



January Case Law Update **January 31, 2021**

A summary of court opinions decided during the month of January affecting planning in Wisconsin¹

Wisconsin Supreme Court Opinions

Town Subdivision Authority Can Apply Within Shoreland Area

[State ex rel. Anderson v. Town of Newbold](#), 2021 WI 6, involved a dispute arising from the Town of Newbold's denial of a proposed land division of a lake lot because the two resulting lots would not meet the applicable minimum shoreland frontage requirements in the Town's subdivision ordinance. The Town of Newbold, located in Oneida County, is subject to the county shoreland zoning ordinance mandated under State law. State law gives counties the exclusive authority to enact shoreland zoning ordinances applicable to the unincorporated areas (towns) within the county. Section 59.692(1d)(a) of the Wisconsin Statutes prohibits counties from enacting shoreland zoning ordinances that are more restrictive than the standards in the Statutes and the Wisconsin Department of Natural Resources' administrative rule containing standards for county shoreland zoning. The two proposed lots met the frontage requirements in the Oneida County Shoreland Zoning Ordinance.

The owner of the lot, Michael Anderson, challenged the Town's denial arguing the Town's ordinance is invalid because it is more restrictive than the state standards. A majority of the Wisconsin Supreme Court disagreed. The Court noted the language of Section 59.692(1d)(a) of the Wisconsin Statutes only applies to zoning ordinances. The Court found that the Town's frontage requirements were part of a valid subdivision ordinance enacted by the Town under Section 236.45 of the Wisconsin Statutes. The Court cited previous cases acknowledging the distinction between zoning ordinances and subdivision ordinances. The Supreme Court concludes that because the Town's ordinance is not a zoning ordinance, the prohibition on enacting more restrictive shoreland standards did not apply. The Court upheld the Town's denial of the proposed land division.

Justices Hagedorn wrote a dissenting opinion joined by Justice Rebecca Bradley.

Wisconsin Court of Appeals Opinions

Rezoning Did Not Constitute Spot Zoning

[Campbell Woods Homeowners' Association, Inc. v. Village of Mt. Pleasant](#) involved a challenge to a rezoning and conditional use permit to allow construction of a senior assisted living facility in a neighborhood of single-family homes. Village zoning staff recommended approving the rezoning because the project was similar to other assisted living facilities in the Village and was consistent with

¹Previous updates are available at: wisconsin.planning.org/policy-and-advocacy/law-updates/case-law-updates/

the Village's 2035 Comprehensive Plan. Despite the staff recommendation to approve the rezoning, the plan commission voted to deny the rezoning. The rezoning then went to the Village Board and the Village Board approved the rezoning. In response, the homeowners sued the Village claiming the rezoning constituted illegal spot zoning. The circuit court found the rezoning was not illegal spot zoning. The homeowners appealed the circuit court's decision to the Wisconsin Court of Appeals. The Court of Appeals upheld the circuit court's decision.

The Court of Appeals noted that spot zoning is not *per se* illegal. If a rezoning is in the public interest and not solely for the benefit of the property owner, it is not illegal. The circuit court concluded the rezoning was in the public interest (and not illegal spot zoning) because the Board considered whether the rezoning was consistent with the Village's comprehensive plan and considered issues affecting the whole community. The Court of Appeals also noted the homeowners placed unwarranted weight on the plan commission's rejection of the rezoning which the Board subsequently approved. The Court noted the plan commission's rejection of the project was advisory and not binding on the board.

The case is **not** recommended for publication in the official reports.²

U.S. Court of Appeals for the 7th Circuit Opinions

[No planning-related cases to report.]

² What is an "unpublished" opinion? Under Wisconsin law, an unpublished opinion may not be cited in any Wisconsin state court as precedent or authority. However, an unpublished opinion issued on or after July 1, 2009, may be cited for its persuasive value with certain exceptions. Because an unpublished opinion cited for its persuasive value is not precedent, it is not binding on any court of this state. A court need not distinguish or otherwise discuss an unpublished opinion and a party has no duty to research or cite it.