American Planning Association
Wisconsin Chapter
Making Great Communities Happen

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November Case Law Update
November 30, 2020

A summary of court opinions decided during the month of November affecting planning in Wisconsin[1]

Wisconsin Supreme Court Opinions

[No planning-related cases to report.]

Wisconsin Court of Appeals Opinions

City May Not Appeal Board of Review Tax Assessment Determination

In City of Waukesha v. City of Waukesha Board of Review, Salem United Methodist Church objected to the City of Waukesha assessor valuing the church's property at $642,200. After a hearing on the valuation the City of Waukesha Board of Review reduced the valuation to $108,700. The City then sought review of the Board's decision in circuit court. The Wisconsin Court of Appeals held that the City was not empowered under state law to appeal the Board's determination and dismissed the lawsuit.

The case is recommended for publication in the official reports.

Court Upholds Residential Classification for Property Tax Purposes

Nudo Holdings, LLC v. Board of Review for the City of Kenosha involved a dispute about whether the city tax assessor correctly classified a parcel as residential rather than agricultural. In an effort to protect Wisconsin's farm economy and curb urban sprawl, agricultural land is taxed according to it's value for agricultural use. This use value assessment typically results in a significantly lower comparative tax burden for agricultural property.

In 2017 Nudo Holdings purchased an undeveloped 8.9 acre parcel of land in the City of Kenosha for $100,000. The parcel was tax exempt at the time of purchase. For 2018 tax purposes the city assessor classified the parcel as residential and assessed the value at $10,000 per acre. Nudo Holdings challenged the assessment arguing the parcel qualified as agricultural land. The Board of Review upheld the residential classification. Nudo Holdings challenged the Board's decision in circuit court and the circuit court reversed the board's determination concluding the Board incorrectly required the parcel to have a business purpose to qualify as agricultural land. Following the Wisconsin Supreme Court's 2019 decision in *Ogden Family Trust v. Board of Review*, a property owner need not have a business purpose for agricultural activity to establish agricultural use.

The circuit court remanded the case to the Board of Appeals to reconsider in light of the *Ogden* case. On remand, the Board took into account other evidence and again upheld the assessor's classification of the

[1]Previous updates are available at: wisconsin.planning.org/policy-and-advocacy/law-updates/case-law-updates/

property as residential. Nudo Holdings appealed the Board's decision to the circuit court and this time the trial court affirmed the Board's determination.

Nudo Holdings appealed the circuit court's decision to the Wisconsin Court of Appeals arguing that the City correctly applied Wisconsin's use value assessment law. Nudo Holdings presented evidence of some walnut trees on a portion of the property and Christmas trees scattered around the property. However, Nudo Holdings was not able to point to any agricultural practices taking place on the property such as pruning or pest control or any evidence of harvesting walnuts or Christmas trees. The city assessor characterized the parcel as residential because the City's plans designated the parcel for residential development and there was a lack of physical evidence or any other indication that the land was being farmed. The assessor testified that it was "a piece of land that has some things growing on it."

The Court of Appeals determined that the City's classification was not improperly based on the absence of an agricultural business purpose. The Court found there was substantial evidence to support the City's determination that the land was not devoted primarily to agricultural use as required by the law. According to the Court, "the agricultural classification does not attach merely because plants falling within the Department of Revenue definition of "agricultural use" happen to be growing on the property…. Agricultural *activity* is necessary." The Court of Appeals concluded "neither the law not the evidence permits us to overturn the residential classification of an overgrown, uncultivated vacant lot awaiting future residential development, given the minimal showing of agricultural activity in the record before us" and affirmed the residential classification for the property.

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.]