



February Case Law Update February 28, 2014

A summary of Wisconsin court opinions decided during the month of February related to planning

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Wisconsin Supreme Court Opinions

Taxpayer has Burden of Proof in Challenge to Classification of Property for Property Tax Assessment

[Sausen v. Town of Black Creek Board of Review](#) involved a challenge to a property tax assessment on the grounds that the assessor's classification of the property was erroneous. The town assessor classified the property as "productive forest land" and assessed the property at \$27,500. The property owner argued the parcel should be classified as "undeveloped land" and should be assessed at \$13,750. The parcel in dispute was a 10 acre parcel occasionally used for hunting with low grade woods. The parcel was not used to produce commercial forest products.

In an opinion written by Chief Justice Abrahamson, the Wisconsin Supreme Court held that reviewing courts should defer to decisions made by local boards of review in classifying property and taxpayers bear the burden of proof to prove that the assessor's classification is erroneous. In this case, the Court determined that the taxpayer did not meet the burden of proving the classification was erroneous and upheld the Town's classification.

Wisconsin Court of Appeals Opinions

City Has No Extraterritorial Plat Approval Authority to Deny Proposed Plat Based on Density Standards

In [Lake Delavan Property Co., LLC v. City of Delavan](#), the Wisconsin Court of Appeals further limited city and village extraterritorial plat approval authority. The case involved the proposed development of approximately 600 homes in the Town of Delavan in Walworth County. The development is within the City of Delavan's extraterritorial plat approval jurisdiction that extends to land within one and one-half miles of the City's limits. The Town is under county zoning and the area of the proposed development is zoned residential. The proposed development is within the planned sanitary sewer service area designated by the Southeastern Wisconsin Regional Planning Commission and was designated as a "traditional neighborhood" in the City's 1999 comprehensive plan and "urban density residential" in the Town and County comprehensive plans.

The City later amended its comprehensive plan to designate the area as "agricultural" and amended its subdivision ordinance to place a density limit of no more than one residence per 35 acres within the City's extraterritorial jurisdiction. Lake Delavan Property Co. submitted a preliminary plat to the City, Town, and County for approval. The City denied the plat.

Lake Delevan Property Co. challenged the City's denial of the proposed plat arguing that the density requirement in the City's subdivision ordinance was a regulation of land use prohibited by state law. 2009 Wis. Act 399 amended Wisconsin's subdivision statutes to prohibit a city or village from denying a plat or certified survey map "on the basis of the proposed use of land within the extraterritorial plat approval jurisdiction" of the city or village unless the denial is based on extraterritorial zoning regulations. Wis. Stat. § 236.45(3)(b). The City argued that it is appropriate for subdivision regulations to establish lot sizes and the City's requirements were merely a density restriction, not a use restriction.

The Wisconsin Court of Appeals, however, did not agree with the City. The Court of Appeals held that the City's subdivision regulations were land use restrictions. Citing no authority other than "[c]ommon knowledge and experience" the Court of Appeals held that the subdivision ordinance's "blanket density requirements effectively preclude residential development throughout the extraterritorial jurisdiction." To support its conclusion that the subdivision ordinance was a use prohibition, the Court of Appeals also noted the language in the City's ordinance that stated the ordinance was enacted "in order to protect rural character and farming viability." The Court of Appeals then ordered the approval of the proposed plat.

The case is recommended for publication.

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