



April Case Law Update April 30, 2017

A summary of Wisconsin court opinions decided during the month of April related to planning

For previous Case Law Updates, please go to: www.wisconsinplanners.org/learn/law-and-legislation

United States Supreme Court Opinions

Cities Can Sue Banks Under Fair Housing Act for Predatory Lending Practices (actually decided May 1st)

In [Bank of America v. City of Miami](#), the United States Supreme Court held that cities are an “aggrieved person” authorized to bring suit under the Federal Fair Housing Act against lending institutions for the economic impact on cities caused by discriminatory lending practices. Following the mortgage foreclosure crisis in 2008, the City of Miami sued the Bank of America and Wells Fargo alleging that the banks intentionally issued riskier mortgages on less favorable terms to African-American and Latino customers than they issued to similarly situated white, non-Latino customers, in violation of the Fair Housing Act. The City claimed the practices disproportionately caused foreclosures and vacancies in minority communities in Miami. Those foreclosures and vacancies harmed the City by decreasing the property value of the foreclosed home and the values of other homes in the neighborhood, thereby reducing property tax revenues to the City and forcing the City to spend more on municipal services to remedy blight and unsafe and dangerous conditions at properties that were foreclosed as a result of the banks’ lending practices.

The banks argued that the City was not an aggrieved person and therefore lacked standing to bring the lawsuit. The U.S. Supreme Court, however, in a 5 to 3 decision, determined that the City’s claims of financial injury were arguably within the zone of interests protected by the Fair Housing Act. The Court remanded the case back to the lower courts to determine if the actions of the banks were the proximate cause of the City’s injury. According to the Court, the City must establish a “direct relation between the injury asserted and the injurious conduct alleged.” Several similar cases are pending in other cities across the U.S.

Wisconsin Supreme Court Opinions

Court Upholds Building Permit Rule for Establishing Vested Rights

[McKee Family I, LLC v. City of Fitchburg](#), 2017 WI 34, involved the Wisconsin Supreme Court’s review of an unpublished Wisconsin Court of Appeals decision from November 2015 in which

the Court of Appeals affirmed the determination of the circuit court that the property owner did not have a vested right to develop their property.

The facts of the case are as follows. In 1994 the property owner in the City of Fitchburg proposed a development project following the City's ordinance for Planned Development Districts (PDD). The City rezoned the property to PDD and approved a general implementation plan (GIP) for the property. The parcels at issue in this case remained undeveloped for a number of years. In 2008, the property owner submitted a specific implementation plan (SIP) for the construction of an apartment building. Neighboring residents expressed concerns about the development and the City rezoned the parcel to a residential zoning classification that only permitted single-family and duplex structures. The rezoning to preclude apartments occurred before the City Council's review of the SIP.

The property owner sued arguing that they had obtained a vested right to the PDD zoning classification because of the approval of the GIP. The Wisconsin Supreme Court, however, affirmed the decision of the lower courts that followed the "bright-line building permit rule" announced by the Wisconsin Supreme Court in its decision in Lake Bluff Housing Partners v. City of South Milwaukee, 197 Wis. 2d 157, 540 N.W.2d 189 (1995). According to that rule, "[a] property owner's rights do not vest until the developer has submitted an application for a building permit that conforms to the zoning or building code requirements in effect at the time of the application." Up until that time, a property owner does not have vested rights in the zoning and the local government can change the zoning, even in the typical two-step PDD process followed by many local governments in Wisconsin: first the approval of the GIP followed by the approval of a more detailed SIP. The property owner can only apply for a building permit after the City approves the SIP.

NOTE: Since the dispute in the McKee case occurred prior to the December 14, 2013, effective date of 2013 Wis. Act 74, the case does not discuss the application of Wisconsin's new vested rights statute within the context of PDD zoning. Among other things, Wisconsin law now requires that "[i]f a project requires more than one approval . . . and the applicant identifies the full scope of the project at the time of filing the application for the first approval required for the project, the existing requirements applicable . . . at the time of filing the application for the first approval required for the project shall be applicable to all subsequent approvals required for the project, unless the applicant and the political subdivision agree otherwise." Wis. Stat. § 66.10015(2)(b). Approvals are no longer limited to building permits. Act 74 defines "approval" as "a permit or authorization for building, zoning, driveway, stormwater, or other activity related to land development." Wis. Stat. § 66.10015(1)(a).

Wisconsin Court of Appeals Opinions

No Vested Rights for Agricultural Use

In Golden Sands Dairy LLC v. Town of Saratoga, the Wisconsin Court of Appeals addressed the issue of whether a large dairy operation proposed for 6388 acres of land had established vested rights to the

agricultural use of property in the Town of Saratoga in Wood County. Golden Sands applied for a building permit to construct seven buildings for the dairy operation. At the time of the application, the land was zoned for “unrestricted use.” The Town subsequently rezoned the land for rural preservation which prohibited Golden Sands’ planned agricultural use. In an earlier decision, the Court of Appeals found that Golden Sands had a vested right to the building permit for the seven farm buildings and ordered the Town to issue the building permit. While that case was pending, Golden Sands also initiated the present lawsuit.

Golden Sands’ building permit application indicated that it involved “100 acres of site and 6388 acres total.” The issue in the second case was whether Golden Sands had a vested right to the agricultural use of the 6388 acre non-building site acres that Golden Sands intended to use to raise crops and spread manure from its planned dairy operation. Golden Sands argued that the building permit application also established vested rights to the entire 6388 acres. In the second case, the Town did not dispute that Golden Sands had the right to use the 100-acre parcel as a building site. Rather, the Town argued that Golden Sands had not established a vested right to the agricultural use of all the land.

The Court of Appeals agreed with the Town. The Court found that the vested rights established by the building permit application applied only to the 100 acre building site and not the entire acreage. According to the Court, Wisconsin’s vested right law applies only to acquiring a vested right to construct or alter a building. The Court also found that Golden Sands had not established a nonconforming use under Wisconsin law because