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WISCONSIN COURT OF APPEALS
DISTRICT IV

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

Petitioners-Respondents,

v. Appeal No.: 2023AP001996
Circuit Court Case No.: 2022CV000334

JEFFERSON COUNTY BOARD OF SUPERVISORS,

Respondent-Appellant,

BRIEF OF RESPONDENT-APPELLANT

Appeal from the Circuit Court for Jefferson County
The Honorable William Gruber, Presiding
Trial Court Case No. 2022 CV 000334

JEFFERSON COUNTY

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ISSUES PRESENTED FOR REVIEW

1) Can the Jefferson County Board of Supervisors, as the governing body of Jefferson County, adopt the recommendations of the Jefferson County Planning & Zoning Committee, as the designated and statutorily authorized county zoning agency, when enacting a zoning ordinance amendment?

Answer: Yes.

Answered by Trial Court: No.

2) Does adequate, relevant evidence in the record support Jefferson County's rezoning ordinance, providing a reasonable basis for the County's legislative act?

Answer: Yes.

Answered by the Trial Court: This issue was not answered by the Trial Court.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The Respondent-Appellant, Jefferson County Board of Supervisors (hereinafter "Jefferson County" or the "County") asserts oral arguments are not necessary as the relevant facts are found within the record and the legal issues are capable of being adequately addressed through the briefs of the parties. Jefferson County does not request publication.

STATEMENT OF THE CASE

I. NATURE OF THE CASE

This case concerns a zoning ordinance adopted by Jefferson County, following approval of the Town of Concord. The ordinance rezoned approximately 7.4 acres of land located in the Town of Concord from *A-1 Exclusive Agriculture* to *A-2 Agricultural & Rural Business* at the landowner's request. (R. 15; A-App. 121-22.) A group of individuals now organized under the name *Defend Town Plans, U.A.*, were involved throughout the public process before the Town and County. Their opposition to the zoning amendment was heard and thoroughly considered by the zoning authority throughout the lengthy legislative process. (R. 23,24,25,34; A-App. 154-263.)

Having failed to stop the amendment through the legislative process, *Petitioner-Respondent, Defend Town Plans, U.A., et al.* (hereinafter "*Defend Town Plans*") filed a Petition for Writ of Certiorari in Jefferson County Circuit Court seeking to invalidate the rezoning ordinance. (R. 2; A-App. 101-20.) In its Petition for Writ of Certiorari, *Defend Town Plans* asserted: 1) the County Board erred in approving the rezone petition without making any of the findings required by Section 91.48(1), Wis. Stats. and Section 11.11(c)(6) of the County's certified

farmland preservation ordinance; 2) the County Board erred in approving the rezone in violation of Wis. Stat. §66.1001(2m); 3) the County Board failed to consider relevant factors and its approval of the rezone was an erroneous exercise of discretion; and 4) the rezone constitutes illegal spot zoning. (R.2; A-App. 108-109.)

Following briefing and oral argument by both sides, the trial Court decided this matter on one sole issue. The trial court's decision turned on its interpretation of the requirements of Wis. Stat. §91.48. (R. 45, p. 2; A-App. 327.) It found the Jefferson County Board of Supervisors did not make findings required under Wis. Stat. §91.48 to rezone a property out of a farmland preservation district. (R. 45, p. 4; A-App. 328-31.) Specifically, the trial court opined the County Board, as the governing body, was required to articulate findings separate from the recommendations of its designated county zoning agency, the Jefferson County Planning & Zoning Committee, and failed to do so. (R. 45, p. 4; A-App. 328-31.)

This is an appeal from an Order granting Defend Town Plans' Petition for Writ of Certiorari. Said Order was entered on October 5, 2023, in the Circuit Court for Jefferson County by the Honorable William Gruber. (R. 47; A-App. 324.) Despite Jefferson County's request to remand the matter back to the

County to rectify the perceived procedural errors, the Court voided the rezoning ordinance in its entirety. This Appeal followed.

