COURT OF APPEALS
DECISION
DATED AND FILED

January 10, 2007

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. 2005AP2376 **Cir. Ct. No. 2004CV178**

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

CLYDE WINTER,

PETITIONER-APPELLANT,

CLAIRE VANDERSLICE AND WINTER BUILDING CORPORATION,

PETITIONERS,

V.

WISCONSIN DEPARTMENT OF REVENUE,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Ozaukee County: PAUL V. MALLOY, Judge. *Affirmed*.

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

¶1 PER CURIAM. Clyde Winter appeals pro se from a judgment affirming the assessed value of his property in the Town of Cedarburg. He argues that his property should have been assessed as agricultural property and not at the fair market value for its highest and best use. He also claims that mathematical errors were made in the Department of Revenue's determination. We affirm the circuit court's judgment because the assessment is a proper application of the law.

¶2 The property Winter refers to as his farm is actually comprised of two adjoining parcels—a 107.7 acre parcel owned by Winter and his spouse and a 40.4 acre parcel owned by the Winter Building Corporation, a family corporation in which Winter has an interest. For 2003 the assessor for the Town of Cedarburg valued the parcels together at $420,800. The Town's Board of Review reduced the assessment to $378,600. Winter sought review with the DOR's Bureau of Equalization under WIS. STAT. § 70.85 (2003-04).[1] On October 17, 2003, the DOR sustained the $378,600 assessment. The circuit court affirmed the DOR's decision. However, upon the DOR's concession that a mathematical error had been made, the total assessment was reduced to $336,900. Winter is dissatisfied with the assessment because it is grossly higher than the prior assessment of $159,500.

¶3 At the outset we clarify that the appeal only concerns the assessment of the 107.7 acre parcel owned by Winter. Winter's pro se petition in the circuit court purported to seek review on behalf of the Winter Building Corporation. The circuit court properly dismissed all claims for reassessment, revaluation or

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

reclassification of the property owned by the corporation because a corporation can only appear in court by a licensed attorney. *See* ***Jadair, Inc. v. United States Fire Ins. Co.***, 209 Wis. 2d 187, 204, 562 N.W.2d 401 (1997). Although Winter claims that the circuit court gratuitously decided issues pertaining to the corporation's property, we need not decide whether claim or issue preclusion may be asserted in future litigation.

¶4 Winter's brief-in-chief first argues that the mathematical error, which was acknowledged by the DOR, was not addressed by the circuit court. He asks this court to remedy the error by making the correction suggested in a footnote in the DOR's responsive circuit court brief. Winter plainly overlooks the provision in the judgment correcting the total assessment to $336,900 to correct the mathematical error. He concedes in his reply brief that the correction issue is moot. We need not address any claim related to mathematical error.

¶5 We review the DOR's decision and not that of the circuit court. ***Walag v. DOA***, 2001 WI App 217, ¶5, 247 Wis. 2d 850, 634 N.W.2d 906. On certiorari review our standard of review is limited to (1) whether the agency kept within its jurisdiction; (2) whether the agency acted according to law; (3) whether the agency's actions were arbitrary, oppressive or unreasonable so as to represent its will and not its judgment; and (4) whether the evidence was such that the agency might reasonably make the determination in question. ***State ex rel. Geipel v. Milwaukee***, 68 Wis. 2d 726, 731, 229 N.W.2d 585 (1975). An assessment must be sustained if a proper basis was used and it is not made arbitrarily or in bad faith. ***Id.*** at 732. "In determining whether there is enough evidence to sustain the assessment, '[t]he presumptions are all in favor of the rightful action of the Board.'" ***ABKA Ltd. P'ship v. Board of Review of the Village of Fontana-On-Geneva Lake***, 231 Wis. 2d 328, 335, 603 N.W.2d 217 (1999) (quoted source

omitted). The burden of showing error in the assessment is on the taxpayer. ***Woller v. Dept. of Taxation***, 35 Wis. 2d 227, 233, 151 N.W.2d 170 (1967).

