

Claude and Gemini disagree on the petition for review in *Sauk Prairie Conservation Alliance v. Wisconsin Department of Natural Resources*, 2023AP002303

Claude's analysis:

No — and the reason for denial is largely that a better vehicle is already sitting on the court's doorstep.

Issue 1 isn't presented by this case. The Alliance asks the court to decide whether § 227.42(3)'s exception is triggered by any hearing or only by something resembling a contested case. That's a real and consequential question — the petition is right that a public hearing and a contested-case hearing are different animals, and *Milwaukee Brewers* and *Town of Two Rivers* say so. But the Alliance **received** a four-day contested-case hearing with twenty-one witnesses. Whatever § 227.42(3) means, it did not deprive this petitioner of anything. The State's "red herring" label is unkind but accurate.

More to the point, *Friends of Blue Mound State Park* is a **published** decision, 2025 WI App 63, with a petition pending in 24AP577. That decision is binding statewide; this one is an unpublished per curiam that binds no one and can't be cited. If the court wants to fix the § 227.42(3) rule — and it may well should — *Friends* is where the rule actually lives. Even the Alliance concedes as much, telling the court it could grant *Friends* and then vacate and remand here. That's a disposition available without granting this petition.

The petition also briefs Issue 1 largely by incorporation: "As more fully explained in the petition in *Friends of Blue Mound*," plus a cite to its own court of appeals brief at 33–40. A petition for review has to stand on its own. Combined with the drafting lapses — a sentence reading "the scope of 's exception," a heading reading "Issues set to be by the ALJ," a citation to § 227.47(3) where § 227.42(3) is meant — the filing does not present the question in a form the court can work from.

Issue 2 is the stronger claim, and the court of appeals may well have gotten it wrong. The facts are genuinely arresting. An ALJ set eight issues, held four days of hearing, then refused to prepare findings and certified the record to a board whose members hadn't attended. The NRB voted to reconsider and reapprove without addressing any of the eight issues, without findings of fact, without conclusions of law, without a written decision. Seven years on, none exists. On the designation point, § 227.46(3) requires designation "by rule or in a particular case . . . by order," and NR 2.155(2)(a) requires it before the hearing; a post-hearing referral letter is neither.

And there is a real circularity in the court of appeals' answer. Holding that "assuming the existence of the errors alleged, any errors were not material" puts the burden on a party to demonstrate that missing findings changed an outcome whose basis was never stated. *Connecticut General* says remand is required precisely when the factual basis for a decision is uncertain and unclear. The State's response barely engages this — it recasts the complaint as wanting "another writing about the master plan," when the Alliance's point is that there was never a first one, and it doesn't address *Anderson-El* or the designation defect at all.

But the claim has two problems the petition doesn't solve. First, the textual argument fails. The Alliance reads § 227.57(4) as making "a failure to follow prescribed procedure" an

independent, materiality-free ground for remand. Grammatically it isn't: "impaired by a material error in procedure or a failure to follow prescribed procedure" — *impaired by* governs both disjuncts. Impairment is required either way. That leaves the Alliance arguing that these particular failures are *inherently* impairing, which is a fair argument but a much narrower one than the petition frames.

Second, and more fundamentally, Issue 2 rides on Issue 1. The § 227.47(1) writing requirement and NR 2.155 attach to contested cases. If master planning is quasi-legislative and no contested case was ever owed — which the circuit court came to suspect after the fact, and which *Friends* suggests — then a hearing held under an erroneous circuit court order may not carry the full apparatus of ch. 227 adjudication. The court cannot sensibly decide whether these requirements were excusable without first deciding whether they applied. That ordering points to *Friends* again.

What I'd do. Deny this petition. Take *Friends* if the court wants the § 227.42(3) question, which it plausibly should — that decision is published, squarely presents the issue, and now controls a recurring dispute between citizen groups and DNR. If *Friends* comes out for the petitioners there, hold this case and remand it for reconsideration in light of that ruling; the findings-and-decisionmaker problem can then be addressed on a premise that has been settled rather than assumed.

The nine-year record, the consolidated petitions, the parallel federal litigation resolved through certiorari denial, and the merits affirmance below all make this a bad place to announce new administrative law. The underlying grievance — a party that won a hearing and never got a decision — is legitimate and deserves an answer. It just needs a cleaner case to get one.

Gemini's analysis:

Yes, the Wisconsin Supreme Court should accept this case for review.

While the State attempts to frame the petition as a mere substantive disagreement over land use and "high-impact" recreation, the Alliance raises fundamental questions of administrative due process that warrant intervention by the state's highest court.

The Integrity of Chapter 227 Adjudications

The most compelling, independent reason for review is the second issue presented: whether mandatory procedural requirements in agency decision-making can be brushed aside as harmless error.

- The Alliance asserts that the Administrative Law Judge (ALJ) failed to issue a written decision, findings of fact, or conclusions of law following the four-day contested-case hearing.
- Instead, the ALJ certified the record to the Natural Resources Board (NRB)—an entity whose members did not attend the hearing and allegedly lacked the statutory authority to adjudicate the contested case.

- The Court of Appeals dismissed these deviations as immaterial procedural errors that did not impair the fairness of the proceedings under Wis. Stat. § 227.57(4).

Allowing this appellate reasoning to stand creates a dangerous roadmap for agencies to sidestep the strict accountability mechanisms of Wis. Stat. § 227.47(1). If an agency can bypass an ALJ's final written decision and farm the adjudication out to an absent board, the statutory right to a contested-case hearing is rendered effectively hollow.

The Vehicle Defense and *Friends of Blue Mound*

The Alliance's first issue asks whether the Wis. Stat. § 227.42(3) exception for discretionary hearings strips parties of their right to a contested-case hearing simply because an agency can hold a generic public hearing.

- The State argues this case is a poor vehicle to address this question because the Alliance actually *received* a contested-case hearing, making the issue a "red herring".
- The State also points out that this exact statutory question was already presented in the *Friends of Blue Mound State Park v. DNR* petition.

However, the State's "poor vehicle" defense collapses when viewed alongside the procedural defects. A four-day hearing devoid of an authorized decisionmaker, findings of fact, and a written legal conclusion is not a valid contested-case adjudication. Because the procedural failures essentially voided the hearing the Alliance received, the underlying statutory question of whether they were entitled to one remains highly relevant.