTL § 720(b)(3)(b) (confining use of the "state equalization rate" to assessment appeals not arising in "special assessing units," which are essentially the City of New York and Nassau County). The original version of this statute was attacked on grounds that the distinction among types of proof allowed in uniformity challenges based on the geographic location or types of property involved allegedly violated the constitutional principle of due process. In *In the Matter of Colt Industries, Inc*., 54 N.Y.2d 533, 430 N.E.2d 1290 (1982), it was particularly argued that other types of assessment level proof (which the statute permitted in New York and Nassau County) were "prohibitively expensive." 54 N.Y.2d at 545, 430 N.E.2d at 1293-94. The New York Court of Appeals rejected this argument. *Id.*

Further support for the theory of the proposed amendment is found in the treatment of ratio study evidence in federal legislation, probably the only other example in the United States which would be comparable to legislation in a jurisdiction such as metropolitan Cook County. (New York and Los Angeles are probably the only comparable state jurisdictions in terms of size and heterogeneous composition of the tax base; New York is considered above, and in California the unique assessment system

fostered by Proposition 13 essentially invalidates any comparison there.) Several federal laws prohibit "discrimination" in *ad valorem* property taxation against property of interstate railroads, motor carriers, and air carriers. See 49 U.S.C. § 11501 (the "Four-R" Act concerning railroads); 49 U.S.C. § 14502 (motor carriers); 49 U.S.C. § 40116(d) (air carriers).

Two of these statutes explicitly provide for ratio study evidence "to be carried out under statistical principles applicable to such a study,"*id*. §§ 11501(c), 14502(c)(4), and as the Court of Appeals for the Fourth Circuit held, "it is clear that Congress expected courts to determine states' assessment levels for other commercial and industrial property by applying sound statistical principles to random samples." *CSX Transportation, Inc. v. Board of Public Works of the State of West Virginia*, 95 F.3d 318, 322 (4th Cir. 1995). Most trials under these statutes have involved extensive use of expert testimony to validate the studies proffered by the taxpayer. E.G. *CSX*, and cases cited therein. Moreover, the courts have specifically noted that whether property is assessed as a single class, or whether the property and assessment methods are homogeneous, may determine which statistical principles are appropriate to a given case. *Id*. At 324.

The Task Force proposal here would allow for a similar degree of flexibility. While taxpayers may conclude that amassing the requisite assessment level evidence under these standards is not economically justified, this is little different from the economic decisions which must be made by litigants in all types of cases on a daily basis. Additionally, the Task Force believes that the mere fact that the IDOR equalization studies of non-Class 2 property are readily available and free of charge should not be a justification for applying them in the midst of severe and apparently intractable controversy over their validity.

IV. Procedural Recommendations

Independently of whatever changes may be made on the assessment level question, a separate procedure should be devised for complex cases at the PTAB. On this question the Task Force reached consensus. These complex cases, which generally involve large properties, and significant changes in assessed value, require a more formal procedure. The significant changes to the revenues of local taxing agencies, brought about by the application of the median level of assessment, necessitate their intervention. As such, the tax appeals process requires a more formal method of proceeding in order to ensure the efficient functioning of the legal process. The three areas in which members of the Task Force agree that some procedural refinements are indicated are (a) who gives notice of a PTAB appeal, and to whom; (b) who may intervene; and (c) the establishment of a case management system for larger cases.

A. Notification

Currently, the Board of Review is charged both with defending its decisions before the PTAB, and with giving notice of the appeal to all taxing agencies within which a property is located. Since the Board of Review must defend its decisions before the

PTAB, the additional responsibility of notifying all taxing agencies is overly burdensome. It is also the only known instance of the appellee being required to give notice of the action of the appellant. Instead, the Task Force recommends that in taxpayer appeals, notice need be given only in cases involving a requested change in assessed valuation of $300,000 or more, and that notice should be given by the party filing the appeal. Such notice should be given within 30 days of receiving notice of docketing by the Property Tax Appeals Board, and only to municipalities, school districts, and community college districts (rather than all taxing agencies) in which such property is situated. In appeals by taxing agencies, the party filing the appeal should give notice to the taxpayer of record regardless of the amount of change requested. Therefore the Task Force recommends the following changes be made to the PTAB's statutory directions for conducting proceedings:

> **§ 16-180. Procedure for determination of correct assessment.** The Property Tax Appeal Board shall establish by rules an informal procedure for the determination of the correct assessment of property which is the subject of an appeal. The procedure, to the extent that the Board considers practicable, shall eliminate formal rules of pleading, practice and evidence, and except for any reasonable filing fee determined by the Board, may provide that costs shall be in the discretion of the Board. A copy of the appellant's petition shall be mailed by the clerk of the Property Tax Appeal Board to the board of review or board of appeals whose decision is being appealed. In all cases where a change in assessed valuation of ~~$100,000~~ $300,000 or more is sought, the ~~board of review or board of appeals shall serve a copy of the petition on all taxing districts as shown on the last available tax bill~~ appellant shall give timely notice of the appeal by mailing a copy of the petition to any municipality, school district and community college district in which such property is situated, and providing the clerk of the Property Tax Appeal Board with proof of service. Failure of a municipality, school district or community college district to receive the notice shall not invalidate the petition. In cases involving an appeal by any taxing agency, the appellant shall give timely notice by mailing a copy of the petition to the taxpayer of record in all cases, and providing the clerk of the Property Tax Appeal Board with proof of service. Failure to serve notice upon the taxpayer shall be grounds for the dismissal of the complaint. The chairman of the Property Tax Appeal Board shall provide for the speedy hearing of all such appeals. All appeals shall be considered de novo. Where no complaint has been made to the board of review of the county where the property is located and

> the appeal is based solely on the effect of an equalizing factor assigned to all property or to a class of property by the board of review, the Property Tax Appeal Board shall not grant a reduction in assessment greater than the amount that was added as the result of the equalizing factor.

