COURT OF APPEALS
DECISION
DATED AND FILED

December 19, 2006

Cornelia G. Clark
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. 2006AP387

Cir. Ct. No. 2005CV672

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

LAMAR CENTRAL OUTDOOR, LLC,

PETITIONER-RESPONDENT,

V.

CITY OF WAUSAU,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Marathon County: PATRICK J. MADDEN, Judge. *Affirmed*.

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

¶1 PER CURIAM. The City of Wausau appeals an order dismissing a notice to raze a billboard pursuant to WIS. STAT. § 66.0413.[1] The City argues the sign structure is a "building" within § 66.0413(1)(a)1, and that it properly determined whether repairs could reasonably be made to the billboard. We need not determine whether the billboard constitutes a building under the statute, because we conclude it was reasonable to repair the billboard. Accordingly, we affirm the order.

¶2 On May 13, 2005, the City notified Lamar Central Outdoor, LLC to raze a billboard, pursuant to WIS. STAT. § 66.0413. Lamar sought judicial review of the raze notice by filing a motion for a restraining order. A preliminary restraining order was issued on July 21. A hearing was held on September 7. Prior to the hearing, Lamar repaired the billboard at a cost of $1,039.80. The circuit court issued a Decision and Order dated December 27, concluding that § 66.0413 did not apply to billboards because subsec. (1)(b) addresses buildings "unfit for human habitation."

¶3 The circuit court also concluded that a prerequisite for a raze order under WIS. STAT. § 66.0413 was a determination that repairs cannot be reasonably made. Relying on ***State ex rel. Covenant Harbor Bible Camp v. Steinke***, 7 Wis. 2d 275, 96 N.W.2d 356 (1959), the court held that in determining the reasonableness of repairs, the City improperly applied the assessed valuation rather than the fair market value when determining whether the cost of repairs would exceed fifty percent of the value of the sign. The court concluded the City

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

"did not present credible evidence that Lamar exceeded 50% of the fair market value in repairing the sign," and ordered that the restraining order remain in force, and the raze order be dismissed. The City now appeals.

¶4 The City insists the circuit court erred by concluding that a billboard is not a "building" within the meaning of WIS. STAT. § 66.0413(1)(a)1, which states: "'Building' includes any building or structure or any portion of a building or structure."

¶5 The circuit court concluded that WIS. STAT. § 66.0413 was not applicable because subsec. (1)(b) addresses "buildings" that are "unfit for human habitation." Section 66.0413(1)(b)1 provides:

> (b) *Raze order*. The governing body, building inspector or other designated officer of a municipality may:
>
> 1. If a building is old, dilapidated or out of repair and consequently dangerous, unsafe, unsanitary or otherwise unfit for human habitation and unreasonable to repair, order the owner of the building to raze the building or, if the building can be made safe by reasonable repairs, order the owner to either make the building safe and sanitary or to raze the building, at the owner's option.

¶6 The City argues the circuit court rewrote the statute to require fitness for human habitation. The City further contends the circuit court's requirement that the structure be habitable for humans produces the absurd result that a city would have no right to raze a dilapidated garage or tool shed because such structures are not inhabited by humans.

¶7 We need not decide whether a billboard constitutes a "building" under the statute, or whether the statute requires habitation by humans, because we conclude that even if the billboard is a building, it was reasonable to repair the billboard.

¶8 The plain language of WIS. STAT. § 66.0413(1)(b)1 requires, as a prerequisite to a raze order, that a building be "unreasonable to repair." A presumptive test for determining the reasonableness of repairs, which is commonly known as the fifty percent rule, is contained in § 66.0413(1)(c):

> (c) *Reasonableness of repair; presumption.* Except as provided in sub. (3), if a municipal body, building inspector or designated officer determines that the cost of repairs of a building described in par. (b)1. would exceed 50% of the assessed value of the building divided by the ratio of the assessed value to the recommended value as last published by the department of revenue for the municipality within which the building is located, the repairs are presumed unreasonable for purposes of par. (b)1.

¶9 The City concedes "[t]he statute only creates a presumption that repairs in excess of 50 percent are unreasonable; the property owner has the burden to show that the presumption is unreasonable in the particular case." The City insists that Lamar did not overcome the presumption of unreasonableness of repair. We disagree.

¶10 The City utilized a "net assessed value" as the exclusive means to determine whether the costs of repair would be reasonable. The circuit court relied upon ***Covenant Harbor***, to conclude the denominator in the fifty percent rule was not limited to merely the assessed value. Rather, the court concluded the denominator should be based upon the actual fair market value if that value is higher than the current assessed value.

¶11 In ***Covenant Harbor***, 7 Wis. 2d at 284, the court explained: "In the case before us, the buildings have not been assessed because the use makes the property exempt from taxation. Assessed value, however, is required by law to equal fair market value and the fair market value could be determined by evidence."

¶12 In the present case, we conclude the circuit court correctly applied the rationale of ***Covenant Harbor*** to determine the City improperly utilized the net assessed value as the exclusive means to determine the reasonableness of repair. The City simply looked at the property tax assessment form and utilized a figure that was obtained by taking the replacement cost and the purchase cost of the billboard and applying a conversion factor. The City's formula produced a value for the billboard of $1,565.21. Thus, the City considered repairs in excess of fifty percent of that value, or $782.61, to be unreasonable. However, the evidence indicated that yearly billings for the billboard were approximately $6,000. The testimony of Lamar representatives, as well as an employee of a competitor, established that the billboard and accompanying rights would sell on the market for approximately five or six times the yearly billings, or $30,000 in this case.

¶13 As mentioned, undisputed evidence established the actual cost to repair the billboard was $1,039.80. It was reasonable for Lamar to expend $1,039.80 to repair a billboard that produces a $6,000 yearly income and would sell on the market for $30,000. Therefore, we agree with the court's finding that "the 'net book value' used by the City does not accurately reflect the fair market value of the sign." Accordingly, we also agree that repairs did not exceed fifty percent of the value of the billboard when utilizing the fair market value as the denominator in the reasonableness test. The record supports the court's conclusion that "Lamar has shown the sign produces an income and was worth repairing."

By the Court.—Order affirmed.

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