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**DISTRICT II**

May 13, 2020

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

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2019AP869

Margaret Pulera v. Town of Richmond (L.C. #2014CV871)

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

**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).**

Margaret Pulera appeals pro se from a circuit court order dismissing her petition for certiorari review of two highway orders issued by the town boards of the Town of Richmond and Town of Johnston. 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 (2017-18).<sup>1</sup>  
We affirm.

This case arises from changes to an intersection located at the county line between Rock and Walworth Counties. Without notifying the Town of Richmond, the Rock County Highway Department made changes to the intersection. To facilitate the changes, it discontinued two existing roads.

In September 2014, the Town of Richmond (in Walworth County) and Town of Johnston (in Rock County) held a joint meeting to decide whether to issue highway orders to discontinue roads no longer in use. During the meeting, the town boards heard from the public and the engineer involved in designing the new intersection. Town board members also discussed their own observations regarding safety prior to and after the reconfiguration.

At the conclusion of the meeting, the town boards voted unanimously to adopt resolutions to abandon the roads. Thus, they retroactively approved changes to the intersection that the Rock County Highway Department had already completed. This required the town boards to approve construction of a new intersection as well as discontinuance of portions of former highways. Afterward, they recorded highway orders in their respective counties.

Pulera sought certiorari review of the highway orders in circuit court. The Town of Richmond and Town of Johnston moved to dismiss the review as untimely, which was granted. Pulera appealed, and this court certified the matter to the Wisconsin Supreme Court. The

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version.

Wisconsin Supreme Court reversed, concluding that the review was timely. *See Pulera v. Town of Richmond*, 2017 WI 61, ¶¶38, 41, 375 Wis. 2d 676, 896 N.W.2d 342. It remanded the matter to the circuit court. *Id.*, ¶41.

On remand, the circuit court permitted Pulera to engage in limited discovery to address why the town boards retroactively approved removal of the roads.<sup>2</sup> It then considered briefs and arguments of the parties. Ultimately, the court concluded that Pulera had not met her burden of showing that the highway orders were improperly issued. Accordingly it dismissed her petition for certiorari review. This appeal follows.

In an appeal from an order on certiorari, we review the actions of the town boards, not the circuit court. *See State ex rel. Anderson v. Town of Newbold*, 2019 WI App 59, ¶7, 389 Wis. 2d 309, 935 N.W.2d 856. Certiorari review requires us to consider whether the boards: “(1) kept within [their] jurisdiction; (2) acted according to law; (3) acted in an arbitrary, oppressive, or unreasonable manner; and (4) whether the evidence was such that the board[s] might reasonably have made the order[s] or determination[s] in question.” *Id.*

Here, Pulera focuses on the second and third criteria of certiorari review. She contends that the town boards acted contrary to law and in an arbitrary, oppressive, or unreasonable manner when they retroactively approved discontinuance of the already discontinued roads. She also suggests that the proceedings were tainted by the Town of Richmond’s acceptance of

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<sup>2</sup> The circuit court permitted the deposition of the Town of Richmond Town Chair Jeffrey Karbash. Karbash’s deposition explains some of the factors that town board members weighed before voting to abandon the roads. The factors included deference to the opinions of engineers, concerns regarding liability if the prior configuration were restored, and fiscal responsibility.

payment from Rock County to compensate it for legal fees incurred in dealing with the matter. We are not persuaded by Pulera's arguments.

Chapter 82 of the Wisconsin Statutes governs Town Highways. Subchapter II of Chapter 82 describes the basic requirements that town boards must follow to lay out, alter, or discontinue a town highway. As noted by the Town of Richmond and Town of Johnston, there is nothing in these provisions that addresses how town boards must act when another entity takes it upon itself to alter a roadway subject to the towns' jurisdiction without first procuring highway orders from the affected towns.

We cannot impute the actions of the Rock County Highway Department to the town boards in this case. Likewise, we cannot say that the town boards acted contrary to law or in an arbitrary, oppressive, or unreasonable manner merely because they retroactively approved what had already been completed. When they acted, the town boards followed the requirements of WIS. STAT. ch. 82. They held a meeting and, after careful consideration of the information presented, voted to abandon the roads. The record shows ample reasons for their determination. The fact that a town also accepted payment from Rock County to compensate it for legal fees incurred in dealing with the matter does not render the highway orders suspect.

As a final matter, the Town of Richmond and Town of Johnston move the court to deem Pulera's appeal frivolous and award them attorney fees and costs under WIS. STAT. RULE 809.25(3). While we reject Pulera's arguments, there is nothing to suggest that they were not made in good faith. Accordingly, we deny the motion.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that the motion for costs and fees under WIS. STAT. RULE 809.25(3) is denied.

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*