**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**August 18, 2016**

**Diane M. Fremgen**
**Clerk of Court of Appeals**



**Appeal No. 2015AP2473** **Cir. Ct. No. 2013CV2666**

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

**WARREN SLOCUM,**

**PETITIONER-APPELLANT,**

**V.**

**WISCONSIN DEPARTMENT OF REVENUE,**

**RESPONDENT-RESPONDENT.**

APPEAL from an order of the circuit court for Dane County: RHONDA L. LANFORD, Judge. *Affirmed.*

Before Kloppenburg, P.J., Lundsten, and Blanchard, JJ.

¶1 PER CURIAM. Warren Slocum, pro se, appeals an order of the circuit court affirming, on certiorari review, a Wisconsin Department of Revenue decision denying a petition that he advanced under WIS. STAT. § 70.75(1)(a)1. (2013-14), requesting that the Department require the Town of Star Prairie to

reassess properties for the year 2012.[1] Slocum challenges the Department's conclusion that the town's 2012 property tax assessment is "in substantial compliance with the law," which resulted in the Department's decision to deny the petition for reassessment. The circuit court upheld the Department. We affirm the Department's decision for the following reasons.

## BACKGROUND

¶2 In early 2013, Slocum submitted a petition to the Department, pursuant to WIS. STAT. § 70.75(1)(a)1., signed by the owners of over 5% of the assessed value in the Town of Star Prairie. The Department conducted a public hearing on Slocum's petition, as required by statute, at which Slocum was the only witness. *See* § 70.75(1)(a)5. Slocum made five allegations regarding the 2012 Star Prairie property assessments: (1) the assessor failed to use all available arm's length sales; (2) vacant land parcels in residential subdivisions were assessed inequitably; (3) properties were classified incorrectly, including a horse-boarding operation incorrectly classified as "agricultural," and some swamp and waste

[1] WISCONSIN STAT. § 70.75(1)(a)1. provides in pertinent part as follows:

> The owners of taxable property in any taxation district ... whose property has an aggregate assessed valuation of not less than 5% of the assessed valuation of all of the property in the district according to the assessment sought to be corrected, may submit to the department of revenue a written petition concerning the assessed valuation of their property.... [I]f the department finds that the assessment of property in the taxation district is not in substantial compliance with the law and that the interest of the public will be promoted by a reassessment, the department may order a reassessment of all or of any part of the taxable property in the district to be made by one or more persons appointed for that purpose by the department.

All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

properties being valued as "forest"; (4) the assessor used a set per-acre price for undeveloped and forest land, which had the result of overvaluing some land and undervaluing other land; and (5) the assessor lacked enough staff to properly conduct the work required.

¶3 In addition to receiving the information at the hearing, the Department conducted an investigation of the town's property valuations, which included reviews of assessment equity and assessment practices. The Department produced a report detailing the findings of the investigation. The report set forth the applicable law under WIS. STAT. § 70.75, discussed the requirements necessary for the Department to order a reassessment, and described the model that the Department used to determine whether Star Prairie's assessments met these standards and thus were "in substantial compliance with the law" pursuant to § 70.75(1).

¶4 The Department generally uses a scale of 100 points to measure assessment equity and assessment practices, with a score below 70 points establishing that assessment is not in substantial compliance with the law. Following the investigation here, the Department awarded Star Prairie 58.3 points out of a possible 60 for assessment equity, and 35.75[2] points out of a possible 40 for assessment practices. The Department determined that the total score of 93.8 points out of the possible 100 meant that Star Prairie was in substantial compliance with the law.

[2] We observe that the total points awarded in the assessment practices category actually equal 35.5 and not 35.75. This minor mathematical error in the report does not change the total number of 93.8 points, nor does it matter to our analysis.

¶5 The Department denied the petition for reassessment based on its conclusion that Star Prairie was in substantial compliance with the law. Although it was not required to do so under the plain terms of WIS. STAT. § 70.75, the Department decided to address the question of whether the public interest would be served by a reassessment based on Slocum's allegations, and concluded that reassessment would not serve the public interest. While we do not discern in Slocum's appellate briefing a clear objection to any aspect of the Department's public interest inquiry, we summarize it for the sake of completeness.

¶6 In its discussion of the public interest, the Department addressed the first four of Slocum's five allegations, excluding discussion of his allegation that the assessor lacked adequate staff to conduct the 2012 assessments.

¶7 The Department rejected on the merits Slocum's first allegation that the assessor failed to use all available arm's length sales, concluding that the assessor developed assessment "values from arm's length land sales that sold within the Town." In contrast, the Department concluded that each of Slocum's three remaining allegations had at least some merit, finding as follows regarding the 2012 assessments: (1) the assessor valued vacant residential lots in subdivisions inconsistently; (2) the assessor incorrectly classified some properties; and (3) the assessor incorrectly categorized water frontage and swamp land, leading to overvaluation.

¶8 With respect to these three areas, the Department addressed the specific concerns expressed in the petition by exercising its supervisory authority under WIS. STAT. § 73.03(1). The Department used that authority to direct the assessor in the following ways for the 2013 assessment. Regarding property classification, the Department directed the assessor to review agricultural

classifications, to classify horse-boarding and commercial horse riding properties as commercial, and to review the number of acres classified as "other." Regarding property valuation, the Department directed the assessor to review and adjust values of swamp and waste acres that were improperly classified as undeveloped, to review the value for acres with water frontage, and to review and correct the value of subdivision lots that were incorrectly valued based on development costs.

