

**OFFICE OF THE CORPORATION COUNSEL
Burnett County**

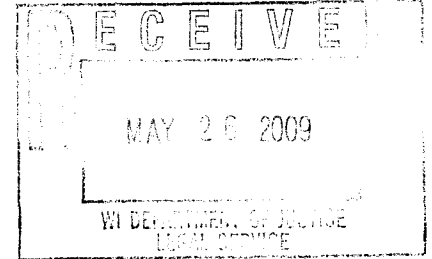
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May 21, 2009

Wisconsin Department of Justice
PO Box 7857
Madison WI 53707-7857



RE: Wis. Stats., Section 236.45

Dear Sirs:

I am writing on behalf of Burnett County, as Corporation Counsel, to request an Attorney General's opinion on the interaction of Section 236.45 Wis. Stats., Wisconsin Administrative Code Sec. NR 115 and our local zoning ordinance.

The situation arising is as follows; pursuant to Sec. 59.692 Wis. Stats., and the Wisconsin Administrative Code NR 115, Burnett County has adopted a Land Use Ordinance, creating among other districts, a shoreline zoning district. While our lot sizes vary, the smallest lot currently allowed is on a Class- 1 lake and requires a minimum width of 150', and a minimum depth of 200', and 30,000 square feet. This is well within the requirements of NR 115, which is a minimum lot of 100 feet. Our ordinance did change several years ago from a 100' minimum width to the 150' width so we do have numerous 100' lots that are grandfathered in throughout the lakes in Burnett County.

The problem arises that in the past, local courts have effectively by-passed our Land Use Ordinance and the minimum lot size by ordering a division of a lot in a partition court action. This results in at least one sub-standard lot pursuant to our ordinance. This event usually occurs in what would be called "friendly" partition action. An example of this would be where there are two owners of a 100' lot, a lawsuit will begin between the owners for a partition of the lot, and the judgment would create 2-50' lots, one in each of the owners name. The authority is referenced as Sec. 236.45(2)(a)(1), and a claim that the court order is exempt from lot size under that section. The further argument is that since Sec. 236.45(2)(a)(1) does not mention minimum lot size, but Section 236.45(2)(a)(3) specifically discusses minimum lot size, these court orders are acceptable.

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While this is a "friendly" partition action and does not involve the county as a party to the lawsuit, the judgment is usually entered and the lots are divided before the county will even become aware that the lawsuit is pending, or that the judgment has been entered.

The question that we ask therefore, is whether a court has authority to override the minimum lot size in our ordinance by either a civil judgment, or a final judgment in probate for property passes pursuant to a Will?

A second question that we request that you address involves the county's ability to charge a fee or require review of the sale, or exchange of lots between adjoining property owners? Section 236.45(2)(a)(3) indicates that a subdivision regulation does not apply to this situation.

The county, however, has no ability to monitor these conveyances to determine if in fact they do meet the minimum lot size for a zoning district without a prior review. We have run into numerous situations where individuals have conveyed property between adjoining property owners, which has resulted in a sub-standard lot being created by one of the owners. This may be done inadvertently, but the result is still the same. This is again, a situation where the county is unaware of the transfer until it is completed. Since Sec. 236.45(2)(a)(3) exempts this from our ordinance, it would appear to prohibit the county from charging a fee for a prior review of any conveyances in this situation.

Again, we would appreciate your addressing this issue.

Respectfully submitted,



David L. Grindell
Corporation Counsel

DLG/st