

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 15, 2005

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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

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

Appeal No. 2005AP518-FT

Cir. Ct. No. 2004CV628

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

TOWN OF WEST BEND,

PLAINTIFF-APPELLANT,

v.

WASHINGTON COUNTY,

DEFENDANT-RESPONDENT,

STATE OF WISCONSIN,

INTERVENOR.

APPEAL from an order of the circuit court for Washington County:
DAVID C. RESHESKE, Judge. *Affirmed.*

Before Anderson, P.J., Nettesheim and Snyder, JJ.

¶1 PER CURIAM. The Town of West Bend appeals from the order of the circuit court that denied its motion for declaratory relief. The issue on appeal is whether an ordinance passed by Washington County that created a park district on the shore of Silver Lake is valid. Because we conclude that the County's ordinance is valid and voids a competing ordinance passed by the Town of West Bend, we affirm the order of the circuit court.

¶2 Washington County acquired two parcels of land on the shores of Silver Lake. The purpose of the acquisition was to provide public access to the lake by building a boat launch. The Town had enacted a shoreline code that covered these parcels. The County consequently applied to the Town of West Bend for a conditional use permit to build the boat launch, but the Town denied the permit. The County then enacted Ordinance 2004-10 that created a park district and designated the parcels of land as a park. A public boat launch is a permitted use for a park district.

¶3 The Town brought a declaratory judgment action asking the court to determine the validity of the County ordinance, and arguing that the Town's zoning regulations applied to the parcels since they were more restrictive. The circuit court ruled that the County ordinance applied. Relying on *Town of Ringle v. County of Marathon*, 104 Wis. 2d 297, 311 N.W.2d 595 (1981), the court found that under WIS. STAT. § 59.69 (2003-04),¹ the County had the authority to zone and rezone the land that it owned as long as it had followed certain statutory procedures. The court further found that this land was owned by the County and

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

that the County had followed the proper procedures when it rezoned the parcels. The court concluded that the County's zoning ordinance was valid and enforceable.

¶4 The Town renews its argument on appeal that its ordinance applies because it is more restrictive, and that the exclusive authority to zone shoreline lands falls under WIS. STAT. § 59.692 and not § 59.69. The County and the State, as an intervenor, respond that *Ringle* controls, and that under *Ringle*, the Town's zoning regulation became a nullity when the County rezoned its own land. We agree.

¶5 In *Ringle*, the County rezoned a parcel of land within the Town to use as a landfill, and another parcel for quarry for clay for the landfill. *Town of Ringle*, 104 Wis. 2d at 299. The proposed uses were not permissible under the Town's zoning ordinance. *Id.* at 300. The County then gave notice to the Town of its intent to zone the parcels by County ordinance for use as a landfill and a quarry. *Id.* The Town brought a declaratory judgment action to have the County ordinances declared invalid. *Id.*

¶6 The supreme court identified the issue presented in the case as whether the authority granted to a county to zone and rezone its own land is so "explicit, clear, and unambiguous as to confer that right upon a county despite the existence of a pre-existing and properly enacted town ordinance and despite the fact that, arguably, the county's authority ... is not completely congruent with other zoning provisions enacted by the legislature." *Id.* at 302. The County argued that the language of the statute in effect at the time (and the predecessor to WIS. STAT. § 59.69(9)), was clear and unambiguous in its grant of authority to the County. *Town of Ringle*, 104 Wis. 2d at 302. The Town argued that the statutes

gave primacy to a town ordinance, and that when the ordinances conflict, the statute required the more restrictive ordinance to be enforced. *Id.* at 302-03. The supreme court concluded that the statute was absolutely clear that “a county [has] the right to zone and rezone its own land without town approval,” and therefore, the town’s pre-existing ordinance is “set aside.” *Id.* at 308.

¶7 We see no reasonable distinction between *Ringle* and the issue presented here. The Town argues that WIS. STAT. § 59.692 controls because this case involves shoreline land, and that under this statute, the more restrictive ordinance applies. We agree with the circuit court, however, that there is nothing in the *Ringle* decision that creates an exemption from its ruling for shoreline land. WISCONSIN STAT. § 59.69(9) allows the County to zone or rezone the lands it owns without securing the approval of town boards as long as certain procedures are followed. The County followed the procedures in this case. Consequently, the County’s ordinance is valid and the Town’s pre-existing ordinance is rendered a nullity. We affirm the decision of the circuit court.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

