

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

December 21, 1999

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**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 § 808.10 and RULE 809.62, STATS.

**No. 99-1875-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**GARY C. SUKOWATEY,**

**PLAINTIFF-APPELLANT,**

**V.**

**ST. CROIX COUNTY BOARD OF ADJUSTMENT,**

**DEFENDANT-RESPONDENT.**

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APPEAL from a judgment of the circuit court for St. Croix County:  
ERIC J. LUNDELL, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Gary Sukowatey appeals a judgment affirming the St. Croix County Board of Adjustment's decision to revoke his special exception

permit to operate certain businesses on his commercially zoned property.<sup>1</sup> Sukowatey argues that the board exceeded its authority when revoking his permit. He also argues that its decision was arbitrary, unreasonable, oppressive and capricious. We reject his arguments and affirm the judgment.

¶2 In 1993, Sukowatey applied for a special exception permit to allow him to operate certain businesses, including auto body work, on his commercially zoned property. In addition to housing a number of businesses, the property also contained Sukowatey's residence. The permit was granted subject to several conditions. One condition limited the number of cars on the property for auto body repair to ten. A second condition required him to maintain the auto body shop's exterior in a neat and orderly appearance.<sup>2</sup> In July 1998, the board revoked the permit for Sukowatey's failure to comply with the permit conditions. Sukowatey appealed to the circuit court, which affirmed the board's action. This appeal ensued.

¶3 Sukowatey argues that the board exceeded its authority when it revoked his permit because the evidence fails to support its finding that he did not comply with the permit's conditions. He argues that he has not exceeded the ten-car limit for auto body repair. He contends that cars are on the property for reasons other than auto body work and should not be counted, and that many of the cars belong to other businesses and his residence.

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<sup>1</sup> This is an expedited appeal under RULE 809.17, STATS.

<sup>2</sup> The condition reads: "All exterior storage shall be maintained in a neat and orderly fashion, in full compliance with rules regarding inoperative vehicles. There shall be no more than ten vehicles stored or parked at one time." For purposes of discussion, we accept the parties' position that this condition applies only to the cars parked or stored in connection with the auto body repair business and not the other businesses on the property.

¶4 ST. CROIX COUNTY, WI, ZONING ORDINANCE § 17.71(6)(a) reads:

Where a special exception use or a variance has been approved subject to specified conditions and where such conditions are not complied with, the Board of Adjustment may conduct a hearing following procedures similar to those followed in considering the granting of such a special exception or variance. Finding of noncompliance with the conditions originally imposed shall be grounds for revocation.

¶5 On appeal of a judgment affirming a board of adjustment decision, we review the decision of the board, not the circuit court. *See Edward Kraemer & Sons v. Sauk County Bd. of Adj.*, 183 Wis.2d 1, 8, 515 N.W.2d 256, 259 (1994). The board's findings and conclusions should be affirmed if they are supported by any reasonable view of the evidence. *See Snyder v. Waukesha County Zoning Bd.*, 74 Wis.2d 468, 476, 247 N.W.2d 98, 103 (1976). Depending on which facet of the board's action is being challenged, our scope of review is limited to the following:

(1) whether the Board kept within its jurisdiction; (2) whether it proceeded on a correct theory of 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.

*Klinger v. Oneida County*, 149 Wis.2d 838, 843, 440 N.W.2d 348, 350 (1989).<sup>3</sup>

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<sup>3</sup> This common law certiorari standard of review applies when the circuit court either does not take evidence or takes evidence that is substantially the same as that taken by the board. *See Klinger v. Oneida County*, 149 Wis.2d 838, 843, 440 N.W.2d 348, 350 (1989). Here, the court took limited testimony and the evidence was substantially the same as that before the board. Accordingly, the common law certiorari standard of review applies. *See id.* at 845, 440 N.W.2d at 350-51.

¶6 We conclude that the record supports the board's finding that Sukowatey "stored or parked" more than ten vehicles connected to his auto body repair shop on the premises at one time. At the revocation hearing before the board, the County offered as an exhibit a letter from the zoning administrator dated August 20, 1996 addressed to Sukowatey. The letter contained an inventory of items the zoning administrator had recently observed on the property. These items included twenty-eight vehicles with either expired license plates or no plates. On July 22, 1998, the zoning administrator counted twenty-two vehicles on the property and noted that the property appeared to be in a "very similar condition" as previously.

¶7 From the evidence, the board could reasonably infer that the unlicensed vehicles would not be parked on the premises for Sukowatey's or a customer's personal use. Also, at the hearing Sukowatey's attorney explained that Sukowatey runs an auto body operation where he uses parts from one car to replace parts of a wrecked car, that "[h]e takes the front end off the car, he puts it on the car that he's replacing, maybe takes a few parts off that car that are good, saves it." The evidence permitted the board to infer that Sukowatey used parts of the stored cars for his auto body business. If there is more than one reasonable view of the evidence, the board may choose among them, and its choice will not be upset by a reviewing court. *See Bucyrus-Erie Co. v. DILHR*, 90 Wis.2d 408, 418, 280 N.W.2d 142, 147 (1979). We conclude that the evidence supports the board's determination that Sukowatey violated the permit condition prohibiting more than ten vehicles for auto body repair to be stored or parked on the property.

¶8 Sukowatey contends the board exceeded its authority and acted arbitrarily, capriciously, oppressively and unreasonably because it revoked his permit based only upon use of his adjoining property not subject to the permit.

The record does not support his contention. Both the order granting the permit and the inventory showing the violations list the same address as the location for Sukowatey's residence, which is where his auto body business is located. While the record reflects the board's concern that "[t]he junk that Mr. Sukowatey has all over that property spills off of that property and onto an adjoining parcel" he owns, this concern does not detract from evidence that Sukowatey violated the permit's ten car limit on the premises in question. The record does not support Sukowatey's position that the board revoked the permit solely for conditions unrelated to the property for which the permit was issued.<sup>4</sup>

¶9 Sukowatey makes a number of additional arguments. He contends that the disorder on the property is caused not by auto body materials, but by his personal property not subject to the permit. He complains the board itself failed to visit the property to make this determination. He further argues that the board exceeded its authority when it revoked the permit for selling cars from the auto body repair shop, because car selling is unregulated by the permit and therefore should not be grounds for revocation. Sukowatey also characterizes the issue as an issue of ordinance interpretation. He contends that the board misinterpreted the ordinance as permitting it to revoke his permit for conditions that exist on adjoining property.

¶10 We need only address dispositional issues and decide the matter on the narrowest ground. *See Clark v. Waupaca County Bd. of Adj.*, 186 Wis.2d 300, 304, 519 N.W.2d 782, 784 (Ct. App. 1994). Thus, if we conclude that any

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<sup>4</sup> Although the board mentioned numerous concerns, and did not explicitly state the ten-car limit violation, the record shows it considered the exhibit containing the inventory showing the violation. Because the evidence supports the board's findings that Sukowatey violated a condition of the permit, we do not overturn its decision.

one of the board's reasons satisfies certiorari review, we may affirm without commenting on the board's other reasons. *See id.* We conclude that the record supports the determination that Sukowatey violated the ten-vehicle permit limitation. Accordingly, we do not overturn the board's decision to revoke Sukowatey's permit for failing to comply with the conditions.

*By the Court.*—Judgment affirmed.

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

