COURT OF APPEALS
DECISION
DATED AND FILED

September 9, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP2130 **Cir. Ct. No. 2013CV24**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN EX REL. RONALD L. COLLISON,

PETITIONER-APPELLANT,

V.

CITY OF MILWAUKEE BOARD OF REVIEW,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: PAUL R. VAN GRUNSVEN, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Ronald L. Collison, *pro se*, appeals the circuit court order affirming, in part, the 2012 property tax assessment on land that he

owns.[1] Collison argues: (1) the City of Milwaukee Environmental Contamination Standards (CMECS) conflict with WIS. STAT. § 70.32; (2) the assessor's valuation was arbitrary; and (3) the Milwaukee Board of Review committed jurisdictional error when it ignored evidence of material adverse facts. We affirm.

I. BACKGROUND

¶2 In January of 2012, Collison's property was assessed at $32,900. He timely filed a formal objection stating that in his opinion the market value of the property was zero.

¶3 A hearing was held in December of 2012 during which Collison and three other witnesses testified in an effort to support Collison's position that his property had no market value. The City's assessor also testified and explained his methodology for arriving at the assessed value of $32,900. An overview of the testimony follows:

Collison

¶4 Collison testified that he bought the property in 1979, before there were environmental laws that made the owners of contaminated properties liable for remediation costs. He explained that the City of Milwaukee has developed a "do not acquire" list—a list that includes properties the City will not acquire because of knowledge as to contamination. The subject property is on the list.

[1] The circuit court reversed the assessor's "rounding" of the assessment at issue from $32,134 to $32,900 on the grounds that it was not based on evidence or supported by law. This portion of the circuit court's ruling is not at issue on appeal.

¶5 Additionally, Collison submitted an exhibit to the Board, referred to as an Addendum, which he gives to all potential buyers. Collison used the Addendum to explain material adverse facts about the property. As part of the Addendum, Collison required "[a]ny party who chooses to conduct a Phase II sampling on the property must enter into an indemnification agreement with Collison and agree to pay, without qualification, for any remediation costs that result from the discovery of any contamination on the subject property."[2]

¶6 Collison testified that he provided the City's assessor, Jim Wiegand, with information in November of 2012 regarding the removal of underground storage tanks from his property in June of 2012.

Ed Krajcir

¶7 Krajcir, a licensed real estate broker, testified that he would not list the property after reviewing Collison's Addendum and because of the contamination on the property. Krajcir expressed concern about future litigation against him or his company resulting from the contamination if he were to list the property. Additionally, Krajcir testified that the contamination would need to be disclosed to a potential buyer.

Roy Scholtka

¶8 Scholtka, a real estate broker, testified that he had been in the real estate business for forty years. He testified that the evidence of contamination and the fact that the subject property is on the "do not acquire" list are material adverse

[2] A Phase II Audit is way of substantiating contamination.

facts that he would have to disclose in order to protect his agency. He also stated that he would not list the property nor would he "touch this property with a ten[-]foot pole." Scholtka acknowledged that the ability to rent a parking space in the lot that was located on the property gave it economic value.

Tom Anderson

¶9 Anderson testified that he owns dry cleaning and laundromat businesses. He was interested in purchasing the subject property but ultimately did not because of the contamination. He also testified that he witnessed significant contamination on the subject property back in 1973.

Jim Wiegand

¶10 Wiegand testified that he conducted the assessment of the subject property to determine its fair market value as of January 1, 2012. He explained that there has been no recent fair market sale transaction of the property but that Collison had listed it during 2007 with an asking price of $200,000. In addition to the two-story commercial building located on the property, there is an asphalt parking lot for approximately fifteen cars.

¶11 To Wiegand's knowledge, there were no written environmental reports from an expert source regarding any environmental examination prior to January 1, 2012. He noted: "Lacking any Phase [II] environmental study, written environmental reports or documentation, it is unclear as to what extent, if any contamination exists on the site." Wiegand acknowledged, however, that Collison had recently provided him a copy of the site assessment report dated July 19, 2012, which detailed the removal of four underground storage tanks and included an analytical soil sample report. The soil sample analytical results indicated

petroleum contamination. Wiegand informed the Board that while the information indicated that there is some contamination, "we do not know the level of the contamination." Additionally, Wiegand stated that the soil analysis information would be considered for the January 1, 2013 assessment rather than the January 1, 2012 assessment.

