STATE OF WISCONSIN

TAX APPEALS COMMISSION

SEATS, INC. (P),

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE

Respondent.

DOCKET NOS. 03-M-315(P) and 03-M-316(P)

RULING AND ORDER

DON M. MILLIS, COMMISSION CHAIRPERSON:

These matters come before the Commission on respondent's motion to dismiss the petitions for review for (1) failure to state a claim upon which relief can be granted, (2) failure to comply with the statutory scheme for challenging and reviewing property tax assessments, (3) failure to exhaust administrative remedies, and (4) lack of subject matter jurisdiction. Petitioner countered with a request for costs and attorney fees under section 802.05 of the Statutes. Both parties have submitted briefs and affidavits with respect to respondent's motion and petitioner's request for costs.

Petitioner is represented by Michael Best & Friedrich LLP, by Attorneys Robert L. Gordon, Joseph A. Pickart, and Kristina E. Somers. Respondent is represented by Attorney Sheree Robertson.

Based on the submissions of the parties and the entire record in these matters, the Commission finds, rules, and orders as follows:

FACTS

Procedural Facts

1. Under the date of June 30, 2003, respondent issued to petitioner a Notice of Real Property Assessment as of January 1, 2003 for two of petitioner's parcels: No. 76-56-276-R002500 ("Parcel 2500") and No. 76-56-276-R002800 ("Parcel 2800").

2. With respect to Parcel 2500, respondent assessed the land at $58,400 and improvements at $487,300, for a total assessed value of $545,700. With respect to Parcel 2800, respondent assessed the land at $123,300 and improvements at $4,159,300, for a total assessed value of $4,282,600.

3. Under the date of August 18, 2003, petitioner filed a Form of Objection to Real Estate Assessment ("Objection") with the State Board of Assessors (the "Board") with respect to each of the parcels. Each Objection was prepared on a Form of Objection prescribed by respondent.

4. Petitioner's Objections asserted that Parcel 2500 had a land value of $50,000 and an improvements value of $100,000, for a total value of $150,000, and that Parcel 2800 had a land value of $100,000 and an improvements value of $1,000,000, for a total value of $1,100,000.

5. Respondent's prescribed Form of Objection contains a box that asks for "Reason(s) for Objecting to Assessment" ("Reasons Box") and a box that asks for the "Basis for Your Opinion of What Full Value Should Be" ("Basis Box"). Each box has an area of approximately 11.3 square inches. There is no indication on the form that

additional information should be attached if the Reasons Box or Basis Box does not provide enough space for the information sought.

6. In the Reasons Box, each Objection contained the same language:

> It is our opinion that the 2003 assessed values overstate the actual market value of the property due to the size, type of construction, and other obsolescence factors associated with the property.

7. In the Basis Box, each Objection contained the same language:

> Sales of comparable properties of similar size ad construction type indicate that the market value of this property should be reduced.

8. The Board sent to petitioner an acknowledgement with respect to each Objection. Each acknowledgement contained the following warning:

> The Board will probably deny jurisdiction and dismiss the objection if any of the following conditions exist:
>
> * * *
>
> - You have not stated your reasons for the objection, your estimate of the correct assessment, and the basis for your estimate of the correct assessment [s. 70.995(8)(c)1, Wis. Stats.]
>
> * * *
>
> The Board requires that any data supporting your opinion of value be submitted to the Madison district office. . . .

9. Along with each acknowledgement, respondent included its two-page form entitled "MANUFACTURING ASSESSMENT APPEAL - WHAT HAPPENS NEXT?" This document provided in part:

> Now that you have appealed your assessment, what should you be doing?
>
> 1. You should be providing the original plus one copy of detailed written information supporting your opinion of what your assessment should be. (The back of this form describes the types of information that may be helpful.)

> 2. You need not repeat information already provided if this is a continuation of an earlier year's appeal and you have provided the information before.
>
> NOTE: State Statutes and case law presume the original assessment is correct and place the burden of proving otherwise on the taxpayer. It is important to provide as much information as possible in the first communication to the district office. Keep in mind that, according to the law, if your assessment is reduced, no interest will be paid on the refund if the reviewing authority determines that the value was reduced because you supplied false or incomplete information.
>
> * * *
>
> COMMENT: You'll get a better, faster decision if the information you provide is timely and complete. It is in your best interest to annually monitor the progress of the original appeal; if it is not resolved, subsequent appeals may be necessary to protect your interest. Generally, as the first year appeal is resolved, all other years follow quickly.

