



## **October Case Law Update October 31, 2022**

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

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

[No planning-related cases to report.]

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

#### **Certiorari (“on the record”) Review of Local Decisions**

In [Dyersville Ready Mix Inc. v. Iowa County Board of Supervisors](#), the plaintiff sought a rezoning to convert its property from preserved agricultural land to a quarry. The Town of Brigham Board voted to oppose the rezoning application because it was inconsistent with the Town’s comprehensive plan. The Iowa County Planning and Zoning Committee then voted to recommend denial of the application for the same reason. The Iowa County Board ultimately voted to deny the rezoning. The plaintiff brought a declaratory judgement action in circuit court against the County and the Town. The circuit court ruled against the Town and County declaring that the plaintiff is entitled to the rezoning.

The Town and County appealed the decision to the Wisconsin Court of Appeals arguing that the circuit court lacked authority to grant a declaratory judgment because the proper means of judicial review of a local government’s rezoning decision is by certiorari. The Wisconsin Court of Appeals agreed, citing the Wisconsin Supreme Court’s 2018 decision in *Voters with Facts v. City of Eau Claire*, 2018 WI 63, 382 Wis. 2d 1, 913 N.W.2d 131.

The Court of Appeals noted that the applicable zoning enabling law, Wis. Stat. § 59.69(14), does not provide the method of judicial review. In *Voters with Facts*, a case challenging the City of Eau Claire’s use of tax increment financing, the Wisconsin Supreme Court held that where there are no statutory provisions for judicial review, the exclusive method of review is by certiorari. The Court of Appeals concluded that certiorari review is the appropriate means to challenge the validity of a local legislative decision, such as the rezoning decision. The Court of Appeals did not dismiss the case but remanded the case to the circuit court for certiorari review.

When conducting certiorari review, a court reviews the record compiled by the municipality and does not take any additional evidence on the merits of the decision. Certiorari review of a legislative decision includes the following four inquiries: (1) whether the local body kept within its jurisdiction; (2) whether it acted according to law; (3) whether its action was arbitrary, oppressive, or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that the local body might reasonably

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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/)

make the order or determination in question. On appeal, the appellate court reviews the decision of the local governmental body, not the decision of the circuit court. Certiorari review is very deferential to local government decisions.

The case is **NOT** recommended for publication in the official reports.<sup>2</sup> Nevertheless, the case is a good reminder of the importance of building a good record that articulates the basis for local government decisions.

## ***U.S. Court of Appeals for the 7<sup>th</sup> Circuit Opinions***

[No planning-related cases to report.]

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<sup>2</sup> Published opinions have precedential value and may be cited as controlling law in Wisconsin. Unpublished authored opinions issued before July 1, 2009, are of no precedential value and may not be cited except in limited instances. Unpublished authored opinions issued on or after July 1, 2009 may be cited for persuasive value.