COURT OF APPEALS
DECISION
DATED AND FILED

October 20, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP2917 **Cir. Ct. No. 2003CV8**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

LEONARD GOETZKA, MARCELL KUJAK, DEWEY REINSTRA, NORMAN STOKER, TOWN OF BROCKWAY AND BROCKWAY SANITARY DISTRICT 1,

PLAINTIFFS-APPELLANTS,

V.

CITY OF BLACK RIVER FALLS AND MCFOUR VENTURES, LLC,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Jackson County: JOHN A. DAMON, Judge. *Affirmed*.

Before Lundsten, P.J., Dykman and Vergeront, JJ.

¶1 VERGERONT, J. This action challenges a tax incremental financing (TIF) district created by the City of Black River Falls under WIS. STAT. § 66.1105. The circuit court granted summary judgment in favor of the City and the plaintiffs—certain taxpayers, the Town of Brockway, and Brockway Sanitary

District No.1—appeal. We conclude: (1) The complaint does not state a claim for relief for a violation of § 66.1105(4m)(c)1.a., which concerns the obligations of the joint review board, not the City; (2) the City properly construed and applied § 66.1105(4)(gm)4.a. in making the requisite finding that not less than 50% of the real property within the district came within at least one of the three categories in that subparagraph; and (3) the appellants' arguments do not establish that the statute is unconstitutional. We therefore affirm.[1]

BACKGROUND

¶2 WISCONSIN STAT. § 66.1105, the "Tax Increment Law," authorizes Wisconsin cities to establish TIF districts to assist them in financing public improvement projects in areas that meet the statutory requirements. ***Town of Baraboo v. Village of West Baraboo***, 2005 WI App 96, ¶32, ___ Wis. 2d ___, 699 N.W.2d 610. This goal is accomplished by permitting a city to divert property tax revenues generated by increased property values in a designated TIF district to pay for municipal improvements or development assistance provided within the district. ***Id.*** Prior to the creation of the district, a city must take a number of steps, including holding public hearings, § 66.1105(4)(a), (e); defining the boundaries of the district, § 66.1105(4)(b); preparing and adopting a proposed project plan for the district, § 66.1105(4)(d), (f), and (g); and passing a resolution that meets statutory requirements, § 66.1105(4)(gm). Among the requirements for the resolution is a finding that

[1] The statute in effect at the times relevant to this appeal is WIS. STAT. § 66.1105 (2001-02). In this opinion we refer to this version of § 66.1105 unless otherwise indicated. All other references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

> [n]ot less than 50%, by area, of the real property within the district is at least one of the following: a blighted area; in need of rehabilitation or conservation work, as defined in s. 66.1337(2m)(b); or suitable for industrial sites within the meaning of s. 66.1101 and has been zoned for industrial use[.]

Section 66.1105(4)(gm)4.a. A joint review board, whose membership is defined in § 66.1105(4m)(a), must then review the public record, planning documents, and the resolution and, applying the statutory criteria, make a decision whether to approve the proposal. Section 66.1105(4m)(b), (c).

¶3 The TIF district that is the subject of this dispute contains real property owned by McFour Ventures, LLC, which is in the business of leasing and selling land. McFour Ventures' property in the TIF district was annexed by the City approximately two months before the City approved the project plan for the TIF district. The annexed property lies along State Highway 54, near the intersection with Interstate 94. Prior to the annexation, the annexed property was located in the Town of Brockway. McFour Ventures sought annexation by the City because it planned an industrial and commercial development for the property and believed that the revenue that would be available in a TIF district was necessary to finance the required public infrastructure.[2]

¶4 After the annexation, the City Common Council zoned the portion of the annexed property that was to be part of the TIF district Light Industrial. Permitted uses in this district are:

[2] Not all of the annexed property owned by McFour Ventures is included in the TIF district. The annexation was challenged in a separate action and this court has recently issued a decision in that case upholding the annexation. ***Town of Brockway v. City of Black River Falls***, 2005 WI App 174, __ Wis. 2d ___, 702 N.W.2d 418.

