

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 6, 2001

Cornelia G. Clark
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.

No. 00-2359

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**STATE OF WISCONSIN EX REL. ANTHONY J.
BOGDANOVICH,**

PLAINTIFF-APPELLANT,

v.

TOWN OF THREE LAKES BOARD OF SUPERVISORS,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Oneida County:
MARK A. MANGERSON, Judge. *Affirmed.*

Before Hoover, P.J., Peterson, J. and Vergeront, P.J.

¶1 PER CURIAM. Anthony Bogdanovich appeals a judgment denying certiorari relief from the decision of the Town of Three Lakes Board of Supervisors that denied his application for construction of a road to his landlocked

property. He argues that the board lacked discretion under WIS. STAT. § 80.13¹ to deny the application, that the record does not support the board's decision and that its actions were arbitrary, oppressive or unreasonable and represented its will and not its judgment. We reject these arguments and affirm the judgment.

¶2 Bogdanovich purchased real estate bordered by private property on three sides and water on the fourth side. After he failed in his effort to purchase an easement from his neighbors to provide access to the site, he petitioned the Board of Supervisors to lay out an access road to his land. The board denied the application and Bogdanovich commenced this certiorari proceeding to review that decision. The circuit court denied relief and he appealed.

¶3 On certiorari review, the court's function is limited to determining whether the board kept within its jurisdiction, whether it proceeded on a correct theory of law, whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment, and whether the evidence was such that the board might reasonably reach the decision it made. *See Brookside v. Jefferson Bd. of Adj.*, 131 Wis. 2d 101, 120, 388 N.W.2d 593 (1986). The board's findings of fact are conclusive if supported by any reasonable view of the evidence. *See State ex rel. Whiting v. Kolb*, 158 Wis. 2d 226, 233, 461 N.W.2d 816 (Ct. App. 1990).

¶4 After the parties submitted their briefs in this appeal, the board's authority to deny an application to construct a road to a landlocked parcel was clarified in *Tagatz v. Township of Crystal Lake*, 2001 WI App 80, ¶7, 243

¹ All references to the Wisconsin Statutes are to the 1999-2000 version.

Wis. 2d 108, 111, 626 N.W.2d 23. *Tagatz* held that WIS. § 80.13(3) gives the board discretion to deny the application to construct a road to a landlocked parcel.

¶5 The board's findings support the exercise of its discretion and defeat any claim that its decision was arbitrary, oppressive or unreasonable. Bogdanovich's argument relies on substantial speculation and incorrectly assumes that the board is compelled to maximize the town's tax base. He testified that he intended to sell two or three lots on the parcel and expected that the buyers would construct very expensive homes on those sites. From this, he argues that increased tax revenues would offset the cost of constructing and maintaining the road.

¶6 The board reasonably refused to expend the funds necessary to purchase the land, construct the road with appropriate drainage and commit itself to long-term maintenance based only on the speculation that valuable homes would be built in that area. Bogdanovich did not establish that these homes would not be built elsewhere in the town if the road were not constructed.

¶7 In addition, the board was not required to maximize the town's tax base. The board reasonably considered the nonfinancial aspects of the proposed construction. The property in question was used as a garden, a radio-controlled car racetrack with lighting equipment, a portable greenhouse and a children's playground, including a slide and fixed spring-horses that were utilized by the neighborhood children. Bogdanovich speculates that these items could be moved to other parts of the neighbor's lot, but the board was not compelled to accept that speculation. The issue before the court is not whether alternative dispositions could have been achieved, but whether the board's decision was reasonable under the circumstances. The board reasonably balanced the benefits of the proposed

project against its detriments and determined that constructing the road was not in the public interest.

¶8 Finally, Bogdanovich suggests some impropriety based on the fact that the adjacent land owner, whose property would be seized, works for the town. In addition, Bogdanovich argues that the board prejudged the matter based on the chairman's comments that Bogdanovich's knowledge that the property was landlocked before he bought it weighs against his application. The record does not show any prejudice by the board. The chairman remarked on the record that the board realized that it could not base its decision on the fact that Bogdanovich knew his property was landlocked when he purchased it. Nothing in the record suggests that the board was influenced by the fact that a town employee's property would be seized. Bogdanovich's argument is substantially based on his assertion that the board stated no valid reasons for its decision and therefore invalid reasons must account for it. Because we conclude that valid considerations justify the board's decision, Bogdanovich's claims of bias have no basis in fact.

By the Court.—Judgment affirmed.

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