This change would bring the tax appeals process throughout the state of Illinois in line with all other civil proceedings in the state, since, as mentioned above, in no other civil proceeding is the appellee charged with notifying other interested parties. On the issues of notice, the Task Force does not think the tax appeals process should be any different from other forms of civil litigation. The Board of Review, as the defendant of the assessment, must prepare a defense. The added burden of notifying other parties places them at a disadvantage. The recipients of this notice should be limited to the parties with the most significant interest in the outcome of the case. These districts are the most likely to organize a consortium of interveners to share the costs associated with appraisals and legal fees.

Additionally, the current structure of the hearing process as outlined in § 16-170 of the Property Tax Code requires notification of a hearing to be provided only to the State's Attorney's Office. For the sake of consistency, notification of the scheduling of a hearing should be provided also to those agencies receiving notification of the appeal. Therefore, the Task Force recommends the following addition to that part of the enabling statute concerning hearings before the PTAB:

> **§ 16-170. Hearings.** 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, with proper notice to the interested parties. Notice to all interested taxing 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, except that in cases involving a change in assessment of $300,000 or more, such notice should also be given to any municipality, school district and community college district in which such property is situated as provided in § 16-180. 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 hold hearings. Such hearings shall be open to the public and shall be conducted in accordance with the rules of practice and procedure promulgated by the Board. 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 it and necessary for the making of a just decision.

Once a party has been notified of the existence of a tax appeal, the notice of a hearing naturally follows. Such a procedure ensures that all major interested parties are notified directly, rather than through the State's Attorney's Office. Finally, the change recognizes that municipalities, school districts, and community college districts are legitimate parties with standing to be heard in the hearing before the PTAB.

B. Intervention

The number of interventions in appeals by taxing agencies, most notably school districts, is also of significant concern. Since school districts are compelled to protect their assessment bases in light of the significant refund orders issued by the PTAB, intervention should be limited to cases involving an assessment reduction of $300,000 or more. While the notification changes in the above recommendation effectively limit the opportunity of taxing agencies to intervene in assessment appeals at the PTAB, the authority to intervene should also be formally limited to the most concerned districts in cases involving significant dollar amounts. To accomplish this end, the following new section should be added:

> **§ 16-181. Intervention.** The Property Tax Appeal Board shall recognize the motions of intervention only from those taxing agencies receiving notice under **§** 16-180. All other interested taxing agencies shall not be granted standing to intervene. Nothing in this section precludes the ability of any taxing agency from appealing the decision of the board of review or board of appeals under § 16-160.

In order to handle large volumes of cases, the PTAB must be able to settle cases quickly and efficiently without interference from a large number of parties with relatively little at stake. The ability to intervene is also the ability to shape the outcome of a tax appeal proceeding. In most cases a tax appeal is disposed of through a stipulation or settlement. The Task Force has recognized that a multiplicity of parties with standing to intervene has the consequence of hindering stipulations or settlements in a number of cases. The larger the number of parties with standing, the less likely a proposed solution is to be palatable to all. Therefore, only the parties with the most significant stake in the outcome should be allowed to intervene.

C. Case Management

The multiple parties involved in tax appeals often have divergent interests, which are difficult to reconcile, and which present a serious obstacle to settlements. A mandatory case management hearing should be set within 90 days of completion of the submission of evidence in an appeal seeking a reduction in assessed valuation of $300,000 or more, to determine the position of all parties and their settlement

requirements. The following new section would have to be added to the Property Tax Code as follows:

> **§ 16-161. Property Tax Appeal Board --- Case Management.** In all cases where a change in assessed valuation of $300,000 or more is sought, a case management conference including the appellant, the taxpayer of record if other than appellant, the State's Attorney, and any intervening taxing bodies, shall be scheduled within 90 days of the completion of the submission of evidence by the appellant. If the pre-hearing conference fails to dispose of the issue, the State's Attorney or other appellee shall have 60 days to submit its evidence. Upon completion of the submission of this evidence, any other party shall have an additional 30 days to submit additional evidence.

This new system allows all parties to share their positions on the case at the outset of the proceedings. Currently, the process at the PTAB proceeds without all parties being apprised of each other's prerequisites for a settlement. In some instances, after time and resources have been spent working toward a settlement, parties discover that a third party is unwilling to accept such a settlement. A case management conference would prevent this misallocation of resources, and help tax appeals proceed more efficiently.

