



## **December Case Law Update December 31, 2021**

**A summary of court opinions decided during the month of December affecting planning in Wisconsin<sup>1</sup>**

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

#### **Municipalities Not Allowed to Appeal Board of Review Determinations**

[City of Waukesha v. City of Waukesha Board of Review](#), 2021 WI 89, answered the question of whether a municipality itself can seek certiorari review of a determination of the municipality's board of review. The case involved property owned by Salem United Methodist Church. In 2017, the property was assessed at a value of \$51,900, but the following year the assessment was raised to \$642,200. The reassessment was triggered by the Church putting the property up for sale. The Church challenged the increased assessment before the City's Board of Review arguing that it was based on speculative future use of the property. After taking testimony from the assessor and a representative of the Church, the Board accepted the Church's valuation, but rounded up slightly to arrive at a value of \$108,700.

The City appealed the Board's determination by seeking certiorari review in the circuit court. The Church challenged the City's appeal arguing that only taxpayers could seek certiorari review of the Board's decision, and not municipalities. The circuit court denied the Church's argument, but the Court of Appeals reversed the circuit court's decision concluding that Wisconsin law did not allow the City to challenge the Board's decision. The Wisconsin Supreme Court accepted review of the case and agreed with the Court of Appeals decision that Wisconsin law does not allow the City to seek certiorari review of a decision of the Board.

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

#### **DNR Improperly Issued Permit to Fill Wetlands for a Frac Sand Facility**

In March 2016, Meteor Timber applied to the Department of Natural Resources (DNR) for a permit to fill wetlands for purposes of constructing a processing facility and rail transloading facility for shipment of industrial sand in the Town of Grant, Monroe County. In 2017, DNR issued a permit to fill 16.25 acres of wetlands.

Clean Wisconsin petitioned the Department for a contested case hearing challenging the Department's decision to issue the permit, and the Department granted the petition. The Ho-Chunk Nation intervened as a petitioner. Following the contested case hearing, the administrative law judge (ALJ) issued a decision reversing the DNR's decision to issue the permit. The ALJ concluded that the DNR improperly

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<sup>1</sup> Previous 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/)

issued the permit in the absence of sufficient information to enable it to consider the proposed project's net positive or negative environmental impact; the DNR improperly issued the permit for a project that will result in significant adverse impact to wetland functional values; and the DNR improperly issued the permit for a project with an inadequate mitigation plan.

Meteor Timber appealed the decision to the circuit court which denied the petition for review. Meteor Timber appealed the circuit court's decision to the Court of Appeals. The Court of Appeals affirmed the circuit court's decision that the ALJ's decision was supported by substantial evidence in the record and consistent with applicable law.

The case, [Meteor Timber, LLC, v. Wisconsin Division of Hearings and Appeals](#), 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.]