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 IV

April 23, 2019

To:

Hon. Brian A. Pfitzinger
Circuit Court Judge
210 W. Center St.
Juneau, WI 53039

Susan K. Raimer
Clerk of Circuit Court
Columbia County Courthouse
400 DeWitt St., P.O. Box 587
Portage, WI 53901-2157

James E. Bartzen
Boardman & Clark LLP
P.O. Box 927
Madison, WI 53701-0927

Lawrence E. Bechler
Murphy Desmond S.C.
P.O. Box 2038
Madison, WI 53701-2038

John M. Bruce
Schober Schober & Mitchell, S.C.
2835 S. Moorland Rd.
New Berlin, WI 53151-3743

Matthew Fleming
Murphy Desmond S.C.
P.O. Box 2038
Madison, WI 53701-2038

Paul A. Johnson
Boardman & Clark LLP
P.O. Box 256
Lodi, WI 53555-0256

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

2018AP268 Town of Dekorra, James Bennett, Deborah Bennett, Danny Tomlinson, Peggy Tomlinson, Kim Hinze, Kevin South and Sandra South v. County of Columbia and WB Sales, Inc. (L.C. # 2017CV1)

Before Sherman, Blanchard and Kloppenburg, JJ.

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).

Columbia County appeals an order of the circuit court granting summary judgment in favor of the Town of Dekorra, James and Deborah Bennett, Danny and Peggy Tomlinson, Kim Hinze and Kevin and Sandra South (collectively, the Town). Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2017-18).[1] Based on the interpretation of WIS. STAT. § 59.69(5)(e)6. provided in ***Johnson v. Washburn Cty.***, 2010 WI App 50, ¶11, 324 Wis. 2d 366, 781 N.W.2d 706, we reverse the grant of summary judgment to the Town and remand for further proceedings.

WB Sales, Inc. filed a petition to rezone a parcel of land in the Town of Dekorra from A-1 agriculture to I-2 general industrial. After a public hearing on the petition by the Columbia County Planning and Zoning Committee, the Town adopted, pursuant to WIS. STAT. § 59.69(5)(e), Resolution 2016-01, disapproving of the proposed rezoning, and a copy of the Resolution was sent to the County Director of planning and zoning.

Following the Town's adoption of Resolution 2016-01, the Planning and Zoning Committee voted to deny WB Sales's petition for rezoning. The following then occurred: the County Board directed that the Planning and Zoning Committee draft a rezoning ordinance in accordance with WB Sales's petition; the Planning and Zoning Committee voted to recommend a zoning ordinance amendment approving the rezoning of WB Sales's parcel, as requested in its petition; and the County adopted zoning ordinance Z450-16, which rezoned WB Sales's parcel to I-2 general industrial, as requested in WB Sales's petition.

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

After the County adopted the ordinance rezoning WB Sales's parcel, the Town adopted Resolution 2016-04, pursuant to WIS. STAT. § 59.69(5)(e)6., purportedly disapproving the County's rezoning of the WB Sales parcel. The Committee sent copies of Resolutions 2016-01 and 2016-04 to the county zoning administrator. The copies of the Resolutions sent to the County were not certified copies, but instead were signed by the Town chair and attested by the Town clerk.

The Town sued the County in circuit court, seeking an order declaring void the County's approval of Ordinance Z450-16 rezoning the property from A-l Agriculture District to the 1-2 General Industrial District, and an order declaring that the property is zoned in the A-l Agriculture District under the zoning code. The County moved the court for summary judgment. The County argued that the Town had failed to properly exercise its veto powers under WIS. STAT. § 59.69(5)(e)3. and 6. because the Town: (1) failed to file certified copies of Resolutions 2016-01 and 2016-04; and (2) failed to disprove the zoning ordinance rezoning the WB Sales parcel. The circuit court determined that the Town had properly exercised its veto powers, and denied the County's motion for summary judgment and entered summary judgment in favor of the Town. The circuit court explained that it did not need to reach the Town's alternative argument for summary judgment, based on a protest petition challenging the amendments. The County appeals the grant of summary judgment to the Town.

