

**Wisconsin Supreme Court**  
**Thursday, January 11, 2018**  
**9:45 a.m.**

2015AP1258

Golden Sands Dairy LLC v. Town of Saratoga

**Supreme Court case type:** Petition for Review

**Court of Appeals:** District IV

**Circuit Court:** Wood County, Judge Thomas B. Eagon, reversed and cause remanded with directions

**Long caption:** Golden Sands Dairy LLC, Plaintiff-Respondent-Petitioner, Ellis Industries Saratoga, LLC, Plaintiff, v. Town of Saratoga, Terry A. Rickaby, Douglas Passineau, Patty Heeg, John Frank and Dan Forbes, Defendants-Appellants, Rural Mutual Insurance Company, Intervenor

**Issue presented:** This case arises out of a dispute between the Town of Saratoga and Golden Sands Dairy LLC, regarding the dairy's efforts to develop and operate an "integrated dairy farm" on approximately 6,388 acres of land in the township. The Supreme Court reviews the issue as presented by Golden Sands: When a permit applicant secures vested rights by filing a valid building permit application for a project (Wisconsin's "Building Permit Rule"), does the law protect the applicant's right to both construct buildings and to use the project land in the lawful manner described in the building permit application?

**Some background:** This is the second case between these parties to reach the Court of Appeals. In the first case, Golden Sands Dairy, LLC v. Fuehrer, No. 2013AP1468 (Wis. Ct. App. July 24, 2014)(Golden Sands I), the Court of Appeals concluded that Golden Sands had met all requisite criteria to obtain a vested right to a building permit issued for the construction of seven farm buildings. The Court of Appeals ordered the town to issue a building permit to Golden Sands.

In its July 17, 2012 commercial building permit application, Golden Sands identified the "area involved" as "100 acres of site and 6388 acres total." The circuit court issued a writ of mandamus ordering the town to issue the building permit, and the Court of Appeals affirmed. The town did not file a petition for review.

The central issue at this point involves the acreage outside of the area where the buildings are to be constructed. At the time Golden Sands filed its building permit application, the disputed acres were zoned for unrestricted use. Under that zoning, the land could be used "for any purpose whatsoever, not in conflict with the law."

Accordingly, in July 2012 when Golden Sands submitted its building permit application to construct the farm buildings, the unrestricted use zoning ordinance would have allowed the 6,388 acres to be used for agricultural purposes.

On Nov. 13, 2012, four months after Golden Sands had submitted its building permit application, the town rezoned the area, including the 6,388 acres, in a way that prohibited Golden Sands' planned agricultural use of the land.

While the Golden Sands I litigation was pending in circuit court, Golden Sands filed this lawsuit against the town seeking a declaration that it had a vested right to use the 6,388 acres of land for its dairy operation. The circuit court granted summary judgment on Golden Sands'

claim that it had acquired vested rights to agricultural use of the property identified in the building permit application prior to the town enacting its new zoning ordinance.

In its remarks from the bench, the circuit court said, "Golden Sands reasonably and substantially relied on existing zoning regulations when it invested in the development of its proposed farm and filed its building permit application." The circuit court also said, "The use of the acreage that is described [in the building permit application] is integral to the farm operation that was described and, therefore, Golden Sands has a vested use in what was allowed at the time the building was applied for, which was agricultural use."

The Court of Appeals reversed, finding that the use of any land associated with a reference in a building permit application poses additional and different issues than the use of a building site for purposes of constructing a building. It said in order to obtain a building permit an applicant must show that the proposed building comports with then-existing zoning and building code regulations, but land use questions are more complex and do not easily lend themselves to regulation by the mere issuance of a building permit.

While the Court of Appeals said that Golden Sands no doubt needs land to grow crops and spread manure to fully use the multiple large dairy buildings it has acquired the right to construct, the court questioned how many of the 6,388 acres are actually needed. The court queried what would happen if a factual inquiry showed that Golden Sands needs substantially fewer than 6,388 acres to fully utilize its proposed farm buildings. In that event, the court asked why all 6,388 acres should obtain nonconforming use status.

The Court of Appeals said as far as it could tell, Golden Sands was advocating for a rule that turned on whether the land was merely identified in a building application, regardless of the applicant's relationship to the land.

Golden Sands argues that the Court of Appeals' decision, which was issued the day after the Wisconsin Supreme Court released its decision in McKee Family I, 374 Wis. 2d 487, is inconsistent with that decision. McKee Family I reaffirmed the bright-line building permit rule which holds that a valid building permit application triggers vested rights in the use of property under the zoning laws in place at the time of the application.

Golden Sands argues that its farm is an integrated agricultural operation of crop and milk production but despite that fact, the Court of Appeals' analysis divided the farm property into two components: the construction of seven agricultural buildings and the agricultural use of the farm property. Golden Sands says this is an artificial distinction not contemplated in any previous application of Wisconsin's bright-line rule.

The town argues that Golden Sands has not cited any case in which lands apart from a building site have been given vested rights. The town argues that the Court of Appeals' decision is consistent with this court's decision in McKee Family I, in which this court noted the broad discretion that municipalities have to enact zoning ordinances and the statutory directive that such ordinances are to be liberally construed in favor of the municipality.

The town argues it is Golden Sands' position that would eviscerate the bright-line approach by allowing a building permit to extend vested rights to land outside of the specific building permit parcel without any apparent limitation. The town also argues that Golden Sands ignores the fact that in 2013 the legislature enacted § 66.10015, which it says will govern the application of vested rights in future projects.