COURT OF APPEALS
DECISION
DATED AND FILED

December 28, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP2257 **Cir. Ct. No. 2004CV2821**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

WALTER J. OLSON,

PLAINTIFF-APPELLANT,

V.

TOWN OF COTTAGE GROVE,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dane County: ANGELA B. BARTELL, Judge. *Reversed and cause remanded for further proceedings*.

Before Dykman, Deininger and Higginbotham, JJ.

¶1 HIGGINBOTHAM, J. Walter Olson, a real estate developer, brought a declaratory judgment action against the Town of Cottage Grove raising multiple challenges to TOWN OF COTTAGE GROVE, WIS., GENERAL ORDINANCES

§ 15.15 (2005). Section 15.15 is part of the Town's land division ordinance and contains a provision relating to the "Transfer of Development Rights." (TDR). Olson attempted to subdivide property he owns in the Town into residential lots by seeking rezoning approval from the Town and Dane County, and by following the plat approval process set forth by WIS. STAT. §§ 236.10 and 236.11 (2003-04).[1] Olson subsequently failed in his attempt to develop his land because he could not meet the TDR requirements of § 15.15. In this lawsuit, Olson seeks to have § 15.15 declared unconstitutional on various grounds and also seeks other relief, including approval of his plat and compensation for the alleged taking of his property. The circuit court granted the Town's motion for summary judgment on the basis that this lawsuit is not ripe, and therefore not justiciable. Olson appeals that determination. We conclude that this lawsuit is ripe for adjudication, and therefore is justiciable. We therefore reverse the circuit court's summary judgment and remand for further proceedings.

BACKGROUND

¶2 The material facts are undisputed. Olson is the owner of the Klosterman Farm, which is comprised of 69.72 acres in a section of the Town of Cottage Grove. The land has been zoned as "A-1 EX Exclusive Agricultural" property. Although Olson's land is surrounded by residential districts, the A-1 EX Exclusive Agricultural zoning classification of his land precludes residential development.

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

¶3 In July 2002, the Town amended TOWN OF COTTAGE GROVE, WIS., GENERAL ORDINANCES § 15.15, adding the TDR provision. Section 15.15 incorporates the Land Use Element of the Town's Smart Growth Comprehensive Plan—2020. Under the incorporated Smart Growth Plan, some land use districts are categorized as "sending areas," while others are categorized as "receiving areas." Sending areas include land designated as part of the agricultural district, while receiving areas include residential districts. Those hoping to develop land in a receiving area must have a requisite number of development rights, which may already be associated with a particular property, or which may be transferred from sending areas to receiving areas through the TDR program. Under the TDR program, owners of land in sending areas may sell their development rights to owners of land in receiving areas through a TDR easement. The ordinance also sets forth additional procedures that must be followed for the rezoning and division of land by a developer in a receiving area, including approval by the Town and County Boards.

¶4 Although Olson's land is zoned as A-1 EX, an agricultural classification, it nonetheless falls within a receiving area, not a sending area. As such, when the ordinance was adopted, it created a new requirement that he obtain a TDR easement in a sending area in order to develop his land.

¶5 On December 27, 2001, prior to the amendment of the ordinance, Olson submitted a petition to the County to rezone his property from A-1 EX classification to R-1 Residential in order to subdivide part of his property into fifteen residential lots. On October 28, 2002, Olson filed a second, separate petition to rezone his property, requesting an increase in proposed lots from fifteen to fifty-eight, but still seeking to rezone the property from A-1 EX to R-1. On January 14, 2003, the Dane County Zoning and Natural Resources Committee

("ZNR") recommended approval of the zoning petition on the conditions that Olson withdraw his previous rezoning petition and that he record a final plat describing the land to be rezoned. The Dane County Board of Supervisors conditionally approved Olson's second zoning application and adopted the ZNR's recommendations, giving Olson a year to record the plat with the Dane County Register of Deeds.