II. STATEMENT OF FACTS

Chapter 59 of the Wisconsin Statutes enables counties to adopt comprehensive zoning ordinances. As this Court knows, zoning ordinances “assign compatible land uses to zoning districts throughout the community.” *Town of Rhine v. Bizzell*, 2008 WI 76, ¶17, 311 Wis. 2d. 1, 751 N.W.2d 780. Each district is classified by use, such as residential, agricultural, business, industrial, etc. Based upon the designated district, uses may be permitted as a right (permitted uses) or allowed by conditional use permits (conditional uses). *Id.* at ¶19-20. If a use is neither permitted nor conditionally permissible, it is prohibited. *Id.*

On November 18, 2021, Donald and Nancy Brunson (the “Brunsons”) submitted a petition to change the zoning of 7.4 acres of their 24-acre parcel of land (the “Property”) located on County Road B in the Town of Concord (the “Town”) from *A-1 Exclusive Agricultural* to *A-2 Agricultural and Rural Business*. (R. 15; A-App. 121-22.) The change in zoning would allow them to apply for a conditional use permit for construction of ten barns to be used for boat storage on the Property. The Property was

directly adjacent to a parcel which already contained a boat storage facility. (R. 20; A-App. 147.) This proposed rezone allowed for the expansion of an existing and established business in the Town of Concord. (R. 25; A-App. 231.)

The Town of Concord agreed to be subject to Jefferson County Zoning in 1975. Because of this, Jefferson County is responsible for administering the zoning districts in the Town of Concord which includes periodically amending the zoning ordinance pursuant to a petition from a landowner. The term "county zoning" is somewhat a misnomer. It is more akin to a county/town partnership as neither the town nor the county have unilateral authority to make zoning decisions. The rezoning process consists of multiple steps at both the Town and County levels which consider the community's needs and goals for managing land use. Pursuant to statute, the County and the Town have adopted comprehensive plans which outline the long-range goals of the community and serve as policy guides for zoning implementing legislation. Wis. Stat. §66.1001.

When a petition for rezoning is filed in Jefferson County, the County first refers the matter to the local town for a recommendation before coming to the County's designated zoning agency, the Jefferson County Planning & Zoning Committee (hereinafter "Planning & Zoning Committee"), for consideration.

Following a site inspection, public hearing and deliberation, the Planning & Zoning Committee makes a recommendation to the governing body, the Jefferson County Board of Supervisors, for final action on the Petition to amend the Official Zoning Map.

A. Consideration of the Zoning Amendment by the Town

The Brunsons' petition for rezoning was first referred to the Town Plan Commission for consideration and recommendation to the Town Board. The Town Plan Commission's role is purely advisory. The Town of Concord Plan Commission considered the petition for rezoning at its meeting on December 22, 2021. (R. 17; A-App. 136.) The minutes from that meeting state the Town Plan Commission was "reluctant to approve more storage buildings as the general area has quite a few already." (R. 17; A-App. 136.) Additionally, the Town Plan Commission indicated the Town was in the process of updating its comprehensive plan and felt the request should be postponed until the updates were complete. (R. 17; A-App. 136.) As such, the Town Plan Commission recommended the Town Board deny the request at that time. (R. 17; A-App. 136.)

The Town Board considered the Brunsons' Petition at its meeting on January 10, 2022. (R. 18, A-App. 137.) Pursuant to the Town's Comprehensive Plan, businesses that require rezoning are evaluated on a case-by-case basis. (R. 2; A-App. 116.) The Town

examines all applications "to determine whether they are consistent with the Town's adopted plan, goals and policies and with protection of the public health, safety, and welfare in the Town." (R. 2; A-App. 116.) After discussion and deliberation by the Town Board and members of the public regarding A-2 zoning approval and the Town's long range Town plan, the Town Board voted in favor of the proposed rezone. (R. 18, 40:19; A-App. 137.) That approval was forwarded to Jefferson County. Subsequently, a member of the Town Board further explained the Town recommended approval of this rezone after consideration of the Town's comprehensive plan because the Property directly borders the rural hamlet and the existing business. (R. 23:12-13; A-App. 163-67.)

B. Consideration of the Zoning Amendment by the County

Following approval by the Town of Concord, the County considered the Brunsons' request to amend the zoning ordinance. At the County level, the process starts with a site inspection. On February 11, 2022, members of the Jefferson County Planning and Zoning Committee conducted a site inspection to view the subject property. (R. 11.) The Jefferson County Planning and Zoning Committee then held a public hearing on Brunson rezone petition on February 17, 2022. (R. 25; A-App. 224-253.) At that hearing, a representative for the Brunsons explained that the

request was to allow the existing boat storage operation to expand and build more storage barns adjacent to the buildings that currently exist. (R. 25:7; A-App. 231.)

Various individuals now associated with Defend Town Plans spoke in opposition to the petition. They asserted the proposed area was inconsistent with the Town's land use plan as the property was located outside of the existing rural hamlet. Concerns were also raised regarding the screening, lighting, traffic, and drainage. (R. 25:8-16; A-App.232-40.) The Brunsons responded to the concerns raised, indicating there were engineered plans to address any drainage concerns, no complaints had been made in the past regarding traffic or operation of the existing business, there was screening in place, and the lighting would be standard dawn to dusk lights consistent with other barns in the area. (R. 25:16-19; A-App. 240-43.)