> Agricultural Services, Agricultural Uses, Contractors-Building Construction, Manufacturing-Assembly Operation, Manufacturing-General Fabricating and Processing, Research Laboratories and Facilities, Supply Yards-Contractor, Warehousing, Wholesale Trade, Civic Uses, Public Parks, Public Works Yards, Essential Services, and all uses permitted in the City's B-5 Zoning Classification.

Black River Falls, WI, Ordinances, § III(8) (2002).[3] B-5 is a commercial district with these uses:

> B-5 Shopping Centers, Shopping Malls, Shopping Plazas, Department Stores, Professional Office Buildings, Office Building Complexes, Restaurants and Motels.

¶5 The City then approved the project plan for the TIF district and passed a resolution that contained the following provision, among others: "at least 50 percent, by area, of the real property within Tax Increment District No. 3 the district is suitable for 'industrial sites' and has been zoned and will continue to be zoned for industrial use throughout the life of [the TIF district]." The project plan and resolution passed by the common council were reviewed by the City of Black River Falls Joint Review Board (the joint review board) and approved.

¶6 The complaint in this action asserts that WIS. STAT. § 66.1105 is unconstitutional on a number of grounds and that the City violated procedures

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[3] Conditional uses in the Light Industrial District are:

> Automobile Service and Repair, Business Services, Concrete or Asphalt Plants, Contractors-Heavy Construction, Day Care Centers, Industrial or Technical Training Schools, Grain Elevator, Manufacturing-Heavy Processing, Mini warehouses-Self Storage Facilities, Motor Freight Terminals, Recycling or Composting Facilities, and Utility Facilities and other uses or customarily incident to the above uses.

BLACK RIVER FALLS, WI, ORDINANCES, § III(8) (2002).

under the statute. McFour Ventures was permitted to intervene by stipulation of all parties. All parties moved for summary judgment, agreeing that the material facts were not disputed. The court concluded: (1) the appellants had not shown that the joint review board's finding that the development expected in the TIF district would not occur without tax incremental financing was lacking in factual support;[4] (2) the statutory requirements that 50% of the property in the district be suitable for industrial sites and zoned for industrial use was met; (3) none of the appellants have standing to challenge the constitutionality of the statute; and (4) alternatively, the statute is constitutional.

ANALYSIS

¶7 On appeal, the appellants contend that the circuit court erred in accepting the joint review board's finding that the expected development in the district would not occur without use of the tax incremental financing and erred in construing the "not less than 50%" requirement in WIS. STAT. § 66.1105(4)(gm)4.a. as it relates to industrial use. They also contend that the court's rulings on their lack of standing and the constitutionality of the statute are in error.[5]

[4] WISCONSIN STAT. § 66.1105(4)(gm)4.b. requires that the resolution the City passes must contain a finding that "[t]he improvement of the area is likely to enhance significantly the value of substantially all of the other real property in the district…."

[5] The appellants also argue that no notice of the hearings on the TIF district was sent to the Town of Brockway Sanitary District, and this was required under WIS. STAT. § 66.1105(4)(a) because the sanitary district had territory that lay within the proposed district. The City responds that, after the annexation, the sanitary district no longer had territory within the TIF district. The appellants do not dispute this assertion in their reply brief and we therefore take it as conceded. ***Schlieper v. DNR***, 188 Wis. 2d 318, 322, 525 N.W.2d 99, 101 (Ct. App. 1994). We also note that we have upheld the annexation. *See* footnote 2. We therefore do not discuss this issue.

¶8 In reviewing the grant or denial of a summary judgment, we employ the same methodology as the circuit court and our review is de novo. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). If there is no genuine issue of material fact, we decide which party is entitled to judgment as a matter of law. *See* WIS. STAT. § 802.08(2).

I. Joint Review Board Finding

¶9 The appellant contends that the circuit court erred in accepting the joint review board's finding that the development expected in the district would not occur without TIF. This is one of the criteria on which the joint review board is directed to "base its decision to approve or deny a proposal." WIS. STAT. § 66.1105(4m)(c)1.a. According to the appellants, the evidence shows that the property in the district would be developed without TIF because the location is desirable and other development has occurred without TIF. Unlike the circuit court, we do not address the merits of this issue because we conclude the complaint does not state a claim for relief on this issue.