V. Appendices

A. The PTAB's Proposed Rule Changes

1. 1997 Proposed Rule Change

Title 86: Revenue
1st Notice Version
Chapter II: Property Tax Appeal Board

Part 1910
PRACTICE AND PROCEDURE FOR HEARINGS
BEFORE THE PROPERTY TAX APPEAL BOARD ~~PROCEEDINGS~~

Section 1910.50 Determination of Appealed Assessment

c) The decision of the Property Tax Appeal Board will be based on equity and the weight of the evidence.

2) In Cook County, a three-year county wide assessment level, by class, according to the Cook County Real Estate Classification Ordinance, as amended, and enacted by the Cook County Board of Commissioners, to be based on relevant sales during the previous three years as certified by the Department of Revenue 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.

2. 1998 Proposed Rule Change

Title 86: Revenue
1st Notice Version
Chapter II: Property Tax Appeal Board

Part 1910
PRACTICE AND PROCEDURE FOR HEARINGS
BEFORE THE PROPERTY TAX APPEAL BOARD

Section 1910.50 Determination of Appealed Assessment

c) The decisions of the Property Tax Appeal Board will be based on equity and the weight of the evidence.

2) In Cook County, ~~for residential property of six units or less currently designated as Class 2 real estate according to the Cook County Real Property Assessment Classification Ordinance, as amended,~~ where sufficient probative evidence indicating the estimate of full market value of the subject property on the relevant assessment date is presented, the Board may consider evidence of the appropriate level of assessment for property <u>within the same classification as the subject property as defined in the Cook County Real Property Classification Ordinance, as amended</u> ~~in that class~~. Such evidence may include:

A) the Department of Revenue's annual sales ratio studies ~~for Class 2 property~~ for the previous three years; and

B) competent assessment level evidence, if any, submitted by the parties pursuant to this Part.

B. Previous Civic Federation Position Statements

July 11, 1997

Dear Members of the Joint Committee on Administrative Rules:

The Civic Federation opposes the proposed amendment to Rule Section 1950-50 (c) of the Property Tax Appeal Board ("PTAB") which adds a subsection (2) specifically dealing with appeals from Cook County.

In the opinion of the Civic Federation, the attempt by PTAB to accommodate the Cook County classification system by employing the existing downstate procedure of applying the three year average of the Department of Revenue's assessment/sales ratio studies by class is ill-considered.

We would initially cite the lack of any statutory authority to do so, in contrast with the downstate procedure, which is fully backed by language in the Property Tax Code and cases interpreting it.

Secondly, a cursory examination of the Department of Revenue studies immediately reveals the inadequacy of the statistical sample for the purpose of establishing de facto assessment levels for classes other than residential. (No question is raised here as to the adequacy of the Department's data for the purpose of establishing the county's equalization multiplier, an issue which the Illinois Supreme Court has on several occasions stated is completely separate from its probative use in establishing assessment levels.)

Finally the uniformity question, which is the apparent genesis of the proposed amendment, can be fully addressed in PTAB's adjudicatory process under its statutory authority, which is embodied in the current rule 1950-50(c): "decisions...will be based on equity and the weight of the evidence."

The Civic Federation is cognizant of the complex problem posed to PTAB by the Cook County classification system. To that end, the Civic Federation will shortly be convening a Task Force on Cook County Classification/Equalization. It will seek to include all interested parties and public offices for a full airing and clarification of the various forces impacting these issues and the intricate interactions among the statutory provisions involved.

Therefore we urge the Joint Committee to defer implementation of any PTAB amendment of the rule on this subject until a thorough review of these issues can determine whether a consensus can be reached that would facilitate a smooth transition into these uncharted waters.

Respectfully Submitted,

Lance Pressl, Ph.D.
President

cc: Max Coffey
James Chipman

CIVIC FEDERATION POSITION STATEMENT ON THE PROPOSED AMENDMENT TO RULE 1910.50(c) OF THE PROPERTY TAX APPEAL BOARD

The Civic Federation opposes the adoption of the Property Tax Appeal Board's proposed amendment to its Rule 1910.50 (c).

The proposed amendment expands that section's current language which is applicable to the determination of the assessment level of Class 2 only, in Cook County adjudications. The proposed amendment expands that language to apply to all classes in Cook County. This change coincides with the expansion of PTAB's Cook County jurisdiction from only Class 2 properties for tax year 1996, to all classes for tax years 1997 and thereafter.

The principal legal flaw in the proposed expansion to the other classes of the Class 2 procedure is that it pre-judges what is certain to be a vigorously contested legal and factual issue, namely, the validity of the Department of Revenue ratio studies to establish the assessment levels of Cook County classes other than Class 2.

The validity of the Department's studies for establishing assessment levels is a non-issue downstate and for Class 2 properties in Cook County. All of the studies for those assessment levels are based on voluminous residential sales data. Also, in each Class 2 residential PTAB appeal in Cook County, while not conceding the validity of the Department's studies, the Cook County Board of Appeals expressly declined to dispute them citing the small amount at issue in each case. The absence of any dispute has led to the application of the Department studies in PTAB's Class 2 appeals. However, any attempt to apply them outside of Class 2 will inevitably be anything but routine. That the attempt to apply the studies for Cook County classes, other than Class 2, will be vigorously contested, is evident from the letters from the various Cook County officials attached to PTAB's Second Notice filing with this Joint Committee on Administrative Rules.

