

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 15, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

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Appeal No. 2025AP1919

Cir. Ct. No. 2024CV451

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**SAUK COUNTY CITIZENS FOR SENIOR CARE, U.A.,
THOMAS KRIEGL AND JUDITH BREY,**

PLAINTIFFS-APPELLANTS,

V.

SAUK COUNTY,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Sauk County:
TODD J. HEPLER, Judge. *Affirmed.*

Before Graham, P.J., Blanchard, and Nashold, JJ.

¶1 NASHOLD, J. Thomas Kriegl, Judith Bey, and Sauk County Citizens for Senior Care, U.A. (collectively, “the Citizens”) filed this action challenging the proposed sale of a nursing home owned by Sauk County (“the County”). The County moved to dismiss the action for failing to state a claim for

relief, and the circuit court granted the County’s motion. On appeal, the Citizens argue that the court erred in dismissing three of their claims, namely, claims that the proposed sale would violate: (1) the public purpose doctrine; (2) a resolution that the Sauk County Board (the “County Board”) had previously adopted regarding proposals as to how to market the nursing home for sale (the “marketing resolution”); and (3) WIS. STAT. § 65.90(5) (2023-24), which requires that changes in a municipal budget to the amount of tax to be levied or to the amounts and purposes of appropriations be approved by a two-thirds majority of the governing body of the municipality, here, the County Board.¹

¶2 Construing the County’s motion as a motion for summary judgment, we conclude, based on the undisputed facts, that the Citizens’ three claims fail as a matter of law. First, regarding the Citizens’ public purpose claim, we conclude that the sale of the nursing home for less than its fair market value was justified by several recognized public purposes—namely, increasing the County’s property tax base by making the property subject to property tax; allowing the property tax revenue that was being used to sustain the nursing home’s operation to be used for other purposes; and, through these two factors and the proceeds of the sale, reducing the County’s debt. Second, we conclude that the circuit court properly dismissed the Citizens’ claim that is predicated on the marketing resolution because that resolution addressed how to market the nursing home for sale and does not place any conditions on the actual sale of the nursing home. And finally, we conclude that the Citizens’ claim under WIS. STAT. § 65.90(5) was properly dismissed because the challenged action—the County Board’s approval of the

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

sale—did not change the amount of tax to be levied or the amounts and purposes of appropriations in the County’s budget.

BACKGROUND

¶3 The following facts are derived from the Citizens’ amended complaint, which is the operative complaint for purposes of appeal, and from documents submitted by the County in support of its motion to dismiss.

¶4 At all relevant times, the County owned and operated the Sauk County Nursing Home (“the nursing home”). In 2009, the County replaced the original nursing home with a new building and incurred debt to do so. The County relied on revenue from property taxes to pay this debt and to sustain the nursing home’s operations.

¶5 In 2024, the County listed the nursing home for sale, asking \$8.5 million for its property and operations. Prior to this listing, the County Board adopted the marketing resolution, which, in pertinent part, imposed various conditions on how the nursing home would be marketed. The County Board subsequently approved, by a vote of 18 to 13, a proposed sale of the nursing home to Aria Sauk County Realty LLC and Aria of Sauk County LLC (collectively, “Aria”) for \$5.1 million, and the County entered into a Purchase and Sale Agreement and an Operations Transfer Agreement with Aria. The County Board stated in the marketing resolution that selling the nursing home would allow the County to use the tax revenue that was being spent to operate the nursing home to provide other public services.

¶6 The Citizens brought an action against the County challenging the proposed sale of the nursing home to Aria. Their amended complaint was

comprised of seven claims, including the claims that are at issue here: that the proposed sale would violate the public purpose doctrine and the marketing resolution, and that, because the proposed sale would affect the County's budget, WIS. STAT. § 65.90(5) required that the proposed sale be approved by two-thirds of the County Board, which had not occurred.²

¶7 The County moved to dismiss the amended complaint, which the circuit court granted. The Citizens appeal.³

DISCUSSION

¶8 The Citizens argue that the circuit court erred in dismissing three of their claims. Specifically, the Citizens challenge the dismissal of their claims that the proposed sale violated the public purpose doctrine, the marketing resolution, and WIS. STAT. § 65.90(5).

