

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

MADISON-KIPP CORP 91CV2921 111292 DANE CTY CIR CT

NOV 11 1992

COPY

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

WISCONSIN DEPARTMENT OF REVENUE,

Petitioner,

vs.

MADISON-KIPP CORPORATION,

Respondent.

MEMORANDUM DECISION
AND ORDER

STATE OF WISCONSIN
Case No. 91-CV-2971
DEPARTMENT OF REVENUE

NOV 12 1992

RECEIVED
LEGAL DIVISION

BEFORE THE HON. ROBERT A. DE CHAMBEAU, CIRCUIT COURT BRANCH

This matter is before the court on the Wisconsin Department of Revenue's ("PETITIONER") petition for administrative review under chapter 227, Wis. Stats., of a decision and order of the Wisconsin Tax Appeals Commission ("COMMISSION"). The Commission's decision and order, dated June 27, 1991, modified 1987 and 1988 assessments relating to the manufacturing property of Madison-Kipp Corporation ("RESPONDENT"), which were made by the State Board of Assessors ("BOA").

FACTS

Respondents manufacturing property, located at 201 Waubesa Street, Madison, Wisconsin, is approximately 6.5 acres in area, 45% of which is occupied by building improvements. Petitioner's intitial assessed valuations of the property for the years 1987 and 1988 were \$868,100 and \$869,100 respectively. In each year the land was valued at \$277,900, while the value of improvements was increased from \$590,200 in 1987 to \$591,100 in 1988. Respondent appealed the assessments for both years to the BOA. The BOA affirmed Respondent's determinations for both 1987 and 1988. Respondent then appealed both

Petitioner's and BOA's determination to the Commission.

Petitioner's assessor valued the subject property in accordance with the Wisconsin Property Assessment Manual for Property Assessors ("ASSESSMENT MANUAL"), and derived a separate value for land and a separate value for improvements as required by the assessment manual. The Commission decision and order modified downward the assessed valuations of Petitioner's assessor, which were affirmed by the BOA, setting a total value of the property at \$475,000.00 for each year. The Commission arrived at its adjustments by evaluating the comparables of the parties respective appraisers. The Commission found five sales reasonably comparable. In the course of its evaluation, the Commission either accepted the appraiser's adjustments, rejected them, or modified the size of the adjustment based on factual considerations. The Commission explained its adjusted assessment figures by stating: "[W]e have derived an overall value which considers land and improvements together even though land value must remain as determined by the assessor and the BOA." (Slip. op. at 16).

Petitioner's appeal of the Commission's decision is based upon its contention that the Commission's decision and order does not result in the subject property being valued in the manner required by sec. 70.32(1), Wis. Stats., and the Wisconsin Property Assessment Manual for Property Assessors. Petitioner requests this court to remand the case to the Commission with directions to reconsider its decision using the separate land/improvement valuation methodology Petitioner alleges is required by sec. 70.32(1), Wis. Stats., and the Assessor's Manual.

STANDARD OF REVIEW

The issue before this court on review is one of law. Bucyrus-Erie Co. v. ILHR Dept., 90 Wis. 2d 408, 417, 280 N.W.2d 142 (1979). In reviewing decisions of administrative

agencies, the reviewing court is not to substitute its judgment for that of the agency on a question of law if "...a rationale basis exists in law for the agency's interpretation and does not conflict with the statute's legislative history, prior decisions of this court, or constitutional prohibitions."

Pabst v. Department of Taxation, 19 Wis. 2d 313, 324, 120 N.W.2d 77 (1963).

Section 227.57, Wis. Stats., establishes the scope of judicial review of an administrative decision. Petitioner is alleging that the Commission did not comply with sec. 70.32(1), Wis. Stats., and the Assessor's Manual in arriving at its decision. This court's role in reviewing the Commission's decision is limited to determining whether the Commission complied with sec. 70.32(1) and the Assessor's Manual. Therefore, 227.57(5) applies, which states:

The court shall set aside or modify the agency action if it finds that the agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law.

