

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

April 3, 1996

NOTICE

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.

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

No. 95-1313

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

ROBERTA YOUSO,

Petitioner-Appellant,

v.

**CITY OF NEENAH BOARD OF
REVIEW, HERBERT KRUSE,
ANNE PAULUS, DANIEL SCHMIDT,
LESTER HERZFELDT, BILL
DE GENEFFE and CLERK
JEAN MOXON,**

Respondents-Respondents.

APPEAL from an order of the circuit court for Winnebago County:
WILLIAM E. CRANE, Judge. *Affirmed.*

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

SNYDER, J. Roberta Youso appeals from an order affirming the City of Neenah's tax assessment of her real estate. On appeal,

Youso claims that the City of Neenah Board of Review (the Board) exceeded its jurisdiction, failed to act according to law and acted arbitrarily in confirming the assessment of her real estate. She specifically complains that the previous affirmance of the assessment did not adequately address the methodology used by the assessor. We conclude that the assessor's methodology addressed the statutory mandates and that the Board acted properly in confirming the assessment. Consequently, we affirm.

Youso owns a home in the City of Neenah that was built in 1891.¹ In 1993, the City reassessed her property for tax purposes and placed the value of the land and improvements at \$409,900. Youso objected to this assessment and requested a hearing before the Board. At the hearing, she argued that the fair market value of her property did not exceed \$375,000 because many expensive repairs were needed. She also claimed that the assessment was not performed according to law. The Board affirmed the assessment.

Youso then commenced an action before the circuit court. Upon review, the court found that there was credible evidence to support the assessment and affirmed it. Youso now appeals that order.

The scope of this court's review is identical to that of the circuit court; our review is independent and does not rely on the circuit court's conclusions. See *Steenburg v. Town of Oakfield*, 167 Wis.2d 566, 571, 482

¹ The assessor described the home as a "mansion built in 1891 with full basement, nine bedrooms, 27 rooms in the home, six full bathrooms, and three ... half baths That's six stacks with 9 openings for fireplaces. I show ... 12,200 square feet in the home."

N.W.2d 326, 327 (1992). This court reviews the findings of the board of review, and we must determine, inter alia, whether the evidence was such that the board might reasonably make the determination in question. See *Metropolitan Holding Co. v. Board of Review*, 173 Wis.2d 626, 630, 495 N.W.2d 314, 316 (1993).

In determining whether a valuation has been made upon the statutory basis, a court adheres to a number of principles. *Steenburg*, 167 Wis.2d at 571, 482 N.W.2d at 328. 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 person contesting the assessment. *Id.*

If there is conflicting testimony concerning the value of the property, the court will not substitute its opinion for that of the board. *Id.* at 572, 482 N.W.2d at 328. The court is not to make an assessment of the property or order that an assessment be made at any fixed amount. *Rosen v. City of Milwaukee*, 72 Wis.2d 653, 661, 242 N.W.2d 681, 684 (1976). The valuation must be upheld if there is credible evidence before the board which in any reasonable view supports the assessor's valuation. *Steenburg*, 167 Wis.2d at 572, 482 N.W.2d at 328.

Wisconsin has codified the procedure for determining the fair market value of real estate for assessment purposes. Section 70.32(1), STATS., states 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. ... [T]he assessor shall consider recent arm's-length sales of the property to be assessed ...; recent arm's-length sales of reasonably comparable property; and all factors that ... affect the value of the property to be assessed.

The “best information” is considered to be a recent arm's-length sale of the subject property. See *State ex rel. Markarian v. City of Cudahy*, 45 Wis.2d 683, 686, 173 N.W.2d 627, 629 (1970). If there has been no such sale, an assessor may use a recent sale of a reasonably comparable property. *Id.* In the absence of these types of sales, the assessor may consider all of the factors which collectively have a bearing on the value of the property in arriving at a fair market value. *Id.*

Youso contends that the assessor, John A. Ophoven, utilized an incorrect valuation method to determine her assessment. She argues that the cost approach method used by Ophoven was contrary to the requirements of the Wisconsin Property Assessment Manual and contends that the comparable sales method should have been used. She maintains that since there had not been a recent sale of her property, Ophoven was *required* to use the comparable sales approach. She contends that there were recent sales of comparable properties available to use and Ophoven chose not to “because of his ... subjective belief that they were not ‘very good.’”

The assessment manual describes reasonably comparable sales as “competitive properties with characteristics similar to the subject which have sold recently on the local market.” 1 WISCONSIN DEP'T OF REVENUE, PROPERTY

ASSESSMENT MANUAL FOR WIS. ASSESSORS 7-3. At the hearing before the Board, Ophoven testified that he looked for comparable properties that had been sold, but determined that recently sold properties were not appropriate to use. Ophoven then turned to the remaining method of property valuation outlined in the manual – the comprehensive factor approach.²

Youso argues that there are at least three homes which could be considered comparable and should have been utilized by Ophoven in arriving at the valuation of her home. The one Youso contends is the most comparable contains 4976 square feet, which is less than half the square footage of the Youso property.³

Youso's property had been assessed by a bank appraiser several years earlier. That appraiser had considered two other homes as comparables. They were: (1) a home measuring 4807 square feet and valued at \$426,000, and (2) a home measuring 8689 square feet and valued at \$373,000. The bank appraiser had said the cost approach was given only supportive consideration

² Although Youso argues that the “cost approach” should not have been utilized, and the City argues that utilization of this approach was within the statutory mandates, our review of the record leads us to conclude that what was actually used was the “comprehensive factor analysis” or the “all factor analysis,” which is mandated by 1 WISCONSIN DEP’T OF REVENUE, PROPERTY ASSESSMENT MANUAL FOR WIS. ASSESSORS 7-3. The assessor used the three terms interchangeably in testimony before the Board.