Following the public hearing, the Zoning & Planning Committee discussed the proposed rezone at its meeting on February 28, 2022. (R. 23; A-App. 155-73.) At that time, the Planning & Zoning Committee voted to postpone action to allow the Town the opportunity to reconsider its recommendation in light of the concerns raised by the public regarding compliance with the Town's comprehensive plan at the public hearing. (R. 23; A-App. 172-73.) In that meeting, the Planning & Zoning

Committee noted the inconsistency between the public's assertions regarding the Town's comprehensive plan and the County's land use plans, recognizing that this proposed A-2 zone would generally be permissible throughout the County under these circumstances. (R. 23:16, A-App. 170.)

The Town took no action following the February 28, 2022, meeting. As such, the Planning & Zoning Committee again considered the rezoning petition at its meeting on March 28, 2022. (R. 24; A-App. 182-223.) The Planning & Zoning Committee reviewed the language in the Town's comprehensive plan and found there were ambiguities in the language that would allow reasonable interpretations on both sides of the issue. (R. 24; A-App. 194-210.) After considerable discussion, the Planning & Zoning Committee voted to recommend adoption of a zoning ordinance amendment permitting the rezone of the Brunson property from *A-1 Exclusive Agricultural* to *A-2 Agricultural & Rural Business*. (R. 21; A-App. 148-49.) Consistent with statute, the Planning & Zoning Committee prepared a proposed rezoning ordinance for the Jefferson County Board of Supervisor's consideration. (R. 32; A-App. 264-267.)

Representatives from both sides of the argument were again heard during public comment at the April 19, 2022, meeting of the Jefferson County Board of Supervisors. (R. 34; A-App. 268-

87.) The Supervisors considered those comments when debating taking action on the recommendation of the Planning & Zoning Committee. (R. 34; A-App. 290-307.) After review, debate and consideration by the Jefferson County Board of Supervisors it followed the recommendations of the Town of Concord and Planning & Zoning Committee, and adopted an ordinance amending the zoning map by rezoning the Brunson Property from A-1 to A-2 on April 19, 2022. (R. 34; A-App. 290-307.) Pursuant to statute, the Town had authority to disapprove any zoning map amendment within 40 days of County Board action. Wis. Stat. § 59.69(5)(e)6. The Town Board on its own, or upon Defend Town Plan's request, could have rejected the County's action to amend the zoning ordinance at issue in this case. Instead, the Town took no action to overturn its prior approval.

Opponents of the rezoning appeared at every opportunity and their objections were heard by the decisionmakers. In adopting the zoning ordinance amendment, the Jefferson County Board of Supervisors acted in a manner consistent with the Town of Concord's recommendation to approve the amendment; the 2021 Jefferson County Comprehensive Plan (which incorporated the 2021 Jefferson County Agricultural Preservation and Land Use Plan); the 2009 Town of Concord Comprehensive Plan; and applicable Wisconsin law.

C. Circuit Court Proceedings

Unsuccessful in stopping the rezoning in the legislative process, Defend Town Plans turned to the judicial process. On October 14, 2022, the group of organized citizens filed a Petition for Writ of Certiorari in Jefferson County Circuit Court. (R. 2; A-App. 101.) Following briefing and oral argument by both parties, on October 5, 2023, the Circuit Court overturned the decision of Jefferson County and vacated the rezoning ordinance. (R. 47; A-App. 324.) The Circuit Court's decision was solely based on its belief that the County Board failed to make findings required to rezone property out of a farmland preservation district. (R. 45; A-App. 327-29.)

ARGUMENT

I. STANDARD OF REVIEW

This case calls for *certiorari* review of the actions of Jefferson County Board of Supervisors. On *certiorari* review, the Court may only consider: "(1) whether the municipality kept within its jurisdiction; (2) whether it proceeded on a correct theory of law; (3) whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably

make the order or determination in question." *Ottman v. Town of Primrose*, 2011 WI 18, ¶35, 332 Wis. 2d. 3, 796 N.W.2d 411.