¶6 On September 19, 2003, Olson submitted his final plat application, which the Town approved, subject to conditions including a requirement, pursuant to the land division ordinance, that Olson transfer to the Town and to Dane County ten TDRs. Olson claims that meeting this requirement would necessitate the purchase of 350 acres of farmland, at a cost of approximately $750,000. Olson was unable to acquire sufficient TDRs to satisfy the requirement. The County informed Olson on January 20, 2004, that his zoning petition had a delayed effective date of February 14, 2004, provided that a plat was recorded in the Dane County Register of Deeds in that time; Olson concedes he did not do so. On February 5, 2004, the County Board rescinded action on Olson's zoning petition and then moved to extend the effective date for a year.[2]

¶7 Olson filed a declaratory action challenging the ordinance's TDR requirements on constitutional and other grounds. Olson seeks to have TOWN OF COTTAGE GROVE, WIS., GENERAL ORDINANCES § 15.15 invalidated, to have the court direct the Town to approve his plat, and to preserve his right to seek just compensation for the temporary taking of his property. The court granted the

[2] The parties appear to dispute whether the extension of time the County Board gave Olson was effective. Because this issue is not germane to these proceedings in its current posture, we do not address it.

Town's motion for summary judgment on the grounds that "Olson has not demonstrated that there are any genuine issues of material fact that entitle him to a trial [and] the facts presented by the Town require the legal conclusions that this controversy is not ripe …."[3] The court also ruled that Olson "must initiate the rezoning or plat approval process *before* attempting to procure a declaratory judgment as to the validity of § 15.15 in order for the action to be ripe." Olson appeals.

STANDARD OF REVIEW

¶8 A circuit court's decision to grant or deny declaratory relief is within its discretion. ***Milwaukee Dist. Council 48 v. Milwaukee County***, 2001 WI 65, ¶36, 244 Wis. 2d 333, 627 N.W.2d 866 (citation omitted). However, when determining the appropriateness of granting or denying declaratory relief hinges on a question of law, our review is de novo. ***Commercial Union Midwest Ins. Co. v. Vorbeck***, 2004 WI App 11, ¶7, 269 Wis. 2d 204, 674 N.W.2d 665.

¶9 In this appeal, we review a circuit court's decision granting summary judgment. Review of a circuit court's decision granting summary judgment is subject to de novo review. ***Green Springs Farms v. Kersten***, 136 Wis. 2d 304, 315-17, 401 N.W.2d 816 (1987). We apply the same methodology as the circuit court. ***Id***. Summary judgment methodology is well known and we need not repeat it here. *See* ***Lambrecht v. Estate of Kaczmarczyk***, 2001 WI 25, ¶¶20-24, 241 Wis. 2d 804, 623 N.W.2d 751. A party is entitled to summary judgment if there

[3] Olson argues the material facts necessary to decide the legal question raised by his request for declaratory judgment are not in dispute. Therefore, according to Olson, it is not necessary to hold a trial.

are no genuine issues of material facts in dispute and the party is entitled to judgment as a matter of law. ***City of Milwaukee v. Burnette***, 2001 WI App 258, ¶8, 248 Wis. 2d 820, 637 N.W.2d 447; *also* WIS. STAT. § 802.08(2).

ANALYSIS

¶10 Olson brought this declaratory judgment action seeking to determine the validity of TOWN OF COTTAGE GROVE, WIS., GENERAL ORDINANCES § 15.15, its Land Division Ordinance. Among the theories Olson advances in arguing the invalidity of the ordinance is his contention that the Town exceeded its authority in enacting the TDR provisions, and that the TDR requirements result in an uncompensated taking in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and Article 1, Section 13, of the Wisconsin Constitution. Olson argues that he has a sufficient interest in the resolution of this dispute as demonstrated by the fact that the Town has already applied the ordinance to him, "conditioning approval of his final subdivision plat upon his purchasing and transferring the … TDRs to it and the County …." He asserts that under the present facts, this case meets all of the factors for ripeness under WIS. STAT. § 806.04,[4] and the case law interpreting that statute.[5]

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[4] The Uniform Declaratory Judgments Act provides in relevant part:

