COURT OF APPEALS
DECISION
DATED AND FILED

August 11, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-1838

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

OAK HILL DEVELOPMENT CORPORATION,

PETITIONER-APPELLANT,

V.

BOARD OF REVIEW FOR THE CITY OF OAK CREEK,
A MUNICIPAL CORPORATION,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: VICTOR MANIAN, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

PER CURIAM. The Oak Hills Development Corporation ("Oak Hills") appeals from a circuit court order affirming a determination by the Board of Review for the City of Oak Creek ("the Board") which upheld an assessment of property owned by Oak Hills at a value of $205,300. Oak Hills claims that the

circuit court erred in affirming the Board's determination because: (1) the Development Method of assessment, which was used by the assessor to justify his assessment at the Board hearing, was not a proper method of assessing the value of Oak Hills' undeveloped property; (2) the Comparable Sales Method, which should have been used to assess the property, would have yielded a lower value for the property; and (3) the Board's method of conducting its hearing violated Oak Hills' constitutional right to due process. We are not persuaded by Oak Hills' claims. Therefore, we affirm the circuit court's order.

I. BACKGROUND.

The subject property is a 51.327 acre parcel of vacant land located in Oak Creek, Wisconsin, which is owned by Oak Hills. In 1991, the property was assessed at $4,000 an acre, resulting in a total assessment of $205,300. According to Oak Hills, in 1994 the South Eastern Wisconsin Regional Planning Commission (SEWRPC) designated between 14.3 to 19 acres of the property as wetlands. Oak Hills also claims that in 1994 the City of Oak Creek adopted a master city-wide rezoning plan which reduced the density permitted on any development of the property.[1] In 1995, based on the wetlands designations and the rezoning, Oak Hills attempted to obtain a reduction in the property's assessment. Oak Hills was unsuccessful and the assessment remained unchanged.

On January 1, 1996, the City of Oak Creek again assessed the property at a value of $205,300. Oak Hills objected to the assessment, and a Board hearing was scheduled. At the hearing, the assessor testified that from

[1] The Board disputes this claim and argues that after rezoning the density of the property remained the same. The density of the property, however, does not affect the outcome of this opinion, and therefore, we conclude that the dispute is irrelevant.

1991 to 1995 he did not change the assessment value of $4,000 per acre. Oak Hills' representative, Steven Colompos, testified that he assigned a value of $500 to the lower number of wetlands acres, 14.3, resulting in a total value of the wetlands acres of $7,150. Colompos testified that, because the assessor did not change the assessment value of $4,000 per acre from 1991 to 1995, he assigned a value of $4,000 to the remaining 36.7 acres, resulting in a total value of the non-wetlands acres of $146,800. Colompos testified that, after adding those two figures, it concluded that the total value of the land was $153,950.

The assessor testified that he did not dispute Oak Hills' conclusion that the 14.3 acres of wetlands were worth $500 an acre. The assessor, however, testified that he believed that the non-wetlands acres were worth more than $4,000 an acre. The assessor explained that he believed that it was possible to develop twenty lots on the property. Colompos testified that the land was subject to a reservation in favor of a former grantor for five lots once the land was platted. Although there were doubts concerning the validity of the reversionary clause, the assessor gave the property owner the benefit of the doubt, deducted the five lots, and concluded that a total of fifteen lots could be developed on the land. The assessor testified that he believed that the fair market value of the fifteen lots, if developed, was approximately $30,000 per lot, resulting in a gross fair market value of $450,000. Factoring in a development cost of 50%, the assessor testified that the total fair market value of the land was $225,000. The assessor then divided that amount by the thirty-six acres of non-wetlands property, and concluded that the total fair-market value of each non-wetlands acre was $6,250. The assessor testified that, based on his calculations, he believed the lower assessment value of $205,300 was valid and appropriate.

After hearing testimony, the Board voted three to two to affirm the 1996 assessment of $205,300. Oak Hills filed a writ of certiorari challenging the Board's decision. The circuit court, upon certiorari review, issued an order affirming the Board's decision to uphold the assessment. In its decision, the circuit court explained that the assessor's method of valuing the property, the Development Method, was an acceptable method of valuation, and that Oak Hills had failed to prove that the assessment was unreasonable. Oak Hills now appeals.

II. ANALYSIS.

A. Standard of Review

This appeal arises by way of statutory certiorari. *See* § 70.47(13), STATS. On appeal from a decision on a writ of certiorari, this court reviews the record and findings of the administrative board, not the judgment and findings of the trial court. *See* ***State ex rel. Harris v. Annuity & Pension Bd.***, 87 Wis.2d 646, 651, 275 N.W.2d 668, 671 (1979). Our review is limited to whether the board remained within its jurisdiction, whether it acted in accordance with the law, whether its action was "arbitrary, oppressive, or unreasonable and represented its will and not its judgment," and whether the evidence was "such that it might reasonably issue the order or make the determination in question." ***Clark v. Waupaca County Bd. of Adjustment***, 186 Wis.2d 300, 304, 519 N.W.2d 782, 784 (Ct. App. 1994).

> There is a presumption that the assessor's valuation is correct. Such valuation will not be set aside in the absence of evidence showing it to be incorrect. The burden of producing evidence to overcome this presumption is upon the person who seeks to attack the assessment, and the presumption survives until it is met by credible evidence.

State ex rel. Evansville Mercantile Ass'n v. City of Evansville, 1 Wis.2d 40, 42, 82 N.W.2d 899, 900-01 (1957) (citations and quotation marks omitted). *See also* ***State ex rel. Boostrom v. Board of Review***, 42 Wis.2d 149, 155, 166 N.W.2d 184, 188 (1969) ("The assessor's valuation of property is *prima facie* correct and is binding upon the board of review in the absence of evidence showing it to be incorrect.") (citation omitted).