When reviewing a decision on a petition for *certiorari*, the Court of Appeals reviews the decision of the local governmental body, not the decision of the Circuit Court. *Miller v. Zoning Board of Appeals of Village of Lyndon Station*, 2023 WI App 46, ¶18, 407 Wis. 2d 678, 991 N.W.2d 380. It is well-established that the act of enacting zoning ordinances, including amendments for rezoning, is a matter of legislative discretion and as such judicial review is limited. *Id.* at ¶15. The court's job is not to substitute its own judgment for that of the zoning authority, but rather to ensure that the authority acts procedurally according to its statutory guidelines. *Ottman v. Primrose*, 2011 WI 18, ¶52-53, 332 Wis. 2d 3, 796 N.W.2d 411; *Buhler v. Racine County*, 33 Wis. 2d. 137, 146-47, 146 N.W.2d 403(1966).

On *certiorari* review, there is a presumption of correctness and validity afforded to a municipality's decision. This presumption "recognizes that locally elected officials are especially attuned to local concerns." *Ottman*, 2022 WI 18, ¶50. Defend Town Plan's bears the burden to overcome the presumption the County acted lawfully when enacting this zoning ordinance. "If there is any reasonable basis for the exercising of legislative discretion by the zoning authority the same cannot

be disturbed on judicial review." *Jefferson County v. Timmel*, 261 Wis. 39, 62-63, 51 N.W.2d 518 (1952).

II. THE COUNTY'S ACTION TO ADOPT THE ZONING ORDINANCE WAS LAWFUL AND WITHIN ITS LEGISLATIVE DISCRETION

A. THE COUNTY BOARD OF SUPERVISORS CAN LAWFULLY RELY ON THE RECOMMENDATIONS OF THE PLANNING & ZONING COMMITTEE WHEN ADOPTING A REZONING ORDINANCE.

As the sole basis for invalidating the County's rezoning ordinance, the trial court found "the County, and more particularly the county by its board, erred as a matter of law in failing to make those required findings as per 91.48(1)." (R. 46:2; A-App. 340.) Specifically, the trial court opined that the County Board, rather than the designated county zoning agency, was required to engage in its own fact-finding on the record when rezoning a property out of a farmland preservation district. (R. 45; A-App. 328-31.) The trial court's decision demonstrates a fundamental misunderstanding of the county zoning process.

Pursuant to statute, the County Board is empowered create a planning & zoning committee and designate that committee as the "county zoning agency." Wis. Stat. §59.69(2)(a)1. The county zoning agency is authorized to act in all matters pertaining to county planning and zoning. *Id.* Whenever a public hearing is required as part of the exercise of the County's zoning

authority, including hearings on petitions to rezone, the hearing is to be conducted by the county zoning agency. Wis. Stat. §59.69(2)(e); §59.69(5)(e)2. Following a public hearing on a rezoning petition, the county zoning agency is to forward a draft of the proposed zoning ordinance to the County Board. *Id.* Upon receipt of the proposed zoning ordinance, the County Board determines whether to enact or deny the proposed ordinance. Wis. Stat. §59.69(5)(e)5.

This statutorily mandated process is further codified in the Jefferson County Zoning Ordinance¹. (JEFFERSON COUNTY, WI, ZONING ORDINANCE § 11.11 (2022); A-App. 404-06.) Here, Jefferson County has created the Jefferson County Planning & Zoning Committee to serve as the county zoning agency. *Id.* The Planning & Zoning Committee serves as the "boots on the ground," conducting the site inspection, overseeing the public hearing and fact-gathering. *Id.* After the information gathering stage, the Planning & Zoning Committee analyzes the petition to determine if it meets the County's requirements for rezoning, including whether it is consistent with the County's land use plans. *Id.*

¹ A complete version of Jefferson County Zoning Ordinance is available at: <https://cms4files.revize.com/jeffersoncountynew/County%20Board/Ordinances/Zoning%20Ordinance.pdf>

This work culminates with a recommendation to the County Board for action. *Id.*

The County Board is statutorily empowered to rely upon the analysis of the county zoning agency when making its legislative determination. Wis. Stat. § 59.69. If it could not do so, the designation of a county zoning agency would serve no purpose. Further, there is no statutory authority which allows for any type of public hearing or fact-finding process before the County Board for a rezoning petition. The facts found during the Planning & Zoning Committee's work necessarily must inform the action of the County Board.