> (1) Scope. Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed…. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree ….
>
> (2) Power to construe, etc. Any person … whose rights, status or other legal relations are affected by a … municipal ordinance …, may have determined any question of construction

(continued)

¶11 The Town counters that this controversy is not ripe. It argues that, even if the court declared the ordinance void, Olson's ability to develop his property is not a certainty, and therefore any declaration by the court would be advisory. The Town asserts that "[a]bsent conditional zoning approval" by the County Board, "it is uncertain whether Olson will ever be granted residential zoning status and thus whether § 15.15 will ever apply." The Town argues that an action to resolve future controversies is at odds with the principles underlying declaratory judgment. Consequently, it suggests that to meet the ripeness requirements, Olson must first reapply for rezoning from the County and plat approval from the Town.

> or validity arising under the … ordinance … and obtain a declaration of rights, status or other legal relations thereunder….
>
> ….
>
> (6) Discretionary. The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.
>
> ….
>
> (12) Construction. This section is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered.

WIS. STAT. § 806.04.

[5] Olson also argues that the circuit court erroneously required him to re-initiate the rezoning or plat approval process before filing a declaratory judgment action. This argument overlaps with his argument that the court improperly required Olson to have suffered an injury under TOWN OF COTTAGE GROVE, WIS., GENERAL ORDINANCES § 15.15 (2005), which we discuss below. Consequently, we will not address that argument separately.

¶12 The purpose of the Uniform Declaratory Judgments Act is to allow the resolution of controversies in a preventative and anticipatory manner. ***Lister v. Bd. of Regents***, 72 Wis. 2d 282, 307, 240 N.W.2d 610 (1976). "'The underlying philosophy of the [Act] is to enable controversies of a justiciable nature to be brought before the courts for settlement and determination *prior to the time that a wrong has been threatened or committed*.'" ***Putnam v. Time Warner Cable***, 2002 WI 108, ¶43, 255 Wis. 2d 447, 649 N.W.2d 626 (citations omitted). The anticipatory focus of the Act is facilitated by "authorizing a court to take jurisdiction at a point earlier in time than it would do under ordinary remedial rules and procedures." ***Lister***, 72 Wis. 2d at 307.

¶13 A party seeking declaratory judgment need not suffer harm before seeking declaratory relief under the Act. ***Putnam***, 255 Wis. 2d 447, ¶44. All that is necessary is that the adjudicatory facts be sufficiently developed. ***Id.*** In other words, "the facts [must] be sufficiently developed to avoid courts entangling themselves in abstract disagreements." ***Miller Brands-Milwaukee Inc. v. Case***, 162 Wis. 2d 684, 694, 470 N.W.2d 290 (1991) (citation omitted). The facts upon which a declaration of rights is premised should not be contingent, hypothetical or uncertain; they should possess a requisite degree of preciseness, certainty and imminence. ***Putnam***, 255 Wis. 2d 447, ¶¶44, 47. The declaratory judgment statute is remedial in nature, and in order to effectuate its purpose, it is to be liberally construed and administered. WIS. STAT. § 806.04; ***F. Rosenberg Elevator Co, Inc.. v. Goll***, 18 Wis. 2d 355, 359, 118 N.W.2d 858 (1963).

¶14 The legal standard for evaluating justiciability is well-established. A controversy is justiciable for purposes of a declaratory judgment action when the following factors are present:

> (1) A controversy in which a claim of right is asserted against one who has an interest in contesting it.
>
> (2) The controversy must be between persons whose interests are adverse.
>
> (3) The party seeking declaratory relief must have a legal interest in the controversy—that is to say, a legally protectible interest.
>
> (4) The issue involved in the controversy must be ripe for judicial determination.

Putnam, 255 Wis. 2d 447, ¶41 (citations omitted). The only factor at issue in this appeal is ripeness. We analyze the legal issue by first explaining why this case is ripe. We then address the Town's arguments as to why this case is not ripe.