In the case at bar, the court looks to whether the Commission erroneously interpreted sec. 70.32(1) and the Assessor's Manual in arriving at its decision.

DECISION

The valuation of real estate in Wisconsin is governed by sec. 70.32, Wis. Stats. Subsection (1) of that section states in relevant part:

Real property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual provided under s. 73.03(2a) from actual view or from the best information that the assessor can practicably obtain, at the full value which could ordinarily be obtained therefor at private sale.

Subsection (3) states:

Manufacturing property subject to assessment under s. 70.995 shall be assessed according to that section.

Respondent's property is manufacturing property and therefore is subject to the assessment procedures set forth in sec. 70.995, Wis. Stats.¹ The court read and re-read sec. 70.995, and did not find any provision in that statute that requires the assessor to value land and improvements separately. The court also read and re-read the Wisconsin Property Assessment Manual,² and did not find any requirement that an assessor must separately value the land and improvements on a parcel. Respondent correctly states in its brief that the Assessment Manual simply provides a procedure by which local assessors will comply with the requirement that the assessment rolls have the required figures in separate columns for land and improvements. Specifically, the Assessment Manual states:

Due to the requirement that land and improvement values be listed separately on the assessment roll, the assessor must derive a separate land value for each parcel. In those cases where there is a sale, the sales price is rarely divided into a separate price for land. Thus, it becomes the task of the assessor to estimate a separate value for land and improvements. (emphasis added)

Vol. 1, part 1, Wisconsin Property Assessment Manual, p. 7-9.

It is clear to this court, that the above statement from the Assessor's Manual does not mandate the assessor to value land and improvements separately. Rather, after the assessor has fixed a value for the parcel, for purposes of the assessment roll, the assessor must then determine a separate estimate of the land value and a separate estimate of the value of improvements. This

¹ sec. 70.995(7)(b) states: "Each 5 years, or more frequently if the department of revenue's workload permits and if in the department's judgment it is desirable, the department of revenue shall complete a field investigation or on-site appraisal at full value under ss. 70.32(1) and 70.34 of all manufacturing property in this state."

² Chapter 10: Class C--Manufacturing Valuation; Chapter 5: Real Property Assessment--General; and Chapter 7: Real Property Valuation.

is also the requirement of sec. 70.32(2). That section provides:

(2) The assessor, having fixed a value, shall enter the same opposite the proper tract or lot in the assessment roll, following the instruction prescribed therein.

(a) In cities and villages, the assessor shall segregate into the following classes on the basis of use and set down separately in proper columns the values of the land, exclusive of improvements, and the improvements in each class:

1. Residential
2. Commercial
3. Manufacturing
4. Agricultural

(emphasis added).

This section clearly applies to the assessor's recording the values of the various classes in the assessment roll, and obviously the separation of land value and improvement value is for purposes of recordation in the assessment roll. Based upon the court's reading of sections 70.32 and 70.995, Wis. Stats., and the Wisconsin Property Assessor's Manual, the court finds that the Commission did not erroneously interpret sec. 70.32 or the Assessor's Manual by valuing Respondent's parcel in the manner it did.

Further, the Commission in its valuation left the land value of \$277,900.00, as determined by the BOA, undisturbed. The Commission then used comparables supplied by the parties' appraisers and made various adjustments, which were in its discretion to make, to the improvement values established by the appraisers. After making the improvement value adjustments, the Commission arrived at a fair market value for the property as a whole, of \$475,000. As Respondent points out in its brief, simple subtraction of the already-determined land value of \$277,900 from the full value of the subject of \$475,000, results in an improvement

value of \$197,100. Thus, you now have the full value of the parcel separated into individual values for land and improvements, such that the values can be recorded in the assessment roll in accordance with sec. 70.32(2), Wis. Stats.

Therefore, IT IS ORDERED that the decision and order of the Wisconsin Tax Appeals Commission is upheld.

Dated this 6 day of November, 1992.

BY THE COURT:

A handwritten signature in cursive script, reading "Robert A. De Chambeau". The signature is written in dark ink and is positioned above the printed name and title.

Robert A. De Chambeau
Circuit Judge