



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2015 Wisconsin Act 41
[2015 Assembly Bill 165]

**Town Zoning Ordinances Affecting
Shorelands**

2015 Wisconsin Act 41 relates to towns' authority to enact zoning ordinances affecting shoreland¹ areas.

BACKGROUND AND PRIOR LAW

Counties in Wisconsin are statutorily required to enact ordinances to zone all shorelands in unincorporated areas. The statutes specify that, if a town ordinance relating to shorelands is more restrictive than a later-enacted county shoreland zoning ordinance, then the town may continue to enforce its ordinance only to the extent of the greater restrictions. [s. 59.692 (1m) and (2) (b), Stats.] Under prior law, the statutes did not expressly address whether county shoreland zoning authority or the statutory exception for prior-enacted town ordinances preempted town authority to enact zoning ordinances that are not specific to shoreland areas and apply such ordinances in shoreland areas.

In a 2013 Wisconsin Court of Appeals decision, *Hegwood v. Town of Eagle Zoning Board of Appeals*, a landowner challenged a town's authority to enforce a general zoning ordinance with respect to shoreland property that was also subject to a county shoreland zoning ordinance. The Wisconsin Court of Appeals held that, except with respect to the limited exception described above, towns lack zoning authority in shoreland areas. [2013 WI App 118.]

Following the *Hegwood* decision, there were differing interpretations with respect to the impact of the decision on town zoning authority. Some interpretations concluded that, except with respect to the limited exception described above, towns lack the authority to enact any type

¹ For purposes of shoreland zoning, "shoreland" is land up to 1,000 feet from a navigable lake, pond, or flowage, or up to 300 feet from a navigable river or stream (or up to the landward side of the floodplain of a river or stream, whichever distance is greater). [s. 59.692 (1) (b), Stats.]

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

of zoning ordinance, including, for example, a farmland preservation ordinance, in areas subject to county shoreland zoning.

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The Act clarifies town zoning authority in shoreland areas. Specifically, the Act authorizes towns to enact zoning ordinances that apply in shorelands, except that it generally prohibits a town zoning ordinance from imposing restrictions or requirements with respect to matters regulated by a county shoreland zoning ordinance that affect the same shorelands. As under prior law, if a town enacted a zoning ordinance before a less-restrictive county shoreland zoning ordinance was enacted, the Act allows the town to continue to enforce the portion of its ordinance that imposes greater restrictions than the county ordinance imposes.

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