The County's ability to rely on the recommendations of its Planning & Zoning Committee is not impacted by its participation in the farmland preservation program outlined in Chapter 91 of the Wisconsin Statutes, also referred to as the Wisconsin Working Lands legislation. The statute relied on upon in the trial court's decision-making, Wis. Stat. §91.48, merely sets state standards for participation in the farmland preservation program. To understand the proper function of Wis. Stat. §91.48, it is necessary to understand the role of Chapter 91 of the Wisconsin Statutes. Chapter 91 establishes a program whereby owners of eligible farmland can receive tax credits for farmland preservation. See Wis. Stat. § 71.57. For a landowner to be

eligible to participate in this process, the land must either be covered by a farmland preservation agreement or located in a certified farmland preservation zoning district. Wis. Stat. §71.59. Pursuant to Wis. Stat. §91.36, the County's A-1 *Exclusive Agricultural* zoning district meets the standard for a certified farmland preservation district. (JEFFERSON COUNTY, WI ZONING ORDINANCE §11.04(F)(6)I; A-App. 386.) Wis. Stat. §91.48 is not a mandatory directive that forbids local governments from rezoning property when they fail to make specified findings. Rather, it is merely one of the standards that defines eligibility for the farmland preservation program and corresponding tax incentives.

Importantly, the Wisconsin Working Lands legislation did not create any new zoning authority. Similarly, it does not require or limit local zoning. County and local governments make their own zoning decisions and exercise their normal county and local zoning authority. As such, the fundamental aspects of the zoning process remain the same. Pursuant to Wis. Stat. §91.30, a political subdivision is empowered to "adopt and administer a farmland preservation zoning ordinance in accordance with Wis. Stat. §59.69." Jefferson County did just that. Jefferson County adopted a farmland preservation zoning ordinance which is administered by the designated county zoning agency, the

Planning & Zoning Committee. (JEFFERSON COUNTY, WI ZONING ORDINANCE §11.04(F)(6); A-App. 386-88.) The Jefferson County Zoning Ordinance explicitly states rezoning out of the *A-1 Exclusive Agricultural* district may occur “after the **County Planning and Zoning Committee** conducts a public hearing and makes findings as specified in §91.48(1) of the Wisconsin Statutes.” *Id.* (*emphasis added*). Notably, this ordinance, including the procedure outlined above, was reviewed by the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP), the agency responsible for overseeing compliance with Chapter 91. The suggestion that the County Board is required to hold a public hearing and issue specific findings is inconsistent with the law and the practice of municipalities throughout the State of Wisconsin.

B. THE LAW DOES NOT REQUIRE THE COUNTY TO ISSUE FINDINGS WHEN TAKING LEGISLATIVE ACTION.

To the extent Defend Town Plans argues Jefferson County, whether by its Planning & Zoning Committee or the Board of Supervisors, failed to make appropriate “findings” when adopting the subject zoning ordinance, it misses the mark. It is well-established that zoning is a legislative process. *Miller*, 2023 WI 46. A legislative body may be guided by certain statutory factors and required to make a legislative decisions consistent

with its analysis of those factors. However, when enacting legislation, a legislative body is not required to articulate specific factual findings.

Despite acknowledging the discussion and consideration of the factors relevant to rezoning by the Planning & Zoning Committee, the trial court expressed concern the County did not articulate specific factual findings when adopting the rezoning ordinance. (R. 45; A-App. 328-29.) If the County were acting in a judicial capacity, rather than a legislative one, the trial court might have a point. Judicial bodies are required to make factual findings and reach legal conclusions and render judgment as to the issues before it.

However, the Planning & Zoning Committee and the County Board are not judicial bodies and were not acting in a judicial capacity. As a legislative body, Jefferson County is not required to make express findings to the degree of precision that a court ordinarily uses. See, e.g., *State ex. rel. Sullivan v. Dammann*, 227 Wis. 72, 81-82, 277 N.W. 687, 691 (1938). In fact, when analyzing legislative actions, the Court has expressly stated, "if any special finding of fact was needed in order to warrant the passage of a particular act, the passage of the act itself is treated as the equivalent of such finding." *Id.* As a general rule, the determination of facts required for

the proper enactment of statutes is for the legislative body alone to decide, in consideration of the presumption of validity afforded to legislative acts. *Id.*

If the Court were to accept Defend Town Plans' argument that a lack of precise findings means a zoning amendment is invalid because the municipality failed to consider all relevant matters, legislative acts throughout the state could be invalidated on the grounds the legislative body did not adequately explain what it was doing. Again, the standard is whether there is any reasonable basis for legislative action—not whether the legislative body expresses itself with the degree of precision that courts ordinarily use in making findings of fact and conclusions of law. *Jefferson County v. Timmel*, 261 Wis. 39, 62-63, 51 N.W.2d 518 (1952).

