



## September Case Law Update September 30, 2014

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

For previous Case Law Updates, please go to: <http://www.wisconsinplanners.org/lawandlegislation.html>

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

[No planning-related cases to report.]

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

#### **Wisconsin Counties Association Not Subject to Public Records Law**

In [Wisconsin Professional Police Ass'n, Inc., v. Wisconsin Counties Ass'n](#), the Wisconsin Court of Appeals held that the Wisconsin Counties Association is not an "authority" subject to Wisconsin's Public Records law. The Public Records law, Wis. Stat. §19.32(1), defines public authorities required to comply with the Public Records law to include "quasi-governmental corporations." The Wisconsin Professional Police Association filed two requests for records with the Wisconsin Counties Association. The Counties Association responded that it did not need to comply. The Police Association sued to enforce the Public Records law. The Court of Appeals dismissed the lawsuit because the Counties Association is not organized as a corporation under Chapter 180 of the Wisconsin Statutes and is therefore not a "quasi-governmental corporation" subject to the Public Records law.

The case is recommended for publication in the official reports.

#### **DNR's Refusal to Grant Contested Case Hearing on Certain Issues Upheld**

[Haase-Hardie v. Wisconsin Department of Natural Resources](#) involved the review by the Wisconsin Court of Appeals of the Department of Natural Resources' (DNR) denial of a contested case hearing on four issues. Haase-Hardie lives near an industrial sand mine and processing facility owned by Preferred Sands of Wisconsin, LLC, located northwest of the City of Blair in Trempealeau County. DNR had issued a combined "Air Pollution Control Construction Permit" and "Air Pollution Control Operation Permit" to the prior owner of the mine and processing facility. The DNR notified Preferred Sands that it was in violation of the permits. In response to the violation, Preferred Sands submitted an application to revise the permits. The DNR issued revised permits. Haase-Hardie then petitioned DNR for a contested case hearing on seven issues related to the permits. The DNR granted a contested case hearing on three issues and denied the request for a contested case hearing on four issues. The reason for denying a

contested case hearing on the four issues was that Haase-Hardie had failed to show they involved disputes of material fact as required by Wisconsin's air pollution laws.

Haase-Hardie petitioned for judicial review of the DNR's decision. She argued that the law did not require her to establish a dispute of material fact regarding every issue. Rather, she argued she was entitled to a contested case hearing on all seven issues as long as she established a dispute of material fact regarding one of them. The Court of Appeals disagreed. The Court agreed with the DNR that she failed to establish a dispute of material fact on four of the seven issues and she was not entitled to a contested case hearing on the four issues by relying on the disputed facts she raised in the remaining three issues.