¶9 Slocum sought judicial review by the circuit court, challenging the Department's decision to deny the petition for reassessment. The court upheld the Department's decision and subsequently denied Slocum's motion for reconsideration. Slocum appeals.

## DISCUSSION

¶10 Slocum's briefing is frequently incoherent and is highly disjointed throughout. His arguments are largely unsupported by pertinent legal authority or pertinent citations to the record. Despite our best efforts, and taking into account Slocum's pro se status, we discern no developed legal argument. *See* ***State ex rel. Harris v. Smith***, 220 Wis. 2d 158, 164-65, 582 N.W.2d 131 (Ct. App. 1998) (a court's obligation to a pro se litigant "does not extend to creating an issue and making an argument for the litigant."); *see also* ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992) ("We cannot serve as both advocate and judge."). None of the references and assertions Slocum makes suggest to us a basis under applicable standards to conclude that the Department's decision to deny the petition for reassessment must be reversed. Slocum essentially fails to address in a coherent manner the substantial evidence in the record that appears to reflect extensive investigation and to support the Department's challenged decision, consistent with the terms of WIS. STAT. § 70.75. For these reasons, we

reject Slocum's appeal and accordingly uphold the Department's decision. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988) (This court may decline to consider arguments that are unexplained, undeveloped, or unsupported by citation to authority.).

¶11 Although we have explained that we reject all of Slocum's arguments as undeveloped, we choose to address a few specific deficiencies in arguments Slocum seemingly makes and explain why it is evident that, even if we attempted to reach the merits of such arguments, the result would be the same.

¶12 We review the Department's decision and not that of the circuit court. ***Walag v. DOA***, 2001 WI App 217, ¶5, 247 Wis. 2d 850, 634 N.W.2d 906. Although Slocum gives no indication that he appreciates the fact, certiorari review is limited to the following questions: (1) whether the agency kept within its jurisdiction; (2) whether the agency acted according to law; (3) whether the agency's actions were arbitrary, oppressive, or unreasonable so as to represent its will and not its judgment; and (4) whether the evidence was such that the agency might reasonably make the determination in question. *See* ***Ottman v. Town of Primrose***, 2011 WI 18, ¶35, 332 Wis. 2d 3, 796 N.W.2d 411. Slocum fails to take into account that we grant the Department's decision a presumption of correctness, that Slocum "bears the burden to overcome the presumption of correctness," and that we may not substitute our view of the evidence for that of the Department. *See* ***id.***,¶¶50-53. To cite only one of many examples, Slocum asserts that the Department took unspecified "actions" in connection with its response to the petition "that could have been handled much more professionally," suggesting the incorrect view that the courts have general authority on certiorari review to grade or rate the "professionalism" of an agency.

¶13 As the statutory language quoted above makes clear, the Department "may order a reassessment" if it makes two determinations: that the district is not in substantial compliance with the law and that it would be in the public interest to order a reassessment. WIS. STAT. § 70.75(1)(a)1. Because the decision whether to order a reassessment is left to the discretion of the Department ("may order"), we will not upset the decision not to order a reassessment if the Department "applied the correct legal standards and reached a decision that is not arbitrary, oppressive, or unreasonable." *See* ***Ottman***, 332 Wis. 2d 3, ¶52.

¶14 Slocum asserts in a confusing manner that the Department "fabricat[ed] rules that conflict with state laws, while violating the other three (3) criteria of lawful actions—not arbitrary or bad faith actions—that reasonably considered the evidence before it." However, he completely fails to support these assertions of fabrication, arbitrariness, and bad faith.

¶15 Slocum asserts that the Department "did not adhere to state law when denying the taxpayers' petition for full or partial reassessment of the district." Slocum offers two general examples that he contends support this assertion. First, Slocum takes issue with the Department's use of certain statistical calculations, apparently arguing that the Department violated state law in some manner by using sample groups formed by the "selective inclusion of sales to maintain an appearance of overall group uniformity." In purported support, Slocum presents a series of definitions and statements related to such concepts as "uniformity" and "dispersion." Slocum does not develop any argument as to how this information could be used to support his position that we should reverse the Department's decision or require the Department to take a different statistical approach, particularly in light of our limited and deferential scope of review.

¶16 Slocum asserts that the Department violated state law by relying on the assessor's use of sales that were either improperly designated, or not designated, as "arm's length" sales. As with his challenge to the sample groups, however, Slocum offers nothing but his opinion that Slocum himself "used better procedures for Arm's Length designations" than did the Department. Whatever Slocum intends to argue regarding statistical calculations and arm's length sales is unexplained and undeveloped.

¶17 Turning to Slocum's assertion that the Department's decision was not reasonable in light of the evidence before it, Slocum provides no basis on which we could conclude that reversal on this ground is appropriate. Instead, Slocum refers to an unexplained alleged "disconnect" between assessment and appraisal values, and asserts that "some taxpayers have found the assessors [ ] difficult to deal with," with no indication as to how these assertions are supported by the record and why they should matter to our analysis under any applicable legal standard and the correct standard of review.

## CONCLUSION

¶18 Slocum fails to develop an argument that the challenged decision to deny the petition for a reassessment is not based on substantial evidence, representing a reasonable interpretation of the relevant evidence under applicable legal standards. Accordingly, we affirm.

*By the Court.*—Order affirmed.

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