¶9 We reject the Citizens' arguments. Before explaining why we do so, we first clarify the procedural posture of the case and the materials that we rely on for our review.

¶10 Although the County styled its motion as a motion to dismiss for failure to state a claim upon which relief can be granted, the County submitted with its motion various documents in support of its arguments, and at least some of these documents addressed matters not referred to in the pleadings. The County

² The Citizens do not challenge the dismissal of their remaining four claims.

³ The County represented in its response brief on appeal that, at the time that brief was filed, the sale of the nursing home had not been finalized as a result of the ongoing litigation and a requirement in one of the agreements related to the sale that there not be any legal actions seeking to prohibit the sale. The lack of finality does not affect our review.

asserted that the circuit court could consider these documents on a motion to dismiss through the incorporation by reference doctrine and by taking judicial notice of the facts contained in the documents.

¶11 In their response to the County’s motion, the Citizens challenged the applicability of incorporation by reference and judicial notice and argued that the County’s motion was “in effect a summary judgment motion.” And, in response to the County’s arguments, the Citizens also proceeded to submit their own documents containing information beyond that contained in the amended complaint. Further, the Citizens argued that the County’s motion should be denied not only on the ground that the Citizens’ claims are adequately pleaded but also because there are disputed issues of material fact created by the submissions outside the pleadings. Specifically, the Citizens argued that the value of the nursing home is a disputed issue of material fact as to their public purpose claim.

¶12 The circuit court, in granting the County’s motion, relied in part on information not included in the amended complaint but included in the documents that the County submitted with its motion. The court referred to the County’s motion as a “motion to dismiss” but did not otherwise address the County’s argument that the court could consider the County’s submissions on a motion to dismiss or the Citizens’ argument that the County’s motion should be treated as one for summary judgment.

¶13 Consistent with what it asserted in the circuit court, the County asserts on appeal that, between the incorporation by reference doctrine and our ability to take judicial notice of certain facts, we may treat the County’s motion as a motion to dismiss, and, in doing so, consider all of the relevant information in the documents that the County submitted with its motion. However, we need not

resolve whether the County is correct on these points, given our conclusion that we may treat the County’s motion as one for summary judgment and construe the circuit court as having implicitly done the same, as we now explain.

¶14 “If on a motion ... to dismiss for failure of the pleading to state a claim upon which relief can be granted, ... matters outside of the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment[.]” WIS. STAT. § 802.06(2)(b). When a motion to dismiss is treated as a motion for summary judgment under § 802.06(2)(b), “all parties shall be given a reasonable opportunity to present all material made pertinent to such a motion.” Generally, a circuit court must notify the parties if it intends to convert a motion to dismiss for failure to state a claim to a motion for summary judgment. **CTI of Ne. Wis., LLC v. Herrell**, 2003 WI App 19, ¶5, 259 Wis. 2d 756, 656 N.W.2d 794. However, when a party responds to a motion to dismiss as if it were a motion for summary judgment—for example, by submitting additional documents containing facts beyond what was alleged in the amended complaint, and by failing to suggest that other relevant evidence could be produced—that party cannot then successfully challenge the circuit court’s decision on the basis that the court improperly converted the motion to dismiss to one for summary judgment without notice. *Id.*, ¶¶10, 11; *see also Alioto v. Marshall Field’s & Co.*, 77 F.3d 934, 936 (7th Cir. 1996) (“[A] litigant ... who seeks to upset a judgment because it resulted from the improper conversion of a ... motion [to dismiss for failure to state a claim] into one for summary judgment must show that notice and an opportunity to respond would have mattered. [The litigant] must, that is, establish that [the litigant] would have been able to create a material factual dispute, which would have precluded the grant of summary judgment.”).

