



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

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

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

[No planning-related cases decided.]

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

#### **When is an Ordinance a Zoning Ordinance?**

In *Zwiefelhofer v. Town of Cooks Valley*, the Wisconsin Court of Appeals has asked the Wisconsin Supreme Court to establish a test for determining whether a town ordinance constitutes a zoning ordinance that must be approved by the county board. The case involves a nonmetallic mining ordinance adopted by the Town of Cooks Valley in Chippewa County. The Town adopted the ordinance under the Town's general police powers. The ordinance is a licensing ordinance that requires a permit for any new or expanded sand or gravel pit. Several property owners sued the Town alleging that the nonmetallic mining ordinance is a zoning ordinance and is therefore invalid because the Town did not have the County approve the ordinance, as required for town zoning ordinances in counties with a county zoning ordinance. The Town claims the ordinance is not a zoning ordinance, recognizing that different types of ordinances, such as subdivision ordinances, can overlap. The Circuit Court, however, agreed with the property owners.

In evaluating the appeal, the Court of Appeals, did not decide the case. Rather, the Court of Appeals certified the appeal to the Wisconsin Supreme Court to clarify the factors that distinguish a zoning ordinance from other ordinances enacted under a town's general police powers.

Stay tuned for what could be an important decision from the Wisconsin Supreme Court as it sorts through this issue!