COURT OF APPEALS
DECISION
DATED AND FILED

April 16, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

No. 97-1468

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

STATE OF WISCONSIN EX REL. ROBERT RUFFER,

PLAINTIFF-APPELLANT,

V.

TOWN OF MONROE - BOARD OF REVIEW,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Adams County: RICHARD L. REHM, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

ROGGENSACK, J. Robert Ruffer appeals from an order of the circuit court affirming the Board of Review's denial of his request for a 1994 property tax reassessment of lots in his district which he alleged were undervalued. Ruffer asserts that a host of procedural irregularities and substantive errors occurred at the Town's open book meeting and the subsequent Board

meeting where his complaint was heard; however, due to the limited scope of our certiorari review, we consider the dispositive issues to be that Ruffer did not ask the Board to reduce his own assessment below $88,900 for 1994, but rather, he asked that other properties' valuations be increased. In addition, subsequent to the Board's decision, Ruffer requested the Department of Revenue to review his own assessment and to revalue other properties. It affirmed his valuation and it chose not to revalue other properties for 1994, even though it did grant relief for 1995. He did not appeal the DOR's decisions. Accordingly, the DOR's decisions are controlling on those issues and we affirm the decision of the circuit court.

BACKGROUND

Ruffer owns a parcel of real estate in the Petenwell Pines Subdivision of the Town of Monroe. In 1993, his lakefront property was assessed at $53,000. In 1994, after he began construction on a new house, the property was reassessed at $119,800. The assessor reduced the figure to $88,900 after Ruffer complained. On October 15, 1994, after his property's assessment had been reduced to $88,900, Ruffer attended the Town's 1994 open book meeting to examine the tax rolls of other properties in the township. His review of the tax records was apparently cut off by the assessor and town clerk, who felt he was taking too much time.[1]

On October 22, 1994, Ruffer appeared before and filed an objection with the Board of Review to contest the "mistakes with dozens of parcells (sic) regarding underassessments" in the Town of Monroe. Ruffer challenged the

[1] Ruffer was successful in obtaining a court order to examine these records at a later date.

assessments of "[a]ll parcells (sic) in Monroe Township." His written objection on the form approved by the Board did not specifically describe his own property by either legal description or parcel number, and did not give all of the form's requested information with regard to each of the challenged parcels. Despite some evidence that there were discrepancies in the valuations of some properties, on October 24, 1994, the Board sent written notice to Ruffer denying relief, on which Ruffer made the notation, "I never once complained of myself at Board of Review."

On November 6, 1994, Ruffer and a group of taxpayers who collectively owned more than five percent of all of the property in the Town of Monroe according to the 1994 assessment, sought revaluation with the Wisconsin Department of Revenue, challenging the assessment of the entire district pursuant to § 70.75, STATS. Ruffer also appealed to the DOR to revalue his own property, pursuant to § 70.85, STATS. On January 9, 1985, the DOR denied his § 70.85 complaint and gave notice to Ruffer of his appeal rights of that decision. However, after the DOR investigated the § 70.75 petition on April 11, 1995, it concluded that the 1994 Town of Monroe assessment was not made in substantial compliance with the law, due to inequities and above-market valuations. The DOR further determined that the interests of the taxpayers in the district would be best served by a special supervision of the 1995 assessment, rather than a revaluation for 1994, and it so ordered. It later issued an amended order detailing the appointment and compensation of personnel for the 1995 assessment. Ruffer did not seek review[2] of any of the DOR's orders.

[2] Section 70.85(4)(c), STATS., provides that an appeal of the DOR's determination shall be by certiorari action in the circuit court of the county in which the property is located.

On January 18, 1995, while the DOR's petition to reassess the Town was still pending, but after the DOR had reviewed Ruffer's assessment and declined to grant relief, Ruffer petitioned for a writ of certiorari to review the Board's October 24, 1994 decision. His petition for the writ alleged that he had appeared before the Board and that "he did not contest his assessment on his real estate and improvements but did contest the assessments of other parcels in the Township [since] [b]y these properties being under assessed, [Ruffer] was subject to high taxation." Ruffer asked for an order requiring the Board to conduct a reassessment of the entire district for the year of 1994. The Town moved to dismiss the certiorari action on the grounds that Ruffer had not objected to his own assessment before the Board and that he lacked standing to object to the assessments of other property owners.

On March 14, 1995, while both the certiorari petition to the circuit court and his petition to the DOR to reassess the Town were pending, the Wisconsin Supreme Court issued a decision which clarified that a taxpayer, who requests a reduction of his assessment and shows that other properties in his district are underassessed, has a constitutional right under the uniformity clause to have his own assessment reduced, even when it reflects the fair market value of his property. ***State ex rel. Levine v. Board of Review of the Village of Fox Point***, 191 Wis.2d 363, 528 N.W.2d 424 (1995). On September 21, 1995, in opposition to the Town's motion to dismiss and five months after ***Levine*** was decided, Ruffer submitted a brief to the circuit court which raised the uniformity issue for the first time. The circuit court affirmed the Board.

