

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 30, 2009

David R. Schanker
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. 2009AP191

Cir. Ct. No. 2006CV22

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. STUPAR RIVER LLC,

PETITIONER-APPELLANT,

V.

TOWN OF LINWOOD PORTAGE COUNTY BOARD OF REVIEW,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Portage County:
THOMAS T. FLUGAUR, Judge. *Affirmed.*

Before Vergeront, Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. Stupar River LLC appeals the order of the circuit court that affirmed the decision of the Town of Linwood Board of Review. Stupar River argues that property it owns was over-assessed in the years 2003, 2004, and 2005. In support of this argument, it asserts that the property was properly

assessed at its fair market value in 2006 and 2007 and, since that assessment was lower than the assessments for the years 2003 through 2005, the earlier assessments must be too high. Because we conclude that the assessor's decision to reduce the assessment in 2006 was based on a reason independent of the fair market value of the property, we affirm the order of the circuit court.

Background

¶2 Stupar River owns the Wisconsin River Country Club in the Town of Linwood. Stupar River purchased the property in 2001 for \$830,000. The Town of Linwood assessed the property at \$1,831,500. Stupar River objected, and the Board of Review held a hearing. The Board denied the objection. Stupar River then petitioned the circuit court for a writ of certiorari. The court reversed the Board of Review and remanded the matter to the Board. The Board appealed, and we then reversed the circuit court and reinstated the decision of the Board of Review.

¶3 While the appeal was pending, the Town of Linwood did not reduce the assessment for 2003 and 2004. In 2005, the Town of Linwood assessed the property at \$1,893,400. Stupar River again objected, a hearing was held, and once again the Board denied the objection. Stupar River again petitioned the court for review.

¶4 In 2006, the Town of Linwood assessed the property at \$1,435,900. Stupar River did not challenge this assessment, but informed the circuit court that the assessors had reduced the assessment to an amount that was consistent with the amount Stupar River proposed in 2005. The circuit court then issued an order directing the Town of Linwood to reassess the property for the years 2003, 2004, and 2005 or, in the alternative, provide "a rational explanation as to why the

property has decreased in value.” In response to this order, the Town of Linwood submitted a letter from its assessor explaining why he reduced the assessment for the property in 2006. The property at issue was part of the commercial class. The assessor stated:

The Department of Revenue’s major class comparison report, which came out in 2005, showed that the commercial class was no longer in line with the other classes of properties during that year. Because the difference was greater than 10%, I felt an adjustment to the overall class needed to be made to bring it back in line with the other classes of properties. Rather than increase the value of the bulk of the classes I chose to reduce commercial instead.

¶5 After receiving this letter and Stupar River’s response, the circuit court issued a decision stating that the Town of Linwood had provided a satisfactory reason for the reduction in the assessment for the year 2006, and concluding that the Town did not need to reassess the property for the years 2003 through 2005. It is from this decision that Stupar River appeals.

Discussion

¶6 We review the Board of Review’s determination independent of the circuit court’s determination. *State ex rel. Brighton Square Co. v. City of Madison*, 178 Wis. 2d 577, 584, 504 N.W.2d 436 (Ct. App. 1993). We do not have jurisdiction to disturb the findings and determinations of a board of review, except when the board “acts in bad faith or exceeds its jurisdiction.” *Id.* at 582. We may review only the following considerations:

“(1) Whether the board kept within its jurisdiction; (2) whether it acted according to law; (3) whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably make the order or determination in question.”

Darcel, Inc. v. City of Manitowoc Bd. of Review, 137 Wis. 2d 623, 626, 405 N.W.2d 344 (1987) (citation omitted). Our role is “to determine, from the evidence presented to the board of review, whether the valuation was made on the statutory basis.” *State ex rel. Flint Bldg. Co. v. Kenosha County Bd. of Review*, 126 Wis. 2d 152, 156, 376 N.W.2d 364 (Ct. App. 1985). The assessor’s valuation is presumed to be correct. *Brighton Square*, 178 Wis. 2d at 582. We will not disturb the board’s findings “if the evidence presented in favor of the assessment furnishes a substantial basis for that valuation.” *Id.*

¶7 Stupar River argues that, because the Town concedes the fair market value of the property did not change from 2003 to 2006, the 2006 assessment must represent the fair market value of the property and, therefore, the earlier assessments were incorrect.¹ The flaw in this argument is that the reason for the reduction in the 2006 assessment had nothing to do with fair market value.

¶8 The reduction in the 2006 assessment was not based on a change in the fair market value of the property, but was based on an attempt to equalize market value in response to a Wisconsin Department of Revenue report. The assessor asserted that the reduction in assessment was not because the properties had a lower fair market value. Rather, the reduction was for a reason independent of the fair market value. Stupar River argues that the Town’s assessor misunderstood the rules he was applying and that his methodology was “not rational.” Even if Stupar River’s expert is correct, however, this does not alter the

¹ The parties also argue about whether the assessments for 2003 and 2004 are properly before this court. We need not decide whether Stupar River waived its objection to those assessments because we reject Stupar River’s argument that the property was over-assessed on the merits.

fact that the Town's assessor was not changing the assessment based on fair market value.

¶9 In sum, Stupar River's attack on the assessments hinges on the factual assumption that the Town's assessor reduced the property's 2006 assessment to reflect its true fair market value. As the circuit court understood, that assumption is incorrect. Consequently, we affirm the order of the circuit court.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2007-08).

