

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 19, 2015

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 Nos. 2013AP2849
2013AP2850
2013AP2851**

**Cir. Ct. Nos. 2010CV353
2011CV298
2012CV241**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN EX REL. WEST CAPITOL, INC.,

PLAINTIFF-APPELLANT,

v.

**THE VILLAGE OF SISTER BAY AND BOARD OF REVIEW FOR THE
VILLAGE OF SISTER BAY,**

DEFENDANTS-RESPONDENTS.

APPEALS from orders of the circuit court for Door County:
D.T. EHLERS, Judge. *Affirmed.*

Before Hoover, P.J., Stark and Hruz, JJ.

¶1 PER CURIAM. West Capitol, Inc. appeals orders affirming the Village of Sister Bay Board of Review's determinations sustaining the property tax assessment of a vacant parcel for the tax years 2010, 2011, and 2012. West argues it is entitled to relief in this certiorari review because the Board committed various legal errors when determining the property's value. We reject West's arguments and affirm.

BACKGROUND

¶2 West owns a parcel of real property in the Village of Sister Bay in Door County. The property consists of nearly seventeen acres of land with 610 feet of shore frontage on Green Bay. The property was reassessed in a Village-wide revaluation in 2008. The assessor valued West's parcel at \$3,935,000 for the tax years 2010, 2011, and 2012. Each year, West objected to the assessment, and the Board convened to consider the objection.¹ The Board heard evidence from municipal assessor Mike Walker and West's retained residential appraiser.²

¶3 Walker explained that as part of the revaluation process he evaluated all of the Village's seventy-eight waterfront properties, eleven of which were Village-owned. He prepared an exhibit detailing sixteen sales of local waterfront property. The exhibit consisted of a parcel map, with the sixteen sold properties identified by address, sale date, sale amount, and an indicated shoreland value (ISV), which consisted of the sale value of the property divided by the feet of

¹ West prevailed in an earlier appeal with respect to the 2009 assessment.

² West does not meaningfully differentiate between the evidence considered in the individual tax years. Further, West does not rely on its appraiser's testimony on appeal.

shoreline. The ISV of the sold properties ranged from \$4598 to \$13,141 per foot of shoreline.

¶4 Walker testified there were three sales in particular on the exhibit that he deemed most relevant to the value of West's property. The ISVs of those three properties were \$5253, \$5437, and \$7000. When comparing the properties, Walker considered variables such as parcel depth and width, orientation, zoning, and beach quality. Walker opined the highest and best use of West's shoreland property was residential use, and he assigned West's parcel an ISV of \$5500 per foot of shoreline. He then multiplied that figure by the parcel's 610 feet of frontage to determine a portion of the assessment. Accordingly, the shoreland portion of the parcel, consisting of the land extending 400 feet from the shore, was valued at \$3,335,000.

¶5 Walker further explained that, after excluding one acre of worthless land, there were 10.26 acres of inland property within West's parcel. Walker opined the highest and best use of the inland property was commercial development. Based on comparable properties, Walker valued the inland area at \$2 per square foot, minus a 35% developer adjustment to account for the time, cost, and expense necessary to develop the property. Walker thus arrived at a value of \$580,000 for the inland property. Walker combined the inland and shoreland values to arrive at the \$3,935,000 assessment for the entire parcel.

¶6 The Board voted to affirm Walker's assessment for each of the three tax years, and West commenced certiorari proceedings in the circuit court. The court affirmed the Board in each instance, and West appeals.

DISCUSSION

¶7 Challenges to property tax assessments bring the board of review's decision before us, not that of the circuit court. *Anic v. Board of Review of Wilson*, 2008 WI App 71, ¶8, 311 Wis. 2d 701, 751 N.W.2d 870. Our review is strictly limited to whether: (1) the board kept within its jurisdiction; (2) the board acted according to law; (3) the action taken by the board was arbitrary, oppressive or unreasonable so as to represent its will and not its judgment; and (4) the evidence before the board was such that it might reasonably sustain the assessment. *Id.*

¶8 A challenger to a property tax assessment has an uphill battle; the assessor's valuation is presumed to be correct. *Id.*, ¶10. The challenger can only overcome the presumption by showing that the assessment is not supported by substantial evidence or that the assessor's methods do not comport with statutory and administrative code requirements. *Id.* If the challenger overcomes the presumption of correctness, we must then determine whether credible evidence was presented to the board that may in any reasonable view support the board's determination. *Id.*

¶9 If there is a conflict in the testimony regarding the value of the property, the court does not substitute its opinion for that of the board. *Id.*, ¶11. Rather, it is the board's task to determine the probity and credibility of the witnesses who appear before it. *Id.* "If there is credible evidence before the board that may in any reasonable view support the assessor's valuation, that valuation must be upheld." *Id.* (quoting *Rosen v. City of Milwaukee*, 72 Wis. 2d 653, 662, 242 N.W.2d 681 (1976)).

