COURT OF APPEALS
DECISION
DATED AND RELEASED

August 7, 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. 95-2474

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

STATE ex rel.
RAYMOND HENRICH,

Petitioner,

STATE ex rel.
GARY DAVID FRIEDMAN,

Petitioner-Appellant,

v.

TOWN OF LYONS,

Respondent-Respondent.

APPEAL from a judgment of the circuit court for Walworth County: JAMES L. CARLSON, Judge. *Affirmed*.

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

PER CURIAM. Gary David Friedman appeals from a judgment affirming the decision of the Town of Lyons Board of Review on the assessment

of Friedman's residence. We conclude that the presumption that the assessment is correct was not rebutted. We affirm the judgment.

In 1991, Friedman purchased a residence in the Town of Lyons, Walworth County, for $288,000. The home is located in Partridge Woods, a unique subdivision of executive-type homes on larger than normal lots. It is a four-bedroom, four-bathroom home of 3317 square feet on 3.87 acres. The 1993 assessment was $231,100. The 1994 assessment was $328,696.[1]

The standard of review applied to certiorari appeal from boards of review is as follows:

> Judicial review of the action of boards of review on *certiorari* extends only to jurisdictional errors. 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 valuation found by the board, its decision will not be disturbed.

Darcel, Inc. v. City of Manitowoc Bd. of Review, 137 Wis.2d 623, 625-26, 405 N.W.2d 344, 345 (1987) (quoted source omitted). This court will consider: "(1) [w]hether 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." ***Id.*** at 626, 405 N.W.2d at 345-46 (quoted source omitted). We review the board's decision independently of the circuit court's conclusion. ***State ex rel. Brighton Square Co. v. City of Madison***, 178 Wis.2d 577, 584, 504 N.W.2d 436, 439 (Ct. App. 1993).

[1] Throughout the record the assessed value was recorded as $323,800. An amendment to the appellant's brief explains how the actual assessment was $328,696. The Town of Lyons does not dispute this figure.

Friedman argues that the assessor's methodology was wrong because it mixed the income, cost and marketing approaches to valuation. In making a determination as to whether a valuation is based on the proper statutory guidelines, there is a presumption that the assessor's valuation is correct. ***Steenberg v. Town of Oakfield,*** 167 Wis.2d 566, 571-72, 482 N.W.2d 326, 328 (1992). The burden of producing evidence to overcome this presumption is on the individual contesting the assessment. ***Id.***

Before the board, Friedman presented what he believed were two comparable sales in the subdivision and a 1992 appraisal of his residence valuing the property at $265,000. Friedman argues here that his 1991 purchase price was the best evidence of the fair market value of the residence and that the board ignored the arm's-length sale.[2] He contends that once presented with this evidence, the board was not allowed to use any other method of valuation. *See* ***Rosen v. City of Milwaukee***, 72 Wis.2d 653, 662-63, 242 N.W.2d 681, 685 (1976) (in the absence of sale of the property the best information is provided by sales of reasonably comparable property); ***State ex rel. Geipel v. City of Milwaukee***, 68 Wis.2d 726, 737, 229 N.W.2d 585, 591 (1975) (error for assessor to use other means to assess the value of property in the presence of an arm's-length sale).

The assessor is charged with determining whether the sale price is the best information of market value. *See* ***Flood v. Village of Lomira***, 153 Wis.2d 428, 437, 451 N.W.2d 422, 426 (1990). The rule which Friedman relies on applies only to a "recent" sale of the property. *See* ***id.*** at 441, 451 N.W.2d at 428. The assessor indicated an awareness of the 1991 purchase price. Friedman presented evidence to the board that in 1993 there was generally a thirteen percent increase in real estate values in Walworth County. Also, there had been landscaping improvements and the addition of a gazebo since Friedman acquired the residence. It was reasonable to conclude that the 1991 purchase and the 1992 appraisal were too remote in time for purposes of assessing the property in 1994.

[2] We question whether Friedman raised this claim before the board. Neither Friedman's presentation before the board nor his written objection suggested that the board should rely on the 1991 purchase price.

The comparables Friedman presented were sales of homes in the same subdivision that occurred in March and September 1993, for $286,000 and $285,000 respectively. The properties were of smaller square footage and smaller acreage.[3] Friedman's residence was noted to be much larger than those sold in 1993. It is implicit that the assessor and the board did not find these properties to be comparable.

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). It was reasonable for the board to conclude that the 1991 sale and allegedly comparable sales did not provide the best information as to the market value of Friedman's residence. Thus, it was permissible to use other assessment methods. We further conclude that Friedman failed to overcome the presumption that the valuation methods were correctly utilized. The evidence supporting the assessed value was adequate.

Friedman contends that the board failed to apply uniform standards within the Partridge Woods subdivision. He relies on photographs and assessed values of other homes in the subdivision. Friedman did not establish that the properties were comparable.[4]

Friedman next argues that the board created an arbitrary and separate system for assessing acreage in the subdivision. The valuation formula used by the board to assess each acre of a residential lot in Partridge Woods was as follows: $28,000, first acre; $14,000, second acre; $7,000, third acre; and $3,500 for each additional acre after three. There is nothing inherently wrong with applying a special formula to a unique subdivision. The assessor indicated that the formula was derived from sales of properties in the neighborhood. Again, Friedman failed to meet his burden to rebut the presumption of correctness

[3] The allegedly comparable sales were of homes of 3000 square feet on 2.6 acres and 2752 square feet on 3.31 acres. Friedman's residence is 3317 square feet on 3.87 acres.

[4] Friedman did not raise before the board the alleged discrepancy in assessments between homes in the subdivision. The exhibits he relies on here were offered to the board by another homeowner challenging his assessment. Thus, there is no question that Friedman made no attempt to establish that lower assessed properties in the subdivision were comparable.

afforded to the assessor's determination that the formula reflects fair market value.

Finally, we address Friedman's contention that the board infringed upon his right to cross-examine the assessor. Friedman's claim is specious and stated with unfounded indignation. The transcript of the hearing before the board reflects that the assessor was present and engaged in a colloquy with Friedman's representative. The board did not do anything to restrict the questions posed by Friedman's representative. Only one time was it necessary to refocus the discussion. If Friedman was unable to get an adequate explanation, it was not at the fault of the board.

By the Court.—Judgment affirmed.

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