

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 6, 2006

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. 2005AP1691

Cir. Ct. No. 2004CV139

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

TOWN OF BASS LAKE,

PETITIONER-APPELLANT,

V.

SAWYER COUNTY,

INTERVENING-RESPONDENT-RESPONDENT,

SAWYER COUNTY BOARD OF APPEALS AND FAS, LLC,

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Sawyer County:
JOHN P. ANDERSON, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. The Town of Bass Lake appeals an order of the circuit court that affirmed a decision of the Sawyer County Board of Appeals.

Bass Lake contends the Board erroneously determined FAS's lakefront property complied with all applicable lot dimension law. Because we agree with the Board that the property conforms to applicable law, we affirm the trial court's decision.

Background

¶2 FAS acquired lakefront property located in Bass Lake. It divided the property and created Lots 1 and 2, which are viewable on Certified Survey Map (CSM) 6445. SAWYER COUNTY, WI, ZONING COMMITTEE SUBDIVISION CONTROL ORDINANCE (March 26, 1971; amended March 20, 2003) (hereinafter referred to as subdivision control ordinance) requires a CSM for division of lakefront property. *Id.* at § 3.2. Registered land surveyor David Rieder created CSM 6445, and he certified that it complied with all applicable law including WIS. STAT. ch. 236.¹

¶3 Prior to recording CSM 6445, FAS submitted it to the County zoning department for approval. The County zoning administrator approved CSM 6445 as complying with applicable law. Bass Lake appealed the administrator's decision to the Board. The Board heard arguments from the parties' attorneys and testimony from witnesses and ultimately determined that the evidence demonstrated that CSM 6445 complied with applicable law. The trial court affirmed the Board's decision.

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

Standard of Review

¶4 We review this issue using a certiorari standard. *See* WIS. STAT. § 59.694(10). This court reviews the decision of the Board and not that of the circuit court. *Miswald v. Waukesha Cty. Bd. of Adj.*, 202 Wis. 2d 401, 408, 550 N.W.2d 434 (Ct. App. 1996). We accord a presumption of “correctness and validity” to the Board’s decision. *See State ex rel. Ziervogel v. Washington Cty. Bd. of Adj.*, 2004 WI 23, ¶13, 269 Wis. 2d 549, 676 N.W.2d 401. Statutory certiorari review is limited to the following issues:

- (1) whether the Board 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.

Arndorfer v. Sauk Cty. Bd. of Adj., 162 Wis. 2d 246, 254, 469 N.W. 2d 831 (1991).

Discussion

¶5 In sum, Bass Lake argues that Lots 1 and 2 do not comply with lot dimension requirements. Specifically, it argues Lots 1 and 2 of CSM 6445 do not comply with the following statutory requirements: SAWYER COUNTY, WI, ZONING ORDINANCE § 2.1(39), renumbered § 2.1(51); § 4.25(4) (hereinafter referred to as zoning ordinance); and WIS. ADMIN. CODE § NR 115.05(3)(a)2 (Apr. 2000).

¶6 Zoning ordinance § 2.1(51) provides: “LOT, WIDTH OF: The width measured at right angles to its depth at all points along its depth. Lot widths shall meet the minimum lot width requirements of section 18.3.” Zoning

ordinance § 18.3 requires a minimum lot width of 100 feet and a minimum of 100 feet at the ordinary high water mark (OHWM). Zoning ordinance § 4.25(4) provides: “Parcels of land existing and of record shall meet a minimum lot area of 20,000 square feet with a minimum average lot width of 100 feet. For these lots, the average lot width shall be calculated by measuring the lot width at right angles to its depth at all points along its depth.” WISCONSIN ADMIN. CODE § NR 115.05(3)(a)2. states all lots “shall have a minimum average width of 100 feet and a minimum area of 20,000 square feet.”

¶7 CSM 6445, and specifically Lots 1 and 2, complies with the preceding requirements. Rieder conducted a survey and drafted CSM 6445 describing the property. Rieder divided the parcel into two separate lots each consisting of 104 feet of frontage at the OHWM. Each lot consists of 100 feet in width when measured at right angles to its depth from side lot line to side lot line at every point along its 200 feet in depth and measured from the most landward portion of the OHWM. Both lots exceeded the minimum square footage requirements. Measured to scale, each lot fits a 100-foot wide by 200-foot deep rectangle with its boundary lines. Therefore, both Lots 1 and 2 comply with the applicable law.

