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**DISTRICT II**

November 4, 2020

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James J. Doubleday  
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You are hereby notified that the Court has entered the following opinion and order:

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2019AP2375

James J. Doubleday v. Town of Hartford (L.C. #2019CV485)

Before Neubauer, C.J., Reilly, P.J., and Davis, 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).**

James J. Doubleday appeals from a judgment of the circuit court affirming the decision of the Town of Hartford Zoning Board of Appeals (BOA). The BOA dismissed Doubleday's appeal on the ground that it was not timely filed. 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 summarily affirm.

This matter relates to what for many decades was the “Pike Lake House” bar and restaurant located in Hartford, Wisconsin. The property is now operated under new ownership as “Uncle Larry’s Rustic Inn.” Doubleday is a neighbor of the property. Pike Lake House held a legal nonconforming status as the land it sat upon was rezoned residential during the time it operated. Pike Lake House closed on September 10, 2017, and did not reopen as Uncle Larry’s Rustic Inn until more than twelve months had elapsed. The property owner claimed that the twelve-month window under WIS. STAT. § 62.23(7)(h) did not expire as an “event” was held on May 5, 2018, restarting the twelve month discontinuation period. The Town of Hartford Town Board (Town Board) held a hearing on February 11, 2019, as to whether the May 5, 2018 “event” restarted the twelve-month clock. The Town Board found that the “event” did qualify to restart the twelve-month clock and therefore allowed Uncle Larry’s Rustic Inn to operate as a bar/restaurant. Doubleday did not agree with the Town Board’s decision. The minutes of the February 11, 2019 meeting were provided to Doubleday on March 18, 2019.

Doubleday filed an appeal of the Town Board’s decision with the BOA on April 23, 2019. The BOA held a hearing on July 23, 2019, and determined that Doubleday’s appeal was not timely as WIS. STAT. § 62.23(7)(e)4. and TOWN OF HARTFORD, WIS., ZONING ORDINANCE

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

§ 9.02(5) (2012) (Ordinance 9.02(5))<sup>2</sup> require any appeal to be brought within thirty days after the written notice of the decision being appealed. Doubleday’s appeal was filed more than thirty days after notice was given. The BOA dismissed Doubleday’s appeal, and Doubleday petitioned for a writ of certiorari. The circuit court upheld the BOA’s determination, finding that Doubleday’s appeal was untimely and that the BOA acted according to law. Doubleday appeals.

On certiorari review, our scope of review is: “(1) [w]hether the Board kept within its jurisdiction; (2) whether it acted according to 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.” *State ex rel. Ruthenberg v. Annuity & Pension Bd.*, 89 Wis. 2d 463, 472, 278 N.W.2d 835 (1979). We review the decision of the BOA, not the decision of the circuit court, and our review is identical to that of the circuit court. *Board of Regents v. Dane Cnty. Bd. of Adjustment*, 2000

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<sup>2</sup> WISCONSIN STAT. § 62.23(7)(e)4. provides:

Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

Section 62.23(7)(e)4. authorizes municipalities to determine what constitutes “a reasonable time.” TOWN OF HARTFORD, WIS., ZONING ORDINANCE § 9.02(5) (2012) answers that question, providing in part that “[a]ppeals from the decision of the Zoning Administrator concerning the literal enforcement of this Ordinance may be made by any person aggrieved or by any officer, department, board, or bureau of the Town. Such appeals shall be filed with the secretary within 30 days after the date of written notice of the decision or order of the Zoning Administrator.”

WI App 211, ¶10, 238 Wis. 2d 810, 618 N.W.2d 537. Importantly, Wisconsin courts have repeatedly stated that there is a presumption of correctness and validity to a municipality's decision on certiorari review. *Ottman v. Town of Primrose*, 2011 WI 18, ¶48, 332 Wis. 2d 3, 796 N.W.2d 411. In this case, Doubleday bears the burden to overcome the presumption that the BOA's determination is correct. *See id.*, ¶50

In applying the applicable law to the facts of this case under certiorari review, we conclude that the evidence in the record overwhelmingly indicates that the BOA kept within its jurisdiction; acted according to the law; did not act arbitrarily, oppressively, or unreasonably; and properly considered and addressed on the record all the requirements and conditions specified in the town code provisions such that the BOA's decision was reasonable under the circumstances.

The BOA's decision was correct as a matter of law. Doubleday's appeal of the Town Board's decision that the May 5, 2018 "event"<sup>3</sup> at the closed Pike Lake House restarted the twelve-month discontinuation period was untimely, as it was not brought within thirty days of the Town Board's notice to Doubleday on March 18, 2019. WISCONSIN STAT. § 62.23(7)(e)4. and Ordinance 9.02(5) require an appeal to be brought within thirty days, and Doubleday did not do so. The administrative decision by the Town Board on February 11, 2019, and the Town's notice to Doubleday on March 18, 2018, "is the subject of the grievance and subject of the appeal." *See Brandt v. Pewaukee Town Bd.*, 15 Wis. 2d 6, 10, 112 N.W.2d 157 (1961). The

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<sup>3</sup> Whether the Town Board was correct in making its determination that the March 5, 2018 "event" restarted the twelve-month clock is not before us.

BOA was within its jurisdiction and acted pursuant to law in dismissing Doubleday's appeal on the ground that it was not brought within thirty days.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, 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*