

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 20, 2010

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2009AP647

Cir. Ct. No. 2007CV373

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

TOWN OF RICE LAKE,

PLAINTIFF-APPELLANT,

V.

COUNTY OF BARRON AND DAVID CROTTEAU,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Barron County:
EUGENE D. HARRINGTON, Judge. *Reversed and cause remanded with
directions.*

Before Hoover, P.J., Peterson and Vergeront, JJ.

¶1 PER CURIAM. The Town of Rice Lake appeals a summary judgment dismissing its request for a declaration invalidating an amendment to a Barron County zoning ordinance. The Town argues it followed the statutory

procedure for vetoing the ordinance change. Because we conclude the Town substantially complied with this procedure, we reverse and remand with directions to grant summary judgment in favor of the Town.

BACKGROUND

¶2 In early 2007, David Crotteau filed a petition with Barron County to rezone property in the Town of Rice Lake. As required by statute, the county zoning agency scheduled a public hearing on the petition and notified the Town. The Town promptly voted to recommend denial of the petition and informed the county zoning administrator by letter.¹ At the public hearing on April 4, 2007, town chair Thomas Fankhauser voiced the Town's disapproval of the zoning amendment. At the end of the hearing, the zoning agency voted to recommend approval of the petition.

¶3 The county board met on April 17. Fankhauser appeared and again expressed the Town's opposition. Nevertheless, the board adopted the amendment.

¶4 On April 20—sixteen days after the hearing—the Town adopted and filed a resolution disapproving of the rezoning petition. Under the zoning statute,

¹ WISCONSIN STAT. § 59.69(6) permits county and town boards to adopt procedures in addition to those prescribed by statute, provided they do not conflict with the statutory process. In the past, Barron County apparently required petitioners to submit a "Town Board Consideration Form." After the applicant completed the form, the County would forward the form to the board of the affected town which would transmit it back to the County indicating the Town's position. Such a form was not used in this case, and the Town indicated it was submitting the March 22 letter instead of the traditional form to inform the County of the Town's position.

References to the Wisconsin Statutes are to the 2007-08 version.

if a town files a disapproval resolution within ten days of the public hearing, the county zoning agency may not recommend approval of the amendment without changes. WIS. STAT. § 59.69(5)(e)3. A town may extend its time for filing a disapproval resolution by twenty days if it has adopted a resolution providing for the extension. WIS. STAT. § 59.69(5)(e)3m. In its disapproval resolution, the Town asserted it had adopted an extension resolution in October 2003, and that it therefore disapproved of the petition within the time permitted by statute.

¶5 On May 9, 2007, the County informed the Town the extension resolution on file with the County was not valid. The resolution on file is a photocopy of the Town's extension resolution and is signed by the town chair and attested to by the town clerk. The County stated that because the document is a photocopy and contains no language indicating it is a certified copy, it does not conform to the statute, which requires a certified copy to be filed with the County. Therefore, the County claimed the Town's disapproval of the rezoning petition was untimely.

¶6 On May 14, 2007, the Town adopted and filed a resolution purporting to veto the zoning ordinance amendment. By statute, a town may veto zoning ordinance amendments within forty days of the amendment's adoption as long as it disapproved of the rezoning petition within the applicable time period. The County maintained the Town no longer had the power to veto the amendment because it did not disapprove of the petition within the statutory time period.

¶7 The Town sued the County, seeking a declaration the amendment was void. The circuit court granted summary judgment dismissing the action, concluding the resolution purporting to extend the Town's time for disapproval was not valid because it was not a certified copy.

DISCUSSION

¶8 The County concedes that if the October 2003 extension resolution is valid, the Town's April 20 disapproval of the rezoning petition was timely and effective. However, it contends the extension resolution is not valid because it is not a "certified copy." Thus, the only issue on appeal is whether the resolution on file with the County met the statutory standard for a certified copy. This is a question of statutory interpretation, and therefore subject to our independent review. "The purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect." *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶44, 271 Wis. 2d 633, 681 N.W.2d 110.

¶9 The procedure for extending a town's time for disapproval is contained in WIS. STAT. § 59.69(5)(e)3m.:

A town may extend its time for disapproving any proposed amendment under subd. 3. by 20 days if the town board adopts a resolution providing for the extension and files a certified copy of the resolution with the clerk of the county in which the town is located. The 20-day extension shall remain in effect until the town board adopts a resolution rescinding [it].