¶15 We conclude that, under the present facts, this controversy is ripe. The nature of this controversy is precisely of the type to be resolved by a declaratory judgment. *See* ***Weber v. Town of Lincoln***, 159 Wis. 2d 144, 148, 463 N.W.2d 869 (Ct. App. 1990). At issue here is the validity of an ordinance. The Uniform Declaratory Judgments Act is uniquely equipped to challenge the validity of an ordinance or statute. ***Putnam***, 255 Wis. 2d 447, ¶50; *see also* ***Weber***, 159 Wis. 2d at 148. The text of the Act explicitly provides that "[a]ny person … whose rights, status, or other legal relations are affected by a … *municipal ordinance* … may have determined *any question of construction or validity* arising under the … ordinance … and obtain a declaration of rights, status or other legal relations thereunder." WIS. STAT. § 806.04(2). As we have observed, "'[t]he most common method [of challenging the validity of some sort of legislative action] … is an action for declaratory judgment in which the plaintiff seeks a declaration of the rights and legal relations of the parties.'" ***Weber***, 159 Wis. 2d at 148 (quoting 3 A. RATHKOPF & D. RATHKOPF, *The Law of Zoning and Planning* § 35.01[1] at 35-2 (1980)). "'The use of declaratory judgment actions as the means of testing

the validity of land use regulations … predominat[es] over all other forms of action ….'" ***Id.*** The central issue in this case is whether the Town has the legal and constitutional authority to impose the TDR requirements on property developers. A circuit court's declaration of the validity of TOWN OF COTTAGE GROVE, WIS., GENERAL ORDINANCES § 15.15 would resolve the uncertainty Olson and other developers have and will confront in developing their lands within the Town's boundaries.

¶16 To the extent that the Town is arguing that Olson must suffer an injury in order to bring a declaratory judgment action, we conclude that Olson is permitted to test the validity of the Town's ordinance before incurring substantial financial liabilities.[6] *See* ***State ex rel. Lynch v. Conta***, 71 Wis. 2d 662, 674, 239 N.W.2d 313 (1976) (potential defendants "may seek a construction of a statute or a test of its constitutional validity without subjecting themselves to forfeitures or prosecution"), *superceded by statute on other grounds, as stated in* ***State ex rel. Newspapers, Inc. v. Showers***, 135 Wis. 2d 77, 398 N.W.2d 154 (1987). In other words, he need not "suffer an injury before seeking relief under the declaratory judgment statute." ***Putnam***, 255 Wis. 2d 447, ¶44 (citation omitted). The facts need only be sufficiently developed for the case to be conclusively adjudicated. ***Id***. Under the present facts, this case is ripe for adjudication.

[6] Another way to characterize this argument is that Olson lacks standing to challenge the land division ordinance because the Town is not seeking to enforce it against him presently. The Town does not structure its argument in this way; thus, we choose not to address whether this controversy is justiciable on that theory. *But see* ***Weber v. Town of Lincoln***, 159 Wis. 2d 144, 149, 463 N.W.2d 869 (Ct. App. 1990), where the court concluded that under WIS. STAT. § 60.61(6), owners of real estate within a town have standing to test the validity of an ordinance that affects them.

¶17 The Town does not dispute that Olson owns property in the "receiving area," and therefore, under TOWN OF COTTAGE GROVE, WIS., GENERAL ORDINANCES § 15.15, before he can develop his property he must obtain development rights in a "sending area." The Town also does not dispute that to obtain those rights, he will be required to incur substantial financial expense.[7] Indeed, Olson has availed himself of the rezoning and plat approval process, but failed because he could not meet the TDR requirements. Thus, although Olson is not required under the law to incur an injury, a reasonable view of Olson's experience in attempting to redevelop his land is that he has indeed suffered injury. The law does not require Olson to suffer additional injury before seeking declaratory relief.

¶18 The Town argues that "Olson is asserting a right that arises only if there is a future zoning change." Noting that three years have passed since the County Board granted conditional approval of Olson's plan, the Town contends that it "is at best speculation" as to whether he will obtain the County's approval in the future. In short, the Town asserts that these proceedings are "premature" because Olson has not reavailed himself of the zoning and plat approval processes prior to commencing this action. It also argues that Olson seeks a contingent interest in the possibility of developing property in the future, which, in the Town's view, is insufficient to satisfy the ripeness requirements. We reject these arguments.

