



October Case Law Update October 31, 2019

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

Wisconsin Supreme Court Opinions

[No planning-related cases to report.]

Wisconsin Court of Appeals Opinions

Towns' Subdivision Ordinance Standards Related to Shoreline Apply in the Shoreland Area

In [Anderson v. Town of Newbold](#), the Wisconsin Court of Appeals addressed the issue of whether a town may enforce a shoreland frontage requirement in the town's subdivision ordinance even though an identical requirement would not be enforceable under the town's zoning ordinance. Wisconsin's shoreland zoning law requires that counties adopt special zoning along shoreland in the unincorporated areas (towns) of the county. While towns not under county zoning may adopt general zoning ordinances that apply to the shoreland areas, town zoning ordinances may not impose restrictions or requirements in shorelands with respect to matters regulated by a county shoreland zoning ordinance.² Towns also have the authority to adopt subdivision ordinances under section 236.45 of the Wisconsin Statutes.

The Town of Newbold in Oneida County, has a subdivision ordinance that includes standards for "on-water" land divisions. The standards require a minimum 225-foot lot width at the ordinary high water mark. Michael Anderson owns a lot in the Town with 358.43 feet of frontage on Lake Mildred. Anderson submitted a certified survey map to the town proposing to divide the lot into two lots that were to have shoreland frontage of 195 and 163.43 feet respectively. The Town denied the land division because it did not comply with the on-water frontage standards in the Town's subdivision ordinance. Anderson sued asking the court to determine whether the town retained the authority to enact subdivision regulations with standards for the shoreland area despite legislation prohibiting towns from enacting similar standards in a zoning ordinance.

The circuit court upheld the Town's denial of the land division. Anderson then appealed to the Wisconsin Court of Appeals. The Court of Appeals affirmed the circuit court's decision. The Court of

¹ Previous Case Law Updates are available at:

<https://wisconsin.planning.org/policy-and-advocacy/law-updates/case-law-updates/>

² Town zoning ordinances related to the shoreland area that were in effect prior to the adoption of the county shoreland zoning ordinance may apply as long as the town's ordinance is more restrictive than the county shoreland zoning ordinance.

Appeals noted that zoning authority and subdivision authority are two independent authorities. The Court concluded that while there can be overlap between those authorities, the shoreland zoning statutes only limit town zoning authority. Those statutes do not limit subdivision ordinances.

The case is recommended for publication in the official reports.

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

[No planning-related cases to report.]