¶12 When he testified, Wiegand explained that he considered three approaches to value the property: the cost approach; the direct sales comparison approach; and the income approach. Wiegand ultimately concluded that the income approach was best for the subject property. It was based on the value of the rent obtained from the parking lot located on the property. His assessment was that the property had a market value of $32,900. Wiegand further stated that "without any contamination or perceived contamination, the property would be assessed at $96,000, based on the land value alone."

¶13 Wiegand concluded his testimony by noting that as of January 1, 2012, his office "did not have any verifiable written information pertaining to the extent or existence of any contamination of the subject property. While the property remains on the City of Milwaukee's list for not to acquire, any environmental issues are suspected but not proven."

¶14 After the hearing, the Board voted 6-1 to sustain the assessment.

¶15 Collison sought *certiorari* review of the Board's decision in the circuit court, which affirmed in part, reversed in part, and remanded with instructions to reduce the rounded assessment of $32,900 to the actual assessed value of $32,124. The City advises that the Board subsequently reduced the assessment to $32,100.

II. DISCUSSION

¶16 "The scope of our review on *certiorari* is identical to the circuit court, and we therefore conduct our review of the Board's decision independent of the circuit court's conclusions." ***Steenberg v. Town of Oakfield***, 167 Wis. 2d 566, 571, 482 N.W.2d 326, 327 (1992). We consider the Record before the Board and its decision. *See* ***Klinger v. Oneida Cnty.***, 149 Wis. 2d 838, 845 n.6, 440 N.W.2d 348, 351 n.6 (1989). We review the proceedings to determine:

> (1) [w]hether the Board kept within its jurisdiction; (2) whether it acted according to law; (3) whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably make the order or determination in question.

Darcel, Inc. v. City of Manitowoc Bd. of Review, 137 Wis. 2d 623, 626, 405 N.W.2d 344, 345–346 (1987) (citation omitted). We presume the Board acted correctly. *See* ***id.*** at 626, 405 N.W.2d at 345.

¶17 With these standards in mind, we will now address each of Collison's claims.

(1) *Violation of WIS. STAT. § 70.32.*

¶18 Collison first asserts that the assessment of his property violates WIS. STAT. § 70.32. He cites CMECS policy provisions detailing how contamination is to be substantiated and submits that without the proper documentation, the policy directs assessors to value the property as if it is uncontaminated.

¶19 WISCONSIN STAT. § 70.32 sets forth the process for evaluating real estate. As relevant here, it provides:

> **(1)** Real property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual provided under s. 73.03(2a) from actual view or from the best information that the assessor can practicably obtain, at the full value which could ordinarily be obtained therefor at private sale. In determining the value, the assessor shall consider recent arm's-length sales of the property to be assessed if according to professionally acceptable appraisal practices those sales conform to recent arm's-length sales of reasonably comparable property; recent arm's-length sales of reasonably comparable property; and all factors that, according to professionally acceptable appraisal practices, affect the value of the property to be assessed.
>
> ….
>
> **(1m)** In addition to the factors set out in sub. (1), the assessor shall consider the impairment of the value of the property because of the presence of a solid or hazardous waste disposal facility or because of environmental pollution, as defined in s. 299.01(4).

¶20 Collison failed to provide any evidence as to the level of contamination and the cost to clean up any contamination. While Collison provided the assessor with documentation as to the removal of underground storage tanks in June 2012, the resulting soils analysis was not provided to the assessor until November 2012—eleven months after the date of assessment. Collison did not present the soils analysis reports to the Board.

¶21 The assessor and the Board considered the possible contamination of the property based on the evidence before it. The assessor testified that without any contamination or perceived contamination, he would have assessed the property at $96,000 based on land value alone. Instead, given the circumstances, he assessed the property at $32,900.