Specifically, as it relates to the factors set forth in Wis. Stat. §91.48, there is no legal authority for contention that failure to provide formal findings in connection with rezoning of farmland preservation areas justified invalidation of the rezoning. In fact, the precedent suggests the opposite is true. The Court of Appeals previously addressed whether a rezoning was invalid due to a failure to specifically find and articulate the factors set forth in the predecessor statute to Wis. Stat. §91.48. In that case, the Court found no support for

the premise that a legislative body must prove it considered certain standards or employed magic words when making a legislative determination. *Step Now Citizens Group v. Town of Utica Planning & Zoning Committee*, 2003 WI App 109, 234 Wis. 2d 662, 663 N.W. 2d 833. The presumption is that an ordinance was validly enacted by a legislative body which acted rationally and considered all factors required by law. *Id.*

On certiorari review, a court must sustain a municipality's action if any reasonable view of the evidence supports them. *Kapischke v. Cnty of Walworth*, 226 Wis. 2d 320, 328, 595 N.W.2d 42 (Ct. App. 1999). A reasonable view of the record shows the County zoning agency was cognizant of the factors it was to consider when determining whether to rezone the Property. (R. 20, 21, 23, 24, 25; A-App. 140-253.) It considered the suitability of the Property for a use not allowed in the A-1 District when it discussed the expansion of an existing use. (R. 23, 24; A-App. 169-170, 206-207.) It considered at length whether the proposed rezone was consistent with the County's comprehensive plan, which incorporates its Agricultural Preservation & Land Use Plan. (R. 23, 24; A-App. 154-223.) Further, it considered any potential impacts of the rezoning on the surrounding parcels when presented with information regarding stormwater, traffic, etc. (R. 23; A-App. 160-167.)

After gathering information regarding the relevant factors and discussing the same, the Planning & Zoning Committee found that the standards had been met when it moved to recommend the rezoning ordinance. (R. 21; A-App. 148-149.) The Committee made a decision which is supported by the facts in the record and founded upon the proper legal standard. Clearly, a reasonable view of the evidence supports upholding the County's legislative action.

III. THE COUNTY'S REZONING DECISION WAS CONSISTENT WITH THE COMPREHENSIVE PLAN.

Throughout this process, Defend Town Plan's primary argument has been that the County, as a matter of law, cannot approve the Brunson rezoning because Wis. Stat. §66.1001(3) prohibits zoning that is inconsistent with the County's comprehensive plan. Defend Town Plan's asserts the proposed rezoning is inconsistent with the County's comprehensive plan which incorporates the County's Agricultural Preservation & Land Use Plan and makes reference to the Town's comprehensive plan. (R. 2; A-App. 101-120.) The trial court did not decide this issue. Setting aside the yet unanswered question of whether Wis. Stat. §66.1001 creates a private right of action which would allow such a claim, simply stated, the Brunson rezoning is not

inconsistent with existing land use policies or the applicable comprehensive plan as a matter of law.

A. A COMPREHENSIVE PLAN IS A POLICY GUIDE THAT MUST BE CONSIDERED HOLISTICALLY.

A comprehensive plan is a "guide to the physical, social, and economic development of a local governmental unit." Wis. Stat. §66.1001(1)(a). The law explicitly states that a comprehensive plan does not have the effect of an ordinance or regulation whereby a governmental unit is bound by it. Wis. Stat. §66.1001(2m). Comprehensive plans are guides intended to inform future policy decisions. Policy decisions that are ultimately made by local elected officials, who are politically accountable to the voting public, based on the goals and needs of the community as a whole. In this case, the County was to consider its comprehensive plan, which incorporates its Agricultural Preservation & Land Use Plan and references the Town's comprehensive plan. To effectuate that goal, the County must attempt to synthesize these three documents to use them as guidance when making zoning decisions. Further, the County must determine how to resolve disputes when ambiguities or inconsistencies exist amongst the plans.

Defend Town Plans points to language in the Town's comprehensive plan which indicates a desire to restrict future

businesses to an area of the Town defined as a "rural hamlet" as the crux of their argument that the Brunson rezone is inconsistent with local land use policy. (R. 2; A-App. 108.) However, the County's comprehensive plan must be interpreted as a whole when determining consistency. Other language throughout the Town's comprehensive plan suggests the Brunson rezone is consistent with the Town's plan. Specifically, there is language that states "there is a general consensus that any future business that do locate in Concord should be limited to locations within the hamlet, adjacent to properties currently utilized for business purposes." (R. 2; A-App. 116.) This language can be interpreted to allow the expansion of an existing business, adjacent to properties currently utilized for business purposes as was the case for the Brunson rezone.