¶10 West first argues Walker erred because he valued the shoreland portion of the parcel “by use of a formula” when utilizing the ISV of \$5500 per foot of shoreline. West quotes *State ex rel. Campbell v. Township of Delavan*, 210 Wis. 2d 239, 264, 565 N.W.2d 209 (Ct. App. 1997), which held that “resort to formulas or extrinsic factors constitutes error.” Apart from also providing a “see also” citation with its quotation, that is the extent of West’s argument. West did not discuss either of the cases it cited.

¶11 The Board responds that *Campbell* was distinguished in *Anic*, where we explained that the assessor in *Campbell* had used the cost approach to set a formula for valuing lakefront properties, as opposed to the sales comparison approach utilized by the assessor in *Anic*. *Anic*, 311 Wis. 2d 701, ¶¶16-17. Just as here, the assessor in *Anic* considered multiple variables and then “looked at the sales and made comparisons on a per-foot basis.” *Id.*, ¶17. We held the approach was not formulaic and was made in compliance with statute. *Id.*, ¶18.

¶12 We reject West’s “formula” argument because it is undeveloped, *see State v. Flynn*, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994) (we may disregard undeveloped arguments); the argument fails on the merits in light of *Anic*; and West failed to reply to the Board’s developed argument, *see Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments are deemed conceded).

¶13 West next asserts the assessment conflicts with court precedents because it was based on speculation that the parcel would be subdivided and developed in some fashion. However, West’s argument and the two cases it discusses focus only on subdivision, as opposed to the potential for future

development. *See Flynn*, 190 Wis. 2d at 39 n.2 (issue raised but not briefed or argued is deemed abandoned). The record belies West’s argument that Walker erroneously valued the parcel based on speculation that it would be subdivided. Rather, Walker repeatedly testified in no uncertain terms that his \$5500 per foot ISV was not dependent on subdivision of the shoreland property.

¶14 Next, West argues the assessment was based on sales of properties that were not sufficiently comparable to its parcel. This minimally developed argument focuses on the differences between West’s parcel and Walker’s comparables. However, as Walker explained, West’s parcel was “extremely rare” due to its overall size, shorefront length and quality, and business zoning classification. Moreover, West conceded before the Board that it believed Walker properly valued the inland portion of the parcel as commercial land at the rate Walker used. West’s attorney stated, “We think that’s the appropriate number. We have no disagreement with Mr. Walker on his valuing of the commercial parcels.” While two of the three comparables used for the shoreland portion of the property were already developed, Walker explained he accounted for variables when arriving at his ISV for West’s parcel. Given the uniqueness of West’s vacant property in a relatively small, highly desirable neighborhood in Door County, we observe nothing unreasonable about the property comparisons Walker relied on.

¶15 West’s fourth argument is that Walker failed to make adjustments when comparing its parcel to the comparable properties used in his valuation. To the contrary, Walker testified he considered variables such as parcel depth and width, orientation, zoning, and beach quality. West further complains that Walker failed to adequately explain or identify comparables for his valuation of the inland

portion of the parcel. However, as discussed above, West conceded before the Board that the inland portion of the valuation was accurate.

¶16 West next argues Walker erred because he failed to consider the effect of property size on incremental value. In other words, West argues Walker ignored the general proposition recognized in the property assessment manual that the shoreland property would be valued lower if sold as a single parcel with more shoreline frontage than if it were subdivided and sold as several smaller parcels. The record again contradicts West’s assertion. Walker acknowledged the “general principle” before the Board, but he explained that while it might take longer to sell due to the amount of money involved in the transaction, he believed the parcel was worth just as much as a single, larger parcel because it was an “extremely rare” parcel.

¶17 Finally, West contends the assessment was improper because the sales of Walker’s three comparables for the shoreland component of the parcel were not recent enough.³ West, however, identifies no alternative property that it would deem comparable. Walker’s exhibit identified all of the most recent waterfront property sales in the locality. Given the unique and relatively small shorefront real estate market in the Sister Bay area, and West’s failure to identify any appropriate alternative comparables, we cannot say Walker’s selection of comparable properties was unreasonable under the circumstances.

³ West raises an additional issue for the first time in its reply brief, asserting Walker erred by failing to apply the thirty-five percent development reduction to the residential shoreland property that he applied to the commercial inland property. We need not address issues raised for the first time in a reply brief. See *Swartwout v. Bilsie*, 100 Wis. 2d 342, 346 n.2, 302 N.W.2d 508 (Ct. App. 1981).

¶18 We conclude West failed to overcome the presumption of correctness of the assessor's valuation. *See Anic*, 311 Wis.2d 701, ¶10. Accordingly, the Board properly accepted Walker's valuation.

By the Court.—Orders affirmed.

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