¶22 Consequently, whether the CMECS policy provisions run afoul of WIS. STAT. § 70.32 is a question for another day. Here, the assessment of

Collison's property did, in fact, factor in the possible contamination of the property; as such, there was no statutory violation.

(2) ***Whether the assessor's valuation was arbitrary.***

¶23 Next, Collison argues that the assessor's valuation was arbitrary. "We must 'determine, from the evidence presented to the [B]oard of [R]eview, whether the valuation was made on the statutory basis.'" ***Steenberg***, 167 Wis. 2d at 571, 482 N.W.2d at 327 (citation omitted). We adhere to the following principles, in making this determination:

> There is a presumption that the assessor's valuation is correct. Such valuation will not be set aside in the absence of evidence showing it to be incorrect.
>
> The burden of producing evidence to overcome this presumption is upon the person who seeks to attack the assessment, and the presumption survives until it is met by credible evidence.
>
> If there is a conflict in the testimony respecting the value of the property the court does not substitute its opinion of the value for that of the [B]oard of [R]eview. If there is credible evidence before the [B]oard that may in any reasonable view support the assessor's valuation, that valuation must be upheld.

Id. at 571–572, 482 N.W.2d at 328 (citation and internal quotation marks omitted; spacing altered).

¶24 Given the possible contamination and the vacant status of the property, Wiegand explained that he used the income approach for valuation. This approach was based on rental income that could be obtained from a parking lot located on the subject property. Wiegand started his calculation with a one-month approximation for income given by Collison during a telephone conversation.

¶25 Collison argues that the figure he gave was never intended to be a substitute for a yearly income and expense statement but rather was intended to show the assessor how many people were parking on the subject property at the time the question was asked. Yet, Collison never came forward with any evidence contradicting Wiegand's calculations nor did he demonstrate an alternative assessment method that would more accurately value his property. *See* ***ABKA Ltd. P'ship v. Board of Review of Village of Fontana-On-Geneva Lake***, 231 Wis. 2d 328, 348, 603 N.W.2d 217, 226 (1999) ("The party challenging a property assessment must show why its method of valuation is more reliable or accurate than the assessor's chosen method. ABKA has failed to convince us that the assessor's methodology was erroneous and has failed to offer a more reliable method of valuation.") (citation omitted). He failed to meet his burden.

(3) ***Whether the Board ignored evidence.***

¶26 Lastly, Collison contends that "[a]s the consequence of the presence of contamination, [his] witnesses showed the market value of the subject property in their eyes to be zero." He submits that the Board may not disregard "competent" evidence that is unimpeached and uncontradicted showing that the assessor's valuation is incorrect. *See* ***Steenberg***, 167 Wis. 2d at 572, 482 N.W.2d at 328 ("'If there be adduced before the [B]oard competent evidence which is unimpeached and uncontradicted and which shows that the assessor's valuation is incorrect, such evidence cannot be disregarded by the [B]oard.' Disregard of such evidence is considered to be jurisdictional error.") (citation omitted).

¶27 None of Collison's witnesses provided evidence as to the level of contamination and the cost to clean up any contamination to support Collison's assertion that the property has a market value of zero. Krajcir and Scholtka gave

their opinions that they would not list the property. And, Anderson said he would not buy the property. The City, however, points out that insofar as Anderson is concerned "one person does not make a market," and it additionally highlights the assessor's testimony that in 2007 Collison listed the property, which was vacant at the time, for $200,000.

¶28 In sum, there was no unimpeached and uncontroverted evidence to support Collison's claim that the property had a market value of zero as of January 1, 2012. The Board could rationally have concluded that the testimony Collison and his witnesses offered was undermined by the assessor's testimony.[3]

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

[3] Insofar as Collison makes a new argument in his reply brief that the Wisconsin Property Assessment Manual is in error, we do not address it. *See* ***State v. Mata***, 230 Wis. 2d 567, 576 n.4, 602 N.W.2d 158, 162 n.4 (Ct. App. 1999) (court will not address issues raised for the first time in a reply brief).