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John J. Donahue

THE USE OF SCIENTIFIC VALUATION PROCEDURE IN REAL PROPERTY TAX ASSESSMENT

The Michigan Supreme Court has recently decided a case which emphasizes the need for the adoption of scientific valuation procedures in real property tax assessment.[1] The city commission of the city of Battle Creek, Michigan, determined that a revaluation and reappraisal for assessment purposes of the property of the city should be made. Pursuant to this determination, a contract was entered into by the city with an appraisal company of Dayton, Ohio, providing for a complete reappraisal and revaluation of all property in the city, to be developed according to scientific rules, and compiled in a form easily kept current. The appraisal company was to make the expert investigation and furnish the assessor with the necessary expert information and records. Four employees of the appraisal company were subsequently appointed as assistant assessors without salary in order to facilitate obtaining the necessary information. The contract provided that the city assessor was to act and serve as appraiser-in-chief, and he was to make final decisions as to valuations, procedures and forms used in revaluation. John Conroy, a resident taxpayer, sought to have the contract set aside as ultra vires, illegal, and as an unlawful usurpation of the powers of the city not permitted by law. The court held that the contract was not ultra vires nor invalid as an unlawful delegation of power.

This case raises the question whether or not such a contract would be sustained in those states where the courts have stringently applied the "market value" rule in determining the valuation of property for taxation purposes.[2] Wisconsin, for example, in the *Hennessey* case,[3] adheres to the doctrine that real estate must be assessed for the purpose of taxation at its fair market value, and it defines market value as the price for which property will sell after negotiations between an owner willing but not obligated to sell, and a willing buyer not obligated to buy. This rule has been the interpretation placed on a statute which is a common one on the statute books of most states.[4] Those states which place a strict construction upon these statutes, and

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[1] Conroy v. City of Battle Creek, 22 N.W. 2d 275 (Mich. 1946).

[2] Luce, "Assessment of Real Property for Taxation," 35 Mich. L.R. 1217 at p. 1238 (1937): "It must be remembered that although practical tax administration has been forced to depart from market value as a guide in tax valuation and to adopt the procedure outlined above (scientific methods of valuation, in-property for taxation. *Author's Note*) most statutes and constitutions, interpreted in the light of their history, still require that all property be assessed uniformly upon the basis of market value."

[3] State ex. rel. Hennessey v. Milwaukee, 241 Wis. 548, 6 N.W. 2d 718 (1942).

[4] See Sec. 70.32 Wis. Stats., which reads as follows:". . . Real property shall be valued by the assessor from actual view or from the best information that the assessor can practicably obtain, at the full value which could be obtained therefor at private sale . . ."

Wisconsin and Pennsylvania seem typical, tend to frown upon the use of scientific formulas or equations in determining valuation for assessment purposes. The attitude of these courts can be illustrated by a statement of the Pennsylvania Court in *Vollmer v. City of Philadelphia,*[5] upholding its position that values determined by the use of scientific methods are not acceptable in that state. The court stated:

> "If fixing assessments were only a problem in mathematics or an exercise to demonstrate a theory, it might be that the arguments of the representatives of the city could prevail, but the question is one of taxation, and 'taxation is a practical not a scientific problem'."

The Wisconsin Supreme Court has expressed similar objection to scientific procedure in the *Park Falls Lumber Co.* case, and others.[6] It has been criticized for its stringent interpretation of its statute, and its disapproval of methods which are asserted to be more equitable and workable as modern standards for assessment of property for taxation.[7]

But despite its seemingly strict construction of the statutory term "market value," the Wisconsin Court has in some cases indicated its willingness to consider factors used in so-called scientific valuation schemes. In the case of *State ex. rel, Gishold Machine Co. v. Norsman,*[8] where an assessor applied a front-foot value rule, and diminished values in rough proportion to the increase of distance from a starting point, the assessor was commended by the Court for being awake and responsive to other factors involved. The problem is discussed at length in regard to the attitude of the Wisconsin Supreme Court in an article in the Wisconsin Law Review.[9]

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[5] 350 Pa. 223, 38 A. 2d. 266 at 269 (1930). See also Harleigh Realty Co. Case, 299 Pa. 384, 387, 149 A. 653, 654: "We learn from the record that in making up its assessment the city called to its aid an appraisal company, which made certain calculations in accordance with formulas adopted by it. Each calculation was based on the value of a basic unit of ground 100 feet in depth by one foot in breadth. It would be surprising to learn that any property in the city had ever been actually bought and sold on such a basis." Kemble's Estate, 280 Pa. 441, 445, 124 A. 694, 695 (1924): "Scientific formulae, arithmetical deductions and mental contemplations, have small value in making assessments under our practical system of taxation. The market value of the separate tracts at public sale, after due notice, is the legal basis recognized by our statutes, of determining the assessable value of real estate, and until the Legislature changes this method, it is binding not only upon the taxing authorities but upon the courts as well."

