

SUPREME COURT OF WISCONSIN

Zwiefelhofer v. Town of Cooks Valley, 338 Wis. 2d 488

809 N.W.2d 362 (2012) · Decided February 8, 2012

SUMMARY

The Wisconsin Supreme Court considered whether the Town of Cooks Valley's nonmetallic mining ordinance was a zoning ordinance requiring Chippewa County Board approval. Applying a functional approach, the court concluded that the ordinance was a non-zoning police-power regulation because it did not create districts, establish generally permitted land uses, or comprehensively allocate land uses throughout the town. The court reversed the circuit court's judgment in favor of the plaintiffs.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Shirley S. Abrahamson, Chief Justice
JURISDICTION	Wisconsin
DECIDED	February 8, 2012
DISPOSITION	reversed
PROCEDURAL POSTURE	The plaintiffs brought a declaratory judgment action challenging the validity of the Town's Nonmetallic Mining Ordinance. The circuit court granted summary judgment for the plaintiffs, and the Town appealed. The court of appeals certified the appeal to the Wisconsin Supreme Court.
STANDARD OF REVIEW	The interpretation of a statute and an ordinance presents a question of law reviewed independently, while benefiting from the analyses of the circuit court and court of appeals.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Town of Cooks Valley v. Loran B. Zwiefelhofer, William J. Schindler, Glenn R. Sarauer, Samuel R. La Gesse

TOPICS

[zoning](#)[municipal law](#)[statutory interpretation](#)[plain meaning rule](#)[minerals](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Town's Nonmetallic Mining Ordinance was a zoning ordinance requiring Chippewa County Board approval under Wisconsin law.

HOLDINGS

1. The ordinance was not a zoning ordinance. It was a valid non-zoning ordinance enacted under the Town's general police power, so Chippewa County Board approval was not required.

KEY QUOTATIONS

“Rather, we determine whether the Ordinance is a zoning ordinance using a functional approach.” (338 Wis. 2d 497)

“The Ordinance is a non-zoning ordinance adopted under the Town's police power. Accordingly, the ordinance did not need county board approval, and we reverse the judgment of the circuit court.” (338 Wis. 2d 498)

“Thus, we hold that the Ordinance is a valid exercise of the Town's non-zoning police power; no county board approval was required.” (338 Wis. 2d 523)

FACTUAL BACKGROUND

The plaintiffs owned land in the Town of Cooks Valley, had engaged in nonmetallic mining previously, and might seek to conduct mining operations in the future. The Town adopted a Nonmetallic Mining Ordinance requiring permits for commercial sand and gravel pits and authorizing conditions concerning reclamation, roads, operating hours, traffic, groundwater, wells, dust, and related health and safety concerns. The ordinance applied throughout the Town, did not create zoning districts, and exempted existing mines unless they were expanded. Chippewa County had countywide zoning, but the Town did not obtain county board approval before adopting the ordinance.

PROCEDURAL HISTORY

The Chippewa County Circuit Court, James M. Isaacson presiding, concluded that the ordinance was a zoning ordinance and granted summary judgment to the plaintiffs. Because Chippewa County had countywide zoning, the circuit court determined that county board approval was required. The Town appealed, and the court of appeals certified the appeal to the Wisconsin Supreme Court under Wis. Stat. Rule 809.61.

DISPOSITION

reversed

CASES CITED

- State ex rel. Zillmer v. Kreutzberg, 114 Wis. 530, 90 N.W. 1098 (1902)

- State v. Cole, 2003 WI 112, 264 Wis. 2d 520, 665 N.W.2d 328
- Village of Wind Point v. Halverson, 38 Wis. 2d 1, 155 N.W.2d 654 (1968)
- Town of Clearfield v. Cushman, 150 Wis. 2d 10, 440 N.W.2d 777 (1989)
- Town of Rhine v. Bizzell, 2008 WI 76, 311 Wis. 2d 1, 751 N.W.2d 780
- Heitman v. City of Mauston Common Council, 226 Wis. 2d 542, 595 N.W.2d 450 (Ct. App. 1999)
- Gordie Boucher Lincoln-Mercury Madison, Inc. v. City of Madison Plan Commission, 178 Wis. 2d 74, 503 N.W.2d 265 (1993)
- Wood v. City of Madison, 2003 WI 24, 260 Wis. 2d 71, 659 N.W.2d 31
- Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926)
- State ex rel. Schleck v. Zoning Board of Appeals, 254 Wis. 42, 35 N.W.2d 312 (1948)
- State ex rel. Saveland Park Holding Corp. v. Wieland, 269 Wis. 262, 69 N.W.2d 217 (1955)
- Town of Hobart v. Collier, 3 Wis. 2d 182, 87 N.W.2d 868 (1958)
- David A. Ulrich, Inc. v. Town of Saukville, 7 Wis. 2d 173, 96 N.W.2d 612 (1959)
- Edelbeck v. Town of Theresa, 57 Wis. 2d 172, 203 N.W.2d 694 (1973)
- County of Columbia v. Bylewski, 94 Wis. 2d 153, 288 N.W.2d 129 (1980)
- Naylor v. Salt Lake City Corp., 410 P.2d 764 (Utah 1966)