³ There is some disagreement over the actual square footage of the Youso home. Youso maintains that her measurements place the size at 9720 square feet. An earlier appraisal of the home listed it at 10,100 square feet, and the assessor recorded the number at 13,310 square feet.

because of the home's massive size, age and the difficulty in measuring depreciation.⁴

Based on the significant differences in size and assessed valuation among the homes Youso contends are “comparables,” we conclude that there was credible evidence to support Ophoven's determination that none of the offered properties were comparable for assessment purposes. The Youso home is a unique property; the fact that there are other equally unique properties in the area does not mean that they are necessarily comparable. The Board acted within its jurisdiction when it found that there was credible evidence to support Ophoven's determination that the other properties were not comparable and should not be used as the sole means of determining the value of Youso's property.

After discounting the use of the comparable sales approach to valuation, Ophoven applied the comprehensive factor analysis. This approach utilizes all of the information available, including “like sales, a sale of the subject [property] which may not be recent, the cost and income approaches to value ... outside appraisals of the subject [property], and the assessments of other comparable properties.” *Id.* In addition to those factors outlined above, this approach requires the assessor to consider depreciation, replacement value and any appraisals procured by the owner. See *Rosen*, 72 Wis.2d at 663, 242 N.W.2d at 685.

⁴ The bank appraiser arrived at a market value of \$453,800 using the cost approach. It is unclear whether any other factors were taken into consideration in arriving at that figure.

In applying the comprehensive factor analysis, Ophoven first determined the value of Youso's land. He testified that because there were no vacant land sales in the neighborhood, the abstraction method was the only method available to do this. This method arrives at an estimation of the value of vacant land through the use of sales of improved property.⁵ Using this method, Ophoven arrived at a land value of \$126,100.

Youso contends that the abstraction method contains too many limitations to be used as the sole means of deriving the land's value. *See* 1 WIS. DEP'T OF REVENUE, *supra*, at 8-4 to 8-5. The manual states that "this method is best utilized on newer properties with little or no depreciation." *Id.* at 7-12. Youso argues that because of the shortcomings of this method of valuation and because of Ophoven's refusal to acknowledge them, the resulting assessment of her property was invalid.

Ophoven agreed that there were limitations to the use of the abstraction method, but stated that in this case, "That's the only method we have. There are no vacant [land] sales of property so you have to use the best method available, which is the abstraction method." Our review of the record leads us to conclude that the Board was presented with credible evidence to sustain Ophoven's decision to employ the abstraction method to determine the value of Youso's land.

⁵ From the sale price of the improved parcel, the assessor subtracts the estimated market value of the improvements to arrive at a market value for the land. *See* 1 WIS. DEP'T OF REVENUE, *supra* note 2, at 7-12.

In a similar argument, Youso contends that the cost approach was erroneously utilized in valuing the improvements to her property. She cites the difficulty of estimating new replacement costs and the accrued depreciation of older improvements as among the limitations of this method, pointing out that most of the improvements on her land are over 100 years old.

In applying the cost approach, Ophoven determined the reproduction cost of Youso's home, less depreciation. This method is approved by the manual and Ophoven submits that it was appropriate. Using this method, the value of the improvements was placed at \$286,800.

Although the assessment manual confirms that the cost approach is best utilized on newer properties because of its limitations, it does not prohibit the method from ever being used as a means of deriving value. The manual merely states, "Depreciation is a critical factor Examples where the cost approach may not be entirely reliable are properties with very old or poorly maintained improvements" *Id.* at 8-14. In this case, given the lack of comparable home sales, Ophoven utilized the cost approach in order to determine an initial starting point to value the improvements to the property. Factors such as depreciation were then included and resulted in a downward assessment.⁶ This figure was then further adjusted based on an open-book meeting with Gary Youso, Roberta's husband.

⁶ Actual reproduction costs were determined to be \$571,850. This was then adjusted for depreciation, and Ophoven arrived at an improvement value of \$286,800.

We conclude that Ophoven's methods demonstrate sufficient compliance with the manual. He considered the preferred methods of property valuation before concluding that the abstraction and cost approaches were the only appropriate options. As a result, his decision to use this methodology was supported by credible evidence that it was applicable and not inherently unreliable.

Finally, Youso argues that Ophoven incorrectly assessed her home by not adjusting the valuation to account for numerous adverse factors and conditions that she contends affect the value of the real estate.⁷ However, the record shows that an open-book meeting was held after Ophoven made his initial valuation. While at the meeting, Gary had the opportunity to point out any adverse factors that were overlooked. Ophoven testified before the Board, "After Mr. Youso and I talked at open book, I made some adjustments to our cost approach"

We conclude that the valuation of the property was made on the statutory bases and the Board correctly exercised its jurisdiction in confirming the assessment.

By the Court. – Order affirmed.

Not recommended for publication in the official reports.

⁷ Gary testified to the Board that the house is infested by carpenter ants, requires \$25,000 to \$30,000 in repairs to the gutters, and has six chimneys that need to be repointed and retucked. He also stated that there is an unused underground oil tank that may have to be removed in the future.