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October 3, 2018

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

2018AP193

Palisades Properties, Inc. v. Village of Fox Crossing
(L.C. #2016CV1087)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Palisades Properties, Inc. appeals from the denial of its petition for writ of certiorari and asks this court to void the August 24, 2016 decision of the Board of Review for the Village of Fox Crossing (the Board of Review) as to the 2016 assessment value of its land and remand to the Board of Review for re-assessment. 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 (2015-16).¹ We affirm the judgment of the circuit court denying the petition for writ of certiorari.

We begin by noting that prior to 2016, the Village of Fox Crossing (the Village) was the Town of Menasha (the Town). Palisades is a Wisconsin corporation that owns property, platted as a condominium complex, in the Village. Palisades has been repeatedly challenging the Town's and the Village's assessments of these same condominium parcels since 2008. Palisades objected to the Town's 2013-2015 assessments in Winnebago County case No. 2013CV662. The circuit court ultimately concluded that Palisades had not overcome the presumption of correctness provided to the assessments and dismissed Palisades' complaints. Palisades appealed to this court, and we affirmed in a per curiam decision. *Palisades Props. Inc. v. Town of Menasha*, No. 2017AP1233, unpublished slip op. (WI App July 25, 2018). We adopt the findings of our per curiam into this order as the evidence offered by Palisades in this action was the same appraisal report utilized in case No. 2017AP1233, showing the market value of each of the lots as of January 1, 2014.²

Palisades now challenges the Village's 2016 assessment. At the Board of Review hearing, the Village presented evidence from its assessor as to two comparable sales, one in 2014 and one in 2016, as well as testimony addressing the appraisal report offered by Palisades. Palisades, as noted above, provided its appraisal report from 2014; Palisades' appraiser did not

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

² We acknowledge that an affidavit, dated October 7, 2015, was supplied to the Board of Review from Palisades' appraiser noting that he prepared two appraisals for Palisades in 2012 and 2013. The affidavit explained that he did not prepare a new appraisal as of January 1, 2014; however, "the methodology applied would be exactly the same as that applied in the two previous appraisals, and I have seen no evidence in the market that there would be any significant difference in the results."

appear. The Board of Review unanimously voted to keep the assessments as determined by their assessor. Palisades petitioned for writ of certiorari. The circuit court denied certiorari on the grounds that the Village based its assessments upon tier two comparables coupled with the fact that the Village's assessments are entitled to a presumption of correctness. The court further found that the 2014 appraisal offered by Palisades utilized the discounted cash flow method, which is not a proper valuation method under the Wisconsin Property Assessment Manual (WPAM).³

Under WIS. STAT. § 70.32(1), Wisconsin tax assessors must value real property in accordance with WPAM, absent conflicting law. *Walgreen Co. v. City of Madison*, 2008 WI 80, ¶3, 311 Wis. 2d 158, 752 N.W.2d 687. Assessments are presumed correct, *see* WIS. STAT. § 70.49(2), unless they do not conform with WPAM or Wisconsin law, *Allright Props., Inc. v. City of Milwaukee*, 2009 WI App 46, ¶12, 317 Wis. 2d 228, 767 N.W.2d 567.

WPAM and Wisconsin law set forth a three-tier system in valuing properties generally. *Id.*, ¶20; *see also* WIS. STAT. § 70.32(1). A recent arm's-length sale of the property is the best evidence of value and is the basis for an assessment under tier one. *Allright Props., Inc.*, 317 Wis. 2d 228, ¶21. If, as in the present case, there has been no recent sale, an assessor must "consider sales of 'reasonably comparable' properties," which is the tier two approach. *Id.*, ¶22. In the absence of comparable sales data, the assessor determines the value under tier three, which permits consideration of "all the factors collectively which have a bearing on value of the

³ The discounted cash flow method was removed from WPAM after 2012. *Compare* WPAM 8-72 (2012), *with* WPAM 8-72 (2013).

property in order to determine its fair market value.” *Id.*, ¶29 (citation omitted). An income approach to valuation fits into this analytic framework. *Id.*

On certiorari review, we review the actions of the Board of Review. *Edward Kraemer & Sons, Inc. v. Sauk Cty. Bd. of Adjustment*, 183 Wis. 2d 1, 8, 515 N.W.2d 256 (1994). The scope of our review is the same as the circuit court’s and is limited to “(1) whether the board acted within its jurisdiction; (2) whether the board acted according to law; (3) whether the board’s action was arbitrary, oppressive or unreasonable, representing its will rather than its judgment; and (4) whether the evidence was such that the board might reasonably make the order or determination in question.”⁴ *Fee v. Board of Review*, 2003 WI App 17, ¶11, 259 Wis. 2d 868, 657 N.W.2d 112. Our standard of review requires us to defer to the board’s decision “unless it is unreasonable and without rational basis.” *Klinger v. Oneida Cty.*, 146 Wis. 2d 158, 163, 430 N.W.2d 596 (Ct. App. 1988). We may “not substitute [our] opinion of the value for that of the board of review. If there is credible evidence before the board that may in any reasonable view support the assessor’s valuation, that valuation must be upheld.” *Steenberg v. Town of Oakfield*, 167 Wis. 2d 566, 572, 482 N.W.2d 326 (1992) (citation omitted).

As the Board of Review did not err by utilizing an approved method of valuation and as Palisades did not overcome the presumption of correctness, we summarily affirm the denial of Palisades’ petition for writ of certiorari. Under the circumstances, the Board of Review properly applied the tier two approach based on the evidence presented at the hearing and credible evidence provided a reasonably sufficient basis for the Board of Review to make its decision.

⁴ Palisades does not challenge the jurisdiction of the Board of Review.

We further note that the presumption of correctness was not overcome by Palisades' offer of an appraisal report showing the value of the parcels as of January 1, 2014, when the issue before the Board of Review was the valuation as of January 1, 2016.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals