COURT OF APPEALS
DECISION
DATED AND FILED

May 16, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP1803 **Cir. Ct. No. 2004CV126**

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

ERIC G. HANSON AND LINDA M. HANSON,

PLAINTIFFS-RESPONDENTS,

V.

TOWN OF RICHLAND BOARD OF REVIEW,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rusk County: NORMAN L. YACKEL, Judge. *Affirmed in part; reversed in part and cause remanded.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. The Town of Richland Board of Review appeals a judgment overturning its 2004 tax assessment of Eric and Linda Hanson's property. The Board adopted the assessor's reclassification of 132 of the

Hanson's 200 acres from wooded pasture to woodland or forest. Because the trial court correctly concluded that the reclassification was not supported by substantial evidence, we affirm the judgment overturning the assessment. We reverse that part of the judgment imposing costs against the Town and remand the matter for a hearing on costs.

¶2 The assessor testified that in 2003 she classified one-hundred-sixty-two acres of the Hanson property as wooded pasture because they had just begun pasturing beef cattle, but told them she would have to review that decision the next year. She wanted to see evidence that "cows have been there" such as a five-foot canopy. When she went to inspect the property in 2004, no one was home. She drove past the property and observed a tree branch laying across the electric fence and the tree canopy lower than five feet. She also calculated that the Hansons devoted too much acreage per cow. On that basis, she reclassified 132 acres as woodland. She did not explain how she arrived at that figure.

¶3 The Hansons' testified that they doubled the size of their herd from ten to twenty cows during that year. The cattle had not yet trampled or eaten all of the undergrowth. The electric fence was activated only when the cattle were grazing in that area. Cattle had never escaped from their property. The land was exclusively used for pasturing cattle. They were told by the county agricultural agent that they needed thirty acres per cow for their type of land. They also submitted a letter from appraiser Arnold Hoff, who personally viewed the property, stating that the contested area is free-range pasture with little or no marketable timber.

¶4 Although it made no credibility determination regarding the Hansons' testimony, the Board voted to uphold the assessment. One member

opined: "I was brought up that way with—when we fenced our land out we had a four strand barbed wire fence." The other Board members stated no particular reason for upholding the reclassification, but appeared to agree that the property was not adequately fenced.

¶5 The assessment and the Board's decision are rebuttably presumed to be correct. *See* ***State ex rel. Kesselman v. Bd. of Review***, 133 Wis. 2d 122, 127, 394 N.W.2d 745 (Ct. App. 1986). The presumption is overcome by a showing that the assessment is not supported by substantial evidence or that the assessor's actions do not comport with statutory requirements. *See* ***Johnson v. City of Greenfield Bd. of Review***, 2005 WI App 156, ¶9, 284 Wis. 2d 805, 702 N.W.2d 460; ***State ex rel. Wisconsin Edison Corp. v. Robertson***, 99 Wis. 2d 561, 571-72, 299 N.W.2d 626 (Ct. App. 1980).

¶6 The reclassification was not supported by substantial evidence for two reasons. First, the assessor did not adequately inspect the property and did not utilize the best information she could practicably obtain as required by WIS. STAT. § 70.32(1).[1] In this case, driving past the 200 acre parcel one time is not adequate to determine its actual use. The assessor made no effort to determine whether cattle actually pastured in the disputed area, and did not speak with the Hansons or attempt to confirm the county agricultural agent's advice. Her failure to comply with § 70.32(1) compels the court to set aside her assessment. *See* ***State ex rel. Boostrom v. Bd. of Review***, 42 Wis. 2d 149, 155-56, 66 N.W.2d 184 (1969).

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

¶7 The second basis for overturning the assessment is that it contradicts unimpeached evidence of the Hansons' actual use of the property. ***Wisconsin Edison***, 99 Wis. 2d at 571-72. While the assessor should look for signs that the property is not actually used as the owners contend, its actual use, not conformity with a specific indicator, should determine the classification. *See* ***Wisconsin Property Assessment Manual***, 11-9. The Hansons' uncontested testimony that the electric fence was adequate to prevent their cattle from escaping, they were told to allot thirty acres per cow, and the land was exclusively used for pasturing cattle could not be ignored by the Board. ***Id.*** Therefore, the trial court correctly set aside the Board's decision.

¶8 The court imposed costs and attorney fees against the Town without giving it an opportunity to be heard. The costs were inserted in the judgment without notice. The Hansons did not serve an itemized bill of costs as required by WIS. STAT. § 814.10(2), resulting in the Town's inability to timely object. The Town was aggrieved by the process employed and does not need to establish prejudice by showing that the costs were excessive or improper. *See, e.g.*, ***Howell v. Denomie***, 2005 WI 81, ¶18, 282 Wis. 2d 130, 698 N.W.2d 621. On remand, the court shall impose costs after giving the parties an opportunity to be heard.

By the Court.—Judgment affirmed in part; reversed in part and cause remanded. No costs on appeal.

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