¶15 Here, the Citizens make one argument that, if meritorious, would show that conversion to summary judgment was improper. Consistent with what they argued in the circuit court, the Citizens argue on appeal that the value of the nursing home is a factual issue on which they were entitled to discovery and which precluded dismissal of their public purpose claim—an argument that we address and reject later in this opinion. Otherwise, however, the Citizens do not identify other disputed issues of fact. Nor do they argue that they were denied a reasonable opportunity to present materials pertinent to the County’s motion. Instead, the Citizens merely assert that treating the County’s motion as one for summary judgment “would be highly prejudicial” to the Citizens “and contrary to well-established rules of civil procedure.” It appears that the Citizens’ assertion of prejudice is related to their discovery argument, which, as stated, we subsequently reject. To the extent the Citizens’ assertion of prejudice is grounded in some other rationale, the Citizens do not develop this argument, and we reject it for that reason. See *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (explaining that this court need not consider arguments that are unsupported by legal authority or are otherwise undeveloped).

¶16 In sum on this issue, the Citizens do not persuasively identify any genuine issues of material fact that preclude summary judgment, and they do not argue that they were denied notice or a reasonable opportunity to present material relevant to the County’s motion. Moreover, any argument challenging our use of a summary judgment framework would be unavailing based on how the Citizens responded to the County’s motion—namely, by effectively treating the County’s motion as one for summary judgment, by identifying what they argued were disputed issues of material fact, and by submitting documents with their response that contained information beyond what was alleged in the amended complaint to

refute the County’s arguments. Accordingly, we will treat the County’s motion as one for summary judgment, and the circuit court’s dismissal of the Citizens’ claims as a grant of summary judgment in the County’s favor.

¶17 Turning to summary judgment standards, summary judgment is proper when the pertinent materials “show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” WIS. STAT. § 802.08(2). We review a circuit court’s summary judgment decision de novo. *Converting/Biophile Lab’s, Inc. v. Ludlow Composites Corp.*, 2006 WI App 187, ¶13, 296 Wis. 2d 273, 722 N.W.2d 633.

I. Public Purpose Doctrine

¶18 The Citizens argue that the circuit court erred when it dismissed their claim that the proposed sale violates the public purpose doctrine. We disagree.

¶19 “Although there is no specific clause in the Wisconsin Constitution establishing the public purpose doctrine, this court has recognized that the doctrine is firmly accepted as a basic constitutional tenet of the Wisconsin Constitution and the United States Constitution.” *Town of Beloit v. County of Rock*, 2003 WI 8, ¶20, 259 Wis. 2d 37, 657 N.W.2d 344. Under the public purpose doctrine, “[a] legislative body may appropriate public funds only for public purposes.” *Alexander v. City of Madison*, 2001 WI App 208, ¶7, 247 Wis. 2d 576, 634 N.W.2d 577. “To maintain a public purpose, the benefit to the public must be direct and not remote.” *Bishop v. City of Burlington*, 2001 WI App 154, ¶10, 246 Wis. 2d 879, 631 N.W.2d 656.

¶20 “[T]he legislative body determines what constitutes a public purpose,” and we accord great deference to this determination. *Beloit*, 259

Wis. 2d 37, ¶¶27, 28. “Under the public purpose doctrine, we are not concerned with the wisdom, merits or practicability of the legislature’s enactment. Rather we are to determine whether a public purpose can be conceived which might reasonably be deemed to justify or serve as a basis for the expenditure.” *Id.*, ¶20 (internal quotation marks omitted) (quoting *Jackson v. Benson*, 218 Wis. 2d 835, 896, 578 N.W.2d 602 (1998)). We “can conclude that no public purpose exists only if it is clear and palpable that there can be no benefit to the public.” *Beloit*, 259 Wis. 2d 37, ¶20 (internal quotation marks omitted) (quoting *Jackson*, 218 Wis. 2d at 896). The burden is on the party challenging the appropriation of public funds to clearly show that no public purpose exists. *Alexander*, 247 Wis. 2d 576, ¶10.

