

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 27, 2026

Samuel A. Christensen
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. 2025AP86
STATE OF WISCONSIN**

Cir. Ct. No. 2020CV285

**IN COURT OF APPEALS
DISTRICT III**

SCHEELS ALL SPORTS, INC.,

PLAINTIFF-APPELLANT,

V.

CITY OF EAU CLAIRE,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Eau Claire County:
SARAH M. HARLESS, Judge. *Affirmed.*

Before Stark, P.J., Hruz, and Gill, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Scheels All Sports, Inc., appeals an order dismissing its claims against the City of Eau Claire for excessive tax assessments.

For the reasons that follow, we conclude that the circuit court did not err by dismissing Scheels's claims and we affirm the order.

BACKGROUND

¶2 This action involves one of the five anchor units of Oakwood Mall in Eau Claire, Wisconsin, which Scheels operates as a sporting goods store. In both 2019 and 2020, the property was assessed at \$7,174,000, and in 2021, it was assessed at \$6,787,600. Pursuant to WIS. STAT. § 74.37 (2023-24),¹ Scheels filed claims for excessive assessments for all three years with the City's Board of Review, claiming that the City had overvalued the property and overtaxed it accordingly. The City disallowed each claim.

¶3 Pursuant to WIS. STAT. § 74.37(3)(d), Scheels filed suit in the circuit court seeking reimbursement for the amount of its claims that were disallowed. In other words, Scheels sought a refund of the amount it alleged it had overpaid in taxes based on the excessive assessments. The case was scheduled for a bench trial.

¶4 Prior to trial, the circuit court granted the City's motion to exclude from evidence a document offered by Scheels regarding assessments of the other anchor stores at the mall, which Scheels had asserted would form the basis for an argument that the City's assessments violated the Wisconsin Constitution's Uniformity Clause, requiring taxes to be uniform. *See* WIS. CONST. art. VIII, § 1. The court also rejected Scheels's attempt to introduce this document again during trial as rebuttal evidence.

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

¶5 At the conclusion of the trial, the circuit court determined that Scheels had failed to overcome the presumption that the City’s assessments were correct and dismissed Scheels’s claims. Scheels now appeals. Additional facts will be provided below as necessary.

DISCUSSION

¶6 Our review of a circuit court’s determination on an excessive tax assessment claim pursuant to WIS. STAT. § 74.37(3)(d) is not a certiorari review. *Lowe’s Home Ctrs. LLC v. City of Delavan*, 2023 WI 8, ¶23, 405 Wis. 2d 616, 985 N.W.2d 69. Therefore, we review the court’s determination, not the determination of either the taxing authority’s assessor or the Board of Review. *Id.* The court’s factual findings will not be disturbed on appeal unless they are clearly erroneous. *Id.*, ¶25; WIS. STAT. § 805.17(2). As factfinder, the court also determines the credibility and weight of expert witness testimony. *Lowe’s*, 405 Wis. 2d 616, ¶25. We review the court’s rulings to admit or exclude evidence under an erroneous exercise of discretion standard. *Gaethke v. Pozder*, 2017 WI App 38, ¶23, 376 Wis. 2d 448, 899 N.W.2d 381.

¶7 In a bench trial, the circuit court must “find the ultimate facts and state separately its conclusions of law thereon.” WIS. STAT. § 805.17(2). *Ultimate* facts are just that, *conclusions* based upon specific evidentiary facts, with evidentiary facts being the premises upon which the conclusions are based. *State v. Martwick*, 2000 WI 5, ¶16, 231 Wis. 2d 801, 604 N.W.2d 552. A court is not required to supplement its ultimate facts with “commentaries on the evidence or reasons for which the findings are made.” *Chernetski v. American Fam. Mut. Ins.*, 183 Wis. 2d 68, 80, 515 N.W.2d 283 (Ct. App. 1994).