[7] The procedural history section of the Town's brief does note Olson's failure to provide record citations in support of the alleged TDR cost, but in its arguments, the Town does not dispute that such costs are inevitably tied to purchasing TDRs.

¶19 The interest that Olson seeks to have resolved is no more contingent or uncertain than the plaintiffs' in ***Milwaukee District Council 48*** or in ***Putnam***. In ***Milwaukee District Council 48***, a labor union brought a declaratory judgment action against Milwaukee County seeking a determination as to whether the County could deny pension benefits to vested employees who were terminated. ***Milwaukee Dist. Council 48***, 244 Wis. 2d 333, ¶3. In that case, the county argued that the case was not ripe because it had not officially denied the named plaintiff's pension and "because a pension cannot vest under its agreement with the employees before an employee has completed honorable service for the county …." ***Id.***, ¶42. The court rejected this argument and concluded that the controversy was ripe because the union sought a declaration regarding what procedural due process was available to an employee contesting termination of employment and the loss of pension when "the determination of one may lead automatically to the determination of the other." ***Id.***, ¶43. The court explained that "[a]n employee need not have been denied pension benefits to satisfy the ripeness required in this type of action." ***Id.***, ¶44.

¶20 In ***Putnam***, customers of Time Warner Cable of Southeastern Wisconsin, LP sought a declaration of rights and injunction to prevent Time Warner from imposing a $5.00 late-payment fee in the future. ***Putnam***, 255 Wis. 2d 447, ¶2. One of two issues before the court related to whether the controversy was justiciable on the ground of ripeness. ***Id.***, ¶¶2, 37-52. Reversing the circuit court, the ***Putnam*** court concluded that the controversy was ripe. ***Id.***, ¶¶52, 53. The court rejected Time Warner's argument that the controversy was not ripe because the late-payment fee might never be imposed on its customers. ***Id.***, ¶¶45, 46. Time Warner contended that imposition of the late-fee payment was contingent upon customers not paying their bills on time and "that this absence of

certainty precludes conclusive adjudication ….” ***Id.***, ¶45. In rejecting that argument, the supreme court concluded that Warner’s imposition of the late-payment fee was imminent and certain. ***Id.***, ¶46. The court noted evidence offered by the plaintiffs that, on average, ten to fifteen percent of Time Warner’s customers were late with their monthly cable bill payments. ***Id.*** The court also noted that Time Warner had not offered any evidence indicating that this trend would not continue. ***Id.***

¶21 Here, Olson seeks a declaration concerning his development rights under TOWN OF COTTAGE GROVE, WIS., GENERAL ORDINANCES § 15.15, which, when applied to him in his first attempt to gain conditional zoning approval, prevented him from obtaining final approval. Olson has already demonstrated that he wants to develop his lands, most clearly through the request for relief in his complaint, which includes that plat approval be ordered. In addition, while the factual record is undeveloped at this stage of the proceedings regarding Olson’s intent on developing his property, a reasonable inference based on the undisputed fact that Olson is a real estate developer is that he will attempt to develop it in the future. Therefore, the possibility that the Town will apply the land division ordinance to Olson is not hypothetical, abstract or remote. “It is real, precise, and immediate.” ***Id.***, ¶47. As the court held in ***Putnam***, “not all adjudicatory facts must be resolved as a prerequisite to a declaratory judgment.” ***Id.***, ¶44. It is sufficient that the Town will continue to apply the ordinance’s TDR requirements to any future plat approval Olson seeks, since his property is in a receiving area subject to those requirements. Olson need not jump through the hoops of the rezoning and plat approval processes a second time before seeking declaratory relief.