¶10 The first stage of summary judgment methodology is to determine if the complaint states a claim for relief on the ground on which summary judgment is sought. *See* ***Green Spring Farms***, 136 Wis. 2d at 314-15. The complaint here does not name the joint review board as a defendant. It alleges that "[i]t is the Defendant City's actions involving such Tax Incremental Financing ("TIF") that serves as the basis for this action." The specific actions alleged that are said to violate the statute are actions of the City. The relief requested, besides a declaration that the statute is unconstitutional, is against the City: an injunction against the City and a declaration that the City's actions "are procedurally defective and … null and void." Therefore, the complaint does not state any claim

for relief against the joint review board.[6] The complaint also does not state a claim for relief against the City based on the joint review board's finding that the development expected would not occur without TIF. The City has no obligation to make such a finding, and, thus, the general allegations that the City violated the statute do not encompass WIS. STAT. § 66.1105(4m)(c)1.a. Accordingly, the circuit court properly granted summary judgment against the appellants on this claim.

¶11 The appellants argue in their reply brief that it is appropriate for the City to defend the joint review board's findings because the mayor of the City was the chairperson of the board and must have been very influential in the board's decision. This argument is lacking in any legal authority for ignoring the separate identities of the City and the joint review board and for ignoring their distinct statutory authority and duties in establishing TIF districts. We therefore do not further consider this argument.

II. Construction of WIS. STAT. § 66.1105(4) (gm)4.a.

¶12 As noted above, the City is required to pass a resolution that contains a finding that not less than 50% of the area in the TIF district falls in at least one of three categories: (1) a blighted area; (2) in need of rehabilitation or conservation work; or (3) "suitable for industrial sites within the meaning of

[6] We do not intend to suggest that, if the joint review board had been named as a defendant and its findings challenged in the complaint, the complaint would then properly raise the issue of the adequacy of the evidence to support the board's findings. Generally, the decision of a board is challenged by means of a complaint for certiorari review and the court reviews the board's action based on the record created by the proceedings before the board. *See, e.g.,* ***State ex rel. Olson v. City of Baraboo Joint Review Board***, 2002 WI App 64, 252 Wis. 2d 628, 643 N.W.2d 796, in which the plaintiff petitioned for certiorari review of that joint review board's approval of that TIF district.

s.66.1101 and has been zoned for industrial use[.]" WIS. STAT. § 66.1105(4)(gm)4.a. The parties' dispute concerns the proper construction of the third category, there being no contention that either of the first two categories is applicable to this TIF district. WISCONSIN STAT. § 66.1101(1), to which the third category refers, provides:

> **Promotion of industry; industrial sites.** (1) It is declared to be the policy of the state to encourage and promote the development of industry to provide greater employment opportunities and to broaden the state's tax base to relieve the tax burden of residents and home owners. It is recognized that the availability of suitable sites is a prime factor in influencing the location of industry but that existing available sites may be encroached upon by the development of other uses unless protected from encroachment by purchase and reservation. It is further recognized that cities, villages and towns have broad power to act for the commercial benefit and the health, safety and public welfare of the public. However, to implement that power, legislation authorizing borrowing is necessary. It is, therefore, the policy of the state to authorize cities, villages and towns to borrow for the reservation and development of industrial sites, and the expenditure of funds for that purpose is determined to be a public purpose.

¶13 The appellants' position is that "suitable for industrial sites within the meaning of s.66.1101" means zoned exclusively for industrial use and the Light Industrial zoning of this TIF district does not satisfy this requirement because it permits other uses besides industrial uses. The respondents assert that "zoned for industrial use" means that industrial uses are permitted and that "suitable for industrial sites" means property that is appropriate for industrial use, which at least 50% of this TIF district is.

