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DISTRICT II

March 23, 2022

To:

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Circuit Court Judge
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Clerk of Circuit Court
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You are hereby notified that the Court has entered the following opinion and order:

2020AP1415 Estate of Philip Busse v. Village of Mt. Pleasant (L.C. #2019CV1643)

Before Gundrum, P.J., Neubauer and Grogan, JJ.

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).

The Estate of Philip Busse, by Special Administrator Linda Ramos, appeals a summary judgment in favor of the Village of Mt. Pleasant. The circuit court concluded the Village had satisfied its obligation to provide replacement housing compensation for the displacement of Busse from his residence. 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 (2019-20).[1] We affirm.

Busse and his wife owned four contiguous parcels, totaling approximately 155 acres and including farmland, which they transferred to their children in 2003. Busse and his wife retained life estates in the parcels, including the one at issue here (the "residential parcel"), which was improved by a three-bedroom dwelling where Busse lived until 2018.[2] In 2017, the Village sought to acquire the parcels for the Foxconn development project. Busse signed an option to purchase with the Village for the entirety of the land holdings at a cost of $50,000 per acre, for a total purchase price of approximately $7.75 million.

The Village exercised the option and purchased the properties, including the residential parcel. Prior to the closing, Busse's attorney contacted the Village and requested that Busse be allowed to allocate the purchase price in whatever way he chose for tax planning purposes. Busse also requested that four separate deeds and transfer tax returns were to be used at the closing, one for each parcel. The Village agreed to these requests. At slightly under one-half of an acre, the residential parcel was allocated a value of $21,450 in the purchase.

The dispute in this case concerns the amount of a replacement housing payment (RHP) Busse is entitled to under WIS. STAT. § 32.19 and WIS. ADMIN. CODE § ADM 92.68 (Dec. 2011). Because the Village was of the view that it had purchased a "package" of farmland and residential parcels from Busse, it used the mixed-use "carve out" procedure under § ADM

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

[2] Payments related to a second residence on one of the other parcels are not at issue in this appeal.

92.68(7)(e)2.b. As relevant here, that provision sets the amount of the RHP at "the difference, if any, between the *value* of the acquired dwelling unit and the value of a comparable dwelling unit in the most comparable property." ***Id.*** (emphasis added). The Village calculated the value of the residential parcel at $161,500,[3] and subtracted that amount from its estimate of $244,900 for comparable replacement property to arrive at an $83,400 RHP, which was the amount it paid to Busse.

Busse's estate filed suit, arguing Busse was entitled to much more in replacement housing compensation. As it pertains to the residential parcel, Busse argued the value of the land *and* dwelling was $21,450, which was the amount Busse had assigned to the parcel during the transaction closing. Subtracting that amount from the $244,900 for comparable replacement property, Busse arrived at a total of $233,450, from which he subtracted the $83,400 the Village had already paid. Thus, Busse sought an additional $140,050. The circuit court agreed with the Village and granted its motion for summary judgment, dismissing Busse's action.

We review a grant of summary judgment de novo using a well-established methodology. ***Nischke v. Aetna Health Plans***, 2008 WI App 190, ¶4, 314 Wis. 2d 774, 763 N.W.2d 554. The facts here are undisputed, and the appeal turns on the interpretation and application of statutory and administrative code provisions, which also present questions of law. ***Id.***

Busse relies on the basic framework for RHP articulated in WIS. STAT. § 32.19, asserting the mixed-use carve out under WIS. ADMIN. CODE § ADM 92.69(7)(e)2.b. is inapplicable. Busse

[3] To arrive at this number, the Village multiplied the value of the improvements to the residential parcel ($92,400 for the house and $3,300 for the garage) by 140%, which was the percentage the Village was offering to property owners as an enticement to sell. To this product of $136,500, the Village added the value of the land, an estimated $25,000, for a total value of $161,500.

views the residential parcel as being discrete from the other properties the Village purchased and argues the administrative code provision does not authorize the "bundling" of properties to determine mixed-use status.

We reject this argument. We agree with the Village, the circuit court, and the Wisconsin Department of Administration, which also signed off on the amount of the Village's proposed RHP to Busse, *see* WIS. STAT. § 32.25(1), and we conclude that the Village properly applied the mixed-use carve out under the administrative code. The parties both rely on ***Pinczkowski v. Milwaukee County***, 2005 WI 161, 286 Wis. 2d 339, 706 N.W.2d 642.[4] In ***Pinczkowski***, our supreme court, relying on WIS. STAT. § 32.19 and the regulations promulgated thereunder, recognized that "[o]rdinarily … a replacement housing payment to a person displaced from a dwelling is 'the selling price of a comparable dwelling on a lot typical for the area, less the price of the acquired dwelling and the site.'" ***Pinczkowski***, 286 Wis. 2d 339, ¶57 (quoting a prior version of WIS. ADMIN. CODE § ADM 92.68(7)(a)1.).

We cannot ignore the context of this transaction, which brings it out of the realm of the ordinary case mentioned in ***Pinczkowski***. Just as ***Pinczkowski*** involved an abnormally sized lot that had a higher and better use, *see* ***Pinczkowski***, 286 Wis. 2d 339, ¶57, here the sale of Busse's dwelling was interrelated with the sale of his other properties to the Village, including property that was used for agricultural purposes. Under these circumstances, the Village properly applied

[4] We note that in ***Pinczkowski v. Milwaukee County***, 2005 WI 161, 286 Wis. 2d 339, 706 N.W.2d 642, our supreme court applied a deferential standard to the determination of an administrative agency. *See* ***id.***, ¶69. Such deference is no longer appropriate in light of our supreme court's decision in ***Tetra Tech EC, Inc. v. DOR***, 2018 WI 75, ¶84, 382 Wis. 2d 496, 914 N.W.2d 21, although ***Pinczkowski*** appears to remain good law, *see* ***Tetra Tech***, 382 Wis. 2d 496, ¶93.

the mixed-use carve out method for calculating the amount of the RHP under WIS. ADMIN. CODE § ADM 92.68(7)(e)2.b.

Busse argues that while he was compensated $21,450 for the land, he received nothing for the improvements located on the residential parcel, and therefore the Village's position represents an unlawful attempt to shortchange him of the compensation he is entitled to for replacement housing. He focuses on the statutory grant of authority for RHP, which statute generically authorizes the payment of "[t]he amount, if any, which when added to the acquisition payment, equals the reasonable cost of a comparable replacement dwelling available on the private market, as determined by the condemnor." WIS. STAT. § 32.19(4)(a)1. Busse's argument is fairly straightforward: he believes "acquisition payment" can only refer to $21,450, the assigned value for the residential parcel.

Unfortunately, the term "acquisition payment" is not defined in WIS. STAT. § 32.19—or, for that matter, in WIS. STAT. ch. 32. From a purely statutory standpoint, the question of what the "acquisition payment" is in a case involving the sale of four parcels, used for different purposes, at a collective per-acre price, is not as clear cut as Busse suggests. As ***Pinczkowski*** noted, our legislature has authorized the Department of Administration to promulgate rules to implement and administer § 32.19, which it has done. *See* WIS. STAT. § 32.26(2)(a); ***Pinczkowski***, 286 Wis. 2d 339, ¶66. We agree that it was proper for the Village to apply the mixed-use carve out pursuant to WIS. ADMIN. CODE § ADM 92.68(7)(e)2.b. under the circumstances here.

Therefore,

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