¶21 The public purpose doctrine applies to municipalities. *Bishop*, 246 Wis. 2d 879, ¶11. “Because of the accepted view that local governments are often in the best position to determine the needs of the public in that locality, Wisconsin municipalities have traditionally been given wide discretion to determine whether a public expenditure is warranted” *Beloit*, 259 Wis. 2d 37, ¶30.

¶22 Under the public purpose doctrine, a municipality may not sell municipally owned property for less than its fair market value unless there is a valid public purpose for doing so. See *Hermann v. City of Lake Mills*, 275 Wis. 537, 542, 82 N.W.2d 167 (1957). In *Hermann*, the plaintiffs challenged a municipality’s sale of a parcel of land for what the plaintiffs alleged was less than the parcel’s fair market value. *Id.* at 540-41. Our supreme court stated that “a transfer of municipal property to a manufacturing corporation in return for a payment representing only part of the fair market value of the property, which is knowingly made for the purpose of promoting industrial expansion, is ... beyond the power of the municipality.” *Id.* at 542. Concluding that the sale was not

justified by a public purpose, the **Hermann** court reversed the circuit court’s grant of summary judgment in favor of the city, reasoning that the fair market value of the parcel was a disputed issue of material fact. **Id.** at 544.

¶23 However, Wisconsin appellate courts have also determined that a municipality need not receive any monetary consideration in exchange for a conveyance of municipally owned property when the conveyance is justified by a valid public purpose. For example, in **Rath v. Two Rivers Community Hospital, Inc.**, 160 Wis.2d 853, 467 N.W.2d 150 (Ct. App. 1991), we addressed the conveyance to a private corporation of a hospital that was owned by the city and had been operating at a deficit each year. **Id.** at 857. The city received no monetary consideration for the hospital, but ownership of the hospital would revert to the city if the facility was not used for the health care needs of the community. **Id.** at 857, 862, 865. We concluded that “[e]xpending public funds to assure adequate health care services is within the public interest,” and that the conveyance did not violate the public purpose doctrine. **Id.** at 862.

¶24 More recently, in **Bishop**, we addressed a challenge to the conveyance of a municipally owned parking lot to a private citizen. **Bishop**, 246 Wis.2d 879, ¶1. The municipality did not receive any monetary consideration, but the private citizen was obligated to upgrade the parking lot, rehabilitate a building that the citizen owned, convey a different parcel to the city to be used as a park, and promise to maintain the parking lot as a public facility for three years after the date of conveyance. **Id.**, ¶4. We concluded that “the purpose of the conveyance was to promote the rehabilitation of [the municipality’s] downtown,” and that “[t]he rehabilitation of deteriorating public facilities is a legitimate public purpose.” **Id.**, ¶21.

¶25 Here, the Citizens argued in the circuit court that the proposed sale violates the public purpose doctrine because the sale price of \$5.1 million would be less than the nursing home’s fair market value and is not justified by any public purpose. Renewing this position on appeal, the Citizens argue that the court erred when it dismissed this claim. The County, for its part, argues that the Citizens did not adequately plead that the proposed sale price is less than the nursing home’s fair market value. The County additionally argues that the documents that it submitted to the court with its motion show that the proposed sale is justified by several public purposes, including expanding the County’s tax base by making the property subject to property tax, freeing up tax revenue for other public purposes that otherwise would have been allocated to the nursing home’s operations, and retiring the public debt “to fund other public priorities.”

¶26 We will assume without deciding that the proposed sale price of the nursing home is less than its fair market value. Even with that assumption, we conclude, based on the undisputed material facts, that the proposed sale at this price is justified by valid public purposes, namely, expanding the County’s tax base, freeing up tax revenue, and allowing the County to retire the County’s debt.

