

WISCONSIN SUPREME COURT
THURSDAY, NOVEMBER 29, 2007
1:30 p.m.

This is a certification from the Wisconsin Court of Appeals, District IV (headquartered in Madison). The Court of Appeals may certify cases that it believes cannot be resolved by applying current Wisconsin law. The Wisconsin Supreme Court, as the state's preeminent law-developing court, often accepts such certifications. This case began in Columbia County Circuit Court, Judge Andrew P. Bissonnette, presiding.

2006AP2761

[WRA, Inc. v. Town of West Point](#)

This certification from the District IV Court of Appeals could affect the state's Smart Growth statute and examines whether towns in Wisconsin have the authority to place moratoriums on new development of land while updating land-use plans.

Some Background: The Smart Growth statute, Wis. Stat. § 66.1101, requires Wisconsin municipalities to develop comprehensive land-use plans by 2010.

After the statute was enacted, the town of West Point, in conjunction with Columbia County, began updating its comprehensive land use plan. In September, 2005, the town imposed by ordinance an 18-month moratorium on the acceptance, review, or approval of land division or subdivision plans. The ordinance was intended to eliminate development pressure, which otherwise might increase because land owners and developers sought to rush their projects to beat the planning process.

The Wisconsin Realtors Association, Inc. and the Wisconsin Builders Association sought a declaration that the town lacked the authority to enact the ordinance. The circuit court granted summary judgment in the town's favor, concluding reasonable moratoria on subdivision of land applications were permitted by Wis. Stat. § 236.45.

The Realtors Association appealed, challenging the town's legal authority to enact a moratorium. The association contends that municipalities in Wisconsin have no inherent powers, rather only authority expressly conferred on them by statute or necessarily implied from powers given. The association also noted that the town did not have authority to enact zoning ordinances in the absence of a county zoning ordinance because Columbia County had its own zoning ordinance.

The town says it is not asserting inherent authority or any zoning authority delegated from the county. The ability to adopt a temporary moratorium is an "ordinance governing the subdivision of land or other division of land" as expressed in Wis. Stat. § 235.45 (1), and/or the broad grant of general police powers under Wis. Stat. § 61.34, the town argues.

The Court of Appeals concluded that this case presents an issue of pressing statewide importance and asked the Supreme Court to take it directly. The Supreme Court is expected to decide whether a town has the authority to enact an ordinance that places a moratorium on new development.