

FILED
10-04-2023
Clerk of Circuit Court
Cindy R. Hamre Incha
2022CV000334

STATE OF WISCONSIN : CIRCUIT COURT: JEFFERSON COUNTY

DEFEND TOWN PLANS, U.A., et
al.,

Plaintiffs,

-vs-

Case No. 2022CV334

ORAL RULING

JEFFERSON COUNTY BOARD OF
SUPERVISORS,

Defendant.

September 25, 2023

HONORABLE WILLIAM V. GRUBER
Circuit Court Judge
Branch I

A P P E A R A N C E S

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ATTORNEY MARY BETH PERANTEAU by telephone on behalf of
the Plaintiffs, DEFEND TOWN PLANS, U.A., et al.;

CORPORATION COUNSEL JON BLAIR WARD on behalf of the
Defendant, JEFFERSON COUNTY BOARD OF SUPERVISORS.

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Erica L. Schueler, RPR, CRR
Official Court Reporter

1 (Proceedings commenced at 1:46 p.m.)

2 THE COURT: This is 22CV334, Defend Town
3 Plans, UA vs. Jefferson County Board of Supervisors.
4 We have additional petitioners in their individual
5 capacities and interests. Not going to recite the
6 names.

7 And we have Corporation Counsel Ward in
8 the courtroom. Correct, Attorney Ward?

9 MR. WARD: I am here, your Honor. Yes.

10 THE COURT: All right. And can you hear
11 me?

12 MR. WARD: I can.

13 THE COURT: All right. And then on the
14 telephone on behalf of all the petitioners,
15 Attorney Peranteau. Can you hear me?

16 MS. PERANTEAU: Yes, your Honor. Thank
17 you.

18 THE COURT: All right. Good afternoon to
19 both of you. Good afternoon to those present in the
20 courtroom. I would suppose or presume that those are
21 one or some of the petitioners or others with similar
22 interests or, I guess, from a -- in a broad sense,
23 broader sense, interested in the ruling here. Just
24 to -- just by way of some brief history, this is
25 essentially part two of hopefully two of the Court's

1 decision.

2 We had -- as I indicated, we had oral
3 argument back in May. The Court ruled on August 14th,
4 2023. The Court found, as urged by Attorney Peranteau,
5 that the County, and more particularly the county by
6 its board, erred as a matter of law in failing to make
7 those required findings as per 91.48 (1). I think the
8 Court made reference also to various provisions in
9 Chapter 66 and then more secondarily county ordinances
10 in Chapter 11, specifically 11.11.

11 And I just want -- before the Court makes
12 additional record here, I want to ask Counsel, starting
13 with Attorney Peranteau. Attorney Peranteau, what
14 is expected, what is asked of the Court essentially, is
15 what -- now that the Court made those findings as to
16 that error, essentially we're down to the remedy here.
17 Do we -- does the Court vacate or invalidate the acts
18 of that legislative body, the County Board, or do
19 something other than that.

20 I think it was really at the end of our
21 last record that you suggested or essentially insisted
22 on, you know, what consequence -- legally speaking, of
23 course -- comes about by way of that finding by the
24 Court. Is that accurate?

25 MS. PERANTEAU: I believe that is, your

1 Honor. And -- and my comments at the end of our last
2 proceeding were that the petitioners are requesting
3 that the zoning ordinance be nullified as opposed to
4 being returned to the Board for making findings on the
5 grounds that the finding of consistency that's required
6 by Section 66.1001 can't be made on this record or, in
7 fact, at all because the County's comprehensive plan
8 can't allow a rezone to the A2 outside of what's known
9 as the Town of Concord rural hamlet.

10 So essentially, it would be useless to
11 return the case -- to remand the case because, as a
12 matter of law, that consistency requirement can't be
13 found.

14 THE COURT: And Attorney Ward, one more
15 time, please, for your part.

16 MR. WARD: Well, the County's always
17 maintained that the decision of the County Board, which
18 took into consideration the recommendation of Planning
19 and Zoning Committee following a public comment and the
20 recommendation of the Town, that the rezoning decision
21 by the County should be sustained for the reasons set
22 forth in the brief of Jefferson County.

23 However, if the Court does find that there
24 are errors, the County Board should be given an
25 opportunity to remedy those errors. Any finding that

1 there's no possibility of a legal rezoning based on the
2 record is something that the County Board should be
3 given the opportunity to review and discuss and then,
4 if there's issues after that, then Defend Town Plans
5 can submit another appeal.

6 But the County's position that it is not
7 appropriate to make a finding that the -- the rezoning
8 is nullified; that it can't -- it can't properly be
9 rezoned under any -- any circumstances. That's a
10 decision for the County Board and I'd ask the Court to
11 send it back to the County Board to make the
12 appropriate findings.

