



## **April Case Law Update April 30, 2011**

**[A summary of published Wisconsin court opinions decided during the month of April related to planning]**

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

[No decisions to report.]

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

#### **County Bound by Initial Ordinary High Water Mark Determination**

In 2003 Collins Outdoor Advertising erected a sign along a state highway in the Town of Sugar Camp, an unzoned Town in Oneida County. The sign was approved by the Wisconsin Department of Transportation, the Wisconsin Department of Natural Resources (because the proposed location of the sign bordered a cedar swamp). Collins also went to the Oneida County to ensure it fell outside the County's shoreland zoning authority. Upon reviewing the county shoreland zoning map and aerial photographs, the County informed Collins that the sign would not fall under the county's Shoreland Zoning Ordinance because it was more than 1000 feet from the ordinary high water mark.

Collins constructed the sign. The County then received complaints about the sign and the County sent a letter to Collins indicating the sign was illegally constructed in the shoreland zone. The County provided several new determinations of the ordinary high water mark. One indicated the sign was about 10 feet from the ordinary high water mark and another indicated the sign was 660 feet from the ordinary high water mark. The County brought an enforcement action against Collins and the Circuit Court ordered Collins to remove the sign, remediate the property, and pay over \$25,000 in forfeitures.

Collins appealed to the Wisconsin Court of Appeals arguing that the County was bound by the ordinary high water mark identified at the time the sign was built and that any subsequent redeterminations cannot render the sign unlawful. The Court of Appeals agreed with Collins and reversed the decision of the Circuit Court. The sign therefore fell outside the county's shoreland zoning jurisdiction (1000 feet from the original ordinary high water mark).

The decision, [\*Oneida County v Collins Outdoor Advertising, Inc.\*](#), is recommended for publication.

## **Village Sex Offender Ordinance Applies to the Residence, Not the Individual**

In *Village of Menomonee Falls v. Ferguson*, the Wisconsin Court of Appeals upheld the Village of Menomonee Falls' interpretation of the distance requirements of the Village's sex offender ordinance. In 2007 the Village adopted an ordinance which states in part: "[a]n offender shall not reside within 1,500 feet of real property that supports or upon which there exists ... [a]ny facility for children." The ordinance also included a grandfather clause exception whereby the ordinance would not apply if an "offender has established a permanent or temporary residence and reported and registered that residence pursuant to [the state registry] prior to the effective date of [the ordinance]."

A registered sex offender lived in an apartment located within 1500 feet of a school. Since the sex offender moved there before the effective date of the ordinance, the grandfather clause exception applied. After the enactment of the ordinance, the sex offender moved to a new residence nearby. The new residence was also within 1500 feet of the school. The Village police cited the sex offender for violating the ordinance. The sex offender challenged the sex offender ordinance arguing that the grandfather clause exception still applied. The Village argued that the grandfather clause applies only to the residence and not the sex offender. When the sex offender moved from his original apartment, he lost the protection of the exception. The Court of Appeals agreed with the Village's interpretation of the ordinance.

The case is recommended for publication.