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**DISTRICT II**

March 20, 2019

To:

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

2018AP2089

County of Walworth v. Stay Lake Geneva, Inc.  
(L.C. #2018FO137)

Before Hagedorn, J.<sup>1</sup>

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Following a bench trial on an ordinance violation, the circuit court entered a judgment against Stay Lake Geneva, Inc. We conclude that this case is appropriate for summary disposition based on our review of the briefs and record. See WIS. STAT. RULE 809.21. Because

<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version.

the County of Walworth effectively conceded the underlying action was barred by an applicable statute of limitations, we reverse the judgment.

In March 2018, the County cited Stay Lake Geneva for violating a shoreland zoning ordinance that prohibits the use of an accessory structure as a separate dwelling unit. Walworth County Shoreland and Floodplain Zoning Ordinance § 74-165(2). The County had discovered the company's property listed on a vacation rental website, where it was described as having a detached guesthouse featuring a kitchen, living room, bedroom, and bathroom. At the conclusion of a two-day trial, the circuit court found that the County had proven the ordinance was violated.

Stay Lake Geneva asserts that the judgment must be reversed because the County's enforcement of the citation was barred by WIS. STAT. § 59.692(1t). The statute provides:

A county or the department [of natural resources] may not commence an enforcement action against a person who owns a building or structure that is in violation of a shoreland zoning standard or an ordinance enacted under this section if the building or structure has been in place for more than 10 years.

*Id.* While Stay Lake Geneva raised the same argument below, the circuit court did not make any findings as to the statute or its application. Stay Lake Geneva renewed the issue on appeal. The County, however, did not respond to this argument in its brief.

Notwithstanding a limited appellate record, evidence shows that the County commenced an action to enforce a shoreland zoning ordinance<sup>2</sup> against Stay Lake Geneva for a

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<sup>2</sup> The ordinance seems to have been enacted, at least in part, under WIS. STAT. § 59.692. Walworth County Shoreland Zoning Ordinance § 74-151 cites a number of statutes as legislative authority for its adoption. Among these, however, § 59.692 (“zoning of shorelands on navigable waters”) most closely aligns with the alleged violation at issue.

nonconforming building that had been constructed more than ten years earlier. In short, the plain statutory language appears to fit. *See also McKinnon v. Benedict*, 38 Wis. 2d 607, 619, 157 N.W.2d 665 (1968) (noting that any doubt arising from restrictions on the use of land should be resolved in favor of the land's free use). While there may be a persuasive counter-argument, the County has not attempted to make it. Since we cannot dispense with our role as neutral arbiter, we deem it appropriate to consider this dispositive statutory argument conceded. *See United Coop. v. Frontier FS Coop.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (treating the lack of response to a developed argument as a concession on the merits of that point). Accordingly, we reverse.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily reversed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*