10. Petitioner did not submit any information in addition to that supplied on the two Objections and did not contact the Board after filing its Objections.

11. Under the date of November 7, 2003, the Board issued a Notice of Determination with respect to each Objection. The Board did not change the full value assessments with respect to either subject property.

12. The Board did not deny jurisdiction or dismiss petitioner's Objections.

13. Petitioner filed timely petitions for review with the Commission to appeal the Board's determinations.

14. Under the date of January 22, 2004, respondent filed its motion to dismiss the petitions for review.

15. Under the date of February 17, 2004, counsel for petitioner wrote to respondent's chief counsel arguing that respondent's motion in this case violates Supreme

Court Rules 20:3.1 and 20:3.3, rules that require attorneys "to be candid with the tribunal, and to not knowingly present legal positions which are entirely unwarranted." Gordon Aff., Ex. 1.

16. Respondent's chief counsel responded under the date of February 24, 2004, with a letter that asserted that respondent's motion was justified by Supreme Court Rule 20:3.1(a)(1) as a position that "can be supported by good faith argument for an extension, modification or reversal of an existing law."[1] Gordon Aff., Ex. 2.

17. In its response to respondent's motion, petitioner requested sanctions under section 802.05 of the Statutes for filing a motion that respondent has conceded has no legal basis.

1997 Assembly Bill 460

18. On July 22, 1997, Rep. Michael Lehman introduced Assembly Bill 460, a bill that would have, among other things, changed the procedure for prosecuting appeals of manufacturing assessments before the Board and the Commission.

19. In its Fiscal Estimate on AB 460, respondent asserted that "[u]nder current law, . . . the taxpayer may raise new issues or introduce new evidence before the" Commission.

[1] The letter from respondent's chief counsel misquoted the Supreme Court Rule. The letter referred to the "extension, modification or reversal of *an* existing law." Gordon Aff., Ex. 2 (emphasis supplied). The word "an" does not appear before the term "existing law" in SCR 20:3.1(a)(1).

20. Section 7 of Assembly Substitute Amendment 1 to AB 460[2] would have amended section 70.995(8)(a) of the Statutes to require that evidence and issues not raised before the Board could not be presented on appeal before the Commission.

21. AB 460 did not become law, but was passed by the Assembly. Before the Assembly adopted ASA 1 to AB 460, it adopted Assembly Amendment 2 to ASA 1. AA 2 removed from ASA 1 the language that would have limited taxpayers, in manufacturing appeals to the Commission, to the evidence and issues presented to the Board.

APPLICABLE STATUTE

70.995 State assessment of manufacturing property.

* * *

(8)(c)1. All objections to the amount, valuation, taxability, or change from assessment under this section to assessment under s. 70.32 (1) of property shall be first made in writing on a form prescribed by the department of revenue that specifies that the objector shall set forth the reasons for the objection, the objector's estimate of the correct assessment, and the basis under s. 70.32 (1) for the objector's estimate of the correct assessment. An objection shall be filed with the state board of assessors within the time prescribed in par. (b) 1. A $45 fee shall be paid when the objection is filed unless a fee has been paid in respect to the same piece of property and that appeal has not been finally adjudicated. The objection is not filed until the fee is paid. Neither the state board of assessors nor the tax appeals commission may waive the requirement that objections be in writing. Persons who own land and improvements to that land may object to the aggregate value of that land and improvements to that land, but no person who owns land and improvements to that land may object only to the valuation of that land or only to the valuation of improvements to that land.

(8)(c)2. A manufacturer who files an objection under subd. 1. may file supplemental information to support the manufacturer's objection within 60 days from the date the objection is filed. The state board of assessors shall notify the municipality in which the manufacturer's property is

[2] While this substitute amendment was introduced by the Assembly Committee on Ways and Means, it appears that it was at least in part drafted at the prompting of respondent.

> located of supplemental information filed by the manufacturer under this subdivision, if the municipality has filed an appeal related to the objection.

CONCLUSIONS OF LAW

1. Petitioner has complied with the requirements of section 70.995(8)(c)1 of the Statutes because it provided reasons for objecting to the assessments and its basis for its opinion of the correct assessments.

2. While two of respondent's arguments in support of its motion were groundless, the Commission cannot conclude that the motion to dismiss was filed without good faith because a third argument was based on the meaning of an ambiguous statute.

RULING

While respondent's brief is not a model of clarity, we read it to make three basic arguments in support of its motion to dismiss. The Commission will first address these arguments and then address petitioner's request for costs.