Ruffer appeals the circuit court's decision, complaining that he was improperly denied access to the tax rolls to determine the assessments of other properties; that the Board could not reasonably have accepted the assessor's

valuations of the other properties based on the evidence before it; that the Board failed to adjust any of the property assessments he challenged; that the Town failed to return the entire transcript; and that the circuit court failed to read the full transcript before deciding the case. Now, for the first time in these proceedings, he asks this court to order the Board to reassess his own property in accordance with the uniformity clause, and to grant him $6,000 in attorneys' fees.

The Town responds that it is too late for Ruffer to object to his own assessment because he challenged only the assessments of other properties, which he considered to be undervalued before the Board. It further argues that Ruffer lacks standing to object to the assessments of other taxpayers, and that in any event, he has already obtained decisions regarding the 1994 assessments of his and of other properties from the DOR and he chose not to appeal the DOR's orders.

DISCUSSION

Standard of Review.

The standard for appellate review on certiorari is the same as that of the circuit court; that is, we are limited to determining whether the Board properly exercised its administrative discretion when it affirmed the decisions of the property tax assessor. ***Levine***, 191 Wis.2d at 370, 528 N.W.2d at 426-27. Therefore, we will affirm the action of the Board so long as it kept within its jurisdiction, proceeded on a correct theory of law, did not act arbitrarily or in bad faith, and had evidence before it sufficient to sustain the assessments. ***Id***.

Status of the Record.

We begin by addressing several matters related to the status of the record on review. Each party in this case submitted affidavits and additional

materials for the circuit court to consider in conjunction with the Town's motion to dismiss. However, we review the decision of the Board, rather than that of the circuit court; therefore we do not consider the parties' submissions made subsequent to the proceedings before the Board, and we construe the circuit court's decision as an order affirming the Board's decision. *See* ***Campbell v. Township of Delavan***, 210 Wis.2d 240, 253-54, 565 N.W.2d 209, 214-15 (Ct. App. 1997) (record cannot be supplemented on appeal). Furthermore, we consider the Board's decision not to grant the relief Ruffer requested of it. We do not consider whether it should have granted relief Ruffer did not request. *See* ***id.***

Reassessment of Ruffer's Property.

In this appeal, Ruffer relies on the rule of uniformity for claimed error by the Board. The rule of uniformity requires that the same method of taxing real property must be applied uniformly to all classes of property. WIS. CONST. art. VIII, § 1; ***Levine***, 191 Wis.2d at 371, 528 N.W.2d at 427. Therefore, an individual property assessment may be deemed to violate the rule of uniformity, even when it reflects its fair market value, if other properties in the district are assessed at less than fair market value. ***Id***. at 371-72, 528 N.W.2d at 427. Underassessments burden the fairly assessed property owner with a disproportionately high percentage of the total tax base. ***Id***. at 367, 528 N.W.2d at 425. The uniformity principle was applied in ***Levine*** to downwardly adjust the fair market value property tax assessments of newer-home-owning taxpayers who claimed that older properties in their neighborhoods were substantially underassessed. ***Id***. at 378, 528 N.W.2d at 430.

There are similarities between this case and ***Levine***. Like Levine, Ruffer conceded that his own property had been assessed at its fair market value.

In turn, the Board apparently conceded that a number of property assessments in the district would need to be adjusted the following year. Taken alone, these facts would seem to present a classic uniformity clause scenario, which the Board did not appear to recognize. However, there is one very important distinction between ***Levine*** and the case at bar which substantially changes the nature of our analysis: Levine had very clearly challenged his own property tax assessment and asked to have it reduced, whereas Ruffer objected only to the assessments of other undervalued properties and repeatedly stated that he was satisfied with his own assessment.

It is axiomatic that a tribunal is under no obligation to grant relief which was not requested. *See, e.g.,* § 70.47(7), STATS., ("Objections to the amount or valuation of property shall first be in writing and filed with the clerk of the board of review.") Of course, Ruffer claims on appeal that he did request that his own assessment be reduced. In support of his contention, he points to the portion of his written objection where he challenged "all parcels in Monroe Township" and to an exchange where, when asked what he thought the Board could do, he responded:

> [I]n my opinion, and I will put it on the record, ok, there could be one of two things done…. either Petenwell Pines would have to basically stay the same as last year or this, these properties would have to be increased.

In addition, after being informed by the Board that other properties would be reassessed the following year, Ruffer asked whether his own assessment could "be lowered to compensate for this length of time."

However, Ruffer's assertion that his written objection was intended to challenge his own assessment is belied by the omission of information relating

to his own property on the form and by the reason he gave for his objection—namely, underassessment of others. Moreover, there were several points during the Board's meeting where Ruffer specifically disavowed any intention to challenge his own assessment, stating, for instance, "I am not saying that mine should be lowered," and:

> [A]t first I was fighting with my increase, but since then Phil has lowered mine and I feel they are reasonably fair now, to what he lowered them to. My problem is with the whole town. The whole town and many many of you people sitting right here are very very under assessed.

