Business Purpose Unnecessary for "Agricultural" Classification

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In a recent decision, the Wisconsin Supreme Court held that a business purpose is not required for land to be classified as "agricultural land" for property tax assessment purposes; rather, the land's primary use must be agricultural. *State of Wisconsin ex rel. The Peter Ogden Family Trust of 2008 and The Therese A. Mahoney-Ogden Family Trust of 2008 v. Board of Review for the Town of Delafield*.[1]

In *Ogden*, the Court considered whether two of three lots owned by the Ogden family trusts ("Ogdens") were properly reclassified from agricultural land to residential.

The Ogdens grew hay, apples, and Christmas trees on the two lots at issue. From 2012 to 2015, the lots were classified as "agricultural land" and "agricultural forest land" for assessment purposes. In 2016, the Board of Review for the Town of Delafield ("Board") reclassified the lots to "residential," which resulted in a large increase to the assessed values and corresponding property tax. The Ogdens objected to the Board's reclassification.

At the evidentiary hearing, the Ogdens presented evidence to the Board showing their primary use of the lots was agricultural, including: photos and records of hay grown and harvested; apple and Christmas trees, individually staked and planted in rows; expense reports, receipts, equipment rental agreements, etc; and witness testimony of a local farmer who helped work the land.

The town assessor testified that, while certain agricultural activities were taking place, he found no evidence showing they were undertaken for a business purpose, which he believed was a requirement for agricultural use. The assessor looked to records and documents associated with the agricultural activities to see whether the activities were carried on like a business and whether there were any efforts to derive a profit from said activities. Absent such evidence, the assessor did not believe he could properly conclude the land was devoted primarily to agricultural use. The assessor's residential classification remained in place following a split decision by the Board.

The circuit court sustained the Board's residential classification. The Court of Appeals reversed, holding a business purpose was not necessary for an agricultural classification under Wis. Stat. § 70.32(2)(c).

After granting review, the Supreme Court affirmed the Court of Appeals' decision. The Court reviewed the Board's decision as a matter of law, considering the plain language of the applicable statutes and Department of Revenue (DOR) rules. The Court first looked to the language of Wis. Stat. § 70.32(2)(c). Wisconsin Stat. § 70.32(1)(c)1g defines "agricultural land" as land, excluding buildings and improvements, that is "devoted primarily to agricultural use." Per Wis. Stat. § 70.32(2)(c)1i, "agricultural use" means agricultural use as defined by the DOR. The relevant DOR rule defines "agricultural use" to include growing Christmas trees and those activities specified in subsector 111 Crop Production, set forth in the North American Industry Classification System, which includes growing apples.[2] Finding the plain language clear and unambiguous, the Court held a business purpose is not required to properly classify land as agricultural land for property tax purposes. The Court stressed that the plain language of the statutes and administrative rules requires "growing" these crops – not selling or other commercial activity.

The Court held the lots should be classified "agricultural land" as a matter

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1. *State ex rel. Peter Ogden Family Trust of 2008 v. Bd. of Review*, 2019 WI 23.
2. Wis. Admin. Code DOR § Tax 18.05(1)(a), (c).

Note: The Wisconsin Department of Revenue (DOR) plans to issue guidance for municipal assessors and others on how to classify and assess "agricultural land" in compliance with this recent Wisconsin Supreme Court decision. DOR staff is interested in hearing the concerns, comments and questions municipal officials and staff may have in the wake of this decision. Contact Scott Shields, Director, Office of Technical and Assessment Services, DOR, (608) 266-7750, Scott.Shields@wisconsin.gov

of law, and remanded the matter back to the Board solely for it to affix a value to that classification. Justice Dallet, joined by Justice A.W. Bradley, concurred with the majority's holding regarding the statutory/administrative rule interpretation, but wrote separately to state the matter should have been remanded back to the Board to both classify the land in accordance with the Court's decision and also determine the proper value.

Taxation 1057

About the Author:

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Appointments & Vacancies FAQ 5

Must an appointed municipal official be a resident of the municipality he or she serves?

In general, the answer is no, unless there is a statutory requirement that the appointed official be a resident of the municipality – e.g., Wis. Stat. §§ 30.37(3) [board of harbor commissioners], 27.11(1) [board of public land commissioners], and 43.54(1)(a) [library boards]. In the absence of such a statutory requirement, a non-resident may be appointed to a municipal office or position unless the city or village has adopted its own residency requirement for appointed officials. However, it is important to note that Wis. Stat. § 66.0502 prohibits municipalities from enacting employee residency requirements. In light of this prohibition, whether a local residency requirement is permissible likely turns on whether the appointed official is an "employee." If an appointed person is an employee, § 66.0502 appears to preclude a local residency requirement.

In contrast to appointed municipal officials, all elected municipal officials must be residents of the municipality and alderpersons must be residents of the district from which they are elected. See Wis. Stat. §§ 61.19, 62.09(2)(a), and 17.03(4)(c).

A person appointed to fill a vacancy in an elective office must meet the residency qualification applicable to elective municipal officers. Wis. Stat.§ 17.28.

(rev. 3/19)

Appointments & Vacancies FAQ 8

Does an elected local government official automatically vacate his or her office if s/he moves outside out of the municipality or aldermanic district for which s/he was elected?

No. Determining whether a public official is or is not a resident of a municipality or an aldermanic district requires evaluating the surrounding circumstances to determine the public official's intent.

Intent may be evidenced to some degree by the circumstances surrounding the move. For example, if a public official needed to move outside the municipality or aldermanic district due to the destruction of his or her home, financial problems, or other similar circumstances, and the official indicated and demonstrated a clear intent to move back into the municipality or district at the earliest opportunity, then the official should probably not be deemed to have vacated his or her office due to lack of residency.

Other factors may also indicate intent. For example, if the official has children in school, a relevant consideration would be whether the children continue to attend their old school or now attend a new school. Another factor would be the legal arrangement of his or her current housing. Did the official purchase a new home outside the district or municipality or is s/he renting? If the official is renting, is the lease term lengthy or short?

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