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Clerk of Circuit Court
Washington County, WI
2025CV000103

BY THE COURT:

DATE SIGNED: July 10, 2026

Electronically signed by Ryan J. Hetzel
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT

WASHINGTON COUNTY

WE LOVE FARMINGTON, U. A., et al.,
Plaintiffs,

vs.

TOWN OF FARMINGTON, et al.,
Defendants.

Case No. 25CV103

**DECISION AND ORDER ON DEFENDANT TOWN OF FARMINGTON'S
MOTION TO DISMISS AND DEFENDANT SHALOM WILDLIFE
SANCTUARY LLC'S MOTION FOR SUMMARY JUDGMENT**

Case Posture

Plaintiffs, We Love Farmington, U.A. (hereinafter "We Love Farmington") and Andrew Willets (hereinafter "Willets") filed an Amended Complaint alleging seven (7) causes of action against Defendants Town of Farmington and Defendant Shalom Wildlife Sanctuary, LLC (hereinafter "Shalom"). These seven causes of action are:

1) Error of Law - CUP cannot cover Zoo Parcels

Alleging that the most recent application for a conditional use permit (CUP) covered both the new proposed event parcel and the previously approved zoo parcel. The complaint alleges only the owner of the zoo parcel signed the application.

2) Error of Law - Use not permitted as CUP or otherwise

Alleging that the grant of the CUP for the zoo parcel violates the agricultural zoning of the parcel.

3) Failure to apply CUP ordinance

Arguing that the Town of Farmington did not follow its own ordinances in granting the CUP to the zoo parcel.

4) Lack of substantial evidence

Alleging that the CUP application filed by the zoo parcel failed to contain any information regarding the use and operation of the event space or the use and operation of the commercial zoo.

5) Violation of 1986 CUP

Alleging that the parcel at 1809 Shalom Drive contained a CUP from 1986 that prohibited commercial activity at the location, and that the current owner's use of the parcel violates those conditions.

6) Illegal non-confirming use

Alleging that in 2013, Washington County changed and expanded the floodway/floodplain district boundary covering portions of the 1809 Shalom Drive and that the event space property, and the abandoned dwelling on that property, to the extent they are within the current floodway/floodplain district boundaries are prohibited from being in place within the floodplain and floodway. It goes on to argue that the CUP, as it purports to allow the use of the event space property for commercial uses and including the redevelopment and use of the abandoned dwelling, is contrary to applicable flood protections laws.

7) Exotic Animals Prohibited Use

Alleging that the keeping of exotic animals on the property is in violation of the Town's agricultural zoning.

Amended Complaint, Electronic Document #16.

Following the filing of the Amended Complaint, on December 9th, 2025 the Town Board approved Town of Farmington Ordinance No. 2025-02. The Amendment added "Zoological Activities" as a permitted use within the AG Agricultural District. Defendants argue that "Shalom's right to operate its zoo and activities associated with the zoo is no longer defined under

the CUP because these operations are now permitted within the AG Agricultural District as “Zoological Activities”.

Defendant Town of Farmington now moves to dismiss Plaintiffs We Love Farmington, U.A. and Andrew Willets Complaint. Defendant Shalom Wildlife Sanctuary, LLC moves for Summary Judgment on those same claims.

Legal Standard

“A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint.” John Doe 1 v. Archdiocese of Milwaukee, 2007 WI 95, ¶ 12, 303 Wis.2d 34, 734 N.W.2d 827 (quoting BBB Doe v. Archdiocese of Milwaukee, 211 Wis.2d 312, 331, 565 N.W.2d 94 (1997)). Upon a motion to dismiss, we accept as true all facts well-pleaded in the complaint and the reasonable inferences therefrom. Data Key Partners v. Permira Advisers LLC, 2014 WI 86, ¶ 19, 356 Wis. 2d 665, 676, 849 N.W.2d 693, 698–99, citing Kaloti Enters., Inc. v. Kellogg Sales Co., 2005 WI 111, ¶ 11, 283 Wis.2d 555, 699 N.W.2d 205. However, a court cannot add facts in the process of construing a complaint. John Doe 67C, 284 Wis.2d 307, ¶ 19, 700 N.W.2d 180. Furthermore, legal conclusions stated in the complaint are not accepted as true, and they are insufficient to enable a complaint to withstand a motion to dismiss. Id.; Mitchell v. Lawson Milk Co., 40 Ohio St.3d 190, 532 N.E.2d 753, 756 (1988). Therefore, it is important for a court considering a motion to dismiss to accurately distinguish pleaded facts from pleaded legal conclusions.

