



December Case Law Update December 31, 2018

A summary of Wisconsin court opinions decided during the month of December related to planning

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

Wisconsin Supreme Court Opinions

Burial Site Not a Cemetery

[DeWitt v. Ferries](#), 2018 WI 117, a group of individuals petitioned to transfer a one-acre parcel believed to be the burial site of their relatives to the Town of Forest in Vernon County as provided in section 157.115(1)(c), the town cemetery law. The site is located on a farm under private ownership. The law allows for the transfer of any cemetery in a town that has fallen into disuse, or is abandoned or neglected, to the town government to manage and maintain. The circuit court granted the transfer. The Wisconsin Court of Appeals reversed that decision. The Wisconsin Supreme Court accepted review of the case and upheld the decision of the Court of Appeals. The Supreme Court found that the petitioners failed to prove that the parcel is a cemetery as defined in the town cemetery law. There were no headstones or grave markers. There were some references to a “cemetery” in the chain of title but no specific boundary or legal description for the location of the cemetery. The Wisconsin Supreme Court concluded that since the parcel did not satisfy the definition of “cemetery” in the town cemetery law, the petitioners could not use the town cemetery transfer statute. The Court did note that the Wisconsin Historical Society cataloged the one-acre parcel as a “burial site” under the Burial Sites Preservation Law so the site is subject to the protections provided by that law (prohibits disturbance of the site but does not require transfer of the parcel to the town).

Wisconsin Court of Appeals Opinions

[No planning-related cases to report.]

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

[No planning-related cases to report.]