¶22 The Town cites ***Lister*** for the proposition that the purpose of the ripeness doctrine "is to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements …." ***Lister***, 72 Wis. 2d at 309. The court in ***Lister***, however, was quite specific about what made the disagreement in that case too abstract to be ripe: the former students in that case challenging the disparity in tuition had no plans to re-enroll and, consequently, the court ruled that there was no anticipatory or preventative relief sought in that action, and the relief sought was therefore too abstract. ***Id.*** at 305, 308-09. That is not the case here. As we have explained, Olson has consistently indicated his intentions that should the TDR requirement be struck down, he would certainly re-apply to develop his land. Thus, ***Lister*** does not help the Town here.

¶23 Finally, the Town argues that a declaratory judgment will not terminate this controversy. It contends that a declaration "will not result in Olson being able to develop the property which is the most fundamental relief he seeks." The Town points out that because Olson was unsuccessful in obtaining conditional zoning approval, obtaining a declaration that the ordinance is void and unenforceable will not alter the current zoning of the land. The Town also argues that a declaration will not grant Olson the relief he seeks because the Town's conditional plat approval has expired. According to the Town, even if the ordinance were struck down and the Town were ordered to amend the final plat approval retroactively, the plat could not be recorded because the time to do so has expired. *See* WIS. STAT. § 236.25 (a plat must be recorded within six months following the last required final plat approval). The Town calculated that the time to record the plat expired on May 3, 2004, which is before Olson filed the instant lawsuit.

¶24 The Town ignores the law regarding declaratory judgments. A declaratory judgment need not be conclusive as to an entire cause of action. ***Loy v. Bunderson***, 107 Wis. 2d at 400, 411, 320 N.W.2d 175 (1982). "Courts … shall have power to declare rights … whether or not further relief is or could be claimed." WIS. STAT. § 806.04(1). We recognize that the relief Olson seeks in the form of an order requiring the Town to approve his application for plat approval exceeds the scope of the declaratory judgment statute. However, "the justiciability of a declaratory judgment claim hinges on an inspection of all the claims for relief sought. If one or more of the claims for relief are properly justiciable through a declaratory judgment, the action should proceed." ***Putnam***, 255 Wis. 2d 447, ¶50 n.16. In this case, in addition to seeking an order requiring plat approval, Olson separately requests a broader declaratory judgment which, as we have explained, would resolve the uncertainty Olson and other developers will continue to face in the future development of their properties. Therefore, a declaratory judgment in this case would be sufficiently conclusive on issues of importance. *See* ***Loy***, 107 Wis. 2d at 411.

CONCLUSION

¶25 We conclude that this declaratory judgment action is ripe for adjudication. We therefore reverse and remand for further proceedings.

By the Court.—Judgment reversed and cause remanded for further proceedings.

Not recommended for publication in the official reports.

¶26 DYKMAN, J. (*dissenting*). The majority converts a discretionary review into a de novo review by a method which will, if followed, result in de novo reviews in all declaratory judgment cases where the issue is ripeness. Then, using this new standard of review, the majority concludes that case law requires that we reverse the trial court's decision. I disagree with the majority's decision to change our standard of review. And I disagree with the majority's analysis of the three cases it cites as authority for its decision to reverse the trial court.

¶27 The majority acknowledges that whether to grant or deny declaratory relief is within a trial court's discretion. ***Milwaukee Dist. Council 48 v. Milwaukee County***, 2001 WI 65, ¶36, 244 Wis.2d 333, 627 N.W.2d 866. When we say that trial courts may exercise discretion in deciding issues, we are acknowledging that there is no "right" answer, and that several different decisions, if based on the facts of the case and a process of reasoning, would be affirmed. *See*, *e.g.*, ***Hartung v. Hartung***, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). This is sometimes called a "limited right to be wrong." ***State v. Jeske***, 197 Wis. 2d 905, 913, 541 N.W.2d 225 (Ct. App. 1995) (citation omitted). That is what is in play here. We are not reviewing the elements of a crime, with definitive elements. Instead, we are reviewing ripeness, which does not have a concrete or inflexible test.