¶27 Indeed, in **Beloit**, our supreme court recognized these as valid justifications under the public purpose doctrine. **Beloit**, 259 Wis. 2d 37, ¶¶36, 47. In **Beloit**, the court addressed whether a municipality’s “expenditure of public tax monies to develop and sell municipally-owned property” was justified by a public purpose. *Id.*, ¶19. The **Beloit** court recognized as a valid public purpose “the goal of increasing the tax base.” *Id.*, ¶36; see also **Alexander**, 247 Wis. 2d 576, ¶10 (also recognizing “[i]ncreasing the property tax base” as a valid public purpose). And the **Beloit** court further stated that “any profit realized from [the municipality’s sale of property] would in fact benefit [the municipality] in that the

profit would ... ultimately benefit all of the citizens of the town by way of decreased taxes and reduced debt.” **Beloit**, 259 Wis. 2d 37, ¶47.

¶28 Here, the undisputed facts demonstrate that the nursing home was operating at a loss and that the sale of the nursing home will increase the County’s property tax base by shifting the property from County to private ownership, thereby making it subject to property tax; allow the property tax revenue that was being used to sustain the nursing home’s operations to be used for other purposes; and, through this mix of increased revenue, reduced expenditures, and the monetary consideration received for the sale, allow the County to retire debt. Applying the reasoning in **Beloit**, we conclude that these are valid public purposes, and that the Citizens therefore fail to clearly show that no public purpose exists. See **Alexander**, 247 Wis. 2d 576, ¶10.⁴ We reject the Citizens’ arguments to the contrary.

¶29 The Citizens rely heavily on **Hermann**, discussed above, which was decided in 1957 and predates **Beloit** and the other more recent precedent we rely on here that more extensively discuss the public purpose doctrine. The Citizens contend that there is no public purpose justifying the sale of the nursing home, and that the fair market value of the nursing home is thus an issue of fact on which

⁴ Our conclusion is based on the presence of all of these public purposes justifying the proposed sale. We need not address whether any one of these public purposes in isolation would be sufficient to justify the proposed sale. Relatedly, we observe that the Citizens limit their argument regarding the public purpose doctrine to the position that these are not public purposes. They do not argue that even if these are valid public purposes that have been recognized under Wisconsin case law, any public benefit resulting from the sale of the nursing home would be too remote and indirect for the public purpose doctrine to apply under the facts here. See **Bishop v. City of Burlington**, 2001 WI App 154, ¶10, 246 Wis. 2d 879, 631 N.W.2d 656 (“To maintain a public purpose, the benefit to the public must be direct and not remote.”). Accordingly, we need not address that as a potential issue.

they are entitled to discovery, thereby precluding dismissal of their public purpose claim. We conclude that the Citizens’ reliance on **Hermann** is misplaced.

¶30 To begin, **Hermann** is factually distinct from the facts here for the same reasons that we distinguished **Hermann** from the facts in **Bishop**. In **Bishop**, we concluded that the **Hermann** court “could see no larger public benefit conferred on the City other than the cash payment.” **Bishop**, 246 Wis. 2d 879, ¶19 (citing **Hermann**, 275 Wis. at 542-43). Here, in contrast, the County has identified several public benefits resulting from the sale in addition to the cash payment for the sale. And although some of these justifications might have also applied in **Hermann**—for example, increasing the municipality’s property tax base—the facts here are materially distinct in that the nursing home was operating at a loss and required revenue from property taxes to sustain its operations.

¶31 Additionally, even if some of the justifications from **Beloit** on which we rely here might have applied in **Hermann**, **Hermann** was decided long before Wisconsin case law recognized as legitimate public purposes increasing the property tax base, decreasing taxes, and reducing public debt. See **Beloit**, 259 Wis. 2d 37, ¶¶36, 47 (recognizing decreasing taxes and reducing debt as public purposes). And significantly, our supreme court has noted that “the trend of Wisconsin courts [has been] to extend the concept of public purpose.” *Id.*, ¶31; see also **Bishop**, 246 Wis. 2d 879, ¶12 (observing “the judicial trend to extend the scope of activities considered to be valid public purposes”); **State ex rel. Bowman v. Barczak**, 34 Wis. 2d 57, 65, 148 N.W.2d 683 (1967) (“[W]hat could not be deemed a public use a century ago may, because of changed economic and industrial conditions, be such today.” (quoted source omitted)); **State ex rel. Hammermill Paper Co. v. La Plante**, 58 Wis. 2d 32, 55-56, 205 N.W.2d 784 (1973) (“Public purpose is not a static concept. The trend of both legislative