¶10 The County argues a photocopy of a resolution that does not explicitly state it is a certified copy does not comply with WIS. STAT. § 59.69(5)(e)3m. The Town counters that to be a certified copy, the document must simply attest to the verity of the resolution, not the accuracy of the copy. But it argues that even if it did not fully comply with the statute, it substantially

complied because it is undisputed the Town adopted and filed an extension resolution and the County was not prejudiced by the alleged defect.²

¶11 The County does not refute that the Town substantially complied with the extension statute. Instead, the County contends the Town was required to strictly comply with the statute, particularly the certified copy requirement. Yet, the County offers little to support this argument. The County simply lists cases the Town cited and concludes without elaboration, “These cases support applying a strict construction to the term ‘Certified Copy’” The County then argues that zoning ordinances must be strictly construed because they affect the use of private property. True or not, this case does not involve the interpretation of zoning ordinances.

¶12 Rather, the issue here pertains to the statutory process by which counties and towns amend zoning ordinances. The statutory process is a partnership between counties and towns. *See Quinn v. Town of Dodgeville*, 122 Wis. 2d 570, 579, 364 N.W.2d 149 (1985). This partnership permits towns to veto both initial zoning ordinances as well as amendments to zoning ordinances. WIS. STAT. §§ 59.69(5)(c), 59.69(5)(e)6. In *Quinn*, our supreme court concluded, “It is reasonable to believe on the face of this statute that the legislature intends the town boards to serve as a political check on the otherwise unfettered discretion of the county board in wielding its legislative zoning power.” *Quinn*, 122 Wis. 2d at 581.

² The Town also argues the County is estopped from refusing to give effect to the Town’s resolutions and that the County itself failed to follow the statutory process for rezoning. We do not address these arguments because we conclude the Town substantially complied with WIS. STAT. § 59.69(5)(e)3m. *See State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (cases should be decided on the narrowest grounds possible).

¶13 Whether a town must strictly comply with the certified copy requirement, then, depends on whether compliance is necessary to effectuate this legislative purpose. We conclude it does not. Filing a certified copy notifies the county that a town in fact adopted an extension resolution, and as a consequence if the town has not disapproved of a petition within ten days, it may nevertheless ultimately exercise its authority to veto the amendment. But where there is no dispute that a resolution was adopted and filed, we discern no reason to reject the filing simply because the document does not explicitly state it is a certified copy.

¶14 We conclude the Town substantially complied with the statutory extension procedure. “Substantial compliance with statutory or ordinance requirements exists if the defective notice given fulfills the objective of the provisions and the record demonstrates that no one was prejudiced by the defect.” *Step Now Citizen’s Group v. Town of Utica Planning & Zoning Comm.*, 2003 WI App 109, ¶58, 264 Wis. 2d 662, 663 N.W.2d 833.

¶15 Here, the document the Town filed in 2003 informed the County it had, as authorized by statute, adopted a resolution extending the time to disapprove of zoning petitions. The resolution was signed by the town chair and attested to by the town clerk. The County does not dispute the resolution was passed, nor does it allege the copy filed with the County is in any way different from the actual resolution. It simply objects to the absence of language in the document certifying it as a copy of the resolution. Indeed, the County concedes that “if the [clerk’s attestation] is sufficient, then the Town successfully extend[ed] its time to file a disapproving Resolution by 20 days.” Thus, the County concedes the substance of the document was sufficient to put it on notice that the Town intended to exercise its statutory right to extend its time to disapprove zoning petitions.

¶16 Having determined the document fulfills the objective of the statute, we turn to whether the County was prejudiced by the alleged defect. The County points to no prejudice, nor do we discern any. Indeed, the County asserts on appeal—albeit absent citation to the record—that it “was ... unaware of the existence of [the] Resolution.” Although we may not consider evidence outside the record, *South Carolina Equipment, Inc. v. Sheedy*, 120 Wis. 2d 119, 125-26, 353 N.W.2d 63 (Ct. App. 1984), we nevertheless find the County’s contention it was unaware of the resolution (which, even if true, would not invalidate it) difficult to square with the notion it was somehow prejudiced by the Town’s failure to specify the document was a certified copy.

¶17 Further, the Town informed the County several times it objected to amending the zoning ordinance. Yet the zoning agency voted to recommend the amendment the night of the public hearing, when—even had the Town not extended its time for disapproval—the Town still would have had ten days to submit a resolution disapproving of the petition. We find it unlikely, then, that any defect in the extension resolution influenced, let alone prejudiced the County. In any event, the County does not refute the Town’s argument that it failed to identify any prejudice. We therefore deem it conceded. *See Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

¶18 Because we conclude the Town substantially complied with the extension provisions in WIS. STAT. § 59.69(5)(e)3m., we conclude its resolution disapproving of the rezoning petition was timely. It therefore preserved its right to veto the amendment, as it did, within forty days of adoption. *See* WIS. STAT. § 59.69(5)(e)6. On remand, the circuit court is directed to declare the ordinance amendment void.

By the Court.—Judgment reversed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