¶14 When we construe a statute, we begin with the language of the statute and give it its common, ordinary, and accepted meaning, except that technical or specially defined words are given their technical or special definitions.

State ex rel. Kalal v. Circuit Court for Dane County, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. We interpret statutory language in the context in which it is used, not in isolation but as part of a whole, in relation to the language of surrounding or closely related statutes, and we interpret it reasonably to avoid absurd or unreasonable results. ***Id.***, ¶46. We also consider the scope, context, and purpose of the statute insofar as they are ascertainable from the text and structure of the statute itself. ***Id.***, ¶48. If this process of analysis yields a plain meaning, then there is no ambiguity and we apply this meaning. ***Id.***, ¶46. If, on the other hand, we employ these principles and conclude the statutory language is ambiguous—that is, capable of being understood by reasonably well-informed persons in two or more senses—then we may employ sources extrinsic to the statutory text. ***Id.***, ¶¶47, 51. These extrinsic sources are typically items of legislative history. ***Id.***, ¶50.

¶15 Beginning first with the language of WIS. STAT. § 66.1105(4)(gm)4.a., we examine the term "suitable for industrial sites within the meaning of s.66.1101(1)." WISCONSIN STAT. § 66.1101(1) sets forth the policy of "encourag[ing] and promot[ing] the development of industry" and, more specifically, the policy of assisting municipalities with borrowing for "the reservation and development of industrial sites," but it does not define either "suitable" or "industrial." As the appellants themselves point out, the common and ordinary meaning of "suitable" is "appropriate." *See* AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2000). Thus the common and ordinary meaning of "suitable for industrial sites" means "appropriate for industrial sites." The common and ordinary meaning of this phrase does not convey that sites must be appropriate *only* for industry and for no other use.

¶16 Turning next to the phrase "zoned for industrial use," we agree with the appellants that the title of "Light Industrial" is not dispositive: the statute can only reasonably be referring to the substance of the zoning. There is no dispute, however, that the Light Industrial classification permits uses that the appellants agree are industrial uses: "Manufacturing-Assembly Operation, Manufacturing-General Fabricating and Processing…." Indeed, these uses are also permitted uses in the General Industrial district.[7] The appellants do not identify any use they consider industrial use that is not permitted in a Light Industrial district.[8] They object to the Light Industrial classification not because it does not permit industrial uses, but because it permits other types of uses—namely, shopping centers and the other uses permitted in the commercial B-5 district. The appellants argue that "zoned for industrial use" must be construed as "zoned exclusively for industrial

[7] The appellants quote the provisions of the zoning ordinance for the General Industrial District in their supplemental brief, but the record cite they give contains only the terms of the Light Industrial District. However, because there appears to be no dispute on the terms of the General Industrial District, we accept the appellants' quotation of the terms:

> (1) PERMITTED USES. (a) General manufacturing, fabrication, assembling, packing and processing of products and produce in compliance with the performance standards set forth in sec. 17.28 of this Code and providing for inside storage of such products and produce. (b) Freight yards and terminals.
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> (2) CONDITIONAL USES. (a) General manufacturing[,] fabrication, assembling, packing and processing of products and produce which are not in compliance with the performance standards set forth in sec. 17.28 of this Code. (b) Outside storage areas. (c) Fueling stations. (d) Restaurants catering to Industrial District employes and uses. (e) Incinerators. (f) Sanitary landfills. (g) Sewage disposal plant.

[8] The appellants refer to these definitions of "industry" in the AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2000): "1. Commercial production and sale of goods. 2. A specific branch of manufacture and trade: textile industry. 3. The sector of the economy made up of manufacturing enterprises: government regulation of industry." The respondents do not dispute that these are common meanings of the term "industry."

use," and "suitable for industrial sites" must be construed to mean sites that are zoned exclusively for industrial use, in order to carry out the policies expressed in WIS. STAT. § 66.1101(1). They emphasize the language in § 66.1101(1) that "existing available sites may be encroached upon by the development of other uses unless protected from encroachment by purchase and reservation."

