

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 15, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

Nos. 97-2643 & 97-2644

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

P.J.H. COMPANY,

PETITIONER-APPELLANT,

v.

BOARD OF REVIEW OF THE CITY OF WAUWATOSA,

RESPONDENT-RESPONDENT.

APPEAL from orders of the circuit court for Milwaukee County:
ARLENE D. CONNORS, Judge. *Affirmed.*

Before Fine, Schudson and Curley, JJ.

PER CURIAM. P.J.H. Company appeals from the trial court's orders affirming the decision of the Board of Review of the City of Wauwatosa. The Board upheld the 1995 and 1996 assessments of P.J.H.'s office building, which is located at 2323 North Mayfair Road, in Wauwatosa. P.J.H. argues that the Board erred in upholding the assessments because the Board, it claims,

improperly valued the building using the income approach rather than the comparable sales approach. We affirm.

BACKGROUND

On May 13, 1995, P.J.H. filed an objection to the 1995 assessment of its office building. The Board of Review held a hearing on the objection on June 13, 1995, and upheld the assessment in a notice dated June 15, 1995. P.J.H. appealed the Board's decision to the circuit court. The circuit court vacated the 1995 assessment and remanded the matter to the Board "for the sole purpose of taking additional testimony on the issue of comparable property with regard to the property located at 13400 Bishop's Way."

On remand, the assessor conceded that the property on Bishop's Way was comparable, and re-assessed P.J.H.'s office building. The new assessment was higher than the original 1995 assessment; therefore, the Board affirmed the original assessment. P.J.H. again appealed the 1995 assessment to the circuit court.

Prior to the remand hearing on the 1995 assessment, P.J.H. also filed an objection to the 1996 assessment of its office building. The Board of Review held a hearing on the objection on October 23, 1996, two days after the remand hearing on the 1995 assessment. The Board affirmed the 1996 assessment, and P.J.H. appealed the Board's decision to the circuit court.

On appeal to the circuit court, one judge reviewed both the 1995 assessment and the 1996 assessment. In a joint decision, which was followed by separate orders, the circuit court affirmed the Board's decisions upholding both

assessments. P.J.H. appealed the circuit court's orders affirming the Board, and the two matters were consolidated on appeal.

DISCUSSION

This appeal arises by way of statutory certiorari. *See* § 70.47(13), STATS. On appeal by certiorari, we review the record and findings of the administrative board, not the judgment and findings of the circuit court. *See State ex rel. Harris v. Annuity & Pension Bd.*, 87 Wis.2d 646, 651, 275 N.W.2d 668, 671 (1979). Our review is limited to the following questions: (1) whether the board kept within its jurisdiction; (2) whether the board acted according to law; (3) whether the action taken by the board was arbitrary, oppressive or unreasonable so as to represent its will and not its judgment; and (4) whether the evidence before the board was such that it might reasonably sustain the assessment. *See State ex rel. N/S Assocs. v. Board of Review*, 164 Wis.2d 31, 41, 473 N.W.2d 554, 557 (Ct. App. 1991). “In the context of property assessment for purposes of taxation the court may determine whether the assessment was made on the statutory basis, for such inquiry involves a question of law.” *State ex rel. Geipel v. City of Milwaukee*, 68 Wis.2d 726, 732, 229 N.W.2d 585, 588 (1975). “If the assessment was made in compliance with the statute, the assessment must be upheld ‘if there is any evidence to support it.’” *State ex rel. N/S Assocs.*, 164 Wis.2d at 42, 473 N.W.2d at 557 (quoting *State ex rel. Geipel*, 68 Wis.2d at 726, 229 N.W.2d at 588). There is a presumption that the assessor's valuation is correct, and it will not be set aside in the absence of evidence showing it to be incorrect. *See Rosen v. City of Milwaukee*, 72 Wis.2d 653, 661, 242 N.W.2d 681, 684 (1976). The burden of producing evidence to overcome the presumption of correctness is on the party attacking the assessment. *Id.*

Section 70.32(1), STATS., governs the method of assessing real property in Wisconsin.

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

Section 70.32(1), STATS.

“Commonly stated, sec. 70.32 (1) requires real estate to be assessed at its fair market value which has often been defined as the amount the property could be sold for in the open market by an owner willing and able but not compelled to sell to a purchaser willing and able but not obliged to buy.

The ‘best information’ of such value is a sale of the property or if there has been no such sale then sales of reasonably comparable property. In the absence of such sales, the assessor may consider all the factors collectively which have a bearing on value of the property in order to determine its fair market value. However, it is error to use this method ‘when the market value is established by a fair sale of the property in question or like property.’”

State ex rel. Geipel, 68 Wis.2d at 733, 229 N.W.2d at 589 (citations omitted).

Whether two properties are reasonably comparable depends on the “degree of similarity between the properties in question.” *Rosen*, 72 Wis.2d at 665, 242 N.W.2d at 686.