This view is supported by the Town's prior interpretations of its comprehensive plan. The Town of Concord has a history of rezoning A-1 and A-3 parcels of property to A-2 which are located outside of the rural hamlet and within the Agricultural Preservation District. In justification for those decisions, the Town has interpreted its comprehensive plan to differentiate between future business and the enlargement of existing business, finding that the latter is consistent with the plan. (R. 15, 24; A-App. 133, 205-207.) The Planning & Zoning

Committee considered this history when interpreting the applicable plans to achieve consistency. (R. 24; A-App. 205-207.) The Brunson rezone is unquestionably related to the expansion of an existing business, rather than a new business.

Furthermore, a comprehensive plan is a living document- it is not static. It is meant to evolve and change over time to reflect the changing needs of the community. The Town's comprehensive plan was adopted in 2009. At the time of this action, the Town's comprehensive plan was over 13 years old despite the statutory requirement that comprehensive plans be updated not less than every ten (10) years. Wis. Stat. §66.1001(2)(i). The Town's 2009 comprehensive plan opines that the existing rural hamlet would be sufficient to support growth through the anticipated life of the plan. It would be reasonable to consider whether additional space is appropriate since the plan was not timely updated. The record indicates the need for additional area outside the existing hamlet was a concern at the Town Board level and a consideration brought to the County Planning & Zoning Committee when interpreting the guidance provided by the Town's dated land use plan. (R. 23:15-19; A-App. 169-172.)

Unfortunately, it is simply not a black and white issue as suggested by Defend Town Plans. There is far more to the

hundreds of pages of land use plans than a map. A comprehensive plan is purposely not a regulation. Interpretation and application of a comprehensive plan necessarily involves a degree of flexibility, judgment and discretion. If there is more than one reasonable interpretation of the record, the governing body may choose among them, and its choice cannot be upset on judicial review. See *Kapischke v. Cnty of Walworth*, 226 Wis. 2d 320, 328. A reasonable interpretation of the County's comprehensive plan exists which supports the Brunson petition being consistent with the County's land use plans. The County's decision was not arbitrary or unreasoned; it was premised on its interpretation of the county and town land use and development policies. As such, the law is clear that this rezoning amendment cannot be overturned on judicial review. *Jefferson County v. Timmel*, 261 Wis. at 62-63.

B. A-2 REZONING IN AGRICULTURAL PRESERVATION AREAS IS CONSISTENT WITH THE COMPREHENSIVE PLAN.

Notably, at issue in this case is a proposed rezoning to A-2 Agriculture and Rural Business of a property located in an agricultural preservation area. The County's comprehensive plan, and incorporated Agricultural Preservation & Land Use Plan, expressly encourages the use of A-2 zoning to allow a wide range of agricultural-related uses and other rural businesses that are

compatible with predominantly agricultural areas. That policy is codified in the County's zoning ordinance. Jefferson County Zoning Ordinance section 11.04(f)(7)i defines the purpose of A-2 AGRICULTURAL AND RURAL BUSINESS districts:

To provide for the proper location and regulation of manufacturing, storage warehousing and related marketing or industrial activities that are related to the agricultural industry and otherwise suited to a relatively isolated, rural location. This district may be considered within the **Agricultural Preservation Areas**, Rural Hamlet areas, Urban Service Areas, and Limited-Service Areas as described in the Jefferson County Agricultural Preservation and Land Use Plan. (emphasis added)

The Jefferson County Zoning Ordinance specifically designates all A-1 zoned property (i.e. parcels within an Agricultural Preservation Area), as being suitable for rezoning from A-1 to A-2 under certain circumstances. The Town of Concord's comprehensive plan adopts and incorporates Jefferson County's A-2 Agricultural and Rural Business District policies including its criteria for evaluating proposals for rezoning land from A-1 Exclusive Agricultural to A-2 Agricultural & Rural Business. (R. 15; A-App. 123.) The Jefferson County Agricultural Preservation and Land Use Plan, which was determined by the Department of Agricultural, Trade & Consumer Protection (DATCP) to meet the requirements of Chapter 91 of the Wisconsin statutes, contemplates that A-1 zoned land can be rezoned to A-2 for

limited business development while continuing to be considered within the County's Agricultural Preservation Area.

While Defend Town Plan's has repeatedly stressed the business nature of the proposed use as the reason for the inconsistency, the rezone to an A-2 zone is separate and distinct from a Business District or the Community District that exists within the rural hamlet. By its very nature, an A-2 District is consistent with the agricultural zoning of the surrounding area. The permitted uses in an A-2 zone are consistent with the possible uses within an A-1 zone. (JEFFERSON COUNTY, WI ZONING ORDINANCE §11.04(F) 6-7; A-App. 386-388.) Consistent with prior decisions, the language found in the land use plans, and the text of the zoning ordinance, the County has interpreted the applicable land use plans to draw a distinction between an A-2 District and a Business or Community District, opining that an A-2 zone is permissible outside of the rural hamlet.