¶17 The appellants' construction, however, requires that we read words into WIS. STAT. § 66.1105(4)(gm)4.a. that are not there and that alter the plain meaning of the language that is there. The legislature could have required that the zoning be "exclusively" for industrial use; it could have required that, for the third category, the area must be used only for industry; but it chose not to do so. Instead, the legislature chose to require that the third category be property that is suitable for industrial sites and zoned for industrial use, but to leave it to a city to determine exactly what uses should be developed.

¶18 We do not agree with the appellants that the reference to WIS. STAT. § 66.1105(1) requires the construction of "suitable for industrial sites" and "zoned for industrial use" that the appellants propose. The policy of encouraging and promoting the development of industry is furthered by requiring that one of the categories making up at least 50% of the district is property that is both suitable for industrial use and zoned for that use in order for the municipality to have the benefit of TIF for public improvements and development assistance. We agree with the City that this requirement promotes the development of industrial uses over other types of land use, even though it does not promote the development of industrial uses to the *exclusion* of other uses. It may be, as the appellants contend, that requiring the third category to be property used exclusively for industry would more effectively promote the development of industry, but the legislature has not chosen to do that.

¶19 We conclude that, with respect to the third category of real property in WIS. STAT. § 66.1105(4)(gm)4.a., the plain language means that it must be both appropriate for industrial sites and zoned to permit industrial use; it does not require that the zoning be exclusively for industrial use. Because the language has a plain meaning, it is not ambiguous and we do not consider the arguments the parties make based on legislative history, nor do we consider their arguments regarding the recent amendment to § 66.1105(4)(gm)4.a., which adds a fourth category: "or suitable for mixed-use development[.]" 2003 Wis. Act 126, § 9, effective 7-1-04.

¶20 Accordingly, the City's finding under WIS. STAT. § 66.1105(4)(gm)4.a. was based on a proper construction of the statute.[9]

III. Constitutional Challenges

¶21 The appellants contend the circuit court erred in concluding that none of them had standing to raise constitutional challenges to WIS. STAT. § 66.1105. We will assume without deciding that at least one of the appellants has standing and will address their constitutional arguments on the merits. They contend the statute is void for vagueness, is an unconstitutional delegation of legislative powers, and violates article X, section 4 of the Wisconsin Constitution by diverting funds from school districts. Because the statute is presumed constitutional, the appellants bear the heavy burden of overcoming that

[9] The dissent relies on the definition of "project" and "industrial project" in WIS. STAT. § 66.1103(2)(k). Section 66.1103 is titled "Industrial development revenue bonding," and the definitions in § 66.1103(2) are as "used in this section…." WISCONSIN STAT. § 66.1105 contains its own set of definitions, § 66.1105(2), which do not include any definition relating to industry or industrial and do not cross reference to § 66.1103(2). Section 66.1105(4)(gm)4, as we have stated above, refers to WIS. STAT. § 66.1101 but not to § 66.1103.

presumption. ***Dowhower v. West Bend Mut. Ins. Co.***, 2000 WI 73, ¶10, 236 Wis. 2d 113, 613 N.W.2d 557.

¶22 Before we examine each of the appellants' three constitutional arguments, we address the respondents' contention that ***Sigma Tau Gamma Fraternity House Corp. v. City of Menomonie***, 93 Wis. 2d 392, 288 N.W.2d 85 (1980), has already resolved the constitutionality of the TIF law.

A. ***Sigma Tau***

¶23 In ***Sigma Tau***, after resolving two issues regarding the proper construction of the TIF law, then numbered WIS. STAT. § 66.46 (1977), the court took up and decided two constitutional questions: whether the statute violates the tax uniformity clause, WIS. CONST. art. VIII, § 1, and whether the statute violates the public purpose doctrine, a separate and inherent limitation on the taxing power. ***Id.*** at 399, 409, 412-13. The court concluded that taxation under the statute was uniform and the requirements of the public purpose doctrine were satisfied. ***Id.*** at 412, 414. It then stated: "For these reasons and because of the strong presumption of constitutionality to be accorded all legislative enactments, we hold the Tax Increment Law is constitutional." ***Id.*** at 414.