[6] Park Falls Lumber Co. v. American Appraisal Co., 189 Wis. 239, 207 N.W. 300 (1926); Hersey v. Board of Supervisors of Barron County, 37 Wis. 75 (1875).

[7] Bonbright, "Valuation of Real Estate for Tax Purposes," 34 Col. L.R. 1397 (1934); Hughes & Schienbrood, "Taxation—Valuation of Real Estate in Wisconsin," 12 Wis. L.R. 540 (1935).

[8] State ex rel Gisholt Machine Co. v. Norsman, 168 Wis. 442, 169 N.W. 429 (1919).

[9] Hughes & Schienbrood, "Taxation—Valuation of Real Estate in Wisconsin," 12 Wis. L.R. 540. (1935).

Several courts in recent years have indicated that they will allow an assessor to consider such factors as original cost less depreciation, capitalization of income, absolesence, insurance carried, future trends, book value, and others.[10] This is particularly true in cases where the property is not readily salable. But even in those courts which do not approve of the use of the factors mentioned, where the assessor has employed experts, or has himself used scientific formulas or equations, there has been a tendency to accept the assessor's valuation as *prima facie* correct.[11] For example, in 1928 in the City of Chicago, the reassessment of that year was conducted under the supervision of a high-salaried valuation engineer, and with the advice of financial experts from the universities, and the real estate organizations of the city. It was made in accordance with plans and specifications evolved by scientific tax experts. The Revenue Act of the state provided:

> "Real property shall be valued at its fair cash value, estimated at the price it would bring at a fair voluntary sale in the course of trade, which shall be set down in one column to be headed 'full value', and said full value shall be set down in another column headed 'assessed value'."

The taxpayer, whose property had been thus reassessed, resisted a suit by the city to have the property sold for delinquent taxes, on the ground that the reassessment procedure violated statutory requirements. While the court did not approve of the methods used, and recognized that the statute was not followed, it passed the matter by saying that there was no evidence to show that the valuation placed upon the objector's real estate in the 1928 reassessment was too high as compared to other properties in the state.[12]

In the principal case, the court recognized the need for better methods in the valuation of real estate for taxation purposes. While the norm of "market value", "sale value", "fair cash value", and others of similar connotation, may be workable where small communities or agricultural lands are concerned, they tend to break down when applied

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[10] State ex rel Northwestern M.L. Ins. Co. v. Weiher, 177 Wis. 445, 188 N.W. 598 (1922); State ex rel Flambeau P. Co. v. Windus, 208 Wis. 583, 243 N.W. 516 (1932); Somers v. City of Meriden, 119 Conn. 5, 174 Atl. 184, 95 A.L.R. 434 (1934).

[11] Hughes & Schienbrood, "Taxation—Valuation of Real Estate in Wisconsin," 12 Wis. L.R. 540 (1935) at p. 541, referring to the Wisconsin Supreme Court: "In its attempt the court has gained a reputation for stringently applying the 'market value' rule. To appreciate the rigid application which has been made at times it should be remembered that 'the 'assessor's valuation is *prima facie* correct, and will not be set aside in the absence of evidence showing it to be incorrect.' Nevertheless, the court has several times upset assessments for failure to comply strictly with the 'market value' rule."

See also Worthington Pump and Machine Corp. v. City of Cudahy, 205 Wis. 227, 229, 237 N.W., 140 141 (1931).

[12] People ex rel McDonough v. Cesar, 349 Ill. 372, 182 N.E. 448 (1932), cert. den. 288 U.S. 603.

to properties in urban areas.[13] This has been particularly true of property infrequently sold. The Michigan Court took a realistic stand when it stated:

> "It might be said at the outset that the valuation and appraisal of urban properties has become almost an engineering science in itself. The duty of a township supervisor in making an assessment as a rule was comparatively simple. It was not difficult to assess farm lands or those of villages and small cities. The correct value of the land could be easily ascertained. The market value could be readily obtained from recent sales and there was no difficulty in making a rather complete and fairly accurate valuation, appraisal and assessment. However, with the growth of cities, valuations became more complicated and a branch of engineering science gradually developed so that it required some engineering science as well as an understanding of the factors entering into an appraisal in order to determine correct values . . . The valuation of real estate and improvements has always been difficult and present many problems, and even with the applied science for valuation and appraisal, the true value cannot be obtained with mathematical exactitude, but by the application of these modern rules, a much fairer degree of accuracy is arrived at than existed theretofore."