enactments and judicial decisions is to extend the concept of public purposes in considering the demand upon municipal governments to provide for the needs of the citizens.”); see also **Kramer v. Board of Educ. of Sch. Dist. of Menomonie Area**, 2001 WI App 244, ¶20, 248 Wis. 2d 333, 635 N.W.2d 857 (“[W]here supreme court decisions appear to be inconsistent, or in conflict, we follow the court’s most recent pronouncement.”). In light of this well-recognized judicial trend to expand the public purpose doctrine and the more recent case law recognizing as public purposes increasing the property tax base, decreasing taxes, and reducing debt, we conclude that **Hermann** does not preclude summary judgment on the Citizens’ public purpose claim.

¶32 The Citizens also appear to argue that public purposes justifying the sale of municipal property must consist of benefits provided by *the buyer* as consideration for the sale. However, this runs counter to the case law on which we rely here, which recognizes as valid public purposes benefits that are created by the sale but that are not provided directly by the buyer, such as increased tax revenue that will be generated by the ability to tax the property being sold.

¶33 Relatedly, the Citizens fault the circuit court for not addressing whether the proposed sale price of the nursing home was less than the nursing home’s fair market value. As noted above, the Citizens also argue that the fair market value is a disputed factual issue on which they are entitled to discovery and that saves their public purpose claim from dismissal. However, in light of the valid public purposes identified here that justify the sale of the nursing home even at a sale price that we have assumed is less than its fair market value, the value of the nursing home is not a material issue of fact that precludes dismissal of the Citizens’ public purpose claim. See, e.g., **Rath**, 160 Wis. 2d 853. Indeed, as discussed earlier, in **Rath** we upheld under the public purpose doctrine the

conveyance of a city hospital that had been operating at a loss in the absence of *any* monetary consideration from the private entity to whom it was conveyed. *See id.* There, under facts analogous to those here, the court determined that the conveyance of the hospital comported with the public purpose doctrine because the hospital was required to be used for the health care needs of the community and because assuring adequate health care services is a public purpose.⁵ *See id.*

II. Marketing Resolution

¶34 The Citizens argue that dismissal was improper because they presented undisputed factual allegations to show that, by voting to sell the nursing home, the County violated the marketing resolution. In adopting the marketing resolution, the County Board resolved “that a Request for Proposals marketing the Sauk County Nursing Home be issued with the following conditions.” The marketing resolution then listed these conditions, which include several that the Citizens allege the sales contract violates, for example: “[t]he [C]ounty reserves the right of first refusal not to exceed the sale price,” “[t]he potential buyer shall demonstrate a history of 5-star ratings in the senior health care industry,” and “[t]he potential buyer shall retain existing staff subject to job performance.” The

⁵ Although the County does not specifically compare the facts here to those in *Rath*, the County does argue that conditions for the proposed sale here maximize the likelihood that the nursing home will continue to serve the public as a nursing home, which the County identifies as an additional public purpose justifying the sale. For example, pursuant to the Purchase and Sale Agreement and the Operations Transfer Agreement, Aria must use its best efforts to obtain the necessary government approvals to continue to operate the nursing home as a skilled nursing facility. Additionally, the County has the right to repurchase the nursing home if Aria receives a bona fide offer to purchase the nursing home from a third party in the next ten years. Because the County does not appear to have argued in the circuit court that assuring adequate health care services is a public purpose that justified the proposed sale, we do not rely on that public purpose in our analysis. *See Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86, ¶45 & n.21, 327 Wis. 2d 572, 786 N.W.2d 177 (explaining that issues not raised in the circuit court are forfeited, and supporting the proposition that appellate courts generally do not address forfeited issues).

Citizens argue that the proposed sale of the nursing home “clearly violates” the conditions in this resolution, which the Citizens characterize as the “enabling resolution authorizing the sale.” This argument fails for two independent reasons.