¶24 The respondents read the clause "we hold the Tax Increment Law is constitutional" to mean that the court is holding the statute constitutional on all grounds. This reading ignores the clause that precedes and modifies this clause: "For these reasons …." The "reasons" are those contained in the court's preceding discussion on the uniformity clause and the public purpose doctrine. From the court's first phrasing of the constitutional issues the appellant raises ("unconstitutional on its face and as applied because of lack of uniformity of taxation and the lack of a public purpose as required by the Wisconsin

Constitution," ***id.*** at 396) to its statement of the constitutional issues it will decide ("we decide only the plaintiff's claims that … the Tax Increment Law violates the Wisconsin constitutional requirements of uniformity and public purpose doctrine on its face," ***id.*** at 399), and throughout its discussion of those two issues to its conclusions, there is no question that those are the only two constitutional issues the court decided. We agree with the appellants that the court in ***Sigma Tau*** did not decide the constitutional issues they raise in this case. We turn to those now.

B. Vagueness

¶25 The appellants contend that WIS. STAT. § 66.1105 is unconstitutionally vague because there is no statutory definition of "industrial." We conclude the constitutional doctrine of vagueness does not apply to the statutory provisions relevant to this case.

¶26 The concept of vagueness is based on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication. ***State ex rel. Hennekens v. River Falls Police & Fire Comm.***, 124 Wis. 2d 413, 420, 369 N.W.2d 670 (1985). It applies to statutes that regulate conduct:

> A law regulating conduct must give adequate notice of what is prohibited, so as not to delegate "basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis." Thus, "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." ***Connally v. General Constr. Co.***, 269 U.S. 385, 391 (1926).

Dog Federation v. City of South Milwaukee, 178 Wis. 2d 353, 359-60, 504 N.W.2d 375 (1993) (citation omitted).

¶27 The consequences of violating the statute may be civil or criminal penalties. *See* ***Gross v. Woodman's Food Market, Inc.***, 2002 WI App 295, ¶¶56-57, 259 Wis. 2d 181, 655 N.W.2d 718. But the central point is that a statute must have a certain degree of definiteness if persons are to be penalized for violating the statute. The two cases the appellants cite in support of their position illustrate this very point. ***Hennekens***, 124 Wis. 2d at 417, 420-21, addresses a vagueness challenge to police department rules, where violations resulted in termination. In ***Carlson & Erickson Builders, Inc. v. Lampert Yards, Inc.***, 183 Wis. 2d 220, 233-34, 515 N.W.2d 305 (Ct. App. 1994), *rev'd* 190 Wis. 2d 650, 529 N.W.2d 905 (1995), this court addressed a vagueness challenge to WIS. STAT. § 133.05, which prohibits unfair trade practices and imposes criminal penalties for violations as well as treble damages in civil actions.[10]

¶28 WISCONSIN STAT. ch. 66.1105 is not a statute that regulates conduct and penalizes violations of the statute. Therefore, the principle of unconstitutional vagueness does not apply.

C. Unconstitutional Delegation of Legislative Powers

¶29 The appellants argue that, by authorizing the joint review board to make findings under WIS. STAT. § 66.1105(4m)(c) but not prescribing more specific standards, the legislature has unconstitutionally delegated its authority to a

[10] Because we concluded treble damages were penal in nature, we held that the middle burden of proof applied in the civil action. ***Carlson & Erickson Builders, Inc. v. Lampert Yards, Inc.***, 183 Wis. 2d 220, 229, 515 N.W.2d 305 (Ct. App. 1994), *rev'd* 190 Wis. 2d 650, 666-68, 529 N.W.2d 905 (1995). The supreme court reversed on this issue, viewing treble damages as remedial as well as penal in nature and concluding that the ordinary civil burden of proof applied. ***Carlson***, 190 Wis. 2d at 666-68.

board that has members who are not elected[11] and for whom there are no required qualifications.