Summary Judgment is similar. If a claim for relief has been stated based on the pleadings when we take as true all facts pleaded by the plaintiff the remaining issue is whether any factual issues exist under the correct legal standards. Murphy v. Columbus McKinnon Corp., 2021 WI

App 61, ¶ 13, 399 Wis. 2d 18, 28, 963 N.W.2d 837, 842, *aff'd but criticized*, 2022 WI 109, 405 Wis. 2d 157, 982 N.W.2d 898, citing Green Spring Farms v. Kersten, 136 Wis. 2d 304, 315-317, 401 N.W.2d 816 (1987). Summary judgment is appropriate only “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” WIS. STAT. § 802.08(2). A factual dispute is genuine if “a reasonable jury could return a verdict in favor of the nonmoving party” and the dispute is material if it could affect the outcome of the trial under the applicable legal standards. See Schmidt v. Northern States Power Co., 2007 WI 136, ¶24, 305 Wis. 2d 538, 742 N.W.2d 294. “[I]f more than one reasonable inference can be drawn from the undisputed facts, summary judgment is not appropriate.” *Id.*, ¶47.

Decision

The Town of Farmington and Shalom both argue that the causes of action raised by the Plaintiffs are moot. They argue that when the Town of Farmington amended its Zoning Code for “Agricultural Districts” districts to allow “zoological activities”, the disputed conditional use permit no longer applied.

On December 9, 2025, the Town of Farmington voted to adopt amendment to the definition of “Agricultural District” in its zoning code, to add the following language:

“(153) Zoological Activities. Zoological activities include zoos and sanctuaries, defined as operations for the care, exhibition, preservation, and breeding of animals, with associated educational programs on parcel(s) of land containing in the aggregate not less than 100 acres of land. This includes internal development and redevelopment of new exhibits, visitor centers, trails, parking lots, accessory retail and footprint expansion upon the acquisition of adjacent agricultural zoned parcels or subdivision of existing parcels. Zoological activities, may include but are not limited to visitor centers, parking lots, trails, educational facilities, food/beverage sales, special events, weddings, or similar uses, and accessory retail sales such as gift shops.”

Electronic Document #86, p. 1, Exhibit 12 to the Declaration of Matthew M. Fernholz.

Additionally, the zoning code was amended to allow “Zoological activities” as a “Permitted Use” in an Agricultural District. *Id.*, p. 2. It is undisputed that the current zoning for the parcels occupied and operated by Shalom are zoned “Agriculture” *Electronic Document #16, Amended Complaint*, ¶61.

Finally, the Town of Farmington also amended its zoning ordinances with respect to animals:

(f) **Animals On Single Family Subdivided Lots.** *For all lots or parcels of less than five (5) acres*, no more than five (5) chickens, ducks or similar poultry, or eight (8) rabbits, are permitted on a lot of at least one and one-half (1.5) acres. No more than one (1) animal (such as a horse, cow, sheep or llama) on a lot having at least three (3) acres, and two (2) animals on a lot having at least four and a half (4.5) acres. Exotic animals requiring a state permit authorizing possession are prohibited within this district.

Electronic Document #86, p. 13, (emphasis added in italics) Exhibit 12 to the Declaration of Matthew M. Fernholz.

Both the Town of Farmington and Shalom now argue that the zoning amendment allows Shalom to operate its zoo under the standard definition of an Agricultural District, and thus the Conditional use Permit is no longer required or valid. *See Town of Farmington’s Motion to Dismiss, Electronic Document #68, p. 5; Shalom’s Brief in support of Summary Judgment, Electronic Document #71, pp. 8-11.* Further, they argue the amendment to the “Animals on Single Family Subdivided Lots” no longer restricts exotic animals on parcels like Shalom’s. This Court agrees.

In general, zoning ordinances provide landowners with permitted uses, which allow a landowner to use his or her land, in said manner, as of right. *Town of Rhine v. Bizzell*, 2008 WI 76, ¶ 19, 311 Wis. 2d 1, 15, 751 N.W.2d 780, 787 citing *Daniel R. Mandelker, Land Use Law* § 6.39, at 6–44 (5th ed. 2003). “Most ordinances impose a broad division of land uses, and, in addition, provide that specified uses may be established or maintained in named districts, only pursuant to a special permit....” *Bizzell*, *supra* citing 3 *Kenneth H. Young, Anderson’s American*