The proposed amendment is also flawed in terms of its procedural application. In candor PTAB is perfectly forthright about its intention to give the non-Class 2 ratio studies *prima facia* weight, with the governmental parties before PTAB having the opportunity to disprove the studies if they can. This relieves the taxpayer from the burden of proving that its assessment, based on the statutory assessment level rather than the level indicated by the studies, is inequitable. (Of course, the taxpayer also has the opportunity to challenge them if he wishes to try to establish an even lower level of assessment than is indicated by them).

PTAB has also stated candidly that its rationale for attributing *prima facie* validity to the ratio studies lies in its desire to make assessments within each class equitable and uniform, according to the requirements of the Illinois Constitution. Unquestionably, any taxpayer who can show that other property in the same class is systematically assessed below the ordinance level is entitled to the same favorable treatment under the Constitution. However, caselaw and PTAB's own rules ($1910.63 (e)) expressly place the burden upon any taxpayer who contends that its assessment lacks uniformity or is

inequitable in comparison with other assessments to prove this contention by "clear and convincing evidence". PTAB's proposed application of the non-Class 2 ratio studies represents a complete reversal as to this burden of proof.

In addition, this shift in the burden of proof is an open invitation for wholesale intervention by taxing bodies in every PTAB appeal, a paperwork nightmare of the first magnitude. A more likely scenario is an attempt by the major affected taxing bodies and assessing officials to seek to enjoin the application of the proposed amendment if adopted. If a temporary injunction were issued pending the Illinois Supreme Court's resolution of the issue of the validity of the non-Class-2 ratio studies to establish assessment levels, the Cook County work of PTAB (other than Class 2 cases) would come to a halt for the two or three years required for an ultimate decision. In the meantime, taxpayers with property in Classes 3 or 5, including those wishing to assert only a valuation claim, would not be able to go forward with their appeals.

On the other hand, no taxpayer would be deprived of its rights by substituting a neutral amendment which The Civic Federation offers as an alternative. Any taxpayer could challenge the ordinance level of assessment by offering proof that the *de facto* level was lower. The ratio studies could be offered in evidence; and an orderly determination of the issue could be made without tying up the appeals process for other taxpayers. The intervention of taxing bodies could then be focused on only those cases where significant challenge were being made.

The alternative language offered by The Civic Federation is attached.

THE CIVIC FEDERATION
Joint Committee on Administrative Rules
May 7, 1998

Substitute amendment to PTAB Rule 19100.50 (c)(2)

(c) The decisions of the Property Tax Appeal Board will be based on equity and the weight of the evidence.

(1) In all counties other than Cook, a three-year county wide assessment level to be based on relevant sales during the previous three years as certified by the Department of Revenue 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.

(2) In Cook County, where sufficient probative evidence indicating the estimate of full market value of the subject property on the relevant assessment date is presented, the Board may consider competent evidence admitted pursuant to this Part, if any, which is relevant to the level of assessment applicable to the subject property under the Illinois Constitution, the Illinois Property Tax Code, and the Cook County Real Property Assessment Classification Ordinance, as amended.

THE CIVIC FEDERATION'S POSITION ON
AMENDMENT #1 TO SENATE BILL 0747, 3 April 2000.

Members of the House Revenue Committee:

Amendment 1 to Senate Bill 0747 is an effort to remedy the critical problem created by 2 recent decisions handed down by the Property Tax Appeal Board (PTAB). Without remedial legislation the decisions in Corporate Lakes of Matteson LLC (97-20270-C-3) and the Robert Bosch Corporation (97-22106-I-3) pose an open invitation to all non-residential property owners to file complaints with PTAB, and have across-the-board reductions based on Department of Revenue sales ratio studies. The Civic Federation believes that the immediate impact on the Cook County assessment base and to the revenue of all school districts and most units of local government would be catastrophic. In addition, efforts to make up the revenue shortfalls, even to the limited extent permitted by tax caps, would immediately shift that portion of the tax burden onto the residential taxpayers of Cook County.

The Civic Federation has historically expressed caution and deliberation regarding changes in assessment levels precisely because such changes could shift the tax burden from one class of taxpayers to another. We have also spoken in favor of comprehensive, instead of piecemeal, efforts to reform state and local tax structures. In our view, the only lasting remedy for overburdened property taxpayers is to develop more broad-based, equitable funding sources. The Cook County Assessor's Year 2000 Plan, which makes gradual adjustments in assessment levels, moves toward a rational and fair tax system. The current decisions threaten to impair a more orderly transition to an improved property tax system in Cook County.

However, The Civic Federation does not support the elimination of PTAB's use of *de facto* assessment levels for Class 2 properties; and we understand that the amendment's supporters did not intend that either. The Department of Revenue's data establishing Class 2 assessment levels is perfectly adequate for this purpose, and there is no reason to deprive homeowners of the benefit of that *de facto* assessment level. The same cannot be said for the data on the other classes

In addition we will be rendering a few strictly technical amendments to this bill. These amendments would improve the functionality of the legislation, but not affect the intent of the bill.

Respectfully Submitted,

Carol W. Garnant
Chairman

John Currie
President

C. Graphs and Statistics

The main reason the Cook County Board of Review has different numbers of appeals than the PTAB is that the PTAB disposes of some cases before the Board of Review is ever notified of their existence. The number of cases actually filed at the PTAB is slightly larger as a result. In the interest of accuracy, the Task Force has included both the Board of Review's statistics (which represent the cases of handled by the Board of Review) *and* the PTAB's statistics (which represent the cases actually filed).