¶30 The appellants do not refer to any provision of the Wisconsin Constitution that prohibits this. They cite to a Kentucky case, ***Miller v. Covington Development Authority***, 539 S.W.2d 1, 3 (Ky. 1976), which is based on the Kentucky Constitution and Kentucky law. However, they do not discuss how the legal underpinnings of that case correspond to the Wisconsin Constitution and Wisconsin law. The appellants also cite to ***In re Fond du Lac Metropolitan Sewerage District***, 42 Wis. 2d 323, 166 N.W.2d 225 (1969), which is concerned with an unconstitutional delegation of legislative authority to the judiciary; but they do not explain what constitutional provisions are involved in that case and why they would apply here.

¶31 In short, the appellants do not present a developed argument that WIS. STAT. § 66.1105 is an unconstitutional delegation of legislative powers. We therefore conclude they have not established that the statute is unconstitutional on this ground.

D. WISCONSIN CONST. art. X, § 4—School Tax

¶32 Article X, section 4 of the Wisconsin Constitution provides:

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[11] WISCONSIN STAT. § 66.1105(4m)(a) provides that the board shall consist of

> one representative chosen by the school district that has power to levy taxes on the property within the tax incremental district, one representative chosen by the technical college district that has power to levy taxes on the property within the tax incremental district, one representative chosen by the county that has power to levy taxes on the property within the tax incremental district, one representative chosen by the city and one public member.

> **Annual school tax.** SECTION 4. Each town and city shall be required to raise by tax, annually, for the support of common schools therein, a sum not less than one-half the amount received by such town or city respectively for school purposes from the income of the school fund.

The appellants argue that this provision prohibits diverting tax monies from local schools to private developers, which, they assert, is what happens under the TIF statute. As with the delegation of powers argument, we conclude that this argument is inadequately developed.

¶33 The appellants cite a dissent in ***Davis v. Grover***, 166 Wis. 2d 501, 558, 480 N.W.2d 460 (1992) (Abrahamson, C.J., dissenting). The majority decision held that the Milwaukee Parental Choice Program was not subject to the private/local legislation clause, WIS. CONST. art. IV, § 18, and did not violate the school uniformity clause, WIS. CONST. art. X, § 3, or the public purpose doctrine. ***Id.*** at 512-13. The portion of Chief Justice Abrahamson's dissent, to which the appellants cite, concludes that article X "prohibits the legislature from diverting state support for district schools to a duplicate, competitive private system of schools." ***Id.*** at 558. The appellants assert that the dissent shows that article X does not allow public funds for schools to be used to develop private industry, but they provide no further explanation of the connections between the issue the ***Davis*** dissent was addressing, WIS. CONST. art X, § 4, and the TIF statute; nor do they explain why a dissent, in any event, provides authority that this court may follow. This court is bound by majority decisions of the supreme court; and only the supreme court has the authority to overrule, modify, or withdraw language from a previous supreme court decision. *See* ***Cook v. Cook***, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997).

¶34 The appellants also cite two decisions from other states, the Kentucky case already cited, ***Miller***, and ***Leonard v. City of Spokane***, 897 P.2d 358 (Wash. 1995), but do not discuss the state constitutional provisions relied on in those cases and how their texts and construction by the courts compares to article X, section 4 of the Wisconsin Constitution and Wisconsin case law construing it, if any.

¶35 We conclude the appellants have not established that WIS. STAT. § 66.1105 violates article X, section 4 of the Wisconsin Constitution.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

¶36 DYKMAN, J. (*dissenting*). To create a tax incremental district, the local legislative body must adopt a resolution which contains findings that not less than fifty percent of the area within the district is blighted, in need of rehabilitation or conservation work, or suitable for industrial sites within the meaning of WIS. STAT. § 66.1101 (2003-04),[12] and has been zoned for industrial use. WIS. STAT. § 66.1105(4)(gm)4.a.

¶37 The City of Black River Falls found that at least fifty percent of the area in question was suitable for industrial sites and had been zoned for industrial use. The problem with this finding is that it has no factual basis. The reason for this failure is that the zoning was not industrial, but nearly "anything except residential." Thus, not only was the zoning contrary to WIS. STAT. § 66.1101, but the permitted uses, which included any kind of retail establishment, meant that the area was hardly suitable for industrial uses. No one builds an iron smelter, tannery or rendering plant in the middle of a shopping center. Once a shopping center is planned, industry never appears there.