Law of Zoning, § 21.01, at 693–94 (4th ed.1996) “Uses are permitted in designated districts because they are thought to be compatible with other uses permitted in such district.” 2 *Young*, *supra*, § 9.20, at 169. “In addition to permitted uses, ordinances may also provide for conditional uses by virtue of a special use or conditional use permit.” Bizzell at ¶20. “A conditional use, however, is different than a permitted use.” *Id.*, See S. Mark White, Classifying and Defining Uses and Building Forms: Land–Use Coding for Zoning Regulations, American Planning Association Zoning Practice, Sept. 2005, at 8. “While a permitted use is as of right, a conditional use does not provide that certainty with respect to land use.” *Id.* “Conditional uses are for those particular uses that a community recognizes as desirable or necessary but which the community will sanction only in a controlled manner.” State ex rel. Skelly Oil Co. v. Common Council, City of Delafield, 58 Wis.2d 695, 701, 207 N.W.2d 585 (1973); 3 *Young*, *supra*, § 21.06 (discussing uses commonly subject to special permit requirements).

Shalom’s business activities now fall squarely within the Agricultural District’s permitted uses. The restrictions of a conditional use permit are no longer necessary. The Amended Complaint, the current operative document on behalf of the Plaintiff, challenges the Town’s issuance of a conditional use permit, in causes of action 1, 2, 3, 4, 5 and 7.

“Mootness is a doctrine of judicial restraint. An issue is moot when its resolution will have no practical effect on the underlying controversy.” Wisconsin State Journal v. Blazel, 2023 WI App 18, ¶ 42, 407 Wis. 2d 472, 502, 991 N.W.2d 450, 465; citing Marathon County v. D.K., 2020 WI 8, ¶19, 390 Wis. 2d 50, 937 N.W.2d 901. There are five exceptions to mootness: “(1) the issue is of great public importance; (2) the issue involves the constitutionality of a statute; (3) the issue arises often and a decision from [the appellate] court is essential; (4) the issue is likely to recur and must be resolved to avoid uncertainty; or (5) the issue is likely of repetition and evades review.”

Id. “Our supreme court has stated that an issue is not moot when a ruling on the issue would have a practical effect on “a legal consequence” of the ruling.” Wisconsin State Journal, *supra* at ¶43, *citing* Sauk Cnty. v. S.A.M., 2022 WI 46, ¶20, 402 Wis. 2d 379, 975 N.W.2d 162.

Because the business activities of Shalom fall squarely within the permitted uses of an Agricultural District in the Town of Farmington, and exotic animals are no longer banned on parcels larger than 5 acres, Plaintiff’s Cause of Action, 1, 2, 3, 4, 5 and 7 are moot. None of the exceptions to the mootness doctrine apply here. This is not an issue of great public importance, it does not involve the constitutionality of a statute, it is not likely to arise often or reoccur routinely, and has not evaded review.

Spot Zoning Challenge

Plaintiffs argue that their Amended Complaint challenging the CUP should stand because the Town of Farmington’s amendment to its “Agricultural District” is spot zoning. ““Spot zoning” is the practice whereby a single lot or area is granted privileges which are not granted or extended to other land in the vicinity in the same use district.” Heaney v. City of Oshkosh, 47 Wis.2d 303, 307, 177 N.W.2d 74 (1970). This is a challenge to the Town of Farmington’s recent amendment to its zoning ordinance.

The Amended Complaint makes no reference to spot zoning or the Town of Farmington’s recent change to its Agricultural District’s zoning ordinance. There is a well-established methodology for challenging a municipality’s zoning ordinance:

The legislature has fashioned a procedure for the property owner to contest adverse rulings before the board of appeals, the unit of government which is closest to the people and which should be given the opportunity to provide a remedy. If the condition imposed by the plan commission had been found invalid, the board could have, if it believed it necessary or appropriate, imposed a different condition which would be lawful. We believe that the legislature intended this type of dispute to be resolved initially by the local administrative agency and thereafter, if necessary, in court by writ of certiorari. The property owners, having failed to utilize available administrative remedies provided by law, are precluded from judicial relief at this time.

Nodell Inv. Corp. v. City of Glendale, Milwaukee Cnty., 78 Wis. 2d 416, 427–28, 254 N.W.2d 310, 316–17 (1977).

Imperative in the Nodell case is that the local administrative agency has an opportunity to address any alleged deficiencies, before the filing of a writ of certiorari. The Plaintiffs, by raising the issue in response to a Motion to Dismiss, have not afforded the Town of Farmington of addressing any concerns regarding the legality of the zoning amendment. The Court finds that issue of spot zoning is not properly before the Court.

