

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 21, 2005

Cornelia G. Clark
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2004AP108

Cir. Ct. No. 2002CV444

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. STUPAR RIVER LLC,

PETITIONER-RESPONDENT,

V.

TOWN OF LINWOOD BOARD OF REVIEW,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Portage County:
JOHN V. FINN, Judge. *Reversed and cause remanded with directions.*

Before Vergeront, Lundsten and Higginbotham, JJ.

¶1 HIGGINBOTHAM, J. The Town of Linwood Board of Review appeals an order of the circuit court reversing its property tax assessment for property owned by Stupar River LLC. The Board argues the circuit court applied an erroneous legal standard in concluding Stupar River's purchase of the property in question constituted a recent arm's-length transaction under WIS. STAT. § 70.32

(2003-04)¹ and that Stupar River failed to meet its burden to prove the sale constituted an arm's-length transaction for the purpose of establishing fair market value. We agree. We reverse the order of the circuit court and reinstate the Board's decision.

BACKGROUND

¶2 On January 30, 2001, Stupar River, a Wisconsin limited liability company owned by William Stupar, purchased a golf course known as the Wisconsin River Country Club for \$830,000. James Giddings and his father were the sole stockholders of Wisconsin River Country Club, Inc. and had owned it for fifteen years.

¶3 The Wisconsin River Country Club had been on the market for seven years; while it had been offered to other parties, no offers to purchase were made. Its availability had been advertised in trade journals and by word of mouth for most of the seven years it was on the market. Giddings had apparently borrowed money from his father against the Wisconsin River Country Club but Giddings' father had not commenced any action to recover the debt. According to Stupar River, no offers were made on the property in the two and one-half years before the sale. During this time Giddings did not advertise the property and did not utilize a real estate broker. Giddings' sole method of marketing was by "word of mouth." The property had never been publicly offered for sale at any price lower than the original asking price of \$2,300,000. According to Giddings, the selling price on January 30, 2001, of \$830,000, was based on the amount offered

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

by Stupar River. Giddings accepted Stupar River's price offer without negotiations.

¶4 The tax assessment for the golf course as of January 1, 2002 was \$1,831,500. Stupar River objected to the assessment. A hearing was conducted before the Board to consider Stupar River's objection, after which the Board affirmed the assessed value of \$1,831,500. Stupar River filed a timely petition for a writ of certiorari pursuant to WIS. STAT. § 70.47(13). The circuit court set aside the tax assessment, concluding the valuation "was not made on the statutory basis;" the case was remanded to the Board for a reassessment for the 2002 tax year. The Board appeals.

STANDARD OF REVIEW

¶5 This case requires us to review a petition for a writ of certiorari of the Board's tax assessment decision. "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 (1992). We review the record before the Board and its decision. *See Klinger v. Oneida County*, 149 Wis. 2d 838, 845 n.6, 440 N.W.2d 348 (1989). We review the proceedings of boards to determine (1) whether 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 626, 625, 405 N.W.2d 344 (1987). We presume the Board acted correctly. *See id.*

¶6 We must determine “from the evidence presented to the board of review, whether the valuation was made on the statutory basis.” *Steenberg*, 167 Wis. 2d at 571. In determining whether the valuation has been made upon the statutory basis we follow these principles:

‘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 board of review. If there is credible evidence before the board that may in any reasonable view support the assessor’s valuation, that valuation must be upheld.

...

‘If there be adduced before the board competent evidence which is unimpeached and uncontradicted and which shows that the assessor’s valuation is incorrect, such evidence cannot be disregarded by the board.’ Disregard of such evidence is considered to be jurisdictional error.

Id. at 571-72 (citation omitted).

ANALYSIS

¶7 The dispositive issue is whether Stupar River carried its burden of proving the sales transaction in question was an arm’s-length transaction.² The Board argues Stupar River failed to meet its burden of proof in establishing its

² The Board also argues the circuit court applied an incorrect legal standard in determining whether the property sale at issue here constituted an arm’s-length transaction. Because we review the Board’s assessment decision de novo, we need not address whether the circuit court applied the correct legal standard.

recent purchase of the Wisconsin River Country Club was an arm's-length transaction and thus the Board properly decided not to assess the property at that sale price. In support of this conclusion, the Board maintains Stupar River failed to satisfy the first, second, third and fourth conditions of the Assessor's Manual for an arm's-length transaction, namely (1) that the property be exposed to the open market for a period of time typical of the turnover time for the type of property involved; (2) that both the buyer and seller are knowledgeable about the real estate market; (3) that the buyer and seller are knowledgeable about the uses, present and potential, of the property; and (4) that there was a willing seller and a willing buyer, with neither party compelled to act.