¶6 Winter complains that upon his first request in the review process, the assessor and DOR failed to produce a map detailing which portions of his property were classified as non-agricultural and within various classifications of tillable, bee pasture, swamp/waste, and forest land. He suggests the DOR was unfair because it did not create and produce the map until his circuit court action was started.

¶7 An informal conference was held on Winter's appeal. At that meeting an aerial map was discussed in detail with Winter pointing out the various uses of portions of the property. The DOR indicated at the informal conference that the determination would be made upon a discussion and review with the DOR's assessor and the material submitted by Winter at the conference. Winter did not object. Winter had as much information as the DOR did and cannot complain that the DOR's determination was based on hidden information.[2] Moreover, Winter has not pointed to law which requires the DOR to give a metes and bounds description of the acreage in each classification. It appears that the map which Winter contends was produced after the determination was produced as a courtesy to Winter to help him understand the result.[3] We reject Winter's

[2] Winter's submission at the conference made reference to the Property Assessment Manual for Wisconsin. Winter had access to the manual and was informed of the mechanics of real estate tax classification and assessment. The DOR's duty under WIS. STAT. § 73.03(2a), to provide the manual was satisfied.

[3] The DOR's assessor walked the property but did not map it out in detail. A letter from Winter to the DOR, dated November 5, 2003, acknowledged that in a phone conversation after the DOR's determination, Winter was told that delineation of specific acreage in each classification would require "substantial additional work." This means that the map was not produced prior to the determination and was not directly used in the determination.

contention that the DOR's determination is procedurally flawed or otherwise unfair because Winter was not earlier informed which acreage fell into each classification.

¶8 Winter contends that certain acreage should be classified as agricultural because he has devoted it to environmental buffers and conservation efforts. It is undisputed that the acreage to which Winter refers is not used for crop or animal production and therefore, does not fall within the usual meaning of land used for agricultural purpose. *See* WIS. ADMIN. CODE TAX § 18.05(1)(a), (b). TAX § 18.05(1)(d) provides that lands enrolled in a federal agriculture program for conservation reserve are classified as agricultural. Winter's acreage is not enrolled in a qualifying federal conservation program.

¶9 Winter argues that his acreage used in fact for conservation purposes should be entitled to the same treatment and that he should not be penalized for voluntarily devoting his acreage to that use with no expense to taxpayers. Although we may sympathize with Winter's position, it remains that the acreage does not meet the definition of agricultural under WIS. ADMIN. CODE TAX § 18.05(1). The DOR and this court must follow the definitions.

¶10 Winter also contends that more of his acreage should have been classified as used in apiculture—for grazing honey bees. The evidence was that forty bee hives are located on Winter's property. The Property Assessment Manual for Wisconsin Assessors, Vol. I, at 11-8 (Rev. 12/2003) explains that a bee can travel 3.5 miles from the hive and once familiar with the area around the hive, bees travel further and faster to areas requiring pollination. ***Id***. at 11-9. The manual also recognizes that it is difficult to identify land as unique to bee grazing because bees are not fenced and move to surrounding lands for pollination. The

manual charges that lands used to graze bees without producing a crop must be evaluated by the assessor to determine if the land is adequately devoted to the commercial production of bee products. ***Id***.

¶11 The DOR's assessor found that the primary area used by bees on Winter's property were the areas surrounding the pond and to the east of that area. Winter offered a letter from the beekeeper utilizing the property. The beekeeper indicated that lands used on Winter's property for the production of crops was no good for bee forage. He explained that the 65 acres within one-third mile of the hives was very desirable and suitable land for producing bee products. Winter's written testimony was that 70 acres were used for apiculture pasture. The assessor classified five acres of Winter's property as bee pasture.[4] The assessor was not required to adopt Winter's position. The determination is based on the assessor's observation of the land, as required by the assessor's manual. There is nothing to suggest additional acreage was adequately devoted to the commercial production of bee products.

By the Court.—Judgment affirmed.

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

[4] Eighteen acres of the property owned by the corporation were classified as bee pasture.