13 THE COURT: I do appreciate that. And the
14 Court's going to provide some level of finality here,
15 at least I think at the trial level, and in
16 so by saying this. And I don't -- I'm not sure that is
17 going to be satisfactory to others, but it is going to
18 be the best you get.

19 And I think I'm going to start out this
20 way. We're all using certain words that I think carry
21 more significance than perhaps we're appreciating,
22 although I'm not being critical of either counsel. And
23 in fact, I'm stating this because I'm just -- by way of
24 the Court's own research that ran off of the research
25 that was most certainly accomplished by counsel in

1 preparing their briefs, I'm just not -- I've never been
2 100 percent comfortable in what language to use. And
3 so I'm going to -- I'm somewhat guarded in whether I'm
4 going to use the word and which words I'm using.

5 And I've heard reference to nullify. I've
6 heard and/or seen reference to invalidate or
7 invalidating and I've heard the word vacate. You know,
8 these all have meanings. You know, they have meanings
9 that are specific to statutes, specific to ordinances.
10 They have meanings that are perhaps a little bit
11 broader in a -- from a -- just a broader legal
12 standpoint.

13 But this is the -- this is where the Court
14 finds itself. Again, the Court made a specific finding
15 that the Board did not make the findings that were --
16 that are required by 91.48 (1) and, to a lesser extent,
17 by county ordinance. So for that reason, I don't think
18 that there's any -- there's really any -- there's any
19 way for the Court to provide a decision, a
20 determination other than something along the lines of
21 an invalidation of the ordinance.

22 Now does that result in a vacation? I --
23 that's what Attorney Peranteau is urging and I think
24 that's -- I don't know that there's any other result
25 here; the Court vacating that ordinance.

1 But what the Court is not prepared to say,
2 because I -- to this -- to -- because the Court
3 disagrees with the petitioners that it is -- as a first
4 principle, that it's an impossibility for the Board to
5 make a finding of this consistency with the farmland
6 preservation requirements in light of the planned use
7 or activities of the interest that really brought about
8 this request for rezoning. I'm not -- I don't think I
9 have the sort of record that allows the Court to say
10 that.

11 And the Court needs to be mindful that
12 there is a considerable amount of deference that has to
13 be left with the local governing body. I'm not
14 prepared to say that, no matter what the County Board
15 does, that it's going to be, you know, as a matter
16 of -- again, as a matter of first principle, it just --
17 it couldn't be found to be consistent. I'm not
18 prepared to say that.

19 And really in a vacuum at this point,
20 because I don't know. I don't know what those findings
21 would look like. I don't know, you know, what the
22 conversation at the local governing body would look
23 like in reference to those findings that have to be
24 made. All I'm prepared to say is that the findings
25 that we have now are inadequate. They are not

1 consistent with the statute really by any measure. But
2 I'm simply not prepared to say that that's an
3 impossibility.

4 So I don't know what form --
5 Attorney Peranteau, I'm going to ask you to draft
6 something that's consistent with this record to the
7 extent that you can glean what the Court -- where the
8 Court is landing on this. But the ordinance is vacated
9 for the records already made, both today and on August
10 14th, but that is going to be the extent of the Court's
11 ruling on the writ of certiori.

12 Do you have any additional record,
13 Attorney Peranteau?

14 MS. PERANTEAU: Only that I want to
15 confirm that it's necessary, corollary to your Honor's
16 ruling that this rezone -- this rezone ordinance is
17 vacated and therefore any effort to rezone the same
18 parcel is going to have to start with a new petition
19 for a rezone.

20 THE COURT: That is consistent with the
21 Court's ruling. So can you prepare a -- prepare
22 something for the Court's signature?

23 MS. PERANTEAU: Yes. I will do that.

24 THE COURT: Do you have anything else,
25 Attorney Ward?

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MR. WARD: Nothing, your Honor.
THE COURT: Madam Clerk, anything?
THE CLERK: No, your Honor.
THE COURT: Recess.
(Proceedings concluded at 1:59 p.m.)

1 STATE OF WISCONSIN)
) SS:
2 COUNTY OF JEFFERSON)

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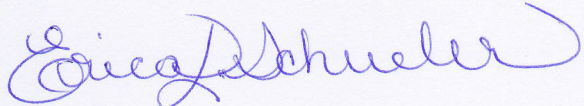
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I, ERICA L. SCHUELER, RPR, CRR, do hereby certify that I reported the foregoing proceedings; that the same is true and correct as reflected by my original machine shorthand notes taken on said date at said place before the HONORABLE WILLIAM V. GRUBER, Circuit Court Judge, Branch I, Jefferson, Wisconsin.

Dated this 4th day of October, 2023.



Erica L. Schueler, RPR, CRR