

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 9, 2011

A. John Voelker
Acting Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2010AP2005

Cir. Ct. No. 2009CV215

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

DAVID SUCHLA, DAVID J. BLASCHKO AND SHELBY J. BLASCHKO,

PLAINTIFFS-RESPONDENTS,

V.

BOARD OF REVIEW TOWN OF BURNSIDE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Trempealeau County:
JOHN A. DAMON, Judge. *Reversed.*

Before Lundsten, Higginbotham and Sherman, JJ.

¶1 PER CURIAM. The Town of Burnside Board of Review appeals a circuit court order remanding disputed property valuations to the board. The board contends that its valuations must be upheld because: (1) the property owners have not overcome the presumption that the town assessor correctly valued

the properties; and (2) even if the property owners have overcome the presumption of correctness, the valuations must be upheld because credible evidence in the record supports the board's decision. We conclude that the property owners did not overcome the presumption that the assessor properly valued the properties, and reverse.

BACKGROUND

¶2 In May 2009, David Blaschko filed an objection to the Town of Burnside tax assessment valuing his property at \$361,400. Blaschko asserted that a recent appraisal valued his property at \$260,000. David Suchla also filed an objection to the Town of Burnside tax assessment of his property at a value of \$349,000, asserting that recent appraisals valued his property at \$240,000 and \$210,000. The board held a hearing on both objections. Blaschko, Suchla and the town assessor all testified at the hearing. The property owners submitted their appraisals, each of which purported to rely on three comparable sales. The owners' privately retained appraiser did not appear at the hearing.

¶3 The town assessor explained that he determined that the quality of the Blaschko and Suchla properties was higher than other homes in Burnside. He submitted his property record folders for each of the properties, which demonstrated his valuation of the properties based on his "dwelling computations" less depreciation. The assessor also identified thirteen home sales he located in Trempealeau County, with an average per square foot sales price of \$103. He explained that his valuations of the Blaschko and Suchla properties were lower on a per square foot basis. The owners challenged the assessor's findings by arguing they had appraisals using comparables while the assessor did not; that the assessor had never been in their homes, while their appraiser had; and arguing that the

thirteen home sales the assessor located were not comparable to the owners' homes.

¶4 Following the hearing, the board adopted the assessor's valuation of the properties. The property owners filed for certiorari review in the circuit court. The circuit court found that the appraisals presented by the owners followed the proper statutory method for valuing the properties using comparable sales, and the board had no valid basis to disregard that evidence and adopt the assessor's valuations. The court remanded the assessments to the board for assessments consistent with its decision. The board appeals.

DISCUSSION

¶5 Our review of the board's decision is limited to: “(1) whether 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.” *State ex rel. Campbell v. Township of Delavan*, 210 Wis. 2d 239, 254-55, 565 N.W.2d 209 (Ct. App. 1997) (quoted source omitted). Here, the issue is whether the board acted according to law and consistent with the evidence in the record in adopting the town assessor's property valuations.

¶6 Real property valuations are governed by WIS. STAT. § 70.32(1) and the WISCONSIN PROPERTY ASSESSMENT MANUAL. *Johnson v. City of Greenfield Bd. of Review*, 2005 WI App 156, ¶7, 284 Wis. 2d 805, 702 N.W.2d 460. “There are three methods of valuing property: the sales comparison approach, the cost approach, and the income approach.” *Id.*, ¶7 n.2. If adequate comparable sales

are available, the sales comparison approach must be used; if not, the cost approach or income approach is used. *See id.*; *see also* WIS. STAT. § 70.32(1).

¶7 We presume that the assessor's valuation is correct, but that presumption "can be overcome by credible evidence that the assessor's valuation is incorrect." *Campbell*, 210 Wis. 2d at 260. Once the presumption is overcome, the question becomes "whether credible evidence was presented to the board that may in any reasonable view support the board's determination." *Id.* The first step in our analysis, then, is whether the owners overcame the presumption in favor of the assessor's valuation at the board hearing; if not, our inquiry ends and we will sustain the board's decision. *See id.* at 262 (question of whether credible evidence supports assessor's valuation only reached if presumption in favor of assessor's valuation has been overcome).

¶8 The property owners contend that they overcame the presumption that the assessor properly valued their properties by showing that there were comparable sales available, as evidenced by their appraiser's reports as well as the town assessor's use of other sales to compute a price per square foot of their properties. Thus, the property owners assert, the town assessor was required to use the sales comparison approach rather than the cost approach. The owners also assert that even if the assessor properly turned to the cost approach, the assessor failed to properly follow the cost approach method because he calculated a price per square foot based on other sales rather than determining the replacement cost of their properties. *See Johnson*, 284 Wis. 2d 805, ¶7 n.2 ("The cost approach relies on determining either the reproduction or replacement cost of the improvements, subtracting all depreciation, then adding the value of the land.") (quoted source omitted). We disagree.

¶9 At the board of review hearing, the property owners presented their private appraisals and contended that the appraisals valued their properties based on comparable sales. See *Campbell*, 210 Wis. 2d at 261 (explaining sales approach method under WIS. STAT. § 70.32(1), and that “[r]easonably comparable sales are competitive properties with characteristics similar to the subject which have sold recently on the local market”). However, their appraiser did not appear at the hearing to explain why she determined that the three sales in each appraisal were reasonably comparable sales for that property, nor do the appraisals themselves provide that explanation.¹ We conclude that the owners did not overcome the presumption that the assessor properly valued their properties simply by providing contrary appraisals, without establishing that those appraisals followed the proper statutory method. See, e.g., *id.* at 261-62 (property owners overcame presumption that assessor’s valuation was correct when their appraiser provided detailed testimony at hearing establishing he followed proper statutory method in reaching different value than assessor).

¶10 Additionally, we disagree with the owners’ assertion that they overcame the presumption in favor of the assessor by showing that the assessor valued the properties by averaging the square foot sales price of other properties. Rather, the assessor explained that he graded the properties as “B+” quality, and then used the 1.1 local modifier in reaching his assessed value. See WISCONSIN PROPERTY ASSESSMENT MANUAL, Volume 1, Part 1, 8-15 (explaining grade

¹ On appeal, the board contends the appraisals relied on sales that required adjustments exceeding 15-20% of the total sale price, contrary to instructions in the WISCONSIN PROPERTY ASSESSMENT MANUAL. The owners argue that the sales were, nonetheless, reasonably comparable. Again, this type of dispute is why the appraiser’s testimony was necessary at the hearing.

classifications for construction quality when valuing improvements). The assessor also explained that he found thirteen sales in Trempealeau County that were relatively similar in age, square foot and price, which averaged \$103 per square foot in sales price. He stated that his assessment of the property owners' properties resulted in a valuation of \$88.79 per square foot for one and \$97.68 per square foot for the other. He did not state that he used the \$103 average to reach his valuation of the properties.

¶11 We conclude, on this record, that the property owners have not overcome the presumption that the assessor's valuations were correct. We therefore do not reach the question of whether credible evidence supported the assessor's valuation. Accordingly, we reverse the order of the circuit court remanding the assessments to the board.

By the Court.—Order reversed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

