

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

June 26, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1312

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**STATE OF WISCONSIN EX REL. BETTY L. CONWAY,
AND JAMES T. CONWAY,**

PETITIONERS-APPELLANTS,

FRED J. WITEK AND CAROL J. WITEK,

PETITIONERS,

v.

**ZONING BOARD OF ADJUSTMENT FOR THE TOWN OF
HARMONY, AND THE TOWN BOARD OF THE TOWN OF
HARMONY,**

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Rock County:
MICHAEL J. BYRON, Judge. *Affirmed.*

Before Eich, C.J., Roggensack and Deininger, JJ.

PER CURIAM. James and Betty Conway appeal from an order dismissing their petition for certiorari review of a Town of Harmony zoning board decision. The dispositive issue is whether they timely commenced the action. We conclude that they did not, and therefore affirm.

The Town's Board of Adjustment rendered its written decision on December 28, 1995. That same day the Board's attorney mailed the decision to the Town Clerk and all interested parties. The Conways, and two other petitioners, filed this petition for a writ of certiorari on January 26, 1996. The trial court endorsed the writ on February 21, 1996. It was filed two days later and served on the Board of Adjustment on February 29, 1996. The Board then moved to dismiss the action, contending that service of the action, and therefore its commencement, was untimely. The trial court granted the motion, and then denied reconsideration, resulting in this appeal.

Section 59.99,¹ STATS., sets forth the duties and procedures for Town Board of Adjustment activities. *See* § 60.65(5), STATS. Under § 59.99(10), any person aggrieved by a Board of Adjustment decision “may, within thirty days after the filing of the decision in the Office of the Board, commence an action seeking the remedy available by certiorari.” “Commencement” of an action under the means of review chosen by the Conways includes both filing and service of the writ within thirty days. Section 801.02(5), STATS.; *State ex rel. DNR v. Walworth County Bd. of Adjustment*, 170 Wis.2d 406, 416, 489 N.W.2d 631, 634 (Ct. App.

¹ Section 59.99, STATS., was renumbered and amended by 1995 Wis. Act 201, § 479, eff. Sept. 1, 1996.

1992).² “Where the legislature has provided a statutory remedy, those procedures ‘must be strictly pursued to the exclusion of other methods of redress.’” *State ex rel. Schwochert v. Marquette County Bd. of Adjustment*, 132 Wis.2d 196, 201, 389 N.W.2d 841, 843 (Ct. App. 1986). The Conways’ failure to serve the Board within thirty days caused their action to be untimely.

The Conways raise numerous other issues concerning the proceedings, none of which have merit. They chose a particular means for review of a zoning decision, and simply did not follow the applicable, and mandatory, statutory procedures.

By the Court.—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5., STATS.

² The Conways could have used the complaint procedure rather than the writ procedure to commence their action under which service is not necessary within the thirty-day commencement deadline. Section 801.02(5), STATS., *State ex rel. DNR v. Walworth County Bd. of Adjustment*, 170 Wis.2d 406, 416, 489 N.W.2d 631, 634 (Ct. App. 1992).

