

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 20, 2002

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. 01-3019

Cir. Ct. No. 01-CV-41

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**STATE OF WISCONSIN EX REL. QUALITY INVESTMENTS,
INC.,**

PETITIONER-APPELLANT,

V.

BOARD OF REVIEW OF THE CITY OF SUPERIOR,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Douglas County:
MICHAEL T. LUCCI, Judge. *Affirmed.*

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

¶1 PER CURIAM. Quality Investments, Inc., appeals a judgment denying its motion to vacate a decision by the Board of Review of the City of Superior that determined the property tax assessment on Quality's property. Quality argues that: (1) there was insufficient evidence to support either the

board's decision or the city assessor's opinion of the assessed value; (2) the city assessor used the wrong cost approach in making his assessment; and (3) the circuit court erroneously considered evidence outside the record in denying Quality's motion to vacate. We reject these arguments and affirm the judgment.

BACKGROUND

¶2 Quality owns the Mariner Mall, a shopping center in the City of Superior. The mall consists of five parcels of real property, one of which contains the mall building and parking lots. In 2000, all property in the city underwent reassessment pursuant to state law. *See* WIS. STAT. § 70.05.¹ Roger Koski, the city's assessor, determined that the full market value of the mall was \$5,201,300. Quality challenged Koski's assessment before the board. After a hearing on the matter, the board reduced the assessed value by \$700,000—resulting in an assessment of \$4,501,300. Quality then filed a petition for writ of certiorari, seeking circuit court review of the board's decision. The circuit court ultimately upheld the board's determination reducing the mall's original assessed value. This appeal followed.

ANALYSIS

I. STANDARD OF REVIEW

¶3 The scope of our review on certiorari is strictly limited to considering: (1) whether the board kept within its jurisdiction; (2) whether it acted according to law; (3) whether its action was arbitrary, oppressive or unreasonable

¹ All references to the Wisconsin Statutes are to the 1999-2000 version.

and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably sustain the assessment. *Darcel, Inc. v. City of Manitowoc Bd. of Review*, 137 Wis. 2d 623, 626, 405 N.W.2d 344 (1987). If the board of review does not act arbitrarily or dishonestly and the evidence presented before it is sufficient to furnish any substantial basis for the board's valuation, its decision will not be disturbed. *Id.* at 625-26. We review the board's decision independently of the circuit court's conclusions. *State ex rel. Brighton Square Co. v. City of Madison*, 178 Wis. 2d 577, 584, 504 N.W.2d 436 (Ct. App. 1993).²

II. EVIDENCE TO SUPPORT THE BOARD'S DECISION

¶4 Quality argues that the board's decision is arbitrary and capricious because the record does not support the board's decision. Specifically, Quality claims that the board disregarded evidence of the mall's 1995 sale to Quality. Quality further contends that there is no evidence regarding how the board calculated the \$700,000 reduction. We are not persuaded.

² Because we review the board's decision independently of the circuit court's conclusion, *see State ex rel. Brighton Square Co. v. City of Madison*, 178 Wis. 2d 577, 584, 504 N.W.2d 436 (Ct. App. 1993), we need not address Quality's argument that the circuit court erroneously considered evidence outside the record. Likewise, because we are reviewing only the board's decision, we refrain from addressing Quality's various challenges to the city assessor's valuation of the property.

¶5 Valuation of real estate for taxation purposes is governed by WIS. STAT. § 70.32, which requires valuation of real estate at its sale or market value.³ A property's full value is defined as its fair market value, or the amount the property will sell for in an arm's-length transaction on the open market between a willing seller not obliged to sell the property and a willing buyer not obliged to purchase it. *Waste Mgmt. of Wisconsin, Inc. v. Kenosha County Bd. of Review*, 184 Wis. 2d 541, 556, 516 N.W.2d 695 (1994). A recent arm's-length sale of the subject property or sales of reasonably comparable land represent the best information with which to determine fair market value. *Id.*

¶6 In the absence of such sales, an assessor must determine market value from the best information the assessor can practicably obtain, considering all elements which collectively have a bearing on the property's value. *Id.* at 557. Elements include, but are not limited to, "cost, depreciation, replacement value, income, industrial conditions, location and occupancy, sales of like property, book value, amount of insurance carried, value asserted in a prospectus, and appraisals procured by the owner." *Id.*

³ WISCONSIN STAT. § 70.32 provides in relevant part:

Real property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual provided under section 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.