A. Board of Review Statistics

Board of Appeals/Review Parcel Filings vs. PTAB Filings

		1996	1997	1998	1999
A	Total Parcels Before the Board of Appeals/Review	73,071	110,063	93,556	82,095
B	**Total Parcels Appealed to Property Tax Appeal Board Sent to the Board of Appeals/Review**	724	5,799	10,099	9,974 (Estimate)
	% Appealed B/A	0.99% (Residential Only)	5.27%	10.79%	10.96%

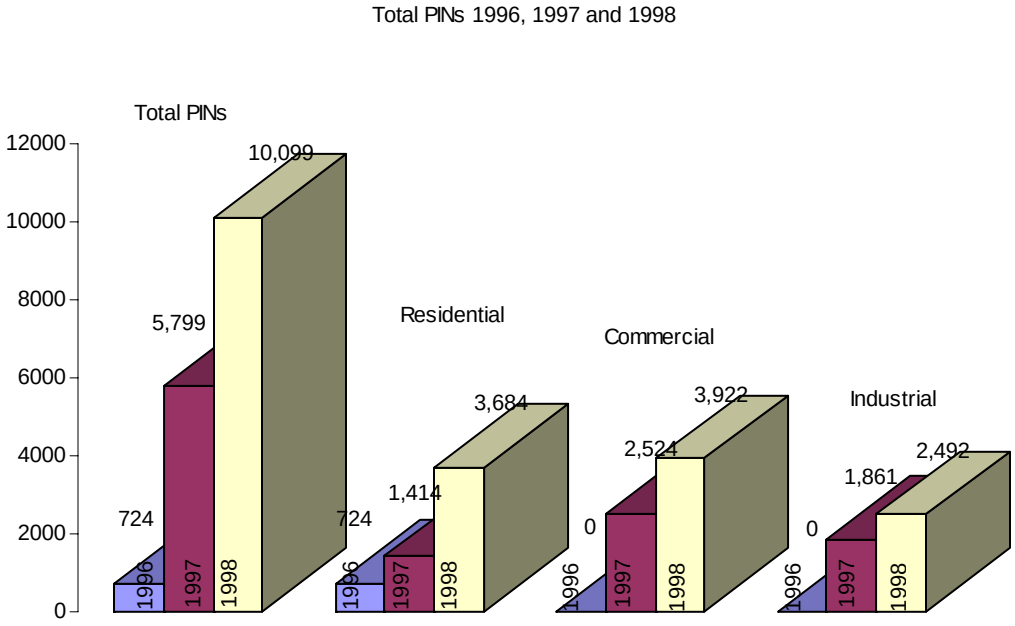
B. PTAB Statistics

Board of Appeals/Review Parcel Filings vs. PTAB Filings

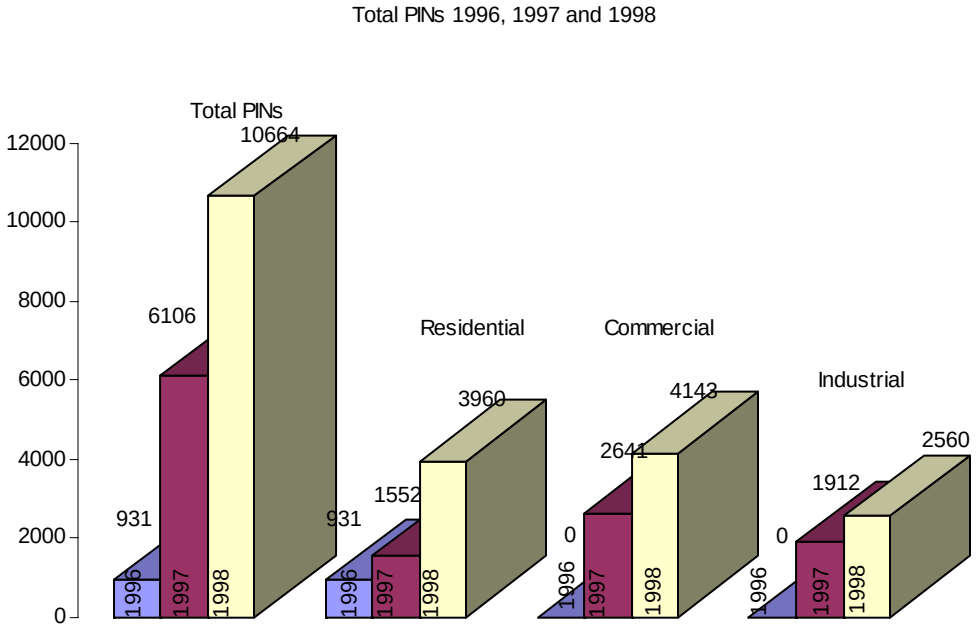
		1996	1997	1998	1999
A	Total Parcels Before the Board of Appeals/Review	73,071	110,063	93,556	82,095
B	**Total Parcels Appealed to Property Tax Appeal Board**	931	6,106	10,664	11,161
	% Appealed B/A	1.27% (Residential Only)	5.55%	11.40%	13.60%