Motion to Dismiss

Record to Review

Respondent's first argument is that because petitioner has failed to provide information to support its objections, there is no information for the Commission to review on appeal. This argument fundamentally misconstrues the role of the Commission.

Appeal to the Commission is made on a *de novo* basis. *Bedynek v. Dep't of Revenue,* Wis. Tax Rptr. (CCH) ¶400-693 at 5 (WTAC 2003); *Dye v. Dept' of Revenue,* Wis. Tax Rptr. (CCH) ¶400-597 at 6 (WTAC 2002). In order to be made a part of the record,

evidence has to be offered before the Commission. Information exchanged between respondent and the taxpayer prior to and even during the appeal does not become a part of the record before the Commission unless it is offered by a party and received by the Commission. In fact, the usual practice for both taxpayers and respondent is to offer information that has been generated *after* a petition for review has been filed with the Commission.

The Commission does not sit in judgment of the actions of respondent or the Board, and it certainly does not sit in judgment of the Board based on the information provided to it. As with all other appeals to the Commission, the interaction between the taxpayer and respondent is irrelevant to the *de novo* inquiry before the Commission,[3] other than the requirement that the taxpayer file its objection with respondent in a timely manner. In the same way that it is irrelevant what a taxpayer has presented to respondent's resolution officer in a sales and use tax or income tax case, it is also irrelevant to the Commission's proceedings what a manufacturer has presented to the Board. Respondent has never offered minutes of the meetings of the Board; other than the assessors involved in the appraisal, members of the Board do not typically testify before the Commission; the Board's file is not certified and transmitted to the Commission; and other than the appraisal report prepared by the Board, relatively few items in the record before the Board or the Board's file are presented to the Commission. For example, it is

[3] The Commission frequently chastises, often at respondent's request, unrepresented litigants (and, alas, some who are represented) who wish to litigate their treatment by respondent prior to the filing of a petition for review with the Commission. Respondent is well aware that the Commission consistently informs petitioners that the Commission does not sit in judgment of their treatment by respondent. The Commission's concern is whether petitioner owes the tax, is entitled to a refund, or, as in this case, has proven its opinion of value of the subject property.

not unusual for the appraisal that is offered by respondent before the Commission to differ significantly from the appraisal report that is prepared for the Board. *E.g., Hormel Foods Corp. v. Dep't of Revenue,* Wis. Tax Rptr. (CCH) ¶400-741 at 7-8, 10 (WTAC 2004).

The statutory scheme and the practice of the Commission is that the Commission does not sit in judgment of the Board's record. The lack of a record before the Board does not prevent the Commission from carrying out its duties in determining whether the assessment is correct and, if not, the correct amount of the assessment.

Exhaustion of Administrative Remedies

Respondent correctly points out that the statutes mandate that all objections to valuation of manufacturing property be first made to the Board on a form prescribed by respondent that sets forth the (a) reasons for the objection, (b) objector's estimate of the correct assessment, and (c) basis under section 70.32(1) for the objector's estimate of the correct assessment. Wis. Stat. § 70.995(8)(c)1. Respondent then correctly observes that where a method of review is prescribed by statute, that prescribed method is exclusive. *Association of Career Employees v. Klauser,* 195 Wis. 2d 602, 612 (Ct. App. 1995).

The problem with respondent's argument is that petitioner complied with the statutorily prescribed requirements. In the space afforded by the Form of Objection, petitioner supplied on each Objection its reasons for objecting to the assessment, its estimate of the correct value, and its basis for its opinion of the correct assessment.

Respondent argues that the information petitioner placed in the Reasons Box and the Basis Box was vague and did not, in and of itself, provide enough information for the Board to investigate and render a decision on the Objections. The Commission

does not read into the statute a requirement to provide the detailed information respondent seeks because, even if the statute is ambiguous, every consideration augurs against respondent's view.

The Form of Objection is tantamount to a notice pleading. Its role is to put respondent, its Board, and the affected municipality on notice of the nature of the objection. Under the principle of modern notice pleading, the function of the pleadings is to give general notice of the claim. *O'Leary v. Howard Young Medical Center*, 89 Wis. 2d 156, 173 (Ct. App. 1979). The purpose of the pleadings is not to provide all of the evidence to be presented at trial.