¶28 Ripeness depends on whether the facts on which a trial court is to make a judgment are contingent or uncertain. ***Putnam v. Time Warner Cable of Southeastern Wisconsin***, 2002 WI 108, ¶44, 255 Wis. 2d 447, 649 N.W.2d 626. Contingency and uncertainty come in a variety of shapes and sizes. Webster's

Dictionary defines "contingent" as "of possible occurrence: likely but not certain to happen." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 493 (1993). "Uncertain" is defined as "being of indefinite date," "indeterminate in number," and "not certain to occur." ***Id.*** at 2484. Human beings, judges included, will have different opinions on whether something is likely to occur or whether a future occurrence is definite or not. So, if we are going to use a principled approach to trial courts' discretionary acts, we must ask whether the result reached by the trial court is so wrong as to be an erroneous exercise of discretion. Using a common test for a proper exercise of "discretion," we are to ask whether the trial court considered the relevant law, the facts, and, by a process of logical reasoning, reached a reasonable conclusion. ***Hartung***, 102 Wis. 2d at 66. The question we are to answer is whether the result is one a reasonable judge could reach. ***Id.***

¶29 I am not willing to say that the conclusion the trial court reached here was an unreasonable one. The majority does not criticize the facts used by the trial court, nor could it; this case is here on summary judgment review and, as the trial court noted, Olson has failed to submit any evidentiary materials at all. Nor can the majority claim that the trial court failed to consider the relevant law. The trial court based its decision on ***Milwaukee Dist. Council 48***, 244 Wis. 2d 333, a case the majority concludes is relevant here, and ***Wagner v. Milwaukee County Election Comm'n***, 2003 WI 103, 263 Wis. 2d 709, 666 N.W.2d 816, another declaratory judgment case. Finally, the majority does not explain how the result the trial court reached was illogical. In short, other than differing with the trial court's conclusion, the majority does not explain why this conclusion is an erroneous exercise of discretion.

¶30 The apparent reason the majority reaches its conclusion is that ***Putnam***, 255 Wis. 2d 447, ***Milwaukee Dist. Council 48***, 244 Wis. 2d 333, and

Lister v. Board of Regents of the Univ. of Wisconsin Sys., 72 Wis. 2d 282, 240 N.W.2d 610 (1976), require that conclusion. I find no such requirement.

¶31 In ***Putnam***, 255 Wis. 2d 447, ¶46, the supreme court concluded that the facts established that ten to fifteen percent of Time Warner's customers pay a late fee each month. There was no speculation in the supreme court's conclusion that customers will continue to pay late fees in the future. *See* ***id.***

¶32 Similarly, there was no speculation in the supreme court's conclusion in ***Milwaukee Dist. Council 48***. There, the county had denied pension benefits to employees who were terminated for just cause. ***Milwaukee Dist. Council 48***, 244 Wis. 2d 333, ¶20. A union, representing over 6000 County employees, requested a declaratory judgment holding that the County's practice violated the County's pension ordinance. ***Id.*** It was logical to conclude that the County would continue to follow its practice for those 6000 employees. *See* ***id.,*** ¶38. The only question was *when* the next case would arise, not *whether* it would.

¶33 Finally, ***Lister*** does not in any way support the majority's conclusion. There, the plaintiffs wanted the court to interpret a nonexistent statute. The court declined to do so and noted: "The basic rationale of the 'ripeness' doctrine is to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative or, in this case, legislative policies." ***Lister***, 72 Wis. 2d at 309. Such is the case here. Olson disagrees with the Town's legislative policy on real estate development, which restricts his ability to develop his property as he sees fit. The supreme court has instructed that courts should not adjudicate disputes such as this one until required to do so. That is what the trial court concluded, which to me shows a proper exercise of discretion.

¶34 Ultimately, the problem with the majority's conclusion as to the ripeness issue of contingency and uncertainty is that Olson is asking for a ruling on something that is irrelevant unless the Dane County Board rezones his land. I find nothing in the majority opinion explaining why a declaratory judgment here would benefit Olson in any way if his land is not rezoned. Is the majority holding that the Dane County Board *will* rezone Olson's land? If that is its holding, it knows something that I, at least, do not. Accordingly, I respectfully dissent.