

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 23, 2012

Diane M. Fremgen
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. 2011AP1968

Cir. Ct. No. 2011CV724

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

VERNON F. BORST AND CAROLYN R. BORST,

PETITIONERS-APPELLANTS,

V.

CITY OF NEW RICHMOND BOARD OF APPEALS,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for St. Croix County:
HOWARD W. CAMERON, JR., Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Mangerson, JJ.

¶1 PER CURIAM. Vernon and Carolyn Borst, pro se, appeal a circuit court order affirming a raze order decision by the City of New Richmond Zoning Board of Appeals. We affirm.

¶2 The raze order stemmed from commercial property owned by the Borsts. The Borsts filed an appeal of the raze order and after a hearing the Board of Appeals upheld the order. The Borsts filed a petition for writ of certiorari seeking review of the Board of Appeals' decision. The circuit court dismissed the petition and denied a motion to reopen.

¶3 The Borsts then filed another petition for writ of certiorari seeking review of the Board of Appeals' decision. On that same day, the Borsts also filed a motion to restrain the razing of the building. The circuit court concluded the Borsts' requests were untimely, and dismissed and denied the petition and motion. The Borsts now appeal.

¶4 The time period for filing a petition for certiorari review is set forth in WIS. STAT. § 62.23(7)(e)10.,¹ which provides that any person aggrieved by a decision of the Board of Appeals may commence a certiorari action within thirty days of the filing of the Board of Appeals' decision. *See State ex rel. Schwochert v. Marquette Cnty. Bd. of Adjust.*, 132 Wis. 2d 196, 203, 389 N.W.2d 841 (Ct. App. 1986).

¶5 Here, the Borsts did not reply to the Board of Appeals' contention that the Borsts' current petition for writ of certiorari was filed more than one year after the Board of Appeals' April 12, 2010 decision, and that the Borsts "essentially filed the same paperwork as they did when they brought [their previous certiorari action]."² Arguments not refuted are deemed admitted. *See*

¹ All references to the Wisconsin Statutes are to the 2009-10 version.

² The Borsts failed to file a reply brief to this court.

Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp., 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979). The circuit court correctly dismissed the certiorari petition as untimely.

¶6 In addition, the timeframe for seeking an order restraining the razing of a building is set forth in WIS. STAT. § 66.0413(1)(h), but the owner has only thirty days from service of the raze order to pursue it “or forever be barred.” See, e.g., ***Matlin v. City of Sheboygan***, 2001 WI App 179, ¶7, 247 Wis. 2d 270, 634 N.W.2d 115. The Board of Appeals contends the Borsts’ motion for a restraining order was filed 557 days after service of the raze order. Again, the Borsts’ failure to file a reply brief is deemed a concession of the issue. See ***Charolais Breeding Ranches***, 90 Wis. 2d at 109. Accordingly, the motion for the restraining order was also properly dismissed as untimely.

By the Court.—Order affirmed.

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