Even respondent seems to agree with this construction, at least in the design of the Form of Objection. The Form of Objection provides very little room to elaborate on the information sought in the Reasons Box and the Basis Box, and there is no invitation to attach additional information. Moreover, the notice that accompanied the Board's acknowledgments provided that petitioner *should* provide "detailed written information supporting" its opinion of value and made it clear that this information is expected *after* the filing of the Objections. Because the Form of Objection performs the function of a pleading, this confirms that section 70.995(8)(c)1 does not require any significant degree of detail in the Reasons Box or the Basis Box.[4]

The existence of section 70.995(8)(c)2—the section that allows, but does not require, supplemental information to be filed within 60 days of objection—also confirms

[4] We also note that the Board did not deny jurisdiction and dismiss the Objections. Had the Board truly believed the arguments offered by respondent here, that would have been the appropriate response.

that the information to be placed in the Reasons Box and Basis Box need not be detailed. It would not make sense to have a statutory scheme that allowed a manufacturer to augment information in the Form of Objection if the information in the Form of Objection was to provide, as respondent argues, the information necessary for the Board to render its decision. We conclude that respondent's view of the role of the Reasons Box and the Basis Box is inconsistent with the statutory scheme set forth in section 70.995(8).

Policy

Respondent makes a number of policy arguments in support of the notion that manufacturers filing objections should make a good faith effort to prosecute their case before the Board. The Commission is not unsympathetic to respondent's concerns. In many cases, it would seem probable that a fair presentation of the evidence to the Board would lead to resolution of some objections and a narrowing of issues for appeal to the Commission in other cases.

We are mindful, however, that experienced litigants may know the position of the Board or its members with respect to certain issues and reasonably believe that there is little or no possibility that the objector will prevail. In such cases, it is hard to blame the objector for not investing significant resources in fighting a futile battle and, instead, doing the minimum necessary to prosecute its appeal and preserve its rights before the Commission.

Moreover, a policy of expecting more from litigants before the Board would present practical problems. How much should be required from objectors? If objectors were limited to evidence and issues presented to the Board, how would the Commission

determine what was, in fact, presented to the Board? The Board does not certify a record. Moreover, because the Board does its own investigation in response to information presented by objectors, such a policy might preclude an objector from presenting evidence in response to the results of the Board's investigation. As stimulating as this discussion may be, it is clear that respondent's view is not the law.

Respondent also notes that a substantial number of manufacturing appeals have been filed with the Commission, and that, somehow, if these cases are not fully litigated before the Board there will be undue costs to the State and local governments.[5] This argument has no merit. Over the past 15 years, one law firm has filed literally thousands of appeals on behalf of retired federal employees as a result of the U.S. Supreme Court decision in *Davis v. Michigan*, 489 U.S. 803 (1989). The volume of cases does not affect our duties, those of respondent or of the Board. If the Board is not satisfied with the evidence presented, it should simply affirm the assessment.

Petitioner argues that respondent is now seeking in its motion to obtain the result that it did not obtain in 1997 when the Assembly adopted AA 2 to ASA 1 to AB 460. Prior to the adoption of AA 2, ASA 1 to AB 460 would have provided that new arguments and evidence could not be presented to the Commission. The result sought by respondent's motion would be that a manufacturer would be required to present a quantum of evidence that allows the Board to reach a decision. While these are not the

[5] It would seem that in many cases, a perfunctory review by the Board of Assessors would save the state money if the case were to be appealed to the Commission. As noted above, respondent rarely relies upon the appraisal report prepared for Board consideration, almost always preparing a new appraisal in response to petitioner's appraisal.

identical results, they are obviously aimed at the same problem as perceived by respondent: that manufacturers filing objections to the Board do not always provide as much information as the Board would like. Moreover, even though the Commission cannot accept the statements in respondent's fiscal estimate to AB 460 as an admission that the current law is something other than what respondent is asserting in support of its motion, it is clear that the obvious goal of respondent's motion is to modify the law governing the requirements of objections filed with the Board. While the motion seeks a modification different from the change sought through the legislature's deliberations on AB 460, it is a modification in the law nevertheless. Respondent's chief counsel admitted as much when she sought to justify the motion in her letter of February 24, 2004, as a good faith argument for the modification or reversal of existing law.

What makes respondent's policy argument inappropriate is that the Commission simply lacks the authority to change the law governing objections. The current law, as explained above, is based on the statues, not on Commission or court decisions.[6] It is the province of the legislature, not the Commission, to amend the statutes.