B. Discussion

Oak Hills claims that the trial court erred in affirming the Board's determination because: (1) the Development Method of assessment, which was used by the assessor to justify his assessment at the Board hearing, was not a proper method of assessing the value of Oak Hills' undeveloped property; (2) the Comparable Sales Method, which should have been used to assess the property, would have yielded a lower value for the property; and (3) the Board's method of conducting its hearing violated Oak Hills' constitutional right to due process. We are not persuaded.

Section 70.32(1), STATS., states that, "Real property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual ...." ***Id.*** According to the Wisconsin property assessment manual ("the Manual"), an assessor may use a number of valuation of techniques in order to value a particular parcel of land, including the "Sales Comparison Approach," "Abstraction," and the "Development Method." *See* 1 PROPERTY ASSESSMENT MANUAL FOR WISCONSIN ASSESSORS, 7-11 (Rev. 12/96). The Manual states:

> [The Development Method] can be used to value land when there is limited sales data available or when a large tract of land is being developed for residential or

> commercial use, or as an industrial park. Using this method, the assessor estimates the number of lots that can be developed from a tract of land, and multiplies that number by the price at which the lots can be expected to sell. From this figure is subtracted the estimated costs of development. Development costs could include the installation of utilities and streets, sales expense, profit, interest, and any other costs incurred to develop and sell the sites. The result after subtracting the development costs from the sales price is the value of the land in its present state.

Id. Oak Hills argues that, because the Manual states that the Development method "can be used to value land ... when a large tract of land *is* being developed," ***id.*** (emphasis added), and because Oak Hills' property was not being developed at the time of the assessment, the assessor should not have used the Development Method. Oak Hills is incorrect.

Although the Manual states that the Development Method *can* be used in certain circumstances, *i.e.*, "when there is limited sales data available or when a large tract of land is being developed for residential or commercial use, or as an industrial park," the Manual does not state that the Development Method *cannot* be used in other circumstances. Thus, according to the Manual's plain language, use of the Development Method valuation technique is not necessarily limited to situations where vacant land has been platted, or where development has begun.

Additionally, interpreting the Manual in this case to exclude the use of the Development Method valuation technique would be inconsistent with the Manual's "Highest and Best Use" valuation principle. *See* ***id.*** at 7-7. According to the "Highest and Best Use" valuation principle, when an assessor is valuing property, "it is necessary to determine which of the possible uses [of the property] is the highest and best use." ***Id.*** "Highest and best use is defined as that use which

over a period of time produces the greatest net return to the property owner." ***Id.*** In the instant case, both parties agree that the property is zoned for residential use. Therefore, residential development would appear to be the highest and best use for the property. Disallowing the assessor from using the Development Method of valuation, however, would have deprived the assessor of perhaps the most accurate method of determining the value of the land as developed residential real estate.

Finally, Oak Hills has not shown that the possibility of developing the property in this case is "highly speculative." *See* ***id.*** at 7-7 ("The highest and best use should not be a highly speculative use."). In fact, at the Board hearing, the Oak Hills representative testified that Oak Hills was "trying to develop" and market the property. Therefore, we conclude that in the instant case the Development Method was an appropriate method of valuing Oak Hills' property.

Oak Hills also argues that, in this case, if the Development Method was an appropriate method of valuation, it was nevertheless improperly applied by the assessor. Oak Hills, however, never challenged, either through cross-examination or the introduction of contrary evidence, the figures which the assessor used in his Development Method calculations, with respect to either the value of the lots if developed, or the cost of development. Instead, Oak Hills merely attempted to show the value of the property through comparable sales evidence. Therefore, Oak Hills cannot now complain on appeal that the assessor incorrectly applied the Development Method. *See* ***Wirth v. Ehly***, 93 Wis.2d 433, 443-44, 287 N.W.2d 140, 145-46 (1980) (appellate court will generally not review issue raised for first time on appeal).

Oak Hills also argues that the Comparable Sales method of valuation should have been used, and that, if it had been used, the property would have been assessed at a lower value. As already noted, however, the Development Method of valuation was a proper method of valuation for the assessor to use. Oak Hills has presented this court with no authority stating that an assessor must use more than one method of property valuation. Therefore, Oak Hills has not shown that the Board's decision to uphold the assessor's valuation, based on the Development Method, was unreasonable, arbitrary or contrary to law. *See* ***Clark***, 186 Wis.2d at 304, 519 N.W.2d at 784.

Oak Hills also argues that the Board's method of conducting the hearing violated its right to due process. Oak Hills apparently believes that its due process rights were violated because the assessor had previously indicated that the assessment was justified under the Comparable Sales method of valuation, but testified at the Board hearing that the assessment was also justified under the Development Method of valuation. Oak Hills has not presented this court with any citations to legal authorities to support this novel argument, and we find it lacks sufficient merit to warrant our attention. *See* ***State v. Shaffer***, 96 Wis.2d 531, 545-46, 292 N.W.2d 370, 378 (Ct. App. 1980) (appellate court does not consider arguments unsupported by citations to legal authority); ***Libertarian Party v. State***, 199 Wis.2d 790, 801, 546 N.W.2d 424, 430 (1996) (appellate court need not address issues that lack sufficient merit to warrant individual attention).

In conclusion, because Oak Hills has failed to show that the Board acted unreasonably in upholding the assessment, we affirm the circuit court's order.

By the Court.—Order affirmed.

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