The County contends that the circuit court erred in granting summary judgment in favor of the Town because the Town failed to properly exercise its veto rights of the rezoning of the WB Sales parcel. We agree with the County because, under ***Johnson***, the copies of the Town's Resolutions, 2016-01 and 2016-04, were not sufficient to exercise the Town's statutory authority

to veto zoning amendments under WIS. STAT. § 59.69(5)(e). *See* ***Johnson***, 324 Wis. 2d 366, ¶11.

Because strict compliance with WIS. STAT. § 59.69(5)(e) is required and the Town did not strictly comply with § 59.69(5)(e), summary judgment could not be entered in favor of the Town.[2]

We review the circuit court grant of summary judgment de novo. ***Johnson***, 324 Wis. 2d 366, ¶7. Review of the court's grant of summary judgment in this case requires us to engage in statutory interpretation, which is a question of law subject to de novo review. ***State v. Cole,*** 2000 WI App 52, ¶3, 233 Wis. 2d 577, 608 N.W.2d 432. Finally, whether the facts fulfill a standard of law is also a question of law which we decide de novo. *See* ***Peplinski v. Fobe's Roofing, Inc.***, 193 Wis. 2d 6, 18, 531 N.W.2d 597 (1995) (once the facts of a case are known, whether the facts fulfill a statutory standard is a question of law).

WISCONSIN STAT. § 59.69(5)(e) requires in both subdivision 3. and subdivision 6. that a "certified copy" of a resolution by the town board objecting to any proposed amended zoning ordinance be filed with the County. The term "certified copy" is not defined in the statutes for the purposes of this chapter. Accordingly, we look to the word's common and approved usage,

[2] The County raises three issues on appeal: (1) did the Resolutions submitted by the Town constitute a "certified copy of a resolution" under WIS. STAT. § 59.69(5)(e)6.; (2) is strict compliance with the requirements of § 59.69(5)(e)6. required in order for a town to veto an amendatory zoning ordinance adopted by a county; and (3) may a resolution adopted by a town board which does not expressly state that the board disapproves of a zoning ordinance constitute a "resolution disapproving of the ordinance" under § 59.69(5)(e)6. Because our answer to the first two issues is dispositive, we do not address the third issue." *See* ***Sweet v. Berge***, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (if a decision on one point disposes of the appeal, the court will not decide other issues raised).

which may be established by dictionary definitions. *See* ***Sullivan Bros., Inc. v. State Bank of Union Grove***, 107 Wis. 2d 641, 646, 321 N.W.2d 545 (Ct. App. 1982).

The term "certified copy" is defined in WIS. STAT. ch. 889, the evidence code, for purposes of admitting evidence. WISCONSIN STAT. § 889.08(1) provides:

> Whenever a certified copy is allowed by law to be evidence, the copy shall be certified by the legal custodian of the original to have been compared by the custodian with the original, and to be a true copy thereof or a correct transcript therefrom, or to be a photograph of the original.

While this definition is not controlling in this substantially different context, it is consistent with the dictionary definition of "certified copy," and provides persuasive support for the dictionary definition.

Black's Law Dictionary defines "certified copy" as a "duplicate of an original (usu[ally] official) document, certified as an exact reproduction [usually] by the officer responsible for issuing or keeping the original." BLACK'S LAW DICTIONARY 410 (10th ed. 2014). In contrast, Black's Law Dictionary defines a "conformed copy" as: An exact copy of a document bearing written explanations of things that were not or could not be copied, such as a note on the document indicating that it was signed by a person whose signature appears on the original." ***Id.*** We conclude that "certified copy" has a plain and ordinary meaning and that meaning requires that the appropriate official or document custodian certify that it is an exact duplicate of the original.

With that common sense definition in mind, we turn to ***Johnson***, which answers the question of whether that definition must be strictly complied with or if substantial compliance, such as submission of a conformed copy, is sufficient under WIS. STAT. § 59.69(5)(e).

