Chapter 21
Legal Review of 2010 – 2011 Court Decisions

The following cases relevant to assessors were decided by Wisconsin appellate courts and presented at the Department of Revenue Assessor Schools. For details or clarification, the assessor should refer to the actual court documents, consult with the municipal attorney, or contact their District Equalization Office.

Wisconsin Supreme Court

Covenant Healthcare System, Inc.* v *City of Wauwatosa, Wisconsin Supreme Court, 2011 WI 80, July 19, 2011

Metropolitan Associates,* v *City of Milwaukee, Wisconsin Supreme Court, 2011 WI 20, March 25, 2011

Nestlé USA, Inc.,* v *Wisconsin Department of Revenue, Wisconsin Supreme Court, 2011 WI 4, February 2, 2011

State of Wisconsin ex rel. Stupar River LLC v Town of Linwood, Portage County Board of Review. Wisconsin Supreme Court, 2011 WI 82, July 22, 2011

Wisconsin Court of Appeals

Clear Channel Outdoor, Inc. and Lamar Central Outdoor, LLC v City of Milwaukee and City of Milwaukee Board of Assessors, Wisconsin Court of Appeals, 2010 WI App 117, July 26, 2011

Mary Faydash,* v *City of Sheboygan, Wisconsin Court of Appeals, District II, Appeal No. 2010AP2073, March 2, 2011.

Great Lakes Quick Lube, LP,* v *City of Milwaukee, Wisconsin court of Appeals, District I, Appeal No. 2009AP2775, December 14, 2010.

David G. Hildebrand and Susan G. Hildebrand v Town of Menasha, Wisconsin court of Appeals, 2011 WI App 83, May 11, 2011.

Northwest Wisconsin Community Services Agency, Inc.,* v *City of Montreal, Wisconsin Court of Appeals, 2010 WI App 119, July 20, 2010.

U. S. Oil Co., Inc.,* v *City of Milwaukee, Wisconsin court of Appeals, 2011 WI App 4, December 28, 2010.

Summaries

Wisconsin Supreme Court

Covenant Healthcare System, Inc. v *City of Wauwatosa,* Wisconsin Supreme Court, 2011 WI 80, July 19, 2011

What Assessors should know: A nonprofit clinic owned and operated by a tax-exempt hospital may be exempt under sec. 70.11(4m)(a), Wis. Stats., if the clinic is used exclusively for the purposes of the hospital.

The Court's reasoning: Covenant Healthcare System, Inc. operated an outpatient clinic which provided a broad range of outpatient medical services, including a 24-hour urgent care center. The clinic was located five miles away from St. Joseph's hospital, a tax-exempt entity owned and managed by Covenant.

Covenant filed Property Tax Exemption requests for 2003 to 2006 for the first, third and fifth floors of the building. The City of Wauwatosa denied the exemptions.

The Supreme Court determined that the Clinic effectively served as a department of the larger Hospital. The court found that the Clinic was designed, constructed and operated to alleviate the burden on the downtown Hospital by providing additional space for outpatient services and that, given this high degree of integration, the Clinic was used exclusively for the purposes of the hospital as required by sec. 70.11(4m)(a). The Clinic's services were integrated with and complementary to the hospital's services; both were staffed by the same four rotating physician groups and patient records were accessible at either location.

Furthermore, the court found that the exemption should not be disqualified on grounds that the Clinic was a "doctor's office." The Clinic was constructed to significantly higher standards than a typical medical office, and it was accredited by the Joint Commission on the Accreditation of Hospitals, an organization which does not accredit private doctor's offices. Additionally, the Clinic possessed many qualities normally attributed to a hospital, including a gift shop, public cafeteria, space for visitors, accommodation for overnight stays and an Urgent Care Center which functioned similarly to a hospital emergency room. Furthermore, while patients would normally receive one bill for all services rendered at a doctor's office, Clinic patients received a facility bill from the Clinic and a professional services bill from the attending physician.

Finally, the court found that the Clinic was not used for commercial purposes, nor was there improper inurement to a member. Charitable organizations are not required to operate at a loss and the mere existence of profits by itself is not enough to establish an improper commercial purpose. Furthermore, because the term "member" under sec. 70.11(4m)(a) does not include not-for-profit entities, any potential transfer of funds from the Clinic to the Hospital would not constitute improper inurement to a member.