¶35 First, it relies on a mischaracterization of the marketing resolution. As the circuit court reasoned, the marketing resolution only imposes conditions on the County’s request for marketing proposals. In other words, these requirements apply to how the nursing home was to be marketed, and not to the manner in which and to whom it is to be sold.

¶36 Second, even if there is a conflict between the marketing resolution and the terms of the proposed sale of the nursing home, the Citizens’ claim nonetheless fails because the County Board voted to supersede the marketing resolution. Specifically, the motion to approve the sale of the nursing home expressly provides that the County Board’s approval of the sale supersedes the marketing resolution to the extent that there is any conflict. As explained below, this defeats the Citizens’ argument.

¶37 A municipal corporation “‘has a right to reconsider under parliamentary law its vote and action upon questions properly pending before it, and [to] rescind its previous action provided vested rights are not violated and such rescission is in conformity with the law applicable to the government of the body.’” *Jackson County v. DNR*, 2006 WI 96, ¶34, 293 Wis. 2d 497, 717 N.W.2d 713 (alteration in original) (quoting *Edwards Realty & Fin. Co. v. City of Superior*, 250 Wis. 472, 477, 27 N.W.2d 370 (1947)). The County argues that the Citizens do not allege that any vested rights were violated. The Citizens do not refute this argument, and we treat their failure to do so as a concession. See

Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp., 90 Wis. 2d 97, 108-09, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments are deemed conceded).

¶38 Instead, the Citizens argue that their claim should not have been dismissed because the County Board did not follow parliamentary procedure in superseding the marketing resolution. Specifically, they argue that the County violated Robert’s Rules of Order, which states that rescinding an earlier vote requires:

(a) a two-thirds vote, (b) a majority vote when notice of intent to make the motion, stating the complete substance of the proposed change, has been given at the previous meeting within a quarterly time interval or in the call of the present meeting, or (c) a vote of a majority of the entire membership—any one of which will suffice.

HENRY M. ROBERT III, ET AL., ROBERT’S RULES OF ORDER NEWLY REVISED, 211 (11th ed. 2011).⁶ Pursuant to this rule, the Citizens argue the County Board needed, but lacked, two-thirds approval for the motion superseding the marketing proposal resolution because there was not notice of the motion at a prior meeting. However, the Citizens’ amended complaint does not allege that the County Board did not follow parliamentary procedure. And, even setting that omission aside, the Citizens misread this rule and omit relevant language when they quote the rule in their appellants’ brief. As the County argues, in using the disjunctive “or,” the rule also allows an earlier vote to be rescinded, without prior notice, by “a vote of a majority of the entire membership.” Such was the case here. The motion to

⁶ The County Board Rules state: “Robert’s Rules of Order Newly Revised, 2011 (11th) Edition, shall govern the proceedings of the Board in all cases to which they are applicable and in which they are not inconsistent with [the County Board] Rules or the laws of the State of Wisconsin.”

supersede the marketing proposal resolution was approved by 18 members of the 31-member County Board.

¶39 Additionally, in their appellants’ brief, the Citizens argue that the motion to supersede the marketing proposal resolution violated parliamentary law because “[p]roper parliamentary process must be seen as prohibiting combining two different subjects into a single motion.” However, in response, the County correctly points out that the Citizens do not cite any authority to support this proposition, and the County additionally argues that in any event, the motion did not combine two different subjects. The Citizens do not respond to these arguments in their reply brief, and we therefore reject their argument that the marketing resolution improperly combined two different subjects into a single motion. The argument is unsupported by legal authority in the first place, and the Citizens have additionally conceded that the motion superseding the marketing proposal resolution did not combine two different subjects into a single motion. See *Pettit*, 171 Wis. 2d at 646 (this court need not consider arguments that are unsupported by legal authority or are otherwise undeveloped); see *Charolais*, 90 Wis. 2d at 108-09 (unrefuted arguments are deemed conceded).

