

**COURT OF APPEALS
DECISION
DATED AND FILED**

JANUARY 13, 1998

**Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin**

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 § 808.10 and RULE 809.62, STATS.

No. 97-1317

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

BARBARA PEPPLER,

PLAINTIFF-APPELLANT,

V.

BURNETT COUNTY BOARD OF ADJUSTMENT,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Burnett County:
JAMES H. TAYLOR, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Barbara Peppler appeals a judgment affirming a decision of the Burnett County Board of Adjustment denying her request to build a sixth condominium on her property. The zoning administrator denied the application because the lot contained insufficient square footage under the county land use ordinance and because WIS. ADM. CODE § ILHR 85.03 requires a

minimum of twenty-thousand square feet per private sanitary system. The Board of Adjustment upheld the zoning administrator's decision and refused to grant a variance.¹ We affirm the Board's conclusion that the proposed construction would violate the county's land use ordinance.

Peppler contends that the minimum lot requirement of § 3.4 of the land use ordinance does not apply to condominiums. She maintains that the minimum lot restriction contained in the land use ordinance transforms it into a subdivision ordinance and that § 703.27(1), STATS., prohibits the county from applying a subdivision ordinance to a condominium. We reject Peppler's underlying proposition that placing a lot size restriction in the zoning ordinance transforms it into a subdivision control ordinance. Lot size regulation can be a land use/zoning regulation or a subdivision control regulation. *See Town of Sun Prairie v. Storms*, 110 Wis.2d 58, 67, 327 N.W.2d 642, 646 (1983). Therefore, a zoning ordinance is not transformed into a subdivision control ordinance merely by containing a lot size component.

Peppler argues that the legislature, when it referred to "subdivision ordinance" in § 703.27(1), STATS., intended to include every ordinance that included a minimum lot size regulation. The plain language of the statute does not support that construction. Nothing in § 703.27(1) suggests that the legislature meant to overturn all lot size zoning restrictions as to condominiums. Rather, the statute is meant to prohibit discrimination against the condominium form of

¹ Because we affirm the Board's decision based on the land use ordinance, we need not decide whether WIS. ADM. CODE § ILHR 85.03 applies. In addition, no issue is raised on appeal regarding the Board's refusal to grant a variance.

ownership. If the legislature meant to make all lot size restrictions inapplicable to condominiums, it could easily have added that clause to the statute.

By the Court.—Judgment affirmed.

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