Metropolitan Associates, v *City of Milwaukee,* Wisconsin Supreme Court, 2011 WI 20, March 25, 2011

What Assessor should know: All of 2007 Wisconsin Act 86's modifications to secs. 70.47, 7303, and 74.37, Wis. Stats., are unconstitutional. Instead, property owners may challenge Board of Review assessment determinations with either certiorari or de novo review. This ruling reversed a prior Court of Appeals decision.

Also, property owners are not afforded the right to a jury trial in disputes over property assessments.

The Court's reasoning: *Metropolitan* is the legislature's second attempt to limit property owners' ability to seek judicial review of property assessments. The first attempt was challenged by *Nankins v. Village of Shorewood,* 2001 WI 92. The *Nankin* court struck down a statute that denied property owners in counties over 500,000 people or more the ability to challenge property assessments with de novo review in circuit courts. The statute in *Metropolitan* allowed municipalities to "opt out" by providing an enhanced certiorari review in place of the traditional de novo review.

The court in *Metropolitan* reasoned that Act 86 lacked a rational basis because it created a distinct class of taxpayers in the "opt out" municipalities, this new class was treated differently because they were unable to contest their case in a court trial and there was no rationale for treating these citizens differently than others. Therefore Act 86's denial of de novo review to a distinct class of citizens violated both the Wisconsin and the United States Constitutions.

Nestlé USA, Inc., v *Wisconsin Department of Revenue,* Wisconsin Supreme Court, 2011 WI 4, February 2, 2011

What Assessors should know: A market can exist for a subject property, especially a special-use property, without actual sales data of similar properties being available.

The Court's reasoning: Nestlé was assessed at $10,719,900 using the cost assessment method, because the Tax Appeals Commission agreed with the Department that (1) the Gateway Plant's "highest and best use" was as a powdered infant formula production facility, and (2) no comparable sales of powdered infant formula production facilities that satisfied FDA regulations existed.

Nestlé argued that the actual value was only $3,590,000, because the Gateway Plant's "highest and best use" was as a food processing plant and comparable food processing plant sales should be used. Alternatively, it argued that it would cost Nestlé over $17 million to reproduce an identical plant, but that approximately $13 million of that should be deducted due to functional obsolescence, because many of the plant's FDA-required features had no value in the market for generic food processing plants.

A subject property's highest and best use must be: 1) legal, 2) complementary, 3) nit highly speculative, and 4) marketable for that use. Nestlé argued that there was no marketability,

because the Commission found no instance in the United States where a powdered infant formula production facility was sold for continued use as a powdered infant formula production facility. The court disagreed, concluding that a market can exist for a subject property, especially a special-use property, without actual sales data of similar properties being available, especially in a young industry.

The court also rejected Nestlé's argument that the cost approach should include deductions for functional obsolescence. Functional obsolescence or super-adequacy is measured by whether a prudent purchaser or owner would include or pay for the feature in a particular type of structure under current market conditions. Prudent purchasers of powdered infant formula production facilities would value the plant's specialized features because these features are required by FDA regulations and are therefore necessary to the operation of such a plant.

State of Wisconsin ex rel. Stupar River LLC v Town of Linwood, Portage County Board of Review. Wisconsin Supreme Court, 2011 WI 82, July 22, 2011

What Assessor's should know: The law does not require that the assessed value of a property equal its fair market value. It only requires that the assessed value be based on the property's fair market value.

The Court's reasoning: In 2001, Stupar River LLC purchased a property in the Town of Linwood for $830,000. In 2002, the town assessed the property at $1,831,500. Stupar mounted an unsuccessful legal challenge to the 2002 assessment. The same $1,831,500 figure was used for the years 2003 and 2004.

In 2005, the assessed value increased to $1,893,400. Once again Stupar challenged the assessed value. While litigation over the 2005 value was pending, the 2006 assessment resulted in a lower value of $1,435,900. The circuit court remanded the case to the Board of Review with instructions to either re-assess the property for the years 2003 - 2005 in a manner consistent with the 2006 appraisal or to provide a rational explanation as to why the 2006 value was lower.

The Board of Review opted for the latter, explaining that the lower 2006 value was not due to any change in the fair market value of the property but was instead made in response to a Department of Revenue report calling for a lower total assessed value of the commercial class of properties in order to "bring it back in line with the other classes of properties."