¶8 Based on the language “at all points along its depth,” Bass Lake contends the applicable law requires that the 100-foot width measurement continue throughout the entire lot. The Board accepted it was appropriate to solely apply the width measurement requirement to the minimum 20,000 square foot area requirement. We agree with the Board that Bass Lake wrongfully contends that lakeshore lot width measurements must commence at the most lakeward rather than landward portion of the OHWM, even if this requires measuring across the lakebed.

¶9 A lake includes greatly irregular shorelines and thus corresponding irregular lakeshore lots. Applying Bass Lake’s logic, it is necessary to measure from one side of the lot to the other across the water in a straight line, instead of starting at one side of the lot and measuring to the other across the land at the most landward portion of the OHWM. Thus, Bass Lake argues when measuring from the most lakeward portion of the OHWM, across the water in a straight line, neither CSM 6445 lots measure 100 feet in width.

¶10 We reject Bass Lake’s argument and agree with the Board’s decision that the evidence demonstrates Lots 1 and 2 comply with minimum frontage and width requirements. The Board must evaluate and interpret an issue in the light of the purpose of the zoning restriction in question. *Ziervogel*, 269 Wis. 2d 549, ¶7. We cannot find, and Bass Lake does not supply, law stating that the minimum width requirement must commence at the most lakeward portion of the OHWM even if this requires measuring across the lake. The lakebed itself is actually public land, so it follows that the lot width measurement would use a landward point, so it measures the private land, not the state’s lakebed. *See State v. Trudeau*, 139 Wis. 2d 91, 101, 408 N.W.2d 337 (1987). The Board’s expert surveyor also supported this interpretation.

¶11 Further, as previously stated, zoning ordinance § 18.3 provides: “On shoreline lots, the minimum lot width shall be 100 feet and a minimum of 100 feet of frontage at the OHWM.” Thus, there is no requirement of a lot width of 100 feet at the OWHM, but only at the frontage. If there were a requirement that the lot have a minimum width throughout the property or at the OHWM, the ordinance would state such a requirement. *See Bruno v. Milwaukee County*, 2003 WI 28, ¶7, 260 Wis. 2d 633, 660 N.W.2d 656 (“We begin with the language of the applicable ordinances. If the plain meaning of the [ordinance] is clear, a court

need not look to rules of statutory construction or other extrinsic aids. Instead, a court should simply apply the clear meaning of the [ordinance] to the facts before it.”).

¶12 Bass Lake also contends the submission of CSM 6445 to the County zoning department for approval did not satisfy the county land division review requirement. Bass Lake argues WIS. ADMIN. CODE § NR 115.05(4), zoning ordinance § 4.47 and subdivision control ordinance § 3.1 require that only the zoning committee may approve land divisions, and it cannot delegate this duty to the zoning administrator.

¶13 The approval process for CSM 6445 did not violate applicable law. WISCONSIN ADMIN. CODE § NR 115.05(4) and zoning ordinance § 4.47 provide that the County must review land divisions subject to WIS. STAT. § 236.45 and the subdivision control ordinance, and consider whether the division complies with applicable law. Subdivision control ordinance § 3.1 provides: “Any proposed lot division where lots are created but in insufficient numbers to require submission of a plat ... shall be approved by the County Zoning Committee.” However subdivision control ordinance § 2.1 “GENERAL REQUIREMENTS” states: “The County Zoning Committee or its duly appointed staff shall be responsible for administration of this ordinance.” Zoning ordinance § 9.11 requires the county zoning committee to appoint a county zoning administrator. Thus, in Sawyer County, submitting a CSM to the County zoning department for review is the standard practice.

¶14 Here, the record indicates that FAS properly followed the normal submission process for approval of CSM 6445. Wisconsin law provides that local government plat review is generally ministerial unless it conflicts with WIS. STAT.

ch. 236 or an existing local ordinance or regulation. *Wood v. City of Madison*, 2003 WI 24, ¶51, 260 Wis. 2d 71, 659 N.W.2d 31. Prior to recording CSM 6445, FAS submitted it to the County zoning department for approval. The County zoning administrator approved the CSM as to being in compliance with all applicable laws. Thus, the Board correctly decided that the zoning administrator properly reviewed and approved CSM 6445.

By the Court.—Order affirmed.

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