¶8 Pursuant to WIS. STAT. § 70.32(1), assessors must value real property in accordance with the Wisconsin Property Assessment Manual (hereinafter, Manual).² Section 70.32(1) provides a “hierarchical valuation methodology for arriving at a property’s fair market value.” *Lowe’s*, 405 Wis. 2d 616, ¶27. An arm’s-length sale of the property is the best information from which to assess a fair market value; this is known as a tier 1 analysis. *Id.*, ¶29. If no such sale is available, then the appraiser should complete a tier 2 analysis by examining recent arm’s-length sales of “reasonably comparable” properties. *Id.* If both those tiers are unavailable, a tier 3 analysis includes consideration of “all the factors collectively that have a bearing on the value of the property.” *Id.*, ¶30. The two approaches to valuation that might be used in a tier 3 analysis are a “cost approach” and an “income approach.” Manual at 9-23. “Only if there are no recent comparable sales of other properties should the assessor proceed to other indicators of value that include the income and cost approaches to value.” *Id.* (citing *Markarian v. City of Cudahy*, 45 Wis. 2d 683, 686, 173 N.W.2d 627 (1970)).

¶9 Regardless of which tier analysis the taxing authority’s assessor employs, its assessments are entitled to a presumption of correctness, see WIS. STAT. § 70.49(2), which attaches upon the filing of the assessment into the assessment roll along with the accompanying assessor’s affidavit, *Lowe’s*, 405 Wis. 2d 616, ¶39. At trial, a party challenging an assessment can rebut this presumption by showing that the assessor did not correctly apply the Manual or by presenting “significant contrary evidence” that it is more probable than not that the

² All references to the Wisconsin Property Assessment Manual are to the 2019 version, which is available at <https://www.revenue.wi.gov/Documents/wpam19.pdf>.

assessed value is not correct. *Lowe’s*, 405 Wis. 2d 616, ¶32; *Bonstores Realty One, LLC v. City of Wauwatosa*, 2013 WI App 131, ¶9, 351 Wis. 2d 439, 839 N.W.2d 893.

¶10 This case involves a tier 2 analysis. During trial, two competing expert witnesses testified as to what properties are reasonably comparable to the Scheels property such that the arm’s-length transactions involving those properties should serve as the basis for the assessed, fair market value of the Scheels property.

¶11 The Manual provides that reasonably comparable properties are those “similar to the subject property in age, condition, use, type of construction, location, design, physical features and economic characteristics.” Manual at 9-24. Assessors “should choose comparable sales exhibiting a similar highest and best use and similar placement in the commercial real estate marketplace.” *Id.* at 13-12. The assessor should avoid using, as comparables for retail stores, sales of vacant or “dark”³ properties, or properties “in transition or suffering from some form of distress unless the subject property is similarly” vacant/dark, in transition, or in distress. *Id.* at 13-12, 13-42; see also *Lowe’s*, 405 Wis. 2d 616, ¶44. Avoiding the use of vacant and dark properties as comparables is consistent with the general principle that properties should be valued at their “highest and best use.” *Lowe’s*, 405 Wis. 2d 616, ¶57.

³ A retail store is “dark” when it is vacant and has been vacant “beyond the normal time period for that commercial real estate marketplace.” Manual at 13-12. “[A]ll dark stores are vacant, but not all vacant stores are dark.” *Lowe’s Home Ctrs. LLC v. City of Delavan*, 2023 WI 8, ¶46, 405 Wis. 2d 616, 985 N.W.2d 69.

¶12 In its oral decision, the circuit court noted that the two competing experts agreed that there were a sufficient number of available property sales “to review in order to do a [tier 2] sales comparison approach.” The court then reviewed the basis for choosing appropriate comparables, noting that the Manual

indicates that when valuing property, the assessor should choose comparable sales exhibiting a similar highest and best use and similar placement in the commercial real estate marketplace. To be comparable, properties should be similar in both physical and economic characteristics including similarities in the ability to generate income and/or similar income streams. The Manual also notes that the assessor should be careful to avoid using comparable sales involving properties that are vacant, in transition or suffering transition, or in distress.