Stupar argued that the assessed value of a property must, pursuant to sec 70.32(1), Wis. Stats., equal that property's fair market value, and that the lower 2006 value demonstrated that the 2003, 2004 and 2005 values were above fair market value of the subject property.

The court disagreed. The Property Assessment Manual requires only that a property's assessed value be *based on* fair market value and need not be *equal to* its fair market value in order to comply with sec. 70.32(1), as assessments at a percentage of fair market value are acceptable when applied uniformly. Thus, the court concluded that the 2005 assessment was made in accordance with sec. 7032(1) and the assessed value was presumed accurate in the absence of any evidence to the contrary.

Wisconsin Court of Appeals

Clear Channel Outdoor, Inc. and Lamar Central Outdoor, LLC v City of Milwaukee and City of Milwaukee Board of Assessors, Wisconsin Court of Appeals, District I, 2011 WI App 117, July 26, 2011 (Petition for review pending as of October 12, 2011)

What Assessors should know: A dispute over a city's legal authority to tax billboards as property must be initially brought to the Board of Review before it can be properly heard in court.

The Court's reasoning: Clear Channel Outdoor and Lamar Central Outdoor appealed the circuit court's dismissal of their complaints seeking declaratory judgment to overturn the assessment of their billboards.

The court concluded that its review was limited to whether or not Clear Channel and Lamar first exhausted all of their administrative remedies in accordance with sec. 70.47(16)(a), Wis. Stats. That section prohibits any person from filing a lawsuit questioning the "amount or valuation" of real or personal property without first taking their claim to the Board of Review.

Clear Channel and Lamar argued that they were not objecting to the "amount" or "valuation" of the assessment, but instead were challenging the City's constitutional authority to levy tax, so that sec. 70.47(16)(a) did not apply.

The court disagreed, finding that any determination on the validity of the tax is necessarily and directly tied to determining "amount of valuation." Whether real or personal property, a crucial component of a billboard's value is the associated permit granted by the City. Clear Channel and Lamar's challenge was essentially a dispute over the permit aspect of the billboards' value and thus concerned "amount of valuation" as contemplated by sec. 70.47(16)(a). For that reason, the issue must first be addressed by the Board of Review.

Mary Faydash, v *City of Sheboygan,* Wisconsin Court of Appeals, District II, Appeal No. 2010AP2073, March 2, 2011.

What Assessors should know: A home that was used by a taxpayer three months out of the year while made continuously available for rent via the Internet was deemed to have a commercial use that was neither de minimis nor inconsequential and therefore the personal property within the home was not exempt under sec. 70.111, Wis. Stats.

The Court's reasoning: In March, 2006 Mary Faydash purchased a single-family home in the City of Sheboygan. She furnished the home with her personal property, and it was used only by Faydash and her family that year.

In 2007 and 2008, Faydash began making the home available for rent over the Internet. She was able to rent the home sporadically, with sixteen overnight stays occurring in 2008.

During the years 2007 and 2008, Faydash and her family used the home and the personal property within for approximately 3 months each year.

For 2008, the City assessed the personal property within the home and levied $625 in tax. The City characterized the property as having "a commercial purpose", and therefore argued that the property was not exempt under sec 70.111, Wis. Stats.

Faydash paid the taxes under protest and made a Claim to recover Unlawful tax on Personal Property pursuant to sec 74.35, Wis. Stats. She filed a complaint with circuit court contending the personal property was kept for personal use, that the property was exempt by law from taxation, and that the levy of personal property tax was an unlawful tax. The City filed a motion for summary judgment.

The Circuit Court granted the City's motion for summary judgment. Faydash appealed.

The Court of Appeals upheld the Circuit Court's decision. The Court noted that mere inconsequential or de minimis commercial use would still qualify the personal property within the home exemption. However, the Court found that it was "key" that Faydash's home was continuously advertised over the Internet. This feature, the Court found, meant the property had "a commercial purpose" that went beyond mere de minimis or inconsequential commercial use.

Thus, the Court held that because Faydash did not establish a pattern of de minimis or inconsequential use, she failed to meet her burden of proof that the personal property was exempt.

Great Lakes Quick Lube, LP, v *City of Milwaukee,* Wisconsin Court of Appeals, District I, Appeal No. 2009AP2775, December 14, 2010.

