

Arguments in This Case

In this case, we are arguing that the county violated two state laws in rezoning for the boat barns. The county is arguing that they did not. Here are the details of the two laws and our arguments:

Comprehensive Planning Law: [Wisconsin Statutes](#)

Rezoning land involves amending the county zoning ordinance. But according to the law, amendments to a zoning ordinance must be consistent with the comprehensive plan.

1. “If a local governmental unit enacts or amends any of the following ordinances, the ordinance **shall be consistent with that local governmental unit's comprehensive plan:** . . . (j) County zoning ordinances.”
2. “‘Consistent with’ means furthers or does not contradict the objectives, goals, and policies contained in the comprehensive plan.”

Our key argument: The rezone is not consistent with the county’s comprehensive plan, and consistency is required by law.

- The county Zoning Commission, County Board, and staff have never explained *how* this rezone fits with the county’s comprehensive plan.
- The county’s comprehensive plan limits business development to hamlets and 15-year growth areas (these are defined on maps in the county plan). The boat barns are *outside* those areas. So we argue that the barns are not consistent with the county plan.
- The county’s plan also commits it to following town plans when rezoning out of Farmland Preservation (A-1). This rezone conflicts with the town plan.

The county’s key argument: The county’s comprehensive plan is just advisory.

- The county’s attorney argues that the comprehensive plan is only a guide and that rezones do not actually have to be consistent with the county plan. (In reply, during the oral arguments, our lawyer quoted the wording listed under item 1 above.)
- The county’s attorney also argued that the boat barn rezoning was consistent with the town plan and that anything that is consistent with the town plan is automatically consistent with the county plan. (According to our lawyer, this is an unusual argument with no case law to back it up.)
- The county made a variety of arguments about our town plan, such as arguing that our town plan was not actually in effect.

The judge’s possible actions: Nullify, send it back for a re-do, uphold the rezone.

- If the judge agrees with us that the boat barn rezoning is inconsistent with the county plan, he could nullify the rezone, and the land would revert to A-1. (We’re not sure who would own it—how the contract for sale was worded.)
- If the judge isn’t sure about the consistency issue, the judge could send it back to the county for a re-do, asking the county to document how/why they think this fits their plan. The town board would have another opportunity to vote on the proposal.
- Or of course the judge could decide that the rezone was consistent with the county plan. (Given how clearly this conflicts with the county plan in our opinion, this would have implications for the enforceability of comprehensive planning law in general, throughout Wisconsin. That means that there could be statewide support for an appeal if we chose.)

Farmland Preservation Law: [Wisconsin Statutes 91.48](#)

Most A-1 land in Concord is in the Farmland Preservation program. The section 91.48 requires the county to make certain findings before rezoning Farmland Preservation land from A-1 to A-2. Here are three required findings, quoted from the law:

1. “The land is better suited for a use not allowed in the farmland preservation zoning district.” (Most A-2 uses are not allowed in farmland preservation zoning.)
2. “The rezoning is consistent with any applicable comprehensive plan.”
3. “The rezoning is substantially consistent with the county certified farmland preservation plan.”

Our argument: The county did not follow the proper procedure because it did not make the required findings. They should have been included in writing in the rezone amendment.

- Members of the county Zoning Commission stated that the use would be “okay” in this location, not *better* than agricultural use, but the law says “better suited,” not “acceptable.” (Did not make finding 1 quoted above.)
- The county did not establish that this rezoning is consistent with the county or town comprehensive plans. (Did not make finding 2.)
- It is the *County Board*, not the Zoning Commission, that must make these findings, and they should be document formally, in writing. So these findings would have had to be listed in the rezone amendment passed by the County Board, but they are not.

The county’s arguments: The required findings were made in comments by the Zoning Commission.

- In his written brief, the county’s attorney (Blair Ward) quoted the comments of the Zoning Commission during their meetings. He considers those proof that they had in fact made the required findings.
- He argues that the comprehensive plan is only a guide and that rezones do not actually have to be consistent with the county plan. (Which to us seems to contradict the second required finding in the law.)

The judge’s possible actions: Send it back for a re-do or uphold the rezone.

- If the judge doesn’t think the county violated the Comprehensive Planning Law, he could agree that the county violated the Farmland Preservation Law: that the county did not follow the proper procedure (did not make the required findings in writing in the rezone amendment). In that case, he would send it back for a re-do: repeat the approval procedure. The town board would have an opportunity to vote on this again.