OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

September 18, 2013

To:

Hon. James L. Carlson
Circuit Court Judge
Walworth County Courthouse
P.O. Box 1001
Elkhorn, WI 53121-1001

Sheila Reiff
Clerk of Circuit Court
Walworth County Courthouse
P.O. Box 1001
Elkhorn, WI 53121-1001

Kim A. Howarth
Mara Claire Spring
Godfrey, Leibsle, Blackbourn & Howarth S.C.
354 Seymour Ct.
Elkhorn, WI 53121-4236

Mark A. Schroeder
Consigny Law Firm, S.C.
303 E. Court St.
Janesville, WI 53545-4008

You are hereby notified that the Court has entered the following opinion and order:

2013AP1236-FT Christopher Pauly v. Village of Williams Bay
(L.C. # 2012CV1347)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Christopher Pauly and Magdalena Pauly appeal from a judgment affirming the decision of the Village of Williams Bay Administrative Appeals Board (the Board), which denied the Paulys' application for a shore station permit. Pursuant to a presubmission conference and this court's order of June 25, 2013, the parties submitted memorandum briefs. *See* WIS. STAT. RULE 809.17(1) (2011-12).[1] Upon review of those memoranda and the record, we affirm the circuit court.

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

The Paulys, lakefront property owners in the Village of Williams Bay, applied for permission to place a second shore station on the south side of their pier.[2] The Village denied the permit on the ground that the shore station resulted in a setback less than twelve and one-half feet from the southern riparian lot line in violation of a Village ordinance. The violation was premised on the Village's use of the extended lot line method to determine riparian boundaries. The Paulys appealed to the Board, arguing that the Village should instead use the Knitter method to measure the relevant boundaries. After a hearing, the Board determined that the extended lot line method was appropriate based on: (1) a written opinion from the Wisconsin Department of Natural Resources (DNR) stating the propriety of this method; (2) evidence that this method had been used previously to determine the riparian lines of other lakeshore parcels in the village; and (3) evidence that the use of other methods, such as the Knitter or coterminous methods, would negatively impact other lakeshore property owners. The Board determined that using the extended lot line method, the Paulys' second shore station violated the Village's ordinance requiring a twelve and one-half foot setback and affirmed the permit denial.

The Paulys sought judicial review of the Board's decision by petitioning for a writ of certiorari in the Walworth County Circuit Court. The circuit court denied the Paulys' writ, concluding that the Board considered the various proposed measurement methods and made a reasonable decision to approve the extended lot line method based on the interests of all involved. The Paulys appeal, arguing that the Board's decision was based on an incorrect theory of law and was arbitrary, oppressive, and unreasonable.

[2] The Paulys previously obtained a permit for one shore station. At some point, they installed a second shore station, and the Village's refusal to grant a permit for the already-installed second station is at issue in this appeal.

The issue on review is whether the Board erred by denying the Paulys' application for a shore station permit. As in the circuit court, the scope of appellate review is limited to the administrative record. *See* ***State ex rel. Harris v. Annuity & Pension Bd.***, 87 Wis. 2d 646, 651, 275 N.W.2d 668 (1979). We will only consider: (1) whether the municipality 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 Board might reasonably make the order or determination in question, based on the evidence. *See* ***State ex rel. Mitchell Aero, Inc. v. Board of Review***, 74 Wis. 2d 268, 281-82, 246 N.W.2d 521 (1976). In this case, the Paulys do not dispute either the Village's jurisdiction or whether the Board's determination was reasonably based on the evidence.

We first determine that the Board's decision was not contrary to law. Despite the Paulys' attempts to cast the issue as a question of law, we are not persuaded that this case involves a question of statutory interpretation. It is undisputed that the extended lot line method is one of several methods explicitly approved by the DNR. As part of the evidence, the Board considered a letter from the DNR stating that based on a survey depicting the Paulys' and two neighboring properties: "[T]he Department has determined that the Extended Lot Line method is the appropriate method of riparian zone determination in this case."[3] The Board considered the DNR letter as well as the Paulys' survey, which demonstrated both the Knitter and extended lot line methods. Though the Paulys advocate for an alternative method, the extended lot line method is a legally viable option.

[3] The DNR letter was written in response to the Paulys' request that the department decide the allocation of riparian rights between their property and a neighbor's property.

Further, we cannot conclude that the Board's decision was arbitrary, unreasonable or oppressive. There was evidence presented that other existing piers located in the Paulys' vicinity appear to have been established based on the extended lot line method, and that this method had been used to determine riparian boundaries in a majority of the Village's shoreline lots. There was also testimony that use of the Knitter method would not only result in setback violations by the Paulys and their two identified neighbors, but would also affect numerous adjacent piers in the Village. Though the Paulys contend that they were treated unfairly because their two neighbors' piers violate the setback restrictions using the extended lot line method, there was ample evidence that the neighboring piers preexisted the setback ordinance and were "grandfathered" into compliance. As cogently stated in the circuit court's written decision, unlike their neighbors, the Paulys sought a permit for a new and enlarged shore station use. There is no evidence of record showing a pattern by the Village of allowing permits for new or expansive shoreline uses which violate its setback ordinances, and we cannot determine that the Board acted arbitrarily, unreasonably, or oppressively.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is affirmed.

Diane M. Fremgen
Clerk of Court of Appeals