

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

April 3, 1996

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.

NOTICE

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

No. 95-1993

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**CHARLES and CAROLYN MILLS,
EUGENE and MARY MILLS, and
CONSOLIDATED MILLS FARMS, INC.,**

Plaintiffs-Appellants,

v.

**BOARD OF REVIEW OF THE
TOWN OF DOVER,**

Defendant-Respondent.

APPEAL from an order of the circuit court for Racine County:
DENNIS J. FLYNN, Judge. *Affirmed.*

Before Anderson, P.J., Nettesheim and Snyder, JJ.

SNYDER, J. This appeal addresses the property tax assessment of real estate owned by Charles and Carolyn Mills, their son Eugene and his wife Mary Mills, and Consolidated Mills Farms, Inc.¹ As a group, the

¹ The family members are the shareholders of Consolidated Mills Farms, Inc.

parties own approximately 1273 acres which are primarily contiguous and operated as a single farm operation. The dispute concerns the valuation of the agricultural land assessment of approximately \$1,321,800, which the Millses maintain should be valued at \$967,025. The Millses contend that the Board of Review of the Town of Dover (the Board) erred when it sustained the Town of Dover's assessment because the assessment was not based on a proper application of the statutory requirements. Because we conclude that the Millses failed to meet their burden of proof to contest the assessment, we affirm.

The Millses brought an action under § 70.47(13), STATS., to review the action of the Board when it sustained the 1994 assessment of the Millses' farm. The circuit court affirmed the action of the Board and dismissed the complaint. This appeal followed. Other facts pertinent to the appeal will be included in the body of the opinion.

The scope of this court's review is independent of the circuit court and does not rely on the circuit court's conclusions. See *Steenberg v. Town of Oakfield*, 167 Wis.2d 566, 571, 482 N.W.2d 326, 327 (1992). In reviewing the findings of a board of review, we must determine whether the evidence was such that the board might reasonably arrive at its determination. See *Metropolitan Holding Co. v. Board of Review*, 173 Wis.2d 626, 630, 495 N.W.2d 314, 316 (1993). The court is not to substitute its opinion of value for that of the board. *Steenberg*, 167 Wis.2d at 572, 482 N.W.2d at 328. The valuation must be

(..continued)

According to the trial court, ownership of the property is divided as follows: Charles and Carolyn own 668 acres; Eugene and Mary own 472 acres; and Consolidated Mills Farms has ownership of 136 acres.

upheld if there is credible evidence before the board which in any reasonable view supports the assessor's valuation. *Id.*

In making a determination as to whether a valuation is based on the proper statutory guidelines, there are several principles to which this court adheres. There is a presumption that the assessor's valuation is correct. *Id.* at 571-72, 482 N.W.2d at 328. The burden of producing evidence to overcome this presumption is on the individual contesting the assessment. *Id.*

Wisconsin has codified the procedure for determining the fair market value of real estate for assessment purposes. Section 70.32(1), STATS., provides in relevant part:

Real estate, how valued. (1) Real property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual ... from actual view or from the best information that the assessor can practicably obtain

While the “best information” is considered to be a recent arm's-length sale of the subject property, lacking this, an assessor may use a recent sale of reasonably comparable property. See *State ex rel. Markarian v. City of Cudahy*, 45 Wis.2d 683, 686, 173 N.W.2d 627, 629 (1970).

The Millses argue that the Board erred in sustaining the assessment because it was wrongly based on sales of properties which were not comparable. They further allege that even if comparable, the properties' sales prices had not been adjusted for proximity, as required by § 70.57(3), STATS.²

² The proximity adjustment recognizes that a farmer will pay a premium to acquire acreage in close proximity to existing farm property.

The Millses allege that it was error to sustain an assessment that kept all farms assessed on the same per-unit basis. The Millses assert that because of the foregoing, their assessment was in excess of the fair market value. Finally, they argue that the Board erred in its role as a quasi-judicial body because it relied on the validity of the prior Department of Revenue (DOR) assessment, rather than on the testimony and evidence presented at the hearing.

Because the first four claims of error are predicated on the Millses' belief that the acreage values established by the DOR do not result in a valid assessment when applied to such a large farm, we address that underlying issue first. This is in keeping with the general rule that cases should be decided on the narrowest possible ground. See *State v. Blalock*, 150 Wis.2d 688, 703, 442 N.W.2d 514, 520 (Ct. App. 1989).

In 1993, DOR employees completed a total reevaluation of Town of Dover properties. The town assessor, Carl Degen, testified at the Board hearing that the 1993 DOR assessment had determined that Grade 1 tillable land was taxed at \$1300 per acre, Grade 2 tillable land at \$1150 per acre, and Grade 3 tillable land at \$1000 per acre.