III. WISCONSIN STAT. § 65.90(5)

¶40 The Citizens argue that dismissal of their WIS. STAT. § 65.90(5) claim was improper because (1) pursuant to § 65.90(5)(ar) and a county ordinance incorporating that statute’s requirements, the County needed affirmative votes by two-thirds of the members of the County Board to approve the sale, and (2) the Citizens presented sufficient facts to show that the County Board lacked the requisite two-thirds vote.

¶41 WISCONSIN STAT. § 65.90(5)(ar) states, as relevant here, that “the amount of tax to be levied or certified, the amounts of the various appropriations and the purposes for such appropriations stated in a [municipal] budget ... may not be changed unless authorized by a vote of two-thirds of the members-elect of the governing body of the municipality.” The County Board’s rules similarly state that “[a]ny budget alterations shall require authorization by two-thirds of the membership of the Board in accordance with WIS. STAT. § 65.90(5).”

¶42 The Citizens argue that the County needed authorization from two-thirds of the County Board members because approving the sale was a budget alteration that changed the amount of tax to be levied and the amounts and purposes of appropriations. Specifically, the Citizens argue that WIS. STAT. § 65.90(5)(ar) requires two-thirds approval for actions that will affect a municipality’s budget, and that approving the sale will affect the County’s budget by: causing the County to stop appropriating tax revenue to fund the nursing home, obviating the need to continue to pay down the outstanding debt from nursing home renovations, and removing a large asset from the County’s balance sheet.

¶43 We reject the Citizens’ argument because we conclude that WIS. STAT. § 65.90(5)(ar) does not apply to an action that will merely affect a municipality’s budget. Instead, it applies to changes to taxes and appropriations as those taxes and appropriations are stated in a municipal budget. Specifically, the relevant language in § 65.90(5)(ar) states that

the amount of tax to be levied or certified, the amounts of the various appropriations and the purposes for such appropriations *stated in a budget required under sub. (1) or authorized under sub. (1m)* may not be changed unless authorized by a vote of two-thirds of the members-elect of the governing body of the municipality.

(Emphasis added.) Relevant here, subsection (1) states, in part: “Except as provided in sub. (1m), every municipality shall annually ... formulate a budget[.]” And subsection (1m) allows municipalities to adopt biennial budgets. See § 65.90(1m)(b).

¶44 This language shows that WIS. STAT. § 65.90(5)(ar) applies to changes of taxes and appropriations that are stated in a municipal budget. Here, the undisputed facts show that the vote to approve the sale was not a vote to specifically change any taxes or appropriations as stated in the County’s budget, and the Citizens’ argument therefore fails. The Citizens’ reading of paragraph (5)(ar) would treat any action that affects a municipality’s budget as a change requiring two-thirds approval under § 65.90(5)(ar). This strained reading would extend the scope of the statute far beyond its language because many of the actions that a governing body of a municipality might take will have at least some effect on the municipality’s budget. If the legislature had intended more broadly for the two-thirds requirement to apply to any action that will have any effect on a municipal budget, the legislature could have so stated. Moreover, the undisputed facts show that the authorization of the sale itself did not affect the County’s budget. As the County argues, once the sale is completed, changes to the budget under § 65.90(5)(ar) may need to be approved, but those were at all relevant times still speculative and would be distinct from the County Board’s decision to authorize the sale.

¶45 The Citizens also rely for their position on two Wisconsin Attorney General opinions, but we conclude that neither is persuasive here. One is distinguishable because it concerns a county board resolution that specifically authorized funds appropriated for one purpose to be used for a different purpose. See 75 Wis. Op. Att’y Gen. 56 (Apr. 22, 1986). And the other is distinguishable

because it states that two-thirds approval is required to appropriate funds for a particular purchase. *See* 66 Wis. Op. Att’y Gen. 198 (June 1, 1977).

¶46 In sum, the circuit court properly dismissed the Citizens’ claim that the County violated WIS. STAT. § 65.90(5).

CONCLUSION

¶47 For the reasons stated, we affirm.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