¶38 The problem we face is determining the meaning of "industrial." Fortunately, the legislature has told us what these terms mean in the context of a tax incremental district. WISCONSIN STAT. § 66.1103(2)(k)14. states that an "Industrial project" or "project" includes any of the following: "In addition to subd. 12., facilities used primarily for the storage or distribution of products described under subd. 1., materials, components or equipment, *but not including*

[12] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

facilities regularly used for the sale of goods or services to ultimate consumers for personal, family or household purposes." (Emphasis added.) It could not be more clear that "industrial" does not include what we typically associate with shopping centers.

¶39 WISCONSIN STAT. § 66.1103(2)(k)1.-21. provides a lengthy, detailed definition of "industrial project" or "project." None of these define "industrial project" to include the zoning classification approved by the City of Black River Falls.

¶40 The majority declines to look further than WIS. STAT. § 66.1105 because: (1) WIS. STAT. § 66.1103 refers to industrial development revenue bonding and (2) § 66.1105 does not define "industry" or "industrial."

¶41 I do not believe that we should reach a wrong result because the parties have not fully considered statutes which, when fully considered, would lead to the correct result. Though the majority does not recommend this opinion for publication, unpublished opinions are readily accessible, and may influence potential litigants. It is unfair to mislead those potential litigants.

¶42 We are not to read statutes in isolation but in the context of related statutes. "[S]tatutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely related statutes; and reasonably, to avoid absurd or unreasonable results." ***State ex rel. Kalal v. Circuit Court***, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110. WISCONSIN STAT. §§ 66.1103 and 66.1105 are linked because a tax increment project incurs "project costs," § 66.1105(2)(f), and requires financing to pay for these costs. That financing is usually accomplished by issuing industrial revenue bonds, WIS. STAT. § 66.1103. WISCONSIN. STAT. § 66.1105(4)(gm)4.a.

defines "industrial sites" by referring to WIS. STAT. § 66.1101. Sections 66.1101 and 66.1103 were previously numbered WIS. STAT. §§ 66.52 and 66.521 (1997-98), again suggesting a close connection. I conclude that we should construe these closely related statutes in relation to each other.

¶43 The majority does not take issue with my conclusion that industrial development revenue bonding does not permit bonding to be used to develop shopping centers. So, the result of the majority's decision is that the Tax Increment Law can be used to develop McFour Ventures' shopping center, but industrial revenue bonds cannot be issued to pay for the cost of developing the site. The result is that the project will probably fail to occur. Since the very purpose of the City's creation of the TIF district was to encourage McFour Ventures to develop the land by paying part of the cost of the development, this result is, in the words of ***Kalal***, unreasonable or absurd.

¶44 It is more reasonable to use the legislature's definition of "industrial project." Indeed, the majority avoids defining "industrial" at all, the very word that this case is all about. Instead, the majority concludes that the meaning of "industrial," as that word is used in WIS. STAT. § 66.1105(4)(gm)4.a., is plain. I do not agree. If the meaning were plain, we would not have asked the parties to file supplemental briefs on that very issue.

¶45 We are not to interpret a statute in derogation of common sense. ***American Industrial Leasing Co. v. Geiger***, 118 Wis. 2d 140, 145, 345 N.W.2d 527 (Ct. App. 1984). Common sense tells us that no one builds a slaughter house in the middle of a shopping mall. Common sense tells us that when the legislature defines "industrial project" as excluding shopping malls, that is what the legislature means. And common sense tells us that tax incremental districts are

meant to address issues of blight, rehabilitation or lack of an industrial base. Those are real problems. The absence of shopping centers is not remotely within the categories the legislature has determined are in need of a remedy. So, because the majority has affirmed the City of Black River Falls' attempt to turn everything but residential uses into industrial uses, I respectfully dissent.