

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

FEBRUARY 27, 1996

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.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2284

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

WOODLAND HILLS LAND COMPANY,

Petitioner-Appellant,

v.

COUNTY OF DOOR,

Respondent-Respondent.

APPEAL from a judgment of the circuit court for Door County:
JOHN D. KOEHN, Judge. *Affirmed.*

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

PER CURIAM. Woodland Hills Land Company appeals a judgment denying its request for certiorari and mandamus relief from the Door County Board's decision denying Woodland's petition to rezone property and allow construction of a planned residential unit development (PRUD). The trial court held that its authority to review the county board's decision was limited and that the board's decision was not arbitrary or without a basis in fact. Woodland argues that, without any change to the zoning ordinances, it was entitled to construct a PRUD because it met the conditions set out in the existing ordinance. It also argues that the board's actions, and those of the resource

planning committee, were arbitrary and unreasonable and unsupported by the evidence. We reject these arguments and affirm the judgment.

Woodland seeks to develop property currently zoned as rural residential. The plan, if approved, would create smaller lot sizes than those currently allowed under the zoning ordinance. After a hearing by the resource planning committee, the committee recommended that the petition be denied. The county board followed the committee's recommendation and denied the petition.

The county board was not compelled to grant construction of the PRUD under the existing ordinance. Even if Woodland satisfied all of the criteria set out in the ordinance, the county board retains discretion to deny the petition. The ordinance states that "The County Board may in its discretion ... approve a Planned Residential Unit Development" upon finding that a number of conditions are met. Construction of the ordinance is a question of law. See *Hansman v. Oneida County*, 123 Wis.2d 511, 514, 366 N.W.2d 901, 903 (Ct. App. 1985). By its very terms, the zoning ordinance does not divest the county board of discretionary authority to deny the petition for zoning amendment or the petition to establish a PRUD merely because the applicant has met the threshold requirements designated in the ordinance.

The question is therefore whether the board reasonably exercised its discretion when denying the petition. To the extent Woodland seeks certiorari review of the county board's decision to deny rezoning, the trial court correctly held that courts have very little authority to review the board's decision and that the record contains an adequate factual basis for the board's discretionary decision. Zoning is a legislative function. Judicial review is limited and judicial interference is restricted to cases of abuse of discretion, excess of power or error of law. See *Quinn v. Town of Dodgeville*, 122 Wis.2d 570, 586, 364 N.W.2d 149, 158 (1989). If there is any reasonable basis for the exercise of the legislative power, we are obligated to uphold the enactment. *Id.* An attack based on the arbitrariness or unreasonableness of a legislative action is the equivalent of a claim of unconstitutionality based on a denial of equal protection of the laws or due process. *Buhler v. Racine County*, 33 Wis.2d 137, 143, 146 N.W.2d 403, 406 (1966). The reasonableness of continuing to apply a zoning ordinance to a particular piece of property is a fairly debatable question that should not be resolved by the judicial process. *Id.* at 146, 146 N.W.2d at

407. Here, the record establishes debatable questions regarding the effect of the planned development on the surrounding homes during construction and following its completion. The county board's decision is adequately supported by the record to preclude any judicial interference.

To the extent Woodland seeks certiorari review of the resource planning committee's decision,¹ the record supports its decision. On certiorari review, a court may not substitute its view of the evidence for that of the committee and cannot evaluate the credibility or weight of the evidence. *See Clark v. Waupaca County Bd. of Adjust.*, 186 Wis.2d 300, 304, 519 N.W.2d 782, 784 (1994); *Bucyrus-Erie Co. v. DILHR*, 90 Wis.2d 408, 418, 280 N.W.2d 142, 147 (1979). The committee had the right to conclude that Woodland had not adequately addressed all of the concerns raised by the objecting neighbors.

By the Court. – Judgment affirmed.

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

¹ This decision should not be construed to hold that the committee's recommendation is reviewable by the courts.