Ruffer did not really begin complaining about his own assessment until after he had filed the petition for certiorari and ***Levine*** was decided. Thus, given the position Ruffer maintained before the Board, we cannot say it was arbitrary or unreasonable for the Board to conclude that the nature of the remedy which Ruffer sought was an increase in the under-assessed properties, rather than a decrease in his own assessment, and to act accordingly. Because Ruffer did not properly raise a uniformity challenge by requesting that his own 1994 assessment be reduced when he objected to the Board, he cannot raise it on a certiorari appeal. ***Campbell***, 210 Wis.2d at 253-54, 565 N.W.2d at 214-15.

Reassessment of Other Properties.

Ruffer also challenges the Board's refusal to increase the assessments of other properties within his district. Assuming, without deciding, that § 70.47, STATS., may be used by a taxpayer to challenge the assessment of properties other than his own in the first instance,[3] the taxpayer must still comply

[3] Clearly, the Board could not have made any adjustments to properties other than Ruffer's without having provided their owners notice and a fair opportunity to be heard themselves. Section 70.47(7)(b) and (8)(b), STATS.

with the procedures set forth for such challenges, including filing a written objection on a proper form for *each property challenged*, in addition to presenting evidence about the challenger's own property. *See* § 70.47(7)(a) ("The board may require such objections to be submitted on forms approved by the department of revenue."); ***Bitters v. Town of Newbold***, 51 Wis.2d 493, 503, 187 N.W.2d 339, 344 (1971) (objection may be denied where it is not filed on a proper form); and ***State ex rel. Reiss v. Board of Review of Town of Erin***, 29 Wis.2d 246, 138 N.W.2d 278 (1965) (review board may deny objection of a taxpayer who did not fill in the fair market value questions on his objection form). Ruffer's attachment to his written objection failed to provide such information as legal descriptions, when the challenged properties were bought and for how much, improvements made to the properties, or even Ruffer's opinion as to what their fair market value should have been. And, as discussed above, it failed to provide the information about his own property which would have been necessary for a comparison. The Board could hardly have been expected to make any adjustments to the assessments without such basic information as that, and again, could have rejected Ruffer's objections solely on his failure to satisfy statutory requirements.[4] *See* ***Reiss***, 29 Wis.2d at 252, 138 N.W.2d at 282.

Furthermore, § 70.75, STATS., provides specific procedures for forcing a general reassessment of an entire district in the manner apparently envisioned by Ruffer when he attempted to challenge the assessments of every

[4] Ruffer complains that the abbreviated open book review he received prevented him from supplying the necessary information about other properties, but he gives no reason for failing to provide the information about his own property which the Board had a right to require. Because the written objection he filed is insufficient in regard to information which was available to Ruffer without an open book review, we do not address his argument that his objection to the Board was affected by the type of open book review he received.

parcel in the Town of Monroe. As the circuit court correctly noted, § 70.75 gives the DOR the authority either to order a reassessment of real estate for the challenged tax year or to supervise future assessments of real estate, when the owners of five percent of a district's property complain. Ruffer's complaint regarding the 1994 tax year resulted in a DOR order for a supervised assessment in 1995. The fact that the DOR chose a remedy other than the one which Ruffer would have preferred does not negate the fact that he has already received a review of the Board's decision on assessments for the 1994 tax year, as well as an independent determination by the DOR. Because he chose not to appeal any of the DOR's decisions, he cannot not now complain of the lack of a 1994 reassessment.

In light of our conclusions above, we do not address whether Ruffer had standing to challenge the individual assessments of his neighbors.[5]

CONCLUSION

Although the valuation of Ruffer's property may have been disproportionate to other property in his district, he neither asked the Board to reduce his assessment in accordance with the uniformity clause, nor followed the procedures required to have the Board increase the assessments of neighboring properties. Therefore, the Board did not act arbitrarily when it refused to order the reassessment of either Ruffer's property or the other allegedly undervalued

[5] Standing in Wisconsin depends, first, upon whether the petitioner has suffered an actual injury (however trifling), and second, whether the interest asserted is one recognized by law. ***State ex rel. Parker v. Fiedler***, 180 Wis.2d 438, 447, 509 N.W.2d 443, 444 (Ct. App. 1993). The answer in this case would depend upon a statutory interpretation of whether § 70.47(7), STATS., limits the filing of objections to the actual owners of the property whose valuation is challenged.

properties. Furthermore, Ruffer already appealed to the DOR to revalue his property and to reassess the Town for 1994. The DOR did not grant the relief he requested and he has not appealed the DOR's decisions. Therefore, we affirm the order of the circuit court.

By the Court.—Order affirmed.

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