Degen then testified that these tax rates were adjusted based on area sales of farmland since 1989. Nine sales, each involving more than 40 acres, were evaluated.³ Degen's analysis led him to make adjustments in his comparables to reflect soil type, use and time of sale. Degen's evaluation placed

³ It is undisputed that the comparable farms considered by the assessor ranged in size from 45 acres to 181 acres.

the area's average selling price of Grade 1 tillable land at \$1201 per acre, Grade 2 tillable land at \$1247 per acre and Grade 3 tillable land at \$960 per acre. These unit prices were then used in arriving at the 1993 assessment of the subject property.⁴ Degen testified that there were no substantial changes in 1994, so the rates from 1993 were reused.⁵

In contrast to the information presented by Degen, Charles testified as a lay witness and gave an opinion as to the value of his property. *See* § 907.01, STATS. He submitted that an income valuation approach more fairly reflects the fair market value of the farm and should have been utilized. Both Charles and his attorney, Amy Seibel, testified regarding information solicited from Jane Arthur, a specialist in farmland brokerage.⁶ Charles also testified extensively as to his belief that the DOR had failed to abide by statutory mandates when it reassessed farm property in the Town of Dover in 1993.

However, the Board was not given an opportunity to question a DOR employee regarding the basis for the 1993 assessment. The only information the Board had regarding the validity of the earlier assessment was the 1993 circuit court decision affirming it.

⁴ The 1993 assessment had been the subject of an earlier challenge. The circuit court had affirmed the Board's finding that the 1993 assessment was supported by credible evidence.

⁵ At that time, the Millses had argued that the fair market value of their property was \$1,278,700. In contesting the 1994 assessment, in spite of agreeing that farmland had appreciated 1% to 3%, the Millses argue for a full assessed value of \$967,025.

⁶ Jane Arthur's opinions were solicited on the basis of information only; she never viewed the Millses' farm.

Section 70.47(8), STATS., provides that “[t]he board shall hear upon oath all persons who appear before it in relation to the assessment.” Based upon this requirement, we conclude that extensive testimony presented to the Board by Charles and his attorney was properly discounted. Because the Millses' challenge to this assessment was premised on their belief that the 1993 assessment by the DOR was faulty, live testimony of a DOR assessor as to the basis for the 1993 valuation would have to be presented.

Furthermore, in order to submit for consideration the income valuation method as a more realistic basis for a market value analysis, an expert on farm valuation would have to testify in person and be subject to questions by the Board. Because she did not appear in person, the testimony regarding the opinion of Arthur as to valuation was hearsay and could not be considered.

Having failed to produce evidence to rebut the presumption of correctness of the assessment, the Millses' challenge was properly denied. Charles' presentation of arguments attacking the validity of the assessment, unanswered by testimony by a DOR assessor,⁷ and claims credited to but unsubstantiated by his expert witness were properly disregarded by the Board

⁷ The Millses concede this lack of information when they note, “[R]espondent's brief ... hypothesizes the procedure by which the Department of Revenue employees set the agricultural land assessments in 1993. Notably, there are no citations to the record in this discourse. The reason for this marked absence of citations is that the record nowhere discloses this hypothetical process.” That defines precisely the Millses' failure to meet their burden of proof.

in upholding the assessment. The Board found Charles' remaining evidence unpersuasive in rebutting the information presented by Degen. The Board's decision to affirm the assessment is supported by credible evidence.

We conclude that the Millses failed to meet the threshold burden of proof as to the invalidity of the assessment of their property. Therefore, the individual issues raised with regard to the procedures employed by the DOR in the earlier assessment will not be addressed. If a decision on one point disposes of an appeal, this court will not decide other issues raised. *Sweet v. Berge*, 113 Wis.2d 61, 67, 334 N.W.2d 559, 562 (Ct. App. 1983).

The final claim of error is the Millses' contention that the Board erred when it relied on the validity of the prior DOR assessment, rather than on the testimony and evidence presented at the hearing. The Millses claim that “[t]he deliberations indicate that respondent [the Board] felt bound to accept the Department of Revenue employee's appraisal approach, even though the members believed it was flawed.”

Based on our conclusion that in order to meet their burden of proof the Millses required the presence of a DOR assessor to respond with live testimony as to the basis of the 1993 valuation, we conclude that the Board had no choice but to rely on the presumption of correctness of the earlier assessment by the DOR. The circuit court's prior review of the 1993 assessment process had confirmed that presumption.

By the Court. – Order affirmed.

Not recommended for publication in the official reports.