

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

FEBRUARY 27, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1326

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**FRANCIS J. BRADAC
and ELIZABETH M. BRADAC,**

Petitioners-Appellants,

v.

**BOARD OF REVIEW OF
TOWN OF FARMINGTON,**

Respondent-Respondent.

APPEAL from a judgment of the circuit court for Polk County:
ROBERT RASMUSSEN, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Francis and Elizabeth Bradac appeal a judgment affirming the assessment of their riverfront property. They raise ten issues on appeal, some of which are not sufficiently developed to invite a response and some that encourage this court to ignore the limitations the law places on its duties regarding certiorari review. Rather than respond to each of the

individual arguments, we apply the same test the circuit court applies in its review of statutory certiorari cases. See *State ex rel. Ruthenberg v. Annuity & Pension Bd.*, 89 Wis.2d 463, 474, 278 N.W.2d 838, 840 (1979). We affirm the assessment.

The Bradacs challenged their assessment before the board of review on three primary grounds: (1) The assessor did not reduce the assessment based on an easement acquired by the federal government that prevents some uses of part of the property; (2) the assessment was for 234 acres and the Bradacs' deed indicates that they had only 229 acres, more or less; and (3) a comparison of their assessment with their neighbor's assessments demonstrates that the assessments were not uniform. The board upheld the assessment. The trial court upheld the board on the first two grounds, but ordered rehearing on the question whether the assessment was disproportionate to other similar properties. Following a supplementary board hearing and reaffirmance by the board, the trial court affirmed the assessment.

The role of both the trial court and the court of appeals in a statutory certiorari action is limited to determining whether the board acted within its jurisdiction, whether it acted according to 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 make the determination in question. See *State ex rel. Michell Aero v. Board of Review*, 74 Wis.2d 268, 281-82, 246 N.W.2d 521, 528 (1976). The assessor's determination is presumed correct and will not be set aside without evidence showing it to be incorrect. *State ex rel. Evansville Mercantile Ass'n v. Evansville*, 1 Wis.2d 40, 42, 82 N.W.2d 899, 900 (1957). The burden of producing evidence to overcome this presumption lies with the person attacking the assessment. The court must uphold the assessment if there is any credible evidence that supports it. *Id.*

The Bradacs contend that the easements impressed on their property under the Wild and Scenic River Act necessarily reduced its value. We disagree. Whether these easements reduce the property values depends in part on the nature of the easements, the restrictions on use created by the easements, the presence of other restrictions that might have limited development irrespective of the easements and the characteristics of the property in question, such as slope, drainage, access and other factors that may have inhibited

subdivision or development of an individual parcel. The assessor was aware of the easements at the time he made his assessment. The burden is on the Bradacs to establish that the assessment was wrong.

The Bradacs presented hearsay evidence of an appraiser's valuation of the property. While the board was free to accept this evidence, it is not the most persuasive method of presenting evidence. The appraiser was not subject to cross-examination and the Bradacs did not provide sufficient information regarding his calculations to overcome the presumption in favor of the assessment. The Bradacs cite *State ex rel. Farmers and Merchants State Bank v. Schanke*, 247 Wis. 182, 189-90, 19 N.W.2d 264, 267-68 (1945), for the proposition that the assessor's valuation "disappears when evidence shows it to be incorrect." In *Schanke*, the board was presented with an actual sale of the property supported by other assessments and sales in the neighborhood as well as the taxpayer's testimony to contradict the assessment. The evidence presented by the Bradacs is not sufficient to nullify the assessor's valuation.

The Bradacs also failed to establish that they were assessed for five acres they did not own. While their deed described the property as 229 acres more or less, a deed may be only a general description of the property conveyed. See *Gates v. Paul*, 117 Wis. 170, 185, 94 N.W. 55, 60 (1903). A description contained in the deed is not conclusive. During the supplemental hearing ordered by the trial court, the Bradacs attempted to present additional evidence regarding the easement and the five-acre discrepancy. The matter was remanded for a limited purpose of composing Bradacs' assessments with similar properties to determine whether it was disproportionate. The only evidence that is properly considered on the easement and five acre discrepancies is the evidence presented at the initial hearing before the board of review. That evidence was insufficient to compel the board to modify the assessment in any manner.

The board properly refused to modify the Bradacs' assessment based on a comparison with other assessments in the neighborhood. The Bradacs point to one parcel that they contend is identical and was assessed at a substantially lower level. The board concluded that that parcel was undervalued. Comparison with many other properties establishes that the Bradacs' property was comparably assessed when the parcels were broken down into their component parts.

Finally, we reject the Bradacs' argument that the board displayed bias. When the Bradacs appeared without counsel, their presentation was disorganized and incoherent and frequently led to accusations and irrelevant diversions that have continued on appeal. The Bradacs insist that once they object to an assessment, the board has a duty to investigate on their behalf, ignoring the fact that the burden of proving the assessment incorrect rests on them. *Evansville*, 1 Wis.2d at 42, 82 N.W.2d at 900. The board members' response to the accusations of impropriety, attempts to shift the burden of proof and disorganized presentation of evidence was reasonably restrained.

By the Court. — Judgment affirmed.

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