¶13 In its attempt to rebut the presumption that the City’s assessments were correct, Scheels offered an appraisal performed by its expert, which relied on ten comparables. The circuit court summarized those comparables as follows:

Sale 1 being a former Yonkers store in Eau Claire, which was sold in bankruptcy; Sale 2, a former Menard’s in Madison which was sold for a different use; then the highest and best purpose, Sale 3, the former Kmart in Menomonie; Sale 4, the former Sears in Green Bay; Sale 5, the former Shopko in Madison, which had been vacant for two-and-a-half years; Sale 6, the former Sam’s Club in Madison, which was sold to At Home; Sale 7, the former Kmart in Eau Claire, which had been vacant for four years and was demolished; Sale 8, the former HOM Furniture in Eau Claire; Sale 9, the former Gordy’s in Eau Claire, which had been vacant for 18 months; and Sale 10, the Shopko in Eau Claire, which was sold in bankruptcy and vacant 18 months.

Of those ten properties, the court found that six—Sales 1, 2, 5, 7, 9 and 10—had “notable differences to the Scheels property” and “deviated remarkably from the [Manual’s] standards.” For those reasons, the court asserted that these six comparables “damage[d] the credibility of the assessment.”

¶14 The circuit court ultimately categorized only one of the ten properties used by Scheels’s expert as a “fairly reasonable comparable” to the Scheels property. This property (Sale 6) was a former warehouse store, was on the market for three months, and was ultimately sold to a furniture retailer. The court noted that the price per square foot for this property, after adjustments made to the sale price by Scheels’s expert, was “actually fairly close” to the City’s assessed price per square foot.⁴

¶15 The circuit court also acknowledged problems with the City’s offered expert testimony. The court observed that the comparable properties used by the City’s expert in his report were “problematic” because they were materially smaller than the Scheels property, and smaller spaces generally are more valuable per square foot than larger spaces. However, the court noted that it was Scheels’s burden to prove that the City’s *original* assessments were incorrect, not that the assessments of the City’s expert at trial were deficient.

¶16 The circuit court ultimately found, after reviewing all the information presented by the parties, that the analysis of Scheels’s expert was insufficient “to persuade [the court] that the assessed values are probably not a fair market value for the property.” Accordingly, the court dismissed Scheels’s claims for excessive tax assessments because Scheels failed to produce sufficient information to overcome the presumption of correctness for the City’s assessments.

⁴ Scheels’s expert listed a price of \$63.18 per square foot for this comparable property, while the City had assessed the Scheels property at \$66.62 per square foot in both 2019 and 2020 and at \$63.23 per square foot in 2021.

¶17 On appeal, Scheels first argues that the circuit court failed to state the ultimate facts upon which its decision was based. Specifically, Scheels asserts that although the court recited notable differences in most of the ten properties used as comparables by Scheels’s expert, the court did not identify what those differences were or why they were legally significant. This is simply not true. The ultimate fact upon which the court’s decision was based was that all but one of the properties were not appropriate to be used as comparables. The circuit court went well beyond its obligation to simply identify that fact, *see Chernetski*, 183 Wis. 2d at 80, providing commentary on the differences between the properties and the Scheels property and explaining the reasons why the properties were not appropriate as comparables. Those notable differences included sales being made while the comparables were in bankruptcy (that is, in transition or in distress), sales being made after the comparables had sat vacant for various periods of time, and one comparable sale that was made for a different highest and best use.

¶18 Second, Scheels argues that it submitted significant contrary evidence proving that the assessments were excessive. However, on our review we will not disturb the circuit court’s factual findings or determinations on the credibility of the expert witnesses or the weight given to their testimony because those findings and determinations are supported by the record and not clearly erroneous. *See Lowe’s*, 405 Wis. 2d 616, ¶25. Further, under our standard of review, it is not our role to reweigh the evidence. *See Dickman v. Vollmer*, 2007 WI App 141, ¶14, 303 Wis. 2d 241, 736 N.W.2d 202.