¶8 The Board made no specific findings on the record but simply voted to adopt the assessment as determined by the assessor, Daniel Mielke. We construe the Board's action as adopting Mielke's reasoning and valuation. We turn to determine whether Stupar River rebutted the presumption that the assessor's valuations were correct. We conclude Stupar River failed to do so.

¶9 WISCONSIN STAT. § 70.32(1) governs the valuation of real property for the purposes of taxation:

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 therefore 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.

Section 70.32(1) requires the assessor to value real property at the “full value” that could ordinarily be obtained at a private sale. *Steenberg*, 167 Wis. 2d at 572. “Full value” means fair market value for purposes of assessing real property: “the amount it will sell for upon arm’s-length negotiation in the open market, between an owner willing but not obliged to sell, and a buyer willing but not obliged to buy.” *Id.* (citation omitted).

¶10 The sale price in an arm’s-length transaction is the best information of the market value of the property. *Id.* at 573. An assessor may not use any other means to assess the value of the property where the sale price of an arm’s-length transaction is available. *Id.*

¶11 WISCONSIN STAT. § 70.32(1) requires the assessor to value property consistent with the Property Assessment Manual for Wisconsin Assessors. *Steenberg*, 167 Wis. 2d at 573. The Property Assessment Manual for Wisconsin Assessors, Vol. I, Part 1, p. 7-3 (Revised 12/87) states the conditions that must be satisfied for a sale to be considered a “market value” or “arm’s-length” transaction:

1. It must have been exposed to the open market for a period of time typical of the turnover time for the type of property involved.
2. It presumes that both buyer and seller are knowledgeable about the real estate market.
3. It presumes buyer and seller are knowledgeable about the uses, present and potential, of the property.
4. It requires a willing buyer and a willing seller, with neither party compelled to act.
5. Payment for the property is cash, or typical of normal financing and payment arrangements prevalent in the market for the type of property involved.

6. The sales price must include all of the rights, privileges and benefits of the real estate. For rental property, this includes both the lessor's and lessee's interests.

Steenberg, 167 Wis. 2d at 573-74. The taxpayer has the burden of proving a sale was an arm's-length transaction. *Id.* at 574. Therefore, Stupar River had the burden of establishing each of the above six criteria before the Board.³ We now examine the record pertaining to the four conditions of an arm's-length transaction the Board claims Stupar River failed to prove.

Exposure To The Open Market For Time Typical For This Type Of Property

¶12 The Board argues Stupar River failed to meet its burden of proof that the property was exposed to the open market for a period of time typical of the turnover time for the type of property involved. The Board points to several undisputed facts in support of its contention. Daniel Mielke, assessor for the Town of Linwood, presented virtually all these facts at the hearing.

¶13 The facts found by the Board that we conclude are germane to this issue are (1) the property was on the open market for seven years; (2) the property was advertised for most of those years, but not in the final two years, in trade journals and by word of mouth; (3) during the entire period that the property was for sale, no "for sale" signs were placed on the property and no real estate broker

³ Stupar River appears to argue it met its burden of proving before the circuit court that the sale at issue was an arm's-length transaction and the Board must now prove the conditions for an arm's-length transaction did not exist. Stupar River misconstrues its burden and our standard of review. As Stupar River observed, "[t]he 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." *Steenberg v. Town of Oakfield*, 167 Wis. 2d 566, 571-72, 482 N.W.2d 326 (1992). Although the circuit court concluded Stupar River had overcome the presumption favoring the tax assessor and the Board, we review the Board's decision, not that of the circuit court. Therefore, we review the record presented to the Board to determine whether Stupar River met its burden of overcoming the presumption that the assessment was correct.

or agent was involved; and (4) at the time of sale the property was not listed with a real estate agency; the property was marketed solely by word of mouth. We also observe the record is barren of any evidence pertaining to whether the seven-year period the property was on the market is typical of the turnover time for this type of property.

¶14 Stupar River had the burden of proving this condition of an arm's-length transaction was met and it failed to do so. We conclude there was sufficient evidence for the Board to find that the property was not openly marketed and that Stupar River failed to prove seven years is a typical period for golf courses/country clubs to be marketed.

Knowledge Of The Real Estate Market

¶15 The Board next argues Stupar River failed to prove that both it and Giddings were knowledgeable about the real estate market. We agree.