Claim for Relief 6- Illegal Non-Conforming Use

In Claim for Relief 6, the Plaintiffs allege that in 2013, Washington County adopted a zoning ordinance that expanded floodway/floodplain districts which cover portions of the 1809 Shalom Drive property. *Amended Complaint, Electronic Document #16*, ¶¶92-96. The Amended Complaint alleges that an abandoned building on the property currently is placed within the floodplain and floodway. *Id.*, ¶97. The Amended Complaint alleges this is an illegal non-conforming use, cannot be redeveloped or re-used and must be removed from the floodplain and floodway. *Id.*, ¶98. The Complaint goes on to reference the CUP. However, the allegations, if accepted as true, allege a violation of the County zoning ordinance, even in the absence of the CUP.

Although the issuance of the CUP is not determinative of Claim for Relief 6, two issues are raised. First, do the Plaintiffs have standing to enforce the floodplain districts? Second, assuming they do have standing, are the Defendants proper parties to assert these claims?

When considering standing, the court must “take all facts alleged by [the plaintiff] to be true in determining whether he has standing to bring his claim.” Friends of Black River Forest v. Kohler Co., 2022 WI 52, ¶ 11, 402 Wis. 2d 587, 600, 977 N.W.2d 342, 348 citing McConkey v.

Van Hollen, 2010 WI 57, ¶14 n.5, 326 Wis. 2d 1, 783 N.W.2d 855 (citing Repetti v. Sysco Corp., 2007 WI App 49, ¶2, 300 Wis. 2d 568, 730 N.W.2d 189). “We construe the law of standing ‘liberally, and “even an injury to a trifling interest” may suffice.’” McConkey, 326 Wis. 2d 1, ¶15, 783 N.W.2d 855 (quoting Fox v. DHSS, 112 Wis. 2d 514, 524, 334 N.W.2d 532); see also Wisconsin’s Env’t Decade, inc. v. Pub. Serv. Comm’n of Wis. (WED I), 69 Wis. 2d 1, 13, 230 N.W.2d 243 (citing Kubista v. State Annuity & Inv. Bd., 257 Wis. 359, 43 N.W.2d 470 (1950)).

In applying the first element of standing—“injury in fact”—we ask “whether the petition alleges injuries that are a direct result of the agency action.” Friends of Black River Forest, *supra* at ¶ 19, citing WED I, 69 Wis. 2d at 13, 230 N.W.2d 243. The second step is to determine whether the interest asserted is recognized by law. WED I, 69 Wis. 2d at 10, 230 N.W.2d at 248.

The Amended Complaint alleges that, “The event space property and the abandoned building are within or otherwise covered by the amended floodway/floodplain district boundary as approved by the County in August 2013.” *Amended Complaint* ¶ 97, *Electronic Document #16*. The Amended Complaint fails to allege how the Plaintiffs, We Love Farmington U.A. and Andrew Willetts are injured by the abandoned building being in the flood plain. “[A]llegations of injury to aesthetic, conservational, recreational, health and safety interests will confer standing so long as the injury is caused by a change in the physical environment.” Milwaukee Brewers Baseball Club v. DHSS, 130 Wis. 2d 56, 65, 387 N.W.2d 245 (1986). However, plaintiffs’ Amended Complaint does not even allege any of those things. The Amended Complaint merely alleges that an abandoned building is located within the county’s floodway/floodplain district. In the absence of any injury or allegation of any injury to the Plaintiffs, the Plaintiffs lack standing to pursue Claim for Relief 6.

Because the court has determined that Plaintiffs lack standing under the first prong of the standing test, the Court does not reach the second issue of whether the Plaintiffs have an interest recognized by law, nor does the Court address whether the Defendants are the proper parties to this cause of action.

NOW THEREFORE, IT IS HEREBY ORDERED:

1. For the reasons stated above; Defendant Town of Farmington's Motion to Dismiss and Defendant Shalom's Motion for summary Judgment are GRANTED as to Causes of Action, 1, 2, 3, 4, 5, and 7 in the Amended Complaint as being moot.
2. For the reasons stated above, Defendant Town of Farmington's Motion to Dismiss and Defendant Shalom's Motion for summary Judgment are GRANTED as to Plaintiffs' Causes of Action 6 in the Amended Complaint for lack of standing.

The Court will hold a Scheduling Conference on August 6, 2026 at 9:00 a.m. and will permit counsel to appear remotely. A separate notice will be generated to include the zoom information.

THIS IS A FINAL ORDER FOR PURPOSES OF APPEAL. Wis. Stats. §808.03(1).

Dated at West Bend, Wisconsin.

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