



## **January Case Law Update** **January 31, 2020**

**A summary of court opinions decided during the month of January affecting planning in Wisconsin<sup>1</sup>**

### ***Wisconsin Supreme Court Opinions***

[No planning-related cases to report.]

### ***Wisconsin Court of Appeals Opinions***

#### **Court Upholds DOR's Amended Agricultural Use Value Assessment Rule**

[Applegate-Bader Farm, LLC v. Department of Revenue](#) involved a challenge to an amended rule promulgated by the Wisconsin Department of Revenue ("DOR") for administration of the State's agricultural use value taxation program. Applegate-Bader Farm ("Applegate") owns land enrolled in federal land conservation programs such as the federal Wetland Reserve program. In 2013, the DOR prepared a scoping statement under the State's rule-making process to amend the rule to clarify what lands in federal and state pollution control and soil erosion programs qualify as agricultural land for purposes of agricultural use assessment.

Before amendment, the rule listed specific state and federal easement programs under which enrolled lands in Wisconsin met the definition of "agricultural use" for property tax purposes. The initial draft of the amended rule replaced the list with criteria whereby land enrolled in any state or federal easement program could meet the agricultural use definition if the land was used for farming at the time it was enrolled in an easement program and the easement met certain standards set by the Department of Agriculture, Trade, and Consumer Protection. Following hearings on the draft rule, DOR changed the rule to require that the owner of land enrolled in a permanent easement program must obtain authorization from the administrator of the easement program to use the land for a compatible agricultural use (for example, land subject to a wetland reserve easement could be used for periodic haying or grazing).

Under the initial draft of the rule, Applegate's land under the federal easement programs would have been included in the definition of agricultural use allowing the land to be taxed at the lower agricultural use classification. As a result of the changes made to the rule by DOR, however, Applegate's lands under the federal easements would not qualify for use value taxation resulting in higher property taxes for Applegate. DOR adopted the changed version of the rule and Applegate sued.

Applegate argued that DOR failed to comply with the rule-making process under the State's Administrative Procedures Act. The circuit court agreed and held that because of the changes to the rule DOR should have prepared a revised scoping statement, held a second public hearing, and prepared a revised economic impact statement. Applegate also argued that DOR violated the Wisconsin Environmental Policy Act (WEPA) because the incentives included in the changed rule would result in the degrading of wetlands by agricultural activity such as pasturing of livestock. The circuit court

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<sup>1</sup>Previous updates are available at: [wisconsin.planning.org/policy-and-advocacy/law-updates/case-law-updates/](https://www.wisconsinplanning.org/policy-and-advocacy/law-updates/case-law-updates/)

dismissed this claim because any environmental effects of the new rule would be indirect and Wisconsin case law establishes that indirect effects alone are not sufficient to trigger an environmental impact statement.

DOR and Applegate cross-appealed the circuit court's decision to the Wisconsin Court of Appeals. The Court of Appeals affirmed the circuit court's decision that DOR did not violate WEPA because the environmental effects were indirect. The Court of Appeals, however, reversed the circuit court's decision that DOR violated the rule-making process of the Administrative Procedures Act. The Court of Appeals found that all the topics in the initial and changed versions of the rule fit within the topics described in the scoping statement so a revised statement was not necessary. The Court of Appeals also determined that a second public hearing was not required for the changed rule because the interested parties were on notice that DOR could make the changes in response to concerns raised by agricultural groups about allowing land permanently removed from agricultural production to receive use value assessment. Finally the Court of Appeals rejected the need for a revised economic impact analysis because Applegate failed to establish undisputed facts to support the economic impact claim. Applegate simply failed to rebut the presumption that DOR complied with the rule-making process under the State's Administrative Procedures Act.

The case is recommended for publication in the official reports.

***U.S. Court of Appeals for the 7<sup>th</sup> Circuit Opinions***  
[No planning-related cases to report.]