What Assessors should know: Where several properties were purchased by another company and then simultaneously leased to the taxpayer and where no special financial arrangements were reported on the associated real estate transfer returns, the sales were properly considered "arm's-length" for assessment purposes.

The Court's reasoning: CRIC Great Lakes Acquisitions LLC (CRIC) purchased properties in the Milwaukee area in 2004. CRIC entered into a lease with Great Lakes Quick Lube at the same time. In 2005 CRIC I BETA, determined by the court to be the same as CRIC, purchased additional properties and leased them to Great Lakes Quick Lube, LP. In both instances CRIC completed real estate transfer returns that either made no representation as to the nature of the financing, if any, or reported "no financing involved," "financial institution conventional" or financing by an "other 3rd party."

The City assessed the four properties based on their investigation of the arm's-length sales. Great lakes Quick Lube argued that "creative financing" in the form of a sales-leaseback transaction inflated the sales prices and thus the sales were not arm's-length sales, and the values were improperly assessed. Great Lakes further argued that the over-taxation resulting from the inflated assessment amounted to a violation of the uniformity Clause in Article VII, section 1 of the Wisconsin Constitution.

The Court concluded the sales were arm's-length since the seller was not leasing back the properties they sold. Since the sales were properly considered to be "arm's-length", the Court found that the City properly assessed the properties in 2006 and 2007. Furthermore, because the properties were assessed accurately based on recent arm's-length sales, the Court also determined that Great Lakes did not establish a violation of Article VIII, section 1 of the Wisconsin Constitution.

David G. Hildebrand and Susan G. Hildebrand v Town of Menasha, Wisconsin Court of Appeals, District II, 2011 WI App 83, May 11, 2011.

What Assessors should know: a municipality may not legally assess commercial property for the cost of installing a portion of an asphalt recreational trail, where the purpose is to complete a trail system in that county and the property us already served by a trail.

The Court's reasoning: Section 66.0703(1)(a), Wis. Stats., allows certain municipalities to levy special assessments upon property in a limited and determinable area for special benefits conferred upon the property by any municipal improvement. Special assessments can only be levied for local improvements.

The primary purpose of the improvements was not local benefit, but general benefit. The purpose was to complete a recreational trail system throughout Winnebago County that would eventually connect with other municipalities. The lower court also noted that the Hildebrand property was on a trail system before the new trail was installed.

The court also rejected the Town's argument that a recreational trail was the same as a sidewalk under sec. 66.0907, Wis. Stats.

Northwest Wisconsin Community Services Agency, Inc., v *City of Montreal,* Wisconsin Court of Appeals, District III, 2010 WI App 119, July 20, 2010.

What Assessors should know: Under sec. 74.35, Wis. Stats., courts are authorized only to return taxes already paid by taxpayers and may not grant taxpayers future tax relief.

The Court's reasoning: Northwest and the City disagreed as to whether Northwest qualified for tax exempt status for 2008 under sec. 70.11(4), Wis. Stats. The circuit court ruled that Northwest was exempt in 2008 and for all future years. The Court of Appeals reversed, reasoning that tax exempt status may change in the future. Organizations are subject to continuing review and the legislature may change the criteria to determine the tax exempt status. Furthermore, to hold otherwise would undermine the legislature's ability to establish criteria governing tax exemptions.

U. S. Oil Co., Inc., v *City of Milwaukee,* Wisconsin Court of Appeals, District I, 2011 WI App 4, December 28, 2010.

What Assessors should know: Where comparables are assessed differently, some using an income approach and the rest using a sales approach, the assessment is excessive under the Wisconsin Constitution's Uniformity Clause.

The Court's reasoning: The oil terminal properties were physically adjacent, shared the same physical characteristics and features, served the same function and were used in the same fashion, so they were comparable properties. The City initially assessed all terminal properties relying on a 2002 sale of the subject. When one owner, U.S. Oil Company, appealed, in the course of that appeal the City reassessed its property using the income approach, causing the assessment on U.S. Oil's property to rise from $6 million to $14 million. Although the City could have reassessed the other properties using the income approach, it chose not to do so. The Wisconsin Constitution requires that the method or mode of taxing real property must be applied uniformly to all classes of property within the tax district. Because the assessor used a different methodology for comparable properties, U.S. Oil was unfairly singled out in violation of the uniformity Clause.