Whether those courts which still apply a strict construction of market value will ever give outspoken approval to the demand for a more liberal construction is doubtful.[14] After all, the legislature bears primary responsibility for the continuance of statutory rules which have received strict construction in the past. Without much question, legislative change will receive judicial approval. For instance, the Charter of the City of Santa Barbara, California provides for a scientific appraisal of the real estate of that city every five years, and the validity of this provision in the Charter was upheld by the Supreme Court of that state.[15]

It will be noted in the principal case that the court is very explicit as to the fact that the contract with the appraisal company provided that the city assessor should have "the last word and final decision, although assisted by experts." The cases have uniformly held that the

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[13] Luce, "Assessment of Real Property for Taxation," 35 Mich. L.R. 1217 at 1219, 1220 (1937): "Widespread complaint concerning the lack of equity in present day property taxation indicates that no satisfactory solution of the problem has been as yet worked out . . . For a time, . . . the sale or market value of property furnished an easily applied process of valuation which was peculiarly applicable, under economic conditions then existing, to the equitable determination of taxable value. But changing economic conditions have destroyed its usefulness as a basis for assessment."

[14] A few courts have largely discarded the statutory mandate of market value, holding that the market value norm must be read in conjunction with the uniformity clause. City of Roanoke v. Gibson, 161 Va. 342, 347, 170 S.E. 723 (1933).

[15] Storke v. City of Santa Barbara, 76 Cal. App. 40, 244 P. 158 (1926).

assessor must exercise independent judgment and not accept the valuation of the expert blindly and servilely.[16] The reason usually given has been that the assessor exercises quasi-judicial powers and such powers cannot be delegated.[17] In practice, it would seem that his exercise of independent judgment is, in most cases, a mere formality, for it is reasonably certain that one who has a complete set of valuation figures before him, compiled by an expert in the appraisal of real estate, is not strongly inclined, as a general rule, to exercise any serious "independent judgment" to change the valuations set. The exercise of such "judgment" is likely to be an idle gesture, so long as the assessor admits that the scientific appraisal is more accurate and uniform than his guess.[18] There can be no doubt that the courts will denounce any outright delegation of the assessor's power, but they will probably go a long way to support the presumption that he exercised independent judgment. A good example of this is found in the case of *Clare v. Curran*[19] where the City of Central Falls, Rhode Island, hired experts to appraise the real estate of that city. The court sustained the city in hiring experts, and in discussing the question of whether or not the power of the assessor had been delegated, as contended by the taxpayer, the court admitted there was evidence that the assessors merely copied the values from cards submitted by the appraisers, but stated that it could not draw the inference that the assessors did not exercise independent judgment where the experts and assistants were at all times under the "direct supervision and control of the board of assessors . . ."

It is clear that there are some states which are beginning to recognize the need for better methods of appraisal of real estate for taxation purposes. The Michigan Supreme Court, in the case discussed, has clearly indicated that it will through judicial interpretation, assist by recognizing such methods. But decisions such as this can never afford a complete remedy. True reform and clear recognition of the so-called scientific methods in any state can come in most situations only through legislative revision of assessment bases and theory.

JOHN J. DONAHUE

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[16] See collection of authorities in 107 A.L.R. 1477, 1482 (1937); Crowell & Spencer Lumber Co. v. Lafleur, 137 La. 772, 776, 69 S. 170 (1915); Clare v. Curran, 52 R.I. 196, 159 A. 835 (1932); Federal Royalty Co. v. State, 42 S.W. 2d. 670 (Tex. Civ. App. 1931).

[17] Clare v. Curran, 52 R.I. 196, 159 A. 835 at p. 836 (1932): "The proceedings for assessing a tax are quasi-judicial, and no one would suggest that a board of assessors can delegate its authority, but assessors have the right, and it is often the duty, to obtain the assistance of experts in arriving at the value of certain classes of property."

[18] Bonbright, "Valuation of Real Estate for Tax Purposes," 34 Col. L.R. 1397 at p. 1422 (1934), in comparing the use of scientific methods with the practice of the assessor in determining the sale value, states that the former methods, though not mathematically accurate, are "superior to the assessor's guess which is an intuitive conclusion from a more limited experience."

[19] Clare v. Curran, 52 R.I. 196, 159 A. 835 (1932).