¶16 Our review of the record before the Board reveals that Stupar River did not present any evidence about its knowledge of the golf course/country club real estate market. In addition, no evidence was presented about the Giddings' knowledge of this market. In its brief, Stupar River presents only argument, not facts, in support of its conclusion that it, as the buyer, and Giddings, as the seller, were knowledgeable about the real estate market. Stupar River argues that because its primary motive for buying the Wisconsin River Country Club was "buying-business prospects," we are to presume Stupar River was knowledgeable about the golf course/country club real estate market. The record is devoid of any evidence pertaining to Stupar River's motives for purchasing the property; the record is also barren of any evidence about Stupar River's experience in pursuing potential golf course/country club business prospects. The only evidence of record

even approaching this topic is Stupar River's claim that it could present information on sixty other golf courses throughout Wisconsin with lower assessments than the property at issue. The Board apparently concluded this evidence was insufficient to reverse the tax assessment. We see nothing in the record calling for a reversal of the Board's decision.

Knowledge of the Property

¶17 The Board claims Stupar River failed to establish that both it and Giddings were knowledgeable about the uses, both present and potential, of the property. Our examination of the record reveals no evidence or testimony about the uses, present and potential, of the property, other than its obvious use as a golf course.

¶18 Stupar River asserts the only reasonable inference from these facts is that both it and Giddings were knowledgeable about the market value of the golf course; because they had both been in the business of golf, Stupar River asserts, they certainly would both understand the present value or lack thereof of the property. We are not persuaded.

¶19 Any inference the Board could or should have drawn, whether reasonable or not, needed to be based on evidence presented to it. No evidence, either documentary or testimonial, was presented about either Stupar River's or Giddings' knowledge of the uses of the property. Furthermore, the mere fact that Stupar River is now in the golf course business is not relevant to the question of what it knew about this type of property when it was purchased. Stupar River presented no evidence to the Board it had been in the golf course business prior to this sale. Stupar River failed to prove this condition was met to satisfy the test for proving it purchased the property in an arm's-length transaction.

Compulsion to Sell

¶20 The Board argues Stupar River failed to demonstrate Giddings was not under pressure to sell the property at the time of the sale. We agree.

¶21 The unrefuted evidence submitted to the Board supports its conclusion that Giddings and his father were compelled to sell the property. Mielke explained to the Board, based on answers provided by Giddings in the questionnaire given by Mielke, that (1) Giddings was under financial pressure to sell this property; (2) Giddings was under personal pressure to sell this property; (3) Giddings was under pressure to sell the property to pay off his father; (4) Giddings' father's financial interest had a bearing on his need to sell; (5) the sale was to "pay off debt;" (6) when asked how the sale price came about Giddings stated "The buyer offered that amount;" and (7) when asked the reason he felt compelled to sell, Giddings stated "To pay back my father." The record shows Giddings and his father were the sole stockholders of the Wisconsin River Country Club. Giddings' father wanted to recover the money he invested in the property; it appears Giddings' father loaned money to the corporation and wanted to recover this money.

¶22 William Stupar testified Giddings' father had invested in the property fifteen years ago and had the property for sale for seven years. Based only on this evidence, Stupar River argues Giddings could have waited longer to sell the property and thus there was no compulsion to sell. Stupar River asserts "merely because the parties are desirous of doing business with each other, does not indicate any compulsion to buy or sell the property." Stupar River also points out there is no evidence of foreclosure or financial pressure experienced by the corporation.

¶23 Stupar River’s arguments notwithstanding, it has not presented any proof to rebut Giddings’ assertions that he, as one of two principal stockholders in the corporation, was under pressure to sell the property to satisfy the debt owed his father. Neither Giddings nor his father testified before the Board about their motivation for selling the golf course. Giddings submitted a written questionnaire to the Board indicating he was under both personal and financial pressure to sell the property to pay off a debt to his father. These statements went essentially unrefuted by Stupar River. Stupar River once again relies heavily on the circuit court’s conclusion that the “corporation” was not under pressure to sell the property, which is not relevant in this certiorari review. The record before the Board and the Board’s decision are what we must review and the record shows Stupar River did not rebut in any way the Giddingses’ claim of pressure to sell.

CONCLUSION

¶24 In sum, it was Stupar River’s obligation to prove to the Board the property was sold in an arm’s-length transaction. It failed to meet that burden. Thus, we conclude the presumption that the Board’s assessment of Stupar River’s property was correct has not been overcome and the record contains sufficient credible evidence to support the tax assessment. We reverse the order of the circuit court and direct the circuit court to reinstate the Board’s tax valuation.

By the Court.—Order reversed and cause remanded with directions.

Not recommended for publication in the official reports.

