

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

July 2, 1997

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. 96-2437

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

ELTON K. FEFFER AND ESPERANZA FEFFER,

PLAINTIFFS-APPELLANTS,

V.

TOWN OF DELAVAN,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Walworth County:
MICHAEL S. GIBBS, Judge. *Affirmed.*

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

PER CURIAM. Elton and Esperanza Feffer have appealed from an order which dismissed their challenge to the Town of Delavan's 1994 tax assessment of real property purchased by them on July 8, 1993. The property consisted of 30 acres surrounding a game farm owned and operated by the Feffers. The Feffers purchased the property for \$165,000. The Town subsequently

assessed the property's value at \$155,000. We affirm the trial court's order dismissing the Feffers' complaint and upholding the assessment.

The method of valuing real estate for tax assessment purposes is governed by § 70.32(1), STATS. *See State ex rel. N/S Assocs. v. Board of Review*, 164 Wis.2d 31, 42, 473 N.W.2d 554, 557-58 (Ct. App. 1991). An assessment must be based on fair market value, which is the amount the property would 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. *See id.* at 42-43, 473 N.W.2d at 558. Assessors are required to use the Property Assessment Manual for Wisconsin Assessors, which outlines six conditions which are necessary for a sale to be a market value transaction. *See id.* Included within these conditions are whether the property has been exposed to the open market for a period of time typical of the turnover time for the type of property involved, and whether the buyer and seller were willing, with neither party compelled to act. *See id.* at 43, 473 N.W.2d at 558. If these six conditions attend a recent sale of the property, that sale price is the best information of the value of the property and must be used for assessment purposes. *See id.*

The Feffers' first argument on appeal is that the purchase price of the property should not have been used as the best indicator of value because the property was not exposed to the open market, causing the sale to be non-arm's-length. When a taxpayer contends that a recent sale was not arm's-length and thus does not represent the property's value, he or she has the burden of proving that any circumstance which the taxpayer claims prevented the sale from being arm's-length actually affected the price. *See id.* at 44, 473 N.W.2d at 558.

The requirement that a property be exposed to the open market is to insure that the property is sold for as high a price as possible so that the taxing authority is not short-changed by a low price resulting from an owner's rush to sell. *See id.* at 47, 473 N.W.2d at 560. In *N/S Associates*, this court rejected a taxpayer's argument that an assessment should be lowered because the property was not sufficiently exposed to the market prior to sale, holding that it was illogical for the taxpayer to claim that it would have paid less for the property if the seller had made stronger attempts to market the property to someone else. *See id.* at 47, 473 N.W.2d at 559-60. Similarly, no basis exists to conclude that the Feffers would have paid a lower price for the property if the seller had placed it on the open market before selling to them. They have thus failed to establish that the sale price was affected by the lack of market exposure.¹

The Feffers also argue that the transaction was not arm's-length because the seller was reluctant to sell and they were compelled to buy to protect their game farm from problems that might have arisen if the land were sold to someone else and developed. They contend that a "willing" seller and buyer therefore did not exist.² However, the Feffers are confusing desire with compulsion. The mere fact that the Feffers had a strong desire to buy the property

¹ The Feffers argue that the holding of *State ex rel. N/S Associates v. Board of Review*, 164 Wis.2d 31, 473 N.W.2d 554 (Ct. App. 1991), is not founded in logic or law, and in effect urge us not to follow it. However, we are bound by prior published decisions of the court of appeals and may not overrule, modify or withdraw language from them. *See Cook v. Cook*, 208 Wis.2d 166, 190, 560 N.W.2d 246, 256 (1997).

² In connection with this argument, the Feffers cite *Cal/West Seeds v. Town of Hamilton*, No. 80-0669 (Wis. Ct. App. Jan. 20, 1981), an unpublished opinion of this court. With limited exceptions which are inapplicable here, it is a violation of the rules of appellate procedure to cite an unpublished opinion. *See* RULE 809.23(3), STATS. Counsel for the Feffers is admonished and cautioned that sanctions will be imposed in the future for such conduct. *See* RULE 809.83(2), STATS.

to prevent its potential future development and thus protect their game farm did not mean that they were compelled to do so. *See State ex rel. Lincoln Fireproof Warehouse Co. v. Board of Review*, 60 Wis.2d 84, 97-98, 208 N.W.2d 380, 387 (1973). In addition, while the seller may not have been eager or sought out other buyers, nothing in the record provides a basis to conclude that she acted under necessitous circumstances in selling the property to the Feffers. No basis therefore exists to conclude that the sale was not between willing participants. *See id.*

As an alternative argument, the Feffers contend that the assessment should be set aside because even if their purchase of the property was arm's-length, the sale price did not conform to recent arm's-length sales of reasonably comparable properties. They concede that Wisconsin case law has long held that when there is an arm's-length sale of the property, the sale price of the property is the best indicator of its value and it is error for an assessor to use other means to determine value. *See Darcel, Inc. v. Manitowoc Bd. of Review*, 137 Wis.2d 623, 629, 405 N.W.2d 344, 347 (1987). However, they contend that § 70.32(1), STATS., as amended pursuant to 1991 Wis. Act 39 § 1722, modified the common law to permit the consideration of sales of comparable properties even in the presence of an arm's-length sale of the subject property.

This court has previously rejected the claim that the amendment to § 70.32(1), STATS., altered the common law rule that a recent arm's-length sale of property constitutes the best information for determining assessment value. *See City of West Bend v. Continental IV Fund Ltd. Partnership*, 193 Wis.2d 481, 490-91, 535 N.W.2d 24, 27-28 (Ct. App. 1995). We recently reiterated this determination, holding that the amendments to § 70.32(1) did not alter the priority to be given a recent arm's-length sale. *See State ex rel. Campbell v. Township of Delavan*, No. 96-1291, slip op. at 14 (Wis. Ct. App. Apr. 16, 1997) (publication

ordered May 27, 1997). We are bound by these holdings, *see Cook v. Cook*, 208 Wis.2d 166, 190, 560 N.W.2d 246, 256 (1997), and therefore conclude that the sale price of the property purchased by the Feffers was properly utilized to determine its assessment value.

By the Court.—Order affirmed.

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