---

[6] None of the cases cited by respondent support the position taken in its motion. In *Food Service Products Co., d/b/a Moore's Food Products v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-117 (WTAC 1995), the Commission dismissed a petition for review because the petitioner failed to insert any opinion of value on the Form of Objection. The petitioner in *Food Service* clearly failed to comply with section 70.995(8)(c)1 and, therefore, deprived the Commission of subject matter jurisdiction. In *Town of Eagle v. Christensen*, Wis. Tax Rptr. (CCH) ¶ 400-041 (Jefferson Co. Cir. Ct. 1993), the circuit court dismissed a complaint against an assessor for failure to exhaust administrative remedies because the plaintiff did not challenge their assessments before the Board of Review. Here, petitioner filed Objections with the Board. In *Simonson v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 203-291 (WTAC 1992), the Commission refused to allow a taxpayer to file an "oral" return by testifying before the Commission to challenge an estimated assessment when the taxpayer had failed to file an income tax return in the first place. Again, petitioner here filed the Objections.

Sanctions under Section 802.05

Petitioner seeks sanctions against respondent under section 802.05(1)(a) of the Statutes because respondent cannot "possibly claim that it has a *good faith* basis for asking *this Commission* for an 'extension, modification or reversal" of the existing *statutory* law which governs this Commission's jurisdiction." Petitioner's Brief at 17. Under section 802.05, the Commission:

> need only 'undertake an objective inquiry into whether the party or his counsel "should have known that his position is groundless."'

Jandrt v. Jerome Foods, Inc., 227 Wis. 2d 531, 549-50 (1999) (citing *National Wrecking Co. v. International Brotherhood of Teamsters Local 731*, 990 F.2d . 957, 963 (7th Cir. 1993)).

The Commission certainly agrees that two of the three arguments respondent offered were groundless. We examine first respondent's argument that without a better record before the Board, the Commission cannot properly do its job. Respondent's Brief at 2, 4, 6-8. As indicated above, this argument completely misconstrues the Commission's role. In countless cases, some involving manufacturing cases, the Commission has presided over appeals where little or no information is provided to respondent prior to the filing of a petition for review. The Commission has no difficulty in deciding these. It is our job. Respondent should have known that this argument was groundless when it filed its motion to dismiss.

We next look to respondent's policy arguments, including its argument concerning the spate of recent manufacturing appeals. Respondent's Brief at 7-9. Again, these arguments may provide food for thought, but they should be directed to the

legislature, not the Commission. This is not to say the policy arguments have no place before the Commission. Certainly, when the Commission is called upon to construe an ambiguous statute, policy considerations may have a place. And while the Commission undertook to construe the meaning of portions of section 70.995(8)(c)1, the policy arguments were not offered by respondent to assist in the construction of this statute. For example, after noting the large number of manufacturing appeals pending before the Commission, respondent asserted:

> Because there was no information provided to the State Board of Assessors to review, the Wisconsin Tax Appeals Commission lacks statutory authority to act as a substitute for the review required by the State Board of Assessors and the Petitions for Review should be dismissed.

Respondent's Brief at 8. There is simply no authority to support this statement. Respondent should have known that its policy arguments were groundless when it filed its motion.

Although the Commission disagrees with respondent's characterization of current law as it applies to the requirements for the Form of Objection in section 70.995(8)(c)1, we cannot conclude that respondent should have known its position was groundless when it filed the motion. The meanings of the words "reasons" and "basis" in this statute are ambiguous. While we do not think it was a close call as to the proper meaning of those terms, it would not be entirely unreasonable to differ with the Commission's view. As indicated above, the Fiscal Estimate to AB 460 did not directly contradict the position taken by respondent in its motion. Moreover, we cannot conclude that the letter from respondent's chief counsel was an admission that respondent's

position on section 70.995(8)(c)1 was contrary to law. As far as the Commission is aware, there has been no case construing the words "reasons" and "basis" in that statute.

Because one of the three arguments offered by respondent was based on the meaning of an ambiguous statute that might arguably be construed in respondent's favor, we cannot conclude that the act of filing the motion was without good faith. Therefore, the Commission declines to award costs to petitioner under section 802.05.

This matter will be set for a telephone status conference on May 17, 2004 at 10:00 a.m.

ORDER

Respondent's motion to dismiss is denied.

Petitioner's motion for costs under section 802.05 of the Statutes is denied.

This matter shall come before the Commission for a **Telephone Status Conference on Monday, May 17, 2004 at 10:00 a.m.**[7]

Dated at Madison, Wisconsin, this 11th day of May, 2004.

WISCONSIN TAX APPEALS COMMISSION

Don M. Millis, Commission Chairperson

[7] This Ruling and Order is issued by a single Commissioner under the authority provided by section 73.01(4)(em)2 of the Statutes as created by 2003 Wisconsin Act 33, § 1614d.