* through 11/3/00

A. Board of Review Statistics



B. PTAB Statistics



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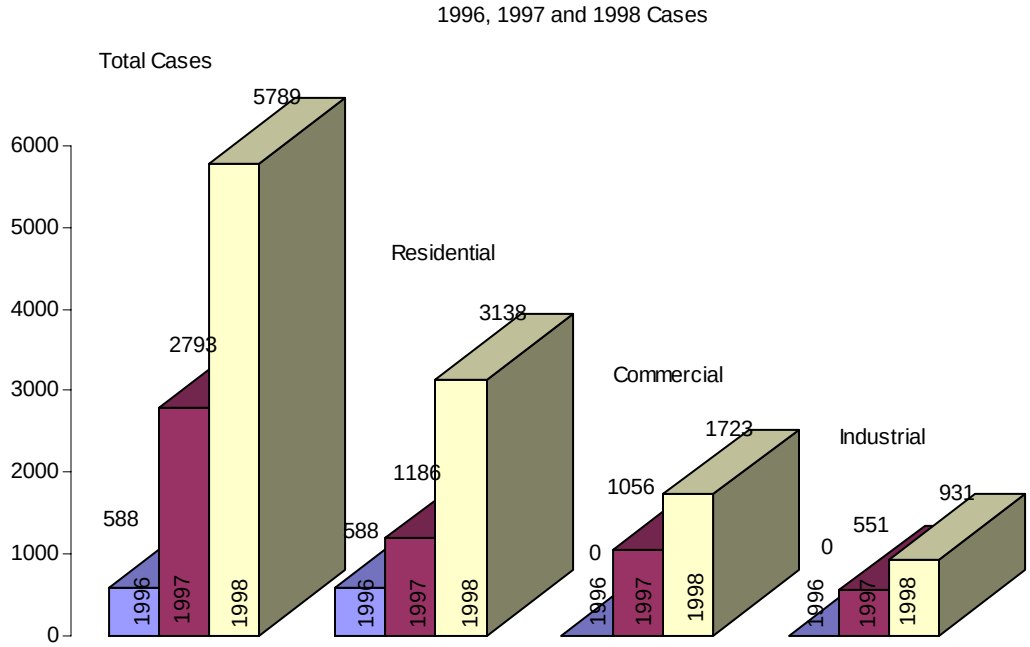
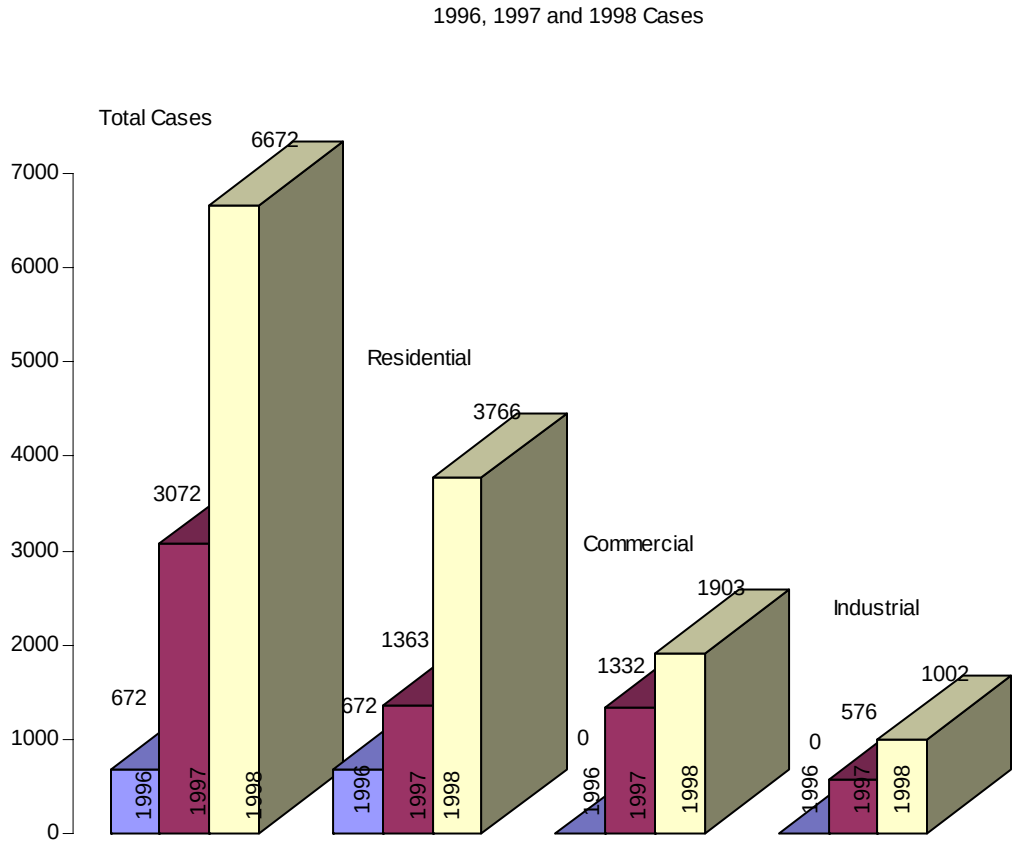
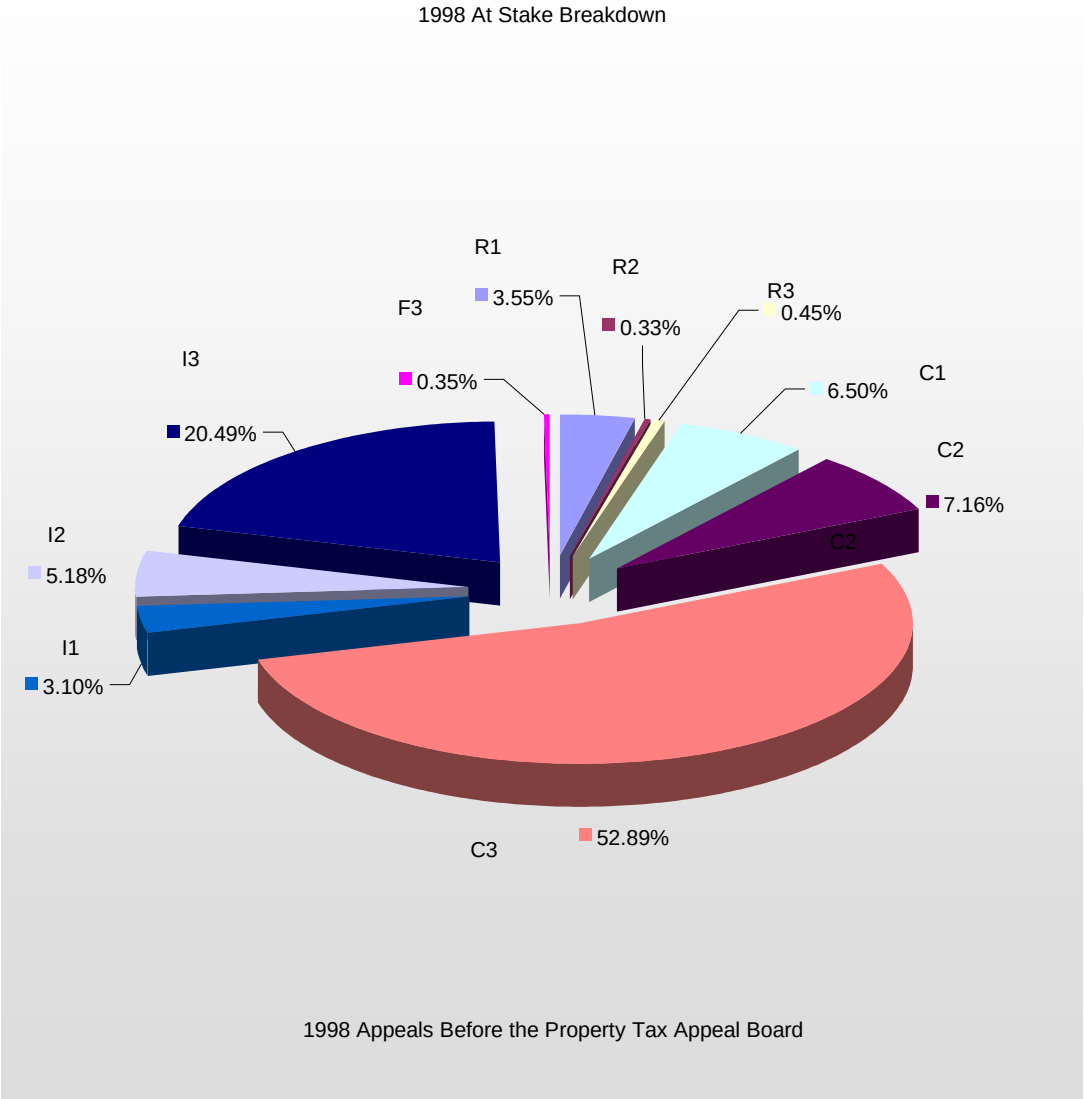


