



March Case Law Update March 31, 2019

A summary of court opinions decided during the month of March affecting planning in Wisconsin

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Wisconsin Supreme Court Opinions

Business Purpose Not Required to Qualify for Agricultural Use Value Taxation

Wisconsin's agricultural use value assessment law was enacted in 1995 and become fully implemented in 2000. The law taxes agricultural land at the value of its use as agricultural land as opposed to its development value for other uses. In [State ex rel. Peter Ogden Family Trust of 2008 v. Board of Review for the Town of Delafield](#), 2019 WI 23, the Wisconsin Supreme Court addressed the issue of whether the land needed to be part of a farming business to qualify for the assessment.

The Ogdens own three adjacent parcels in the Town of Delafield in Waukesha County. One parcel contains the Ogdens' residence and is not at issue in the case. The parcels at issue are a 4.6 acre parcel and a 7.76 acre parcel. The Ogdens grew apple trees on approximately one acre of the smaller parcel. On the larger parcel, the Ogdens grew hay on three acres and Christmas trees on the remainder of the parcel. A local farmer harvests the hay for cattle feed. From 2012 through 2015, the two lots were classified as "agricultural land" and "agricultural forest land." In 2015 the assessed value of the two lots was \$17,100. In 2016 the Town's tax assessor reclassified the two lots as "residential." The assessed value of the two lots jumped to \$886,000.

The Ogdens appealed the reclassification to the Town's Board of Review. The appeal resulted in a tie vote of the Board so the reclassification to "residential" was sustained. The Ogdens then petitioned the circuit court to review the Board's decision but the court dismissed the petition. The Ogdens appeals and the Wisconsin Court of Appeals reversed the Board's decision. The Town petitioned the Wisconsin Supreme Court to review the Court of Appeals decision. In a decision written by Justice Abrahamson, the Wisconsin Supreme Court affirmed the Court of Appeals decision.

The Supreme Court based its decision on the plain language of the use value taxation statute and the Wisconsin Department of Revenue's administrative rules implementing the use value taxation program. According to the Court, section 70.32(2)(c)1g of the *Wisconsin Statutes* defines "agricultural land" as land that is "devoted primarily to agricultural use." The Department of Revenue rules define "agricultural use" to include "growing Christmas trees," "growing apples," and "growing hay." The Court notes that the rules refer to "growing" and not "selling" or "profiting" so the Court concludes that a business use is not required in order for land to be classified as "agricultural land" for property tax purposes.

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.]