¶19 The same commentary that the circuit court provided regarding the notable differences in the ten properties used by Scheels’s expert as comparables provides clear support for the court’s factual findings that at least six of the ten properties were not appropriate comparables according to the Manual and relevant

law. Those comparables were either vacant at the time of sale (Sales 5, 7, 9 and 10); in distress at the time they were sold (Sales 1 and 10); or sold for a different highest and best use (Sale 2).⁵ Use of such properties as comparables would be contrary to the directives of the Manual to avoid using sales of vacant properties, properties in transition or distress, or properties that do not exhibit a similar highest and best use. See Manual at 13-12. And, again, for the one comparable that the court found was actually a “fairly reasonable comparable” (Sale 6), the valuation of Scheels’s expert was not significantly different from the City’s valuation.

¶20 The circuit court’s determination that the testimony of Scheels’s expert was not sufficiently credible to overcome the presumption of correctness was also not clearly erroneous. The court identified that the flaws in the expert’s choice of comparables “damage[d] the credibility” of his analysis. The court then

⁵ As the circuit court noted in its oral decision, both expert witnesses “agreed that the highest and best use [for the Scheels property] is the existing retail operation.” Scheels now argues that the highest and best use for the property is an “alternative use[]” other than an existing retail operation. We generally will not review issues raised for the first time on appeal and we decline to do so here. See *Wirth v. Ehly*, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980), *superseded on other grounds by statute*, WIS. STAT. § 895.52.

concluded that all other information provided by Scheels was insufficient to overcome the presumption of correctness.⁶

¶21 Finally, Scheels argues that the circuit court erred by excluding evidence in support of Scheels’s argument that the City’s assessments violated the Uniformity Clause. Scheels’s argument on this matter is limited to the court’s refusal to admit the evidence as rebuttal evidence at trial. However, the court had excluded this exhibit in a pretrial motion on the basis that it was expert testimony that had not been properly disclosed during discovery. The court’s ruling at trial referred back to that ruling on the pretrial motion, simply stating: “[The court’s] ruling stands. This was not previously disclosed. The exhibit is not going to be admitted.”

¶22 It is apparent that the substance of the circuit court’s ruling as to the admissibility of the evidence is found in the transcript of the hearing on the pretrial motion. Scheels has not provided that transcript on appeal. Therefore, we limit our review to those parts of the record which are available, *see Jocius v. Jocius*, 218 Wis. 2d 103, 119, 580 N.W.2d 708 (Ct. App. 1998), and any facts stated by the circuit court are presumptively established, *see Oxmans’ Erwin Meat Co. v.*

⁶ The parties also argued at trial, and now on appeal, whether the assessments were excessive based on either a cost approach or an income approach. As noted above, these are different approaches used in a tier 3 analysis and are only used when no recent comparable sales of other properties are available. Manual at 9-23. The expert witnesses agreed, and the circuit court subsequently found, that there were sufficient comparable properties such that a tier 2 analysis could be completed. Therefore, the court did not need to address these tier 3 approaches. Nonetheless, the court did so, finding that Scheels’s evidence with regard to both of these approaches also failed to overcome the presumption that the City’s original assessments were correct. Having concluded that the court’s findings with respect to the tier 2 analysis were not clearly erroneous, we need not address the parties’ arguments regarding the tier 3 analysis. *See State v. Castillo*, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997) (“An appellate court should decide cases on the narrowest possible grounds.”).

Blacketer, 86 Wis. 2d 683, 689, 273 N.W.2d 285 (1979). On the record before us, the court did not erroneously exercise its discretion by excluding the document on the basis that it had not been properly disclosed. See **Gaethke**, 376 Wis. 2d 448, ¶23.

¶23 In summary, we conclude that the circuit court’s findings were not clearly erroneous and support the court’s determination that Scheels failed to overcome the presumption that the City’s original tax assessments were correct. We also conclude that the court properly stated the ultimate facts on which its decision was based. Additionally, Scheels has failed to show that the court erroneously exercised its discretion by excluding Scheels’s proffered evidence regarding the Uniformity Clause. Accordingly, we affirm the court’s order dismissing Scheels’s claims for excessive tax assessments.

By the Court.—Order affirmed.

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