B. PTAB Statistics

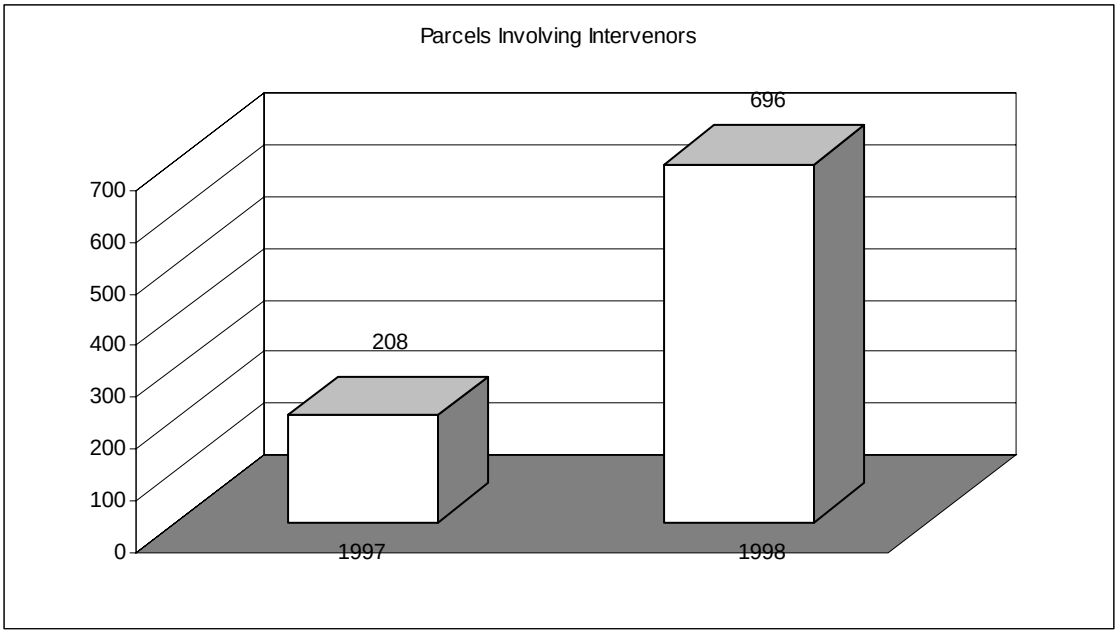


Board of Review Statistics

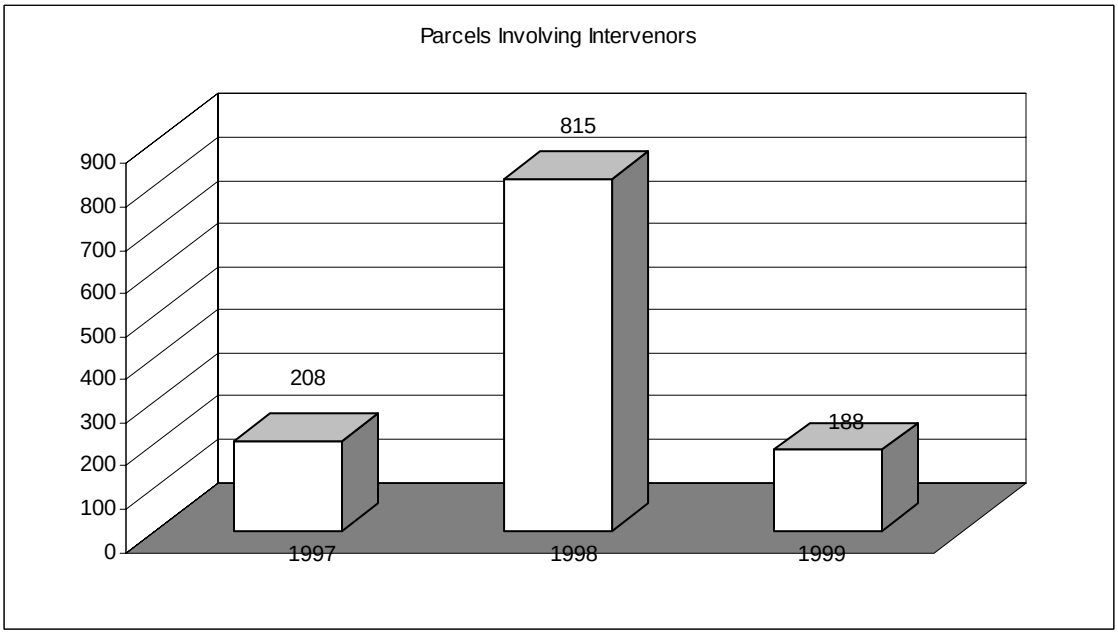
The chart below uses the PTAB's notation for cases based on the dollar amount of the assessment change requested. The letters represent the type of property (R residential, I industrial, C commercial, F farm). The numbers represent the assessment change requested (1 less than $100,000, 2 $100,001 to $299,999, and 3 $300,000 or more).



A. Board of Review Statistics



B. PTAB Statistics



D. Tax Refund Calculations

Potential *Bosch* Decision Refund Amount

Original Asssessment	
Assessed Value	$3,349,997
Multiplier	2.149
Equalized Assessed Value	$7,199,144
Tax Rate	0.09213
Taxes Paid	$663,257
Refund Using Median Level of Assessment	
New Asssessment	$2,703,482
Multiplier	2.149
Equalized Assessed Value	$5,809,783
Tax Rate	0.09213
New Taxes Due	$535,255
Refund	$128,002
Refund Using Ordinance Level of Assessment	
New Assessment (Using PTAB Full Value and Ordinance Level of Assessment)	$2,823,480
Multiplier	2.149
Equalized Assessed Value	$6,067,658
Tax Rate	0.09213
New Taxes Due	$559,013
Refund	$104,244
Amount of Refund due to PTAB's use of the Median Level Assessment	$23,758

Potential *Corporate Lakes* Decision Refund Amount

Original Asssessment	
Assessed Value	$1,774,066
Multiplier	2.149
Equalized Assessed Value	$3,812,468
Tax Rate	0.12417
Taxes Paid	$473,394
Refund Using Median Level of Assessment	
New Asssessment	$730,170
Multiplier	2.149
Equalized Assessed Value	$1,569,135
Tax Rate	0.12417
New Taxes Due	$194,840
Refund	$278,555
Refund Using Ordinance Level of Assessment	
New Assessment (Using PTAB Full Value and Ordinance Level of Assessment)	$1,342,000
Multiplier	2.149
Equalized Assessed Value	$2,883,958
Tax Rate	0.12417
New Taxes Due	$358,101
Refund	$115,293
Amount of Refund due to PTAB's use of the Median Level Assessment	$163,262