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DISTRICT I/IV

January 23, 2014

To:

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You are hereby notified that the Court has entered the following opinion and order:

2012AP1382

B & E 53207 Corp. and RDAR Corp. v. City of Milwaukee Board
of Review (L.C. # 2011CV13322)

Before Lundsten, Sherman and Kloppenburg, JJ.

The appellants, B & E 53207 Corp. (“B & E”) and RDAR Corp. (“RDAR”) appeal a circuit court order denying their petition for certiorari review of a decision of the City of Milwaukee Board of Review. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹ We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

BACKGROUND

B & E is the owner of property located at 138 East Becher Street in the City of Milwaukee. The property was assessed in 2009 at \$480,100. RDAR is the owner of property located at 2018-2018R South 1st Street in the City of Milwaukee, which was assessed in 2009 at \$264,500. The appellants filed objections to the 2009 assessments with the City of Milwaukee Board of Review.

On May 12, 2011 and May 18, 2011, the board conducted consolidated hearings of the appellants' objections to the assessments of the two properties as well as a third property owned by an entity related to the appellants. Of the seven board members holding office at the time, six board members were present at the May 12, 2011 hearing, and five members were present at the May 18, 2011 hearing. It is undisputed that one board member was recused during the May 18, 2011 meeting and did not vote. This left four members at the time of voting on May 18, 2011. Two members voted in favor and two members voted against upholding the assessments on the East Becher and South 1st Street properties. The board concluded that, in the case of a tie, an assessment stands. The board rejected the assessment as to the third property. Together, B & E and RDAR filed a petition for certiorari review in the circuit court with respect to the East Becher and South 1st Street properties. The circuit court denied the petition, and the appellants now appeal.

ANALYSIS

The scope of this court's review on certiorari is identical to that of the circuit court. *State ex rel. Ortega v. McCaughtry*, 221 Wis. 2d 376, 386, 585 N.W.2d 640 (Ct. App. 1998). The appellants argue that, when the board made its decision to uphold the assessments, it did so

without a quorum, rendering its decision void. We begin our analysis of this issue by noting that the City of Milwaukee Board of Review is a body mandated by statute and, thus, the rules of statutory interpretation apply. When interpreting a statute, we begin with the language of the statute and, if the meaning of the statute is plain, we ordinarily stop the inquiry. *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110.

WISCONSIN STAT. § 70.46(1) provides the method for towns, cities, and villages to designate individuals to make up the board of review. For cities of the first class, such as Milwaukee, “the board of review shall by ordinance in lieu of the foregoing consist of 5 to 9 residents of the city, none of whom may occupy any public office or be publicly employed.” WIS. STAT. § 70.46(1). The statutes further provide that, for correction of assessments, a “majority of the members of the board present at the meeting to make the determination shall constitute a quorum for purposes of making such determination, and a majority vote of the quorum shall constitute the determination. In the event there is a tie vote, the assessment shall be sustained.” WIS. STAT. § 70.47(9)(a). The plain language of § 70.46(1) and § 70.47(9)(a) establishes that the City of Milwaukee Board of Review shall consist of five to nine residents, and that a majority of members present at a meeting shall constitute a quorum for purposes of making determinations on corrections to assessments.

We turn, then, to the Milwaukee ordinance authorized by WIS. STAT. § 70.46(1). We interpret an ordinance using the rules of construction that we apply to statutes, beginning with the language of the ordinance. *See Schroeder v. Dane Cnty. Bd. of Adjustment*, 228 Wis. 2d 324, 333, 596 N.W.2d 472 (Ct. App. 1999). If the language is plain, we apply the meaning to the facts; if it is ambiguous, we consider matters beyond the language such as scope, history, context, subject matter, and the object of the ordinance. *Id.*

The City of Milwaukee Code of Ordinances, Volume 3, Chapter 307, § 307-4 provides, in relevant part, “There is created a board of review under s. 70.46, Wis. Stats., consisting of 9 members appointed by the mayor for 5-year terms and confirmed by the common council.” The appellants take the position that this ordinance requires the board to have nine members and that a quorum, therefore, is five members. However, such an interpretation would appear, at least facially, to be inconsistent with WIS. STAT. § 70.46(1), which contemplates a board consisting of anywhere from five to nine residents of the city. We turn, then, to the facts in the record that demonstrate how the City of Milwaukee has historically interpreted and applied § 307-4.

The record reflects that in 2011, membership of the City of Milwaukee Board of Review was increased from five members—the number with which the board had been operating for the past several years—to seven members. The sixth and seventh members of the board commenced their terms on May 9, 2011, just a few days prior to when the hearings in this matter were held before the board.

Considering that the board has historically operated with five and, more recently, seven members, we reject the appellants’ argument that § 307-4 requires that the board must consist of nine members and no less, and that five members must be present to constitute a quorum. Rather, WIS. STAT. § 70.47(1) provides that a “majority shall constitute a quorum” for meetings of the board of review. Thus, a majority of the seven-member board, or four members, needed to be present to constitute a quorum of the board of review in this case. As previously discussed, five members were present at the May 18, 2011 hearing where the deliberation and voting took place. However, when it came time to vote on whether to uphold the assessments, only four members voted, as one member had been recused. Under § 70.47(1), those four members constituted a quorum. Under § 70.47(9) a majority vote of the quorum, or three members, was

needed to uphold or reject the assessment and, in the event of a tie, the assessment was to be sustained. Here, there was a tie vote, and so the assessment was sustained. We reject the appellant's argument that the board's determination was made without a quorum.

Because the quorum issue in this case is dispositive, we need not address the remaining issue of whether the board inappropriately required a board member to be recused. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (stating that if a decision on one point disposes of the appeal, we need not address the other issues raised).

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals