



## July Case Law Update July 31, 2019

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

Previous Case Law 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/)

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

[No planning-related cases to report.]

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

#### **Denial of Cell Tower Permit Upheld**

[Eco-Site, LLC, v. Town of Cedarburg](#), involved a challenge to the denial of a conditional use permit for a wireless communication tower proposed for a rural area in the Town of Cedarburg. T-Mobile sought to move their cellular equipment from the Village of Grafton water tower to a tower to be built by Eco-Site on a site about 1300 feet away in the Town of Cedarburg. The site was zoned as A-1 Agricultural District under the Town's zoning ordinance. Telecommunication towers are allowed as a conditional use in the District. The proposed tower site is surrounded by land zoned as residential.

The Town Board ultimately voted unanimously to deny the application for failure to meet three of six standards in the Town's zoning ordinance and a requirement under Wisconsin's mobile tower siting regulations found in Wis. Stat. § 66.0404. The reasons given by the Town were: "(1) the considerable and foreseeable loss in value to the surrounding properties particularly given the rural and rustic nature of the property, and the loss of property sales in the area as a result of the prospect of the tower; (2) the incompatibility of the 120-foot monopole with the adjacent land, which the Town is struggling to keep rural and rustic; (3) the 'dropping a metal tower in the middle of' a 'beautiful and scenic area' would be detrimental the public health, safety, and general welfare; and (4) Eco-Site's failure to explain why its 'search ring' for other locations was so small, therefore failing to provide an application that was complete under Wis. Stat. § 66.0404(2)(b)6."

Eco-Site sued the Town over the denial but the circuit court upheld the Town's decision. Eco-Site then appealed to the Wisconsin Court of Appeals. Eco-Site argued that the Town misapplied its zoning ordinances in determining that the tower would be incompatible with the adjacent land and that Wis. Stat. § 66.0404(4)(g) prohibits local governments from denying mobile telecommunication towers "solely on aesthetic concerns." The Court of Appeals noted that even though the tower was allowed as a conditional use in the A-1 district, "there is no presumption that a 'conditional use is ipso facto consistent with the public interest or that a conditional use is a use as of right at a particular site within an area zoned to permit that conditional use.'" According to the Court, testimony at the public hearings

supported the Town’s conclusion the tower would be incompatible with adjacent land. Residents presented sufficient evidence of the “substantial diminishment” in the value of adjacent properties if the tower is built. One resident cited two studies showing loss in property values near towers and a developer stated he lost a potential sale due to the tower proposal.

While the stated reasons for Town’s decision included comments on the aesthetic impact, the Court of Appeals distinguished these comments from the economic impact of decreased property values on adjacent property values. The Court noted that the language in the mobile tower siting Statutes prohibit basing a denial of a proposed tower “solely” on aesthetic concerns. Since the Town also based its denial on the economic impacts of the tower, the Town did not base its decision “solely” on aesthetic concerns.

The Court of Appeals determined that substantial evidence supported the Town’s decision to deny the permit for the tower. The Court noted that property owners could give an opinion as to the value of property they own. The Court further noted that substantial evidence is evidence where reasonable persons could decide as the Town did. It is less than a preponderance of the evidence but more than a mere scintilla of evidence and more than conjecture and speculation. Finally, the Court acknowledged that reviewing courts generally defer to a Town’s weighing of the evidence in the matter.

The case is recommended for publication in the official reports.

### **Enforcement of County Uniform Addressing System Ordinance Upheld**

[Vilas County v. Bowler](#) involved an action brought by Vilas County to enforce its ordinance establishing a uniform addressing system in the unincorporated areas of the County. The Bowlers owned a resort consisting of their residence and 9 cabins available for short-term rental. In 2008, Vilas County adopted a Uniform Addressing System Ordinance in accordance with Wis. Stat. § 59.54(4). The Ordinance required that all structures for human habitation shall be assigned a uniform addressing number and that where more than one principal structure exists, each structure shall be assigned an address. In 2015 the County informed the Bowers that they had to name the private road located on their property and address numbers would be assigned to the 10 structures on their property. The Bowers objected and refused to allow the County with access to their property. The County initiated this enforcement action. The circuit court concluded that the rental structures could be considered “residences” so it was proper to provide addresses for those structures. The Bowlers appealed to the Wisconsin Court of Appeals and the Court affirmed the County’s actions. The Court of Appeals concluded that the Bowlers’ residence and each of the 9 rental units is a “principal structure” under the Ordinance so naming the private road and providing addresses for each cabin was appropriate. The Court noted that the term “residence” included lodging structures for short-term rental.

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.]