SUPREME COURT OF WISCONSIN

Walgreen Co. v. City of Madison, 2008 WI 80

752 N.W.2d 687 (2008) · No. 2006AP1859 · Decided July 8, 2008

SUMMARY

The Supreme Court of Wisconsin held that the assessment of leased retail property under Wisconsin Statute § 70.32(1) must generally reflect the market rent and market value of the fee simple interest, rather than above-market contract rent. The court reaffirmed that the Wisconsin Property Assessment Manual must be followed absent conflicting law, reversed the court of appeals, and remanded for further proceedings. The court deemed the challenge to the 2004 assessments waived and moot and did not reach the uniformity-clause issue.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Louis B. Butler, Jr.; Shirley S. Abrahamson
JURISDICTION	Wisconsin
DECIDED	July 8, 2008
DOCKET	2006AP1859
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Walgreen Co. sought review of a published Wisconsin Court of Appeals decision affirming a Dane County Circuit Court judgment upholding Madison's property-tax assessments of two Walgreen stores.
STANDARD OF REVIEW	Excessive-assessment claims under Wis. Stat. § 74.37(3)(d) are reviewed without regard to determinations made in earlier proceedings, based on the circuit court record rather than the Board of Review record. Legal questions concerning compliance with statutory assessment requirements are reviewed de novo. A municipal assessment receives presumptive weight only when the challenger has not presented significant contrary evidence and the assessment applies the Property Assessment Manual.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Walgreen Co. v. City of Madison

TOPICS

property tax | state and local tax | tax refunds | tax court procedure

PRACTICE AREAS

property taxation | municipal taxation | real-property valuation | appellate procedure

QUESTIONS PRESENTED

1. Whether Wisconsin property-tax law required Madison to assess the leased retail properties using market rents rather than the above-market contract rents under the income approach.
2. Whether the City and lower courts improperly relied on the actual lease terms and unusual financing arrangements in determining the properties' taxable real-property value.
3. Whether Walgreen was barred from challenging the 2004 assessments for failure to comply with Wis. Stat. § 70.47(7), or whether that issue was waived and moot.
4. Whether the assessments violated the Wisconsin Constitution's uniformity clause.

HOLDINGS

1. Under Wis. Stat. § 70.32(1), an income-approach assessment of leased retail property must generally use market rent rather than the property's actual contract rent when determining the market value of the fee-simple interest. Above-market lease terms resulting from unusual business or financing arrangements may not be used to increase the property's taxable real-property value.
2. Assessors must distinguish unusual financing arrangements, development costs, and business value from taxable real-property value and may not rely solely on a lease's income stream to establish the assessment.
3. Wis. Stat. § 70.32(1) requires adherence to the Wisconsin Property Assessment Manual absent conflicting law, and no conflict existed here that justified using above-market contract rents.
4. The issue whether Walgreen failed to comply with Wis. Stat. § 70.47(7) was waived and moot because the Board of Review conducted a hearing and accepted the assessment evidence.

KEY QUOTATIONS

> *"Wis. Stat. § 70.32(1) "proscribes assessing real property in excess of market value.""* (at 690)

> *"Rent is not a right in realty; it is what is exchanged for an encumbrance upon a right in realty."* (at 700-701)

> *"A lease never increases the market value of real property rights to the fee simple estate."* (at 701)

> *"an assessor's task is to value the real estate, not the business concern which may be using the property."* (at 705)

> *"The main rule for income approach assessments of leased property is that the property must be assessed in terms of market rents unless, as is the case with encumbrances created by lower than market value rent, a buyer would not be able to buy the property at the market rate."* (at 710)

FACTUAL BACKGROUND

Walgreen Co. leased two Madison properties under long-term, build-to-suit arrangements developed to its specifications. The leases incorporated land-acquisition, construction, financing, development, and profit costs, producing rents materially above market rental rates. Madison assessed the properties using an income approach based on the actual contract rents, while Walgreen's appraisals used market rents and valued the fee-simple interests at substantially lower amounts.

PROCEDURAL HISTORY

The City assessed two leased Walgreen properties for tax years 2003 and 2004 using an income approach based substantially on the properties' actual contract rents. Walgreen challenged the assessments before the Madison Board of Review and then filed an excessive-assessment and tax-refund action under Wis. Stat. § 74.37(3)(d). The Dane County Circuit Court ruled for the City, and the Wisconsin Court of Appeals affirmed. The Wisconsin Supreme Court granted review, reversed the court of appeals, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion, including application of the Property Assessment Manual's market-rent methodology and proper determination of the fee-simple market value of the properties.

CASES CITED

- Flood v. Bd. of Review, 153 Wis. 2d 428, 451 N.W.2d 422 (1990)
- State ex rel. Flint Building Co. v. Bd. of Review, 126 Wis. 2d 152, 376 N.W.2d 364 (Ct. App. 1985)
- Metropolitan Holding Co. v. Bd. of Review, 173 Wis. 2d 626, 495 N.W.2d 314 (1993)
- Darcel, Inc. v. Bd. of Review, 137 Wis. 2d 623, 405 N.W.2d 344 (1987)
- City of West Bend v. Continental IV Fund Ltd. Partnership, 193 Wis. 2d 481, 535 N.W.2d 24 (Ct. App. 1995)
- Adams Outdoor Advertising Ltd. v. City of Madison, 2006 WI 104, 294 Wis. 2d 441, 717 N.W.2d 803
- ABKA Ltd. Partnership v. Board of Review, 231 Wis. 2d 328, 603 N.W.2d 217 (1999)
- Waste Management v. Board of Review, 184 Wis. 2d 541, 516 N.W.2d 695 (1994)
- State ex rel. N/S Associates v. Board of Review, 164 Wis. 2d 31, 473 N.W.2d 554 (Ct. App. 1991)
- Bischoff v. City of Appleton, 81 Wis. 2d 612, 260 N.W.2d 773 (1978)
- Nankin v. Village of Shorewood, 2001 WI 92, 245 Wis. 2d 86, 630 N.W.2d 141
- Fee v. Bd. of Review, 2003 WI App 17, 259 Wis. 2d 868, 657 N.W.2d 112

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