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**DISTRICT II**

February 18, 2026

To:

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

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2025AP98

Harve C. Ross v. Town of Omro (L.C. #2020CV438)

Before Neubauer, P.J., Grogan, and Lazar, 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).**

The Town of Omro (the “Town”) appeals from an order of the circuit court declaring that the Town failed to follow the procedure set forth in WIS. STAT. § 59.69(5)(e)6. (2023-24)<sup>1</sup> to disapprove of a zoning amendment approved by Winnebago County (the “County”). 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. For the following reasons, we affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

Eric Wagner and Sundee Wagner sought to purchase certain real property owned by Harve C. Ross and Renee M. Ross located in the Town in order to construct private storage buildings for a business endeavor. The purchase is conditioned on the property being rezoned from its current zoning of B-2 (Community Business) to either B-3 (General Business) or A-2 (General Agriculture) under the County's zoning ordinance. In late 2019, the Rosses applied to the County for a zoning map amendment requesting the property be rezoned from B-2 to A-2.

On March 16, 2020, before the County held a hearing to consider the amendment request, the Town board, acting pursuant to WIS. STAT. § 59.69(5)(e)3., adopted a resolution disapproving the proposed amendment. An uncertified copy of that resolution was sent to the County via email. On April 8, 2020, the County planning and zoning committee met and recommended approval of the zoning amendment with a modification, namely, that the property area be rezoned from B-2 to B-3, rather than to A-2. The County's board of supervisors voted unanimously to adopt that recommendation.

On June 15, 2020, the Town board met again and considered a resolution to disapprove or oppose the County board's proposed amendment rezoning the property to B-3. The board adopted a resolution opposing the amendment, which was signed by the Town clerk. A copy of the resolution, along with a certification signed by the Town clerk verifying that the resolution was "a true, correct and complete copy[.]" was later filed with the County.

The Rosses and the Wagners filed suit against the Town and the County seeking a declaration that the Town's June 15, 2020 resolution disapproving the zoning amendment was unlawful and an order compelling the Town to approve the zoning change. At a hearing in October 2024, the circuit court concluded that the Town's first resolution opposing the

amendment in March 2020 was defective because it was not certified as required under WIS. STAT. § 59.69(5)(e)3. The court also determined that the resolution adopted in June 2020 was insufficient to oppose the zoning change to B-3 under § 59.69(5)(e)6. because the resolution did not indicate that “[t]he denial was considered at a properly-noticed public meeting at which a resolution was introduced and carried[,]” and the Town thus “did not meet the strict compliance requirements in order to comply with” our decision in *Johnson v. Washburn County*, 2010 WI App 50, 324 Wis. 2d 366, 781 N.W.2d 706. The court subsequently entered a written order declaring that the Town “did not follow the statutory procedure to disapprove of the Zoning Amendment ... and thus the Zoning Amendment and the associated [conditional use permit] ... became effective 40 days after the County’s enactment of the ordinance[.]” The court directed the Town and the County to “undertake whatever actions are necessary to effectuate the [d]eclaratory [j]udgment.” The Town now appeals.

Whether “to grant or deny declaratory relief falls within the discretion of the circuit court.” *Milwaukee Dist. Council 48 v. Milwaukee County*, 2001 WI 65, ¶36, 244 Wis. 2d 333, 627 N.W.2d 866. We will uphold a discretionary act if “the circuit court ‘examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.’” *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982).

Under WIS. STAT. § 59.69(5)(e), property owners may petition for an amendment of a county zoning ordinance. Upon receipt of such a petition, a county “shall call a public hearing on the petition[,]” and must provide notice to any affected towns. Sec. 59.69(5)(e)2. A town may oppose the amendment by filing “a certified copy of the resolution adopted by the [county] board disapproving of the petition ... before, at or within 10 days after the public hearing.”

Sec. 59.69(5)(e)3. The Town acted pursuant to subdivision three in disapproving the initial request to rezone the property from B-2 to A-2 on March 16, 2020. On appeal, no party challenges the circuit court’s conclusion that the resolution disapproving the initial rezoning request did not comply with subdivision three because it was not certified.

Instead, the Town’s appeal focuses on the resolution it adopted on June 15, 2020 disapproving the County’s proposed amendment rezoning the property from B-2 to B-3. The validity of that resolution is governed by the following language in WIS. STAT. § 59.69(5)(e)6.:

The county clerk shall submit under par. (g), within 7 days of its enactment, any ordinance relating to the location of boundaries of districts only to the town clerk of the town in which the lands affected by the change are located. Such an ordinance shall become effective 40 days after enactment of the ordinance by the county board unless such town board prior to such date files a certified copy of a resolution disapproving of the ordinance with the county clerk.

Our supreme court has acknowledged the county planning and zoning statute “provides towns with a role in the zoning process[,]” and that town boards were intended “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, 580, 581, 364 N.W.2d 149 (1985). In *Johnson*, we recognized that WIS. STAT. § 59.69(5)(e)3 “prescribe[s] a specific procedure by which towns perform that function”—“*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.” *Johnson*, 324 Wis. 2d 366, ¶10 (emphasis added). As support for this proposition, we cited WIS. STAT. §§ 19.82 and 19.83, *see Johnson*, 324 Wis. 2d 366, ¶10, which require meetings of governmental bodies to “be preceded by public notice as provided in [WIS. STAT. §] 19.84, and [to] be held in open session” and “all discussion ... and all action of any

kind, formal or informal” at such a meeting is to “be initiated, deliberated upon and acted upon only in open session except as provided in [WIS. STAT. §] 19.85.” *See* WIS. STAT. § 19.83.

Here, it is undisputed that the Town’s June 15, 2020 resolution opposing the amendment does not indicate the resolution was introduced and adopted at a properly-noticed public meeting. The circuit court concluded that the resolution was therefore ineffective to disapprove the amendment under WIS. STAT. § 59.69(5)(e)6 and ***Johnson***. We agree. The Town argues that the court “erroneously concluded that ***Johnson*** [added] specific requirements not required under the actual language of § 59.69(5)(e).” Not so; the requirement that the resolution be introduced and carried in a properly-noticed public meeting is contained in WIS. STAT. § 19.82. In ***Johnson***, we simply determined that compliance with § 59.69(5)(e) requires a town board to “certify[] to the county that its denial was considered at a properly-noticed public meeting at which a resolution was introduced and carried.” ***Johnson***, 324 Wis. 2d 366, ¶10. Because the Town’s June 15 resolution does not so indicate, it was not sufficient to disapprove the County’s proposed amendment rezoning the property from B-2 to B-3.

Additionally, WIS. STAT. § 60.24, which sets forth the powers and duties of a Town Chairperson, states, as relevant here, that the Chairperson “*shall*” “[s]ign all ... resolutions ... adopted or authorized by the town board unless the town board, by ordinance, authorizes another officer to sign specific types of documents in lieu of the chairperson.” Sec. 60.24(1)(c)1. (emphasis added). The Town chairperson did not sign the resolution in this case, and there is nothing in the record indicating “the town board, by ordinance, authorize[d] another officer to sign” it. We conclude the resolution is invalid on that ground as well.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*