

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 6, 2010

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2009AP972

Cir. Ct. No. 2007CV861

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STEVEN P. SAGER AND MARY M. SAGER,

PETITIONERS-RESPONDENTS,

V.

BOARD OF REVIEW OF TOWN OF TAYCHEEDAH,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Fond du Lac County:
STEVEN W. WEINKE, Judge. *Reversed and cause remanded with directions.*

Before Brown, C.J., Anderson and Snyder, JJ.

¶1 PER CURIAM. The Board of Review of the Town of Taycheedah appeals from the order of the circuit court that determined that the Board's assessment of property owned by Steven and Mary Sager was arbitrary and capricious. The court remanded the matter to the Board directing it to assess the

property at a value determined by the court. The Town argues that the circuit court improperly considered evidence outside of the record in its certiorari review, and that the Board's determination must be upheld because there was sufficient evidence to support it, the assessor acted according to statute, and the taxpayer did not rebut the presumption of correctness. We agree. Consequently, we reverse the order and remand the matter to the circuit court with instructions to affirm the decision of the Board.

Background

¶2 The Sagers own a 1.8 acre parcel of land, comprised of a .53 acre portion on which their residence is built, and a 1.27 acre portion that is not developed. Both portions have frontage on Lake Winnebago. The Town assessed the land and improvements at \$756,700, which included an assessment of \$40,000 for the 1.27 acre undeveloped portion. The Sagers filed an objection, asserting that the 1.27 acre portion was assessed too high because it was zoned "conservancy," and they could not build on it. They argued that it should be assessed between \$18,000 to \$29,000. The Board of Review heard the Sagers' objection.

¶3 At the hearing, the assessor testified at the hearing that the fair market value of the Sagers' property was \$756,700. The assessor compared the Sagers' improvements and property to other properties nearby. The assessor also testified that he had reduced the value of the 1.27 portion of the property to account for the fact that it was not "buildable." The Sagers argued that the parcel should be compared to an immediately adjacent parcel (the Spies' parcel). The Spies' parcel was also 1.27 acres and was assessed at \$29,100. The assessor countered that the Spies' parcel is not comparable because, unlike the Sagers'

parcel, it is landlocked, does not have a road in front of it, and would require a right of way to access it. The assessor testified that the Sagers' parcel added \$40,000 in value to the Sagers' total property because it could be sold for that. The assessor also testified that he had initially assessed that portion at \$45,000, but had reduced it to \$40,000 when Sager said he thought it was too much based on the assessed value of the Spies' parcel. The Board upheld the assessor's valuation of the Sagers' property.

¶4 The Sagers then petitioned the circuit court for review. The court conducted independent research by looking at the internet and reviewed other sources to determine that the Board's decision was contrary to law and was arbitrary and capricious. The court then remanded the matter to the Board to reassess the Sagers' property at a value of between \$5,176.50 and \$12,390.30. It is from this order that the Town appeals.

Discussion

¶5 This case is determined solely by the standard of review for decisions of a board of review. We do not have jurisdiction to disturb the findings and determinations of a board of review, except when the board "acts in bad faith or exceeds its jurisdiction." *State ex rel. Brighton Square Co. v. City of Madison*, 178 Wis. 2d 577, 582, 504 N.W.2d 436 (Ct. App. 1993). Certiorari review is limited to the record made before the board of review. *Nankin v. Village of Shorewood*, 2001 WI 92, ¶20, 245 Wis. 2d 86, 630 N.W.2d 141. "Thus, the court may not conduct its own factual inquiry and may not admit any new evidence." *Id.* The court may consider only the following factors:

- (1) whether the board acted within its jurisdiction;
- (2) whether the board acted according to law; (3) whether the board's action was arbitrary, oppressive or

unreasonable, representing its will rather than its judgment; and (4) whether the evidence was such that the board might reasonably make the order or determination in question.

Id.

¶6 The assessor's valuation is presumed to be correct. *Brighton Square*, 178 Wis. 2d at 582. The method of valuation, however, must be in accord with the statutes. *Id.* The objector must overcome the presumption of correctness by a "sufficient showing" that the assessor's valuation was incorrect. WIS. STAT. § 70.47(8)(i) (2007-08).¹ "The court [may] not make an assessment of the property; instead, if it finds any error that renders the assessment void, the court must set aside the assessment and remand to the board for further proceedings." *Nankin*, 245 Wis. 2d 86, ¶21.

¶7 We review the Board of Review's determination independent of the circuit court's determination. *Brighton Square*, 178 Wis. 2d at 584. We uphold the valuation if there is any credible evidence before the board that may "in any reasonable view support the assessor's valuation." *Id.* Our role is "to determine, from the evidence presented to the board of review, whether the valuation was made on the statutory basis." *State ex rel. Flint Bldg. Co. v. Kenosha County Review Board*, 126 Wis. 2d 152, 156, 376 N.W.2d 364 (Ct. App. 1985).

¶8 We conclude that the circuit court exceeded its authority by going outside of the record to determine the appropriate assessment of the property, and by remanding the matter to the Board to assess the property at a set amount. We are particularly concerned with the circuit court's use of the internet to conduct

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

factual research, *see, e.g., Kiniti-Wairimu v. Holder*, 312 Fed. Appx. 907, 918-19, 2009 WL 430439 (9th Cir. 2009), as well as its determination of the appropriate valuation. This was beyond the court’s jurisdiction when reviewing a Board’s determination. The only question properly before the circuit court was whether the assessment was made in conformity with the statutory mandate.

¶9 The assessor in this case explained to the Board why the property had been assessed at \$45,000, and why he had reduced the assessed value of that portion of the property to \$40,000. He explained that the portion increased the overall value of the property, and why this portion of property was more valuable than the nearby Spies’ property. The Sagers argued they could not build on the property and did not use it for anything other than a “buffer.” The Sagers did not argue that the assessor’s valuation was contrary to statute and did not overcome the presumption of correctness. We conclude that the assessment was proper and was entitled to the presumption of correctness. We also conclude that the objector did not present sufficient evidence to overcome that presumption. Because there was credible evidence before the Board to support the assessor’s valuation, the circuit court should have affirmed the decision of the Board of Review. Consequently, we reverse the order of the circuit court and remand with instructions to affirm the decision of the Board of Review.

By the Court.—Order reversed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