In ***Johnson***, a town sent a copy of a resolution to the county that "was not certified as a resolution by the town clerk nor was there a place for such a certification on the form." ***Johnson***, 324 Wis. 2d 366, ¶9. In response to an argument by the county and town that certification was not necessary, this court stated the following:

> Despite the lack of a valid certified resolution, the circuit court concluded the July 10 document effectively satisfied the statutory elements because it was signed by the town board and clerk and dated. The respondents urge us to accept the circuit court's conclusion by emphasizing the importance of the "town's ability to have a say" in county zoning actions affecting the town. Although the legislature intended the town board "to serve as a political check on the otherwise unfettered discretion of the county board in wielding its legislative zoning power," ***Quinn*** [***v. Town of Dodgeville***, 122 Wis. 2d 570, 581, 364 N.W.2d 149 (1985)], it prescribed a specific procedure by which towns perform that function, *see* WIS. STAT. § 59.69(5)(e)3. *The town board performs its function as a political check only by certifying to the county that its denial was considered at a properly-noticed public meeting at which a resolution was introduced and carried*. *See* WIS. STAT. §§ 19.82, 19.83. The clerk's certification *is the only assurance* the county, zoning division, and town citizens have that the resolution was properly passed at a public meeting. Nothing in the record assures this occurred.

Id., ¶10 (emphasis added).

The Town argues that ***Johnson*** is distinguishable. The Town points out that in ***Johnson***, the resolution sent to the county did not have the necessary information, in addition to not being certified. ***Johnson*** cannot be distinguished on this basis. We expressly held in ***Johnson*** that the "only" way for a town to provide the needed check is to provide a certified copy. ***Id.***, ¶10. We cannot ignore, modify or withdraw language from a prior published opinion of this court. *See* ***Cook v. Cook***, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997) (the court of appeals "must speak with a unified voice" and may not overrule, modify or withdraw language from its prior

published decisions). Thus, we apply ***Johnson***'s holding that strict compliance with the requirement that a certified copy of the resolutions be filed with the county is required.

We observe that, like our supreme court in ***Marathon Cty. v. Eau Claire Cty.,*** 3 Wis. 2d 662, 668, 89 N.W.2d 271 (1958), we find the consequences of this interpretation "disturbing." Here, the Town intended to veto the zoning amendment, attempted to do so and substantially complied with the requirements of WIS. STAT. § 59.69(5)(e), just as the town did in ***Marathon Cty.*** Nonetheless, as the supreme court in ***Marathon Cty.*** concluded, "[w]hile we dislike the result, nevertheless, we are compelled to the determination that the objective sought to be achieved would be defeated if we did not hold the clause in question to be mandatory in character." ***Id.*** And, the legislature has not altered the law in response to this concern.

Turning to the question of whether the Town in the present case filed a certified copy of Resolutions 2016-01 and 2016-04 with the County, this issue is easily resolved.

To repeat, a certified copy is one in which the appropriate official has certified that it is a true and correct copy of the original. The Town argues that the copies of the Resolutions 2016-01 and 2016-04 sent to the County are "certified" because the Town clerk signed the copies under the word "attest." The Town's reasoning is that the word "certify" means "to attest." The problem is that the Town does not identify what exactly it is that the clerk attested to. The clerk could simply be attesting to the signature of the town chair on the document, for example. What distinguishes a certified copy is the express statement by the certifier that he or she has compared the copy with the original and vouches for the fact that the copy is a true, accurate copy of the original. There is nothing like that here. Nothing assures the reader that the copies of the Resolutions are true and genuine copies of the original Resolutions. At most, these are merely

conformed copies of the Resolutions. That does not meet the objective of WIS. STAT. § 59.69(5)(e) of providing the County with certainty that the Town has properly exercised its veto authority.

Accordingly, we conclude that the Town did not submit certified copies of its Resolutions to the County and, thus, did not strictly comply with WIS. STAT. § 59.69(5)(e) to validly exercise its veto power. Summary judgment in favor of the Town was, therefore, erroneous.

At the same time, summary judgment in favor of the County is not appropriate at this time, for at least the reason that the protest petition issue raised by the Town has not been resolved. To clarify, our exclusive determination in this appeal is that the Town is not entitled to summary judgment based on the holding of ***Johnson*** that we have explained.

Therefore,

IT IS ORDERED that the circuit court's order granting summary judgment to the Town is summarily reversed pursuant to WIS. STAT. RULE 809.21(1) and the cause is remanded for further proceedings.

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

Sheila T. Reiff
Clerk of Court of Appeals