



Wisconsin Chapter of the American Planning Association

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WAPA Files Motion to Become a “Friend of the Court” in the Planning Moratoria Case

WAPA has filed an “amicus curiae” or “friend of the court” brief in the case entitled *Wisconsin Realtors Association v. Town of West Point*. This case has been discussed in previous case law updates. The case addresses an unresolved legal issue about the authority of local governments in Wisconsin to enact a temporary moratorium ordinance to stay local government approvals while the local government completes a plan.

The Town of West Point, in Columbia County, adopted a moratorium ordinance to prohibit the acceptance, review, and approval of applications for land divisions within the Town while the Town completed an update to its comprehensive plan. The Town is under county zoning but the Town has its own subdivision ordinance. In Wisconsin there is no express authority for local governments to adopt a moratoria ordinance for general planning purposes. Express authority for moratoria is limited to certain things such as the express authority for adopting interim zoning to temporarily freeze existing uses under section 62.23(7)(da) of the Wisconsin Statutes and interim zoning as part of the extraterritorial zoning process under section 62.23(7a) of the Wisconsin Statutes. The Town based its moratoria ordinance on the general police power authority that came when the town adopted “village powers,” and the general authority given to local governments to regulate subdivisions under section 236.45 of the Wisconsin Statutes.

WAPA’s brief supports the use of moratoria as a planning tool, citing the statement by the United States Supreme Court in Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302 (2002), that “moratoria . . . are widely used among land-use planners to preserve the status quo while formulating a more permanent development strategy. In fact, the consensus in the planning community appears to be that moratoria, or ‘interim development controls’ as they are often called, are an essential tool of successful development.” Id. at 337-38. WAPA’s brief then makes the argument that local governments in Wisconsin have implied authority to adopt a moratoria ordinance under the authorities relied upon by the Town of West Point.

There were no Wisconsin Supreme Court or Wisconsin Court of Appeals cases of significant interest published since the last case law update.