



January Case Law Update January 31, 2011

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

Wisconsin Supreme Court Opinions

[No planning related cases to report.]

Wisconsin Court of Appeals Opinions

Challenge to Nonmetallic Mining Reclamation Permit Thrown Out On Procedural Defect

Bergstrom v. Polk County involved a challenge to the issuance of a nonmetallic mining reclamation permit issued by the Polk County Land and Water Resources Department. Eighteen Polk County property owners unsuccessfully challenged the issuance of the permit in administrative proceedings. The property owners then sought review of the permit in the circuit court (trial court). Wisconsin Statutes governing civil court procedure require that a summons and complaint to initiate a lawsuit against a county must be personally served on the county board chairperson or the county clerk. In this case, the attorney for the property owners mailed the summons and complaint to the Polk County corporation counsel.

Polk County moved to dismiss the complaint because the property owners failed to follow the requirements for service on the County. The circuit court denied the county's motion stating that dismissal of the lawsuit would be "unduly harsh." The county appealed to the Wisconsin Court of Appeals and the Court reversed the circuit court's decision finding that the facts of the case did not justify departing from the requirements of the rules of civil procedure.

The case is recommended for publication.