

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 3, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

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

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-1128-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

HAROLD CARLSON TRUST,

PLAINTIFF-APPELLANT,

V.

ST. CROIX COUNTY,

DEFENDANT-RESPONDENT,

**TOWN OF ST. JOSEPH, LLOYD DAHLKE, ROBERT MARTY,
PAUL NASVICK, SUSAN SCARBOROUGH AND SCOT
FOGELBERG,**

DEFENDANTS.

TOWN OF ST. JOSEPH,

PLAINTIFF,

V.

ST. CROIX COUNTY,

DEFENDANT-RESPONDENT,
HAROLD AND JACKIE CARLSON,
DEFENDANTS-APPELLANTS.

APPEAL from a judgment and an order of the circuit court for St. Croix County: SCOTT R. NEEDHAM, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. The Harold Carlson Trust appeals an order denying its motion for summary judgment and granting summary judgment to St. Croix County.¹ The trial court concluded that the County zoning administrator’s duty to update zoning maps was discretionary rather than ministerial. The court thus held that the County is immune from suit under WIS. STAT. § 893.80(4).² We agree with the trial court and therefore affirm.

¹ This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 1997-98 version.

² WISCONSIN STAT. § 893.80(4) provides:

Claims against governmental bodies or officers, agents or employees; notice of injury; limitation of damages and suits.

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- (4) No suit may be brought against any volunteer fire company organized under ch. 213, political corporation, governmental subdivision or any agency thereof for the intentional torts of its officers, officials, agents or employees nor may any suit be brought against such corporation, subdivision or agency or volunteer fire company or against its officers, officials, agents or employees for acts done in the exercise of legislative, quasi-legislative, judicial or quasi-judicial functions.

(5)

STANDARD OF REVIEW

¶2 When reviewing a summary judgment, we perform the same function as the trial court and our review is de novo. *See Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). Summary judgment is appropriate when no material facts are in dispute and the moving party demonstrates that he or she is entitled to judgment as a matter of law.³ *See* WIS. STAT. § 802.08. The interpretation of an ordinance is a question of law this court reviews de novo. *See Thorp v. Town of Lebanon*, 2000 WI 60, ¶18, 235 Wis. 2d 610, 612 N.W.2d 59.

ANALYSIS

¶3 Under WIS. STAT. § 893.80(4), no suit may be brought against a county or town or against its officers, officials, agents, or employees for acts done in the exercise of legislative, quasi-legislative, judicial or quasi-judicial functions. Legislative, quasi-legislative, judicial or quasi-judicial acts are by definition non-ministerial; in application, they are synonymous with discretionary acts. *See Lifer v. Raymond*, 80 Wis. 2d 503, 512, 259 N.W.2d 537 (1977). The County is immune for acts performed pursuant to a discretionary duty. *See C.L. v. Olson*, 143 Wis. 2d 701, 710-11, 422 N.W.2d 614 (1988).

¶4 A ministerial duty, by contrast, is one that “is absolute, certain and imperative, involving merely the performance of specific tasks when the law imposes, prescribes and defines the time, mode and occasion for its performance with such certainty that nothing remains for judgment or discretion.” *Stann v.*

³ The parties stipulated to the facts and continue to assert that there are no facts in dispute.

Waukesha County, 161 Wis. 2d 808, 816, 468 N.W.2d 775 (Ct. App. 1991). Government entities and officials do not enjoy immunity for the negligent performance or failure to perform ministerial duties or for malicious, willful, and intentional conduct. See *Olson*, 143 Wis. 2d at 710-11. As in the trial court, our focus is on the nature of the duty to maintain zoning maps under ST. CROIX COUNTY, WIS., ORD. § 17.08 (1986).⁴

¶5 The relevant ordinance states that “[t]he Zoning Administrator shall periodically update all maps to reflect adopted changes.” ST. CROIX COUNTY, WIS., ORD. § 17.08 (1986). By use of the word “periodically,” the ordinance does not define the time, mode and occasion for the duty’s performance so as to remove all judgment and discretion. Rather, it leaves it to the zoning administrator’s discretion to determine when it is appropriate to update the zoning map.

¶6 Carlson’s underlying theme is that the zoning administrator was negligent by not updating the zoning map for over twenty years, despite the zoning changes that had occurred during that period. Essentially he argues that the County should not be permitted to avoid responsibility for the administrator’s

⁴ ST. CROIX COUNTY, WIS., ORD. §17.08 (1986) provides in relevant part:

DETERMINATION OF DISTRICT BOUNDARIES. The boundaries of the districts established by this chapter for general, shoreland and wetland zoning are shown on the maps entitled “Wisconsin Wetland Inventory Maps for St. Croix County”, dated November 13, 1964, which maps are made a part of this chapter by reference. The above maps are on file in the County Clerk’s Office, the County Zoning Administrator’s Office and in the offices of the deputy zoning administrators in each town. The maps on file in the office of the County Zoning Administrator shall be the official version and shall control in any case where differences occur between it and other copies. All notations and references shown on the district maps are as much a part of this chapter as though specifically described herein. *The Zoning Administrator shall periodically update all maps to reflect adopted changes.* (Emphasis added.)

failure to do that which the administrator is required to do. This argument, however equitably appealing, is nevertheless beside the point. The threshold issue is not whether the zoning administrator was negligent, but whether the County is immune from liability for the administrator's alleged negligence. Because the duty to periodically update the zoning map was discretionary, the trial court properly concluded that the County was immune.

¶7 Having resolved the case on the question of governmental immunity, we need not discuss the remaining issues. *See Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983).

By the Court.—Judgment and order affirmed.

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

