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June Case Law Update

June 30, 2022

A summary of court opinions decided during the month of June affecting planning in Wisconsin[[1]](#footnote-1)

*Wisconsin Supreme Court Opinions*

[No planning-related cases to report.]

*Wisconsin Court of Appeals Opinions*

Non-Shoreland Provisions of County General Zoning Ordinances Apply in Shoreland Areas

Golla owns a residential property on Dake Lake in the Town of Dayton, Waupaca County. In 2015, Golla contacted the County Deputy Zoning Administrator about what County approval would be necessary to build a second-story addition within the footprint of the existing residence. The Deputy Zoning Administrator told Golla that a land use permit was required and would not be issued without a side yard setback variance for the addition. Golla applied to the Town of Dayton for a building permit for the addition, and the Town issued the building permit and informed her that she needed to consult with Waupaca County to determine if any type of land use permit was required. Golla did not consult with the County about whether a land use permit was required after receiving the Town building permit, nor did she ever apply for a County land use permit or variance for construction of the addition. She did contact a State Legislator who informed her that no County land use permit was necessary. Golla began construction and the County sent her a cease-and-desist letter stating she needed to stop the work and comply with County’s ordinances. Golla continued with construction and completed the addition.

The County then issued a citation to Golla for failing to obtain a land use permit and a zoning variance before commencing construction of the addition. The County also filed this enforcement action in circuit court. The circuit court determined that Golla violated both the land use permit and the side yard setback provisions in the County General Zoning Ordinance and ordered that Golla remove the addition.

Golla appealed the circuit court’s decision to the Wisconsin Court of Appeals, but the Court of Appeals affirmed the circuit court’s decision. One of the main arguments made by Golla was that Wis. Stat. § 59.692 (part of the shoreland zoning enabling law) prohibited the County from requiring a land use permit and requiring a variance for construction of an addition that encroaches on the side yard setback pursuant to the County’s General Zoning Ordinance. Section 59.692(1d)(a) of the Wisconsin Statutes states that county shoreland zoning ordinances “may not regulate a matter more restrictively than the matter is regulated by a shoreland zoning standard” in State Statutes or the administrative rules developed by the Wisconsin Department of Natural Resources.

The Court noted under Wis. Stat. § 59.692(1)(d)(b), counties retain the authority (under the general zoning enabling law, the subdivision ordinance enabling law, etc.) to regulate matters that are not regulated by a state shoreland zoning standard. The Court also noted that there are no state shoreland zoning standards for side yard setbacks or land use permits. The language in the shoreland zoning law prohibiting counties from regulating matters more restively than the state shoreland zoning standards does not nullify all general zoning ordinance provisions as to shorelands or prohibit a county from imposing general zoning requirements in the shoreland area which do not specifically relate to shorelands.

As summarized by the Court, “Wis. Stat. § 59.692(5) establishes the preeminence of the administrative standards and legislative restrictions established pursuant to § 59.692 over provisions in a general zoning ordinance that are specifically connected with or about shorelands. In this case the General Zoning Ordinance side yard setback provision applies to any property in a sewered residential district in the County [the Golla property was in the sewered residential zoning district] and the land use permit provision applies to any structural alteration on any property in the County. Neither provision is specifically connected with or about shorelands. Thus, § 59.692(5) does not bar enforcement of the side yard setback and land use permit provisions in the County General Zoning Ordinance because those provisions do not ‘relate to’ shorelands.”

The case is [Waupaca County v. Golla](https://www.wicourts.gov/ca/opinion/DisplayDocument.pdf?content=pdf&seqNo=536151) and the Court recommended it for publication in the official reports.

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

[No planning-related cases to report.]

1. Previous updates are available at: [wisconsin.planning.org/policy-and-advocacy/law-updates/case-law-updates/](https://wisconsin.planning.org/policy-and-advocacy/law-updates/case-law-updates/) [↑](#footnote-ref-1)