A. Recent Arm's-Length Sale of Subject Property

¶7 Quality proposed an assessed value of \$3,300,000. It argued that its 1995 purchase of the mall, as the most recent sale of the subject property, should have been the main basis for the board's valuation of the property. However, because the sale was more than three years old, the board was not required to readily accept it as a "recent" arm's-length sale. *See Lloyd v. City of Stoughton Bd. of Review*, 179 Wis. 2d 33, 505 N.W.2d 465 (Ct. App. 1993). The board nevertheless considered testimony regarding the mall's 1995 purchase and assessment.

¶8 The board also heard testimony regarding the increased occupancy rate and substantial improvements that have been made to the property since 1995, including a theatre complex expansion and lease of one of the parcels for use as a medical facility. Because the mall's occupancy rate and physical plant had substantially improved since 1995, the board did not err by declining to base the valuation on the 1995 sale.

B. Recent Arm's-Length Sale of Reasonably Comparable Property

¶9 It is undisputed that there is no comparable property in Superior. The board heard evidence of sales of malls sold in other cities, though there were only a limited number of sales to consider. Ultimately, the parties agreed that there were no other truly comparable sales. In fact, Quality testified that "[t]here is no basis, really, to use other properties for any good comparable [sales]." Quality offered some "out of town" possibilities but conceded that there were "no

real good apples for apples.” Thus the board could not be required to base its decision solely on these sales.⁴

C. Elements that Collectively Bear on the Property’s Value

¶10 Because there were no recent sales, the board properly considered testimony regarding the mall’s replacement cost, its income and expense, the vacancy rate, the competition, the lease portfolio, the insurance value and the square footage rentals. *See Waste Mgmt.*, 184 Wis. 2d at 557. The city assessor, valuing the land based upon a comparable sale and improvements to the physical plant based upon the cost approach, urged the board to adopt his valuation of \$5,201,300 for the mall.⁵

¶11 The board heard Quality’s and the city assessor’s conflicting testimony regarding their respective valuations. During its deliberations, the board considered Quality’s testimony regarding the mall’s reduction in square footage rental and its continuing vacancy problems to determine that the property was entitled to a reduction in the city assessor’s proposed assessment. The board also based the reduction on information regarding the sales of other malls and “how the prices of other malls since the early [1980’s] ... have gone down.” *See Dempze Cranberry Co., Inc. v. Board of Review*, 143 Wis. 2d 879, 887 n.5, 422 N.W.2d

⁴ With respect to valuation of the land, however, both Quality and the assessor offered evidence of recent comparable sales of real property.

⁵ With respect to replacement cost, the city assessor testified that it would cost \$18,228,860 to replace the mall. Utilizing that replacement cost, the assessor applied discounts for unfavorable market conditions and actual depreciation to assess the mall’s value. Quality admitted that based on insurance estimates, “[t]he actual replacement cost, or brick and mortar, might be at those types of levels.” However, Quality argued that the mall “isn’t worth anywhere near that type of level.”

902 (Ct. App. 1988). The board weighs the credibility of witnesses. *Id.* Therefore, there is substantial evidence to support the board's conclusion that the value of the property lay between the assessor's valuation and Quality's proposed valuation.

¶12 Based on the evidence presented at the hearing, the board in its discretion determined the value of the property was \$700,000 less than the assessor's proposed valuation and \$1,201,300 more than Quality's proposed valuation. Moreover, the fact that the board reduced the assessment by \$700,000 indicates that the board did consider Quality's testimony and proposed valuation. *See State ex. rel. Park Plaza Shop. Ctr. v. Bd. of Review*, 61 Wis. 2d 469, 476, 213 N.W.2d 27 (1973). Because the board did not act arbitrarily but, rather, based its decision on a reasonable view of the evidence, we affirm the judgment.

By the Court.—Judgment affirmed.

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