C. THE TOWN AND COUNTY ARE THE BEST EQUIPPED TO INTERPRET LOCAL LAND USE POLICY.

Both the Town and the County found the Brunson rezoning was consistent with local land use policies. When this Court considers the record before the legislative bodies, it is clear issues relating the County's comprehensive plan, as well as other issues relating to the consistency of the proposal with

the surrounding area and the long-term goals of the community were always on the forefront of discussions. (R. 23, 24, 25, 34; A-App. 154-253, 268-323.) The consistency of the rezoning with the surrounding area, whether based on nature of use, traffic, noise, etc., was the issue from day one. The record reflects substantial evidence and reasoning that supports the Town and the County's determination that the proposed rezoning was consistent with applicable land use plans. (R. 23, 24, 25, 34; A-App. 154-253, 268-323.)

Deference must be afforded to the Town and the County, given their expertise in administering local zoning and interpreting local land use plans. The Court has held the resolution of disagreements over the interpretation of a county's planning policies "is a matter for the actors in the legislative process, and possibly the political and electoral processes; [but] it is not for the courts to resolve." *Schmeling v. Phelps*, 212 Wis. 2d 898, 918, 569 N.W. 2d 784 (Ct. App. 1997). In *Schmeling*, landowners brought a declaratory judgment action seeking to invalidate the county executive's veto of a rezoning petition. In that case, the county executive vetoed a petition to rezone agricultural property to allow for rural homes. *Id.* The Court found that the county executive's action in vetoing a rezoning petition was a legislative act, subject to

limited judicial review in the same manner and according to the same standard as a county board's action in approving a petition to rezone. *Id.* at 913. The veto was premised on the executive's interpretation of county and town land use development plans and policies. The Court declined to weigh in on the validity of the executive's interpretation of the land use policies, holding that even if twenty members of the county board disagreed with the executive's interpretation, it was not an appropriate subject for judicial review. *Id.* at 918.

As was the case in *Schmeling*, Defend Town Plans' concerns regarding the wisdom of the Town and the County's rezoning actions are issues which are to be resolved by the political process. Defend Town Plan's may disagree with the County's interpretation of the applicable land use plans, but they are prohibited from substituting their judgment for that of the zoning authority. *Buhler*, 33 Wis. 2d at 146-47. At its core, certiorari review recognizes that a local government is better qualified than a court to apply facts to its own ordinance and interpret the goals of its land use plan. Both the Town of Concord and Jefferson County reasonably determined the proposed rezoning was consistent with its land use plan when deciding to enact the rezoning ordinance.

IV. IF THE COURT FINDS THE COUNTY MADE A LEGAL ERROR, THE PROPER REMEDY IS REMAND TO THE COUNTY BOARD.

For all of the reasons set forth above, this Court should overturn the trial court's decision in this matter and reinstate the County's rezoning ordinance. However, if this Court finds Jefferson County erred in enacting this ordinance, this matter should be remanded to the County Board. The purpose of certiorari judicial review of municipal decisions is to ensure due process. After review, a certiorari court may remand for further proceedings consistent with the court's decision. *Lamar Cent. Outdoor, Inc. v. Board of Zoning Appeals of City of Milwaukee*, 2005 WI 117, 284 Wis. 2d. 1, 700 N.W. 2d 87. Remand to the municipality is appropriate where the defect is one that can be cured. *Id.* For example, where an appellate court finds the deliberating body applied the wrong legal standard or failed to articulate statutory criteria, reconsideration is in order because these issues can be cured on remand and the local body is the best suited to make factual determinations. *Id.* at ¶40.

Jefferson County is the entity best suited to make factual determinations and apply local policy. As such, if necessary, this case should be remanded to allow it to do so.

CONCLUSION

For all the reasons stated herein, the Circuit Court erred when it vacated the County's rezoning ordinance. Jefferson County's approval of the Brunson rezoning petition was a legitimate exercise of the County's zoning authority which involves broad legislative discretion. A legislative decision made after lengthy deliberation and full participation by all interested parties may not be disturbed on judicial review if there is any reasonable basis for the action taken. The record in this matter clearly establishes a reasonable basis for the County's determination. As such, the County respectfully requests this Court reverse the decision of the Trial Court and direct that judgment be entered dismissing Defend Town Plan's writ of certiorari.

CERTIFICATION OF FORM & LENGTH

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(bm) and (c) for a brief and appendix, if any, produced with monospaced font. The length of this brief is 36 pages.

Dated this 19th day of February 2024.

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