Important considerations in determining whether particular property is sufficiently similar to the property being assessed to warrant reliance on its sale price as evidence of market value include its location, including the distance

from the assessed property, its business or residential advantages or disadvantages, its improvements, size and use. It is also important to consider the conditions of sale, including its time in relation to the date of valuation, and its general mode and character insofar as they tend to indicate an arm's length transaction.

Id.

1. The 1995 Assessment

P.J.H. argues that the Board erred in upholding the 1995 assessment because the assessor consistently valued the building by using the income approach rather than the comparable sales approach.¹ Specifically, P.J.H. asserts that the assessor improperly failed to value the building based upon the 1991 sale of the concededly comparable property located on Bishop's Way. The Board responds that, on remand, the assessor considered the sale of the property alleged to be comparable in determining the 1995 assessment, and that the assessor considered the income of both P.J.H.'s building and the other building in order to bring them into true comparability and properly adjust the value of P.J.H.'s building. We agree.

At the remand hearing for the 1995 assessment, the assessor conceded that the property on Bishop's Way was "comparable." The assessor also testified that the fair market value of income-producing properties, such as P.J.H.'s building and the comparable building, was largely driven by the net operating income of the properties; therefore, the disparity in the income produced by the two buildings had to be considered in determining the value of P.J.H.'s

¹ P.J.H. asserts that, with respect to both the 1995 assessment and the 1996 assessment, the assessor improperly refused to consider properties outside of Wauwatosa in determining the existence of comparable sales. The record reveals that the assessor considered properties outside of Wauwatosa in making both assessments. P.J.H.'s claim is without merit.

building. The assessor compared the incomes and lease terms of the two buildings and, because P.J.H.'s building produced much more income than the "comparable" building, the assessor placed a value on P.J.H.'s building that was higher than the sale price of the "comparable" property. This approach yielded an assessment value that was higher than the original assessment, therefore the Board affirmed the original 1995 assessment of P.J.H.'s building. The Board found that the two properties were comparable, and that based upon the differing incomes of the two properties the assessor properly placed a higher value on P.J.H.'s building. We conclude that the assessor properly considered sales of comparable properties in assessing P.J.H.'s building, and the Board did not err in upholding the assessment.

2. *The 1996 Assessment*

P.J.H. argues that the Board erred in upholding the 1996 assessment, again asserting that the assessor valued the office building using the income approach rather than the comparable sales approach. P.J.H. argues that it presented evidence of comparable sales, and that the assessor, therefore, improperly valued the office building based on an income approach. P.J.H. also argues that the assessment is invalid because it is based solely on the income approach.² See *Waste Management v. Kenosha County Bd. of Review*, 184 Wis.2d 541, 558, 516 N.W.2d 695, 702 (1994) ("Income may never be the sole basis for an assessment of property."). We reject these arguments.

² P.J.H. also argues that the 1995 assessment is invalid because it is based solely on the income approach. We reject this argument because, as noted, we conclude that the Board considered the sale of comparable property in making the 1995 assessment.

The record reveals that although P.J.H. presented information relating to the sales of several buildings that it claimed were comparable to its building, the Board rejected those buildings as comparable properties because P.J.H. failed to present enough information about the properties to enable the Board to determine that they were truly comparable. Significantly, P.J.H. failed to present any information about the gross or the net rental incomes and leasable areas of any of the proposed comparable properties, thus preventing the Board from determining the comparability of the several income-producing properties. *See Rosen*, 72 Wis.2d at 665, 242 N.W.2d at 686. Further, the assessor testified that she was unable to conclude that there were sufficient comparable sales to use in assessing P.J.H.'s building. In the absence of evidence of sufficient comparable sales information, the Board did not err in affirming an assessment that was not based on the comparable sales approach.³

The record further reveals that the assessor considered both a cost approach value and an income approach value before assessing P.J.H.'s building. The cost approach produced a fair market value that was significantly higher than the value used for the 1996 assessment, and the income approach produced an assessment value that was slightly higher than the 1996 assessed value; therefore the Board affirmed the original 1996 assessment. Consequently, we reject P.J.H.'s argument that the Board erred in relying solely on the income approach for the 1996 assessment. We conclude that the Board properly followed § 70.32(1),

³ P.J.H. also asserts that the Board arbitrarily rejected the 1996 sale of the Bishop's Way property as a comparable sale for the 1996 assessment of P.J.H.'s building. Contrary to P.J.H.'s assertion, the record reveals that the Board considered the 1996 sale of the allegedly comparable property, but did not use it for a comparable sales approach valuation of P.J.H.'s building because there were elements in the price that made a "comparable" valuation not feasible. The Board acted reasonably in making this determination.

STATS., and that a reasonable view of the evidence as a whole supports the Board's determination.

By the Court.—Orders affirmed.

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

