



October Case Law Update October 31, 2015

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

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Wisconsin Supreme Court Opinions

[No planning-related cases to report.]

Wisconsin Court of Appeals Opinions

Plan Commission Had Authority to Grant Special Exception

[Hasanoglu v. Town of Mukwonago](#) involved a dispute between two neighbors over the construction of a riding arena in the suburban estate zoning district of the Town of Mukwonago in Waukesha County. The zoning code allows for a maximum of two accessory structures not to exceed 3,900 square feet. An existing barn on the parcel at issue is 418 square feet. The proposed riding arena is 6,300 square feet. The zoning code also allowed for a roof height of 15 feet and the proposed arena roof would be 24.75 feet. The property owners applied for a special exception from the zoning code to allow the riding arena to exceed the size and height limitations of the code.

The Town's plan commission granted a special exception to the Town's zoning code for the construction of the riding arena. Neighboring property owners sued the Town arguing that the plan commission lacked jurisdiction to grant the special exception. The neighbors contended that only the Town Board could grant a special exception based on the following section of the Town's zoning code:

For parcels of three (3) acres of [sic] more in size in any zoning district ..., the accessory building areas may be greater than those requirements set forth [the ordinance] if the Town Board in its discretion, upon consideration of a recommendation from the Plan Commission, grants a special exception and makes all of the following findings:

- a. That one or more rural accessory building(s) as defined herein, are located on the property;*
 - b. That such rural accessory building(s) is (are) not a nuisance or detriment to the existing neighborhood;*
 - c. That the property is in compliance with the floor area ratio requirements of the District in which it is located; and*
 - d. That the total floor area of all accessory buildings, excluding the floor areas of such rural accessory building(s), is in compliance with the requirements set forth [elsewhere in the code].*
- (Emphasis added.)

The Town argued that a different part of the zoning code gave the plan commission the same power. That section of the zoning code stated: *“Upon petition from a property owner, the plan commission may grant a special exception to the maximum attached garage size limitations of [the ordinance] or maximum accessory building square footages allowed in the [code]...”* (Emphasis added.)

The Wisconsin Court of Appeals concluded that the section of the zoning code giving the special exception authority to the Town Board only applied in the case of rural accessory buildings and there was no finding of a rural accessory building on the property at issue. The Town’s zoning code defines a “rural accessory building” as:

An existing building, which is:

- (1) set apart from other buildings as being distinct, due to its construction technique, construction materials, age, local historic significance, or design as determined by the Town Board; and*
- (2) is characteristic of past agricultural practices or rural life, whether presently utilized or not for agricultural practice, as determined by the Town Board; and*
- (3) which is sufficiently structurally sound to meet minimum safety requirements for the proposed use, as determined by the Town Building Inspector, provided that such determination shall not relieve the property owner of any responsibility or liability as to the building and shall not form a basis of liability against the Building Inspector or the Town.*

The Court noted that there was no evidence the Town Board determined the preexisting barn on the property met this definition. The section of the zoning code granting the plan commission the authority to grant a special exception was not limited to situations involving rural accessory buildings. The neighbors argued that section only applied to garages but the Court of Appeals deferred to the Town’s interpretation of its code and agreed that the plan commission had the authority to grant the special exception for the arena.

The case will not be published in the official reports.