COURT OF APPEALS
DECISION
DATED AND FILED

September 28, 2006

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.

Appeal No. 2005AP1894

Cir. Ct. No. 2005CV3

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

WAYNE L. MEHRINGER,

PLAINTIFF-APPELLANT,

V.

MARQUETTE COUNTY BOARD OF ADJUSTMENT AND PHIL MALSACK,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Marquette County: RICHARD O. WRIGHT, Judge. *Affirmed*.

Before Lundsten, P.J., Deininger and Higginbotham, JJ.

¶1 PER CURIAM. Wayne Mehringer appeals the circuit court's order in favor of Phil Malsack and the Marquette County Board of Adjustment. Mehringer argues that: (1) the Board of Adjustment proceeded under an incorrect

theory of law; and (2) the circuit court should not have dismissed his claim for injunctive relief. We affirm.

¶2 On certiorari review, the court "must accord a presumption of correctness and validity to a board of adjustment's decision." ***State ex rel. Ziervogel v. Washington County Bd. of Adjustment***, 2004 WI 23, ¶13, 269 Wis. 2d 549, 676 N.W.2d 401. "A reviewing court may not substitute its discretion for that of the board, the entity to which the legislature has committed these decisions." ***Id.*** The court's review on certiorari is limited to determining whether: (1) the board acted within its jurisdiction; (2) the board proceeded on a correct theory of law; (3) the board's decision was arbitrary, oppressive, or unreasonable; and (4) the board "might reasonably make the order or determination in question based on the evidence." ***Id.***, ¶14.

¶3 Mehringer contends that the Board of Adjustment proceeded under an incorrect theory of the law when reviewing the decision of the zoning administrator. The problem with Mehringer's argument is that he does not explain what theory of law the Board of Adjustment erroneously failed to apply. Mehringer appears to challenge as overly broad the *scope* of the Board of Adjustment's review of the zoning administrator's decision, but does not tell us what he believes the scope of the Board of Adjustment's authority is and how that authority was exceeded. It is well established that we reject arguments that are not adequately explained or are not supported by references to relevant legal authority. *See* ***State v. Lindell***, 2000 WI App 180, ¶23 n.8, 238 Wis. 2d 422, 617 N.W.2d 500. We reject Mehringer's arguments.

¶4 Mehringer next argues that the circuit court should not have dismissed his claim for injunctive relief under WIS. STAT. § 59.69(11) (2003-04).[1] We recently held that claim preclusion bars a litigant from bringing before the circuit court an action for declaratory and injunctive relief regarding a neighbor's use of property where a zoning board of appeals has already issued a decision affirming a decision of a plan commission allowing the use. *See* ***Barber v. Weber***, 2006 WI App 88, ¶¶1-4, __Wis. 2d __ 715 N.W.2d 683. We explained that an agency determination—even one not reviewed by certiorari—may have a "preclusive effect if the dispute was properly before the agency and the parties had an adequate opportunity to litigate." ***Id.***, ¶11. In this case, not only had the Board of Adjustment reviewed the claim, the circuit court had also reviewed the claim by certiorari. Thus, the reasoning of ***Barber*** is all the more applicable. Because Mehringer had already asked the zoning administrator to enforce the ordinance and had appealed that decision to the Board of Adjustment, which also denied relief, the circuit court properly dismissed the claim on grounds of claim preclusion.

By the Court.—Order affirmed.

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

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.