COURT OF APPEALS
DECISION
DATED AND FILED

June 15, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-3184

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

LAWRENCE PIECZYNSKI,

PLAINTIFF-APPELLANT,

V.

STATE OF WISCONSIN DEPARTMENT OF REVENUE,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Washburn County: EUGENE D. HARRINGTON, Judge. *Reversed and cause remanded with directions.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Lawrence Pieczynski appeals a judgment upholding the Department of Revenue's decision refusing to adjust his property tax assessment. The local assessor and board of review valued his lakefront lot and buildings at $46,000. The department appraised the property at $52,000 and

refused to reduce the board's assessment as allowed by § 70.85(4), STATS.[1] Because the record does not show a lawful basis for the formula the department used or the figures it inserted in that formula, we reverse the judgment and the department's assessment and remand the cause to the department. On remand, the department shall determine the value of Pieczynski's land as of January 1, 1997, by using identifiable criteria that allow meaningful judicial review, and amend the assessment if Pieczynski would have met the criteria set out in § 70.85(4), STATS., had the department properly performed the reassessment.

Pieczynski chose to challenge the local assessment by seeking the department's review under § 70.85, STATS. Therefore, judicial review by certiorari is limited to the department's decision, not that of the local board or its assessor. Because § 70.85 does not expand upon the grounds for review, the department's decision is reviewed by common law writ of certiorari. *See* ***Berschens v. Town of Prairie du Sac***, 76 Wis.2d 115, 119, 250 N.W.2d 369, 372 (1977). This court's review is limited to (1) whether the department kept within

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[1] Section 70.85(4), STATS., provides:

> (b) The department of revenue may revalue the property and adjust the assessment of the property to the assessment ratio of other property within the taxation district, if the department of revenue determines that:
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> 1. The assessment of the property is not within 10% of the general level of assessment of all other property in the taxation district.
>
> 2. The revaluation can be satisfactorily completed without a reassessment of all property within the taxation district.
>
> 3. The revaluation can be accomplished before November 1 of the year in which the assessment is made or within 60 days of the receipt of the written complaint, whichever is later.

The department did not explain why it chose not to adjust the assessment higher.

its jurisdiction; (2) whether it proceeded on a correct theory of law; (3) whether its action was arbitrary, oppressive or unreasonable; and (4) whether the evidence was such that it might reasonably have made the determination in question. *See* ***Rite-Hite Corp. v. Brown Deer Review Bd.***, 216 Wis.2d 189, 192, 575 N.W.2d 721, 724 (Ct. App. 1997).

The department has created a property assessment manual that specifies the factors an assessor must consider in determining property value. *See* § 70.32(1), STATS. Pieczynski's property had not been recently sold. Therefore, its value must be calculated by considering sales of comparable property. *See* ***SXR Campbell v. Township of Delavan***, 210 Wis.2d 239, 258, 565 N.W.2d 209, 217 (Ct. App. 1997).

The department determined the value of Pieczynski's lot by multiplying its 321 feet of lake frontage by $100 per foot. The department's explanation for its formula is based entirely on four other vacant lot sales on the same lake. The department's assessor concluded "Neither size (acres) nor depth predicted sale price. Date of sale seems to be the best predictor of front-foot on the lake value." The assessor noted that two properties sold in February and March, 1996, at prices that amount to $60 and $63 per front-foot. In March and May, 1997, two other properties sold for $175 per front-foot. The department adjusted these prices to reflect their January 1, 1997 value by adding or subtracting l.5% per month, the rate of appreciation it calculated for similar properties.

If the department were correct in stating that price per front-foot and date were the best predictor of sale price, the properties would have appreciated by more than 12% per month for 16 months. It offers no explanation for the discrepancy between its calculated rate of appreciation and the rate displayed by

these four properties. Its conclusion that price per front-foot and date of sale predict the sale price is contradicted by its own figures.

While an assessment based on a front-footage formula might reflect actual market conditions in some circumstances, examining the formula requires "an understanding and rational assessment of the mathematic and economic principles underlying the basic formula and the specific adjustments made by the DOR." *See* ***Soo Line R.R. v. DOR***, 97 Wis.2d 56, 60, 292 N.W.2d 869, 871-72 (1980). The department's assessment does not provide adequate information or analysis to allow meaningful judicial review and suggests that it used an unjustified formula and an arbitrary multiplier to arrive at its assessment.

It is one thing to describe property value in terms of price per front-foot; it is another thing to determine its value in that manner. The assertion that a buyer would pay for property by the front-foot regardless of its depth or any other characteristic or condition is patently absurd. The department did not identify any adjustments it made for other factors listed in the assessment manual, such as the property's depth, total acreage, partially swampy shoreline, steep grade and zoning restrictions. While it described some of these features, the department neither explained the effect these features had on the formula nor justified ignoring them. It is error for an assessor to rely solely on a simplistic per front-foot valuation when other factors contribute to the property's fair market value. *See* ***Hersey v. Board of Supervisors***, 37 Wis. 75, 79 (1875).

The department ignored Pieczynski's exhaustive analysis that used the manual and calculations based on adjoining property that sold nine months earlier at $63 per front-foot, time adjusted to $72 per front-foot. It identified no

errors in his calculations, and summarily dismissed his methodology because "It is not a mandatory procedure."

Even if we were to accept the proposition that front-footage and date of sale or assessment determined a property's value, the decision to value the property at $100 per front-foot is not supported by any formula or calculation contained in the record. The department's assessor does not identify her starting point or any formula used to arrive at the $100 figure. She recited that other properties appreciated by 6% to 9% per month and "therefore I have chosen a value between $70 and $160 per front-foot, also considering sales of vacant lots on other small lakes in the town, and have chosen $100 per front-foot for the subject lot value." Because the record establishes no rational basis for the $100 multiplier, the assessment is arbitrary. *See* ***Town of Hudson v. Bd. of Adjustment***, 158 Wis.2d 263, 276, 461 N.W.2d 827, 831 (Ct. App. 1990).

Pieczynski also challenges the assessment of the improvements to his property. As the trial court noted, neither the record nor the department's assessment documents reveal how it arrived at its calculations of replacement value less depreciation. In addition, Pieczynski argues that the department failed to make adjustments for the unfinished interior of his cabin, that it used a procedure that has been repeatedly rejected by the courts, applied an adjustment of plus 25% based on a list of all waterfront residential buildings regardless of type or grade and applied that multiplier to a nonresidential building. In its brief on appeal, the department has not responded to Pieczynski's arguments and has not attempted to explain the assessment. Because the department has not undertaken to refute Pieczynski's arguments, it cannot complain if they are taken as confessed. *See* ***Charolais Breeding Ranches Ltd. v. FPC Securities***, 90 Wis.2d 97, 109, 279 N.W.2d 493, 499 (Ct. App. 1979).

By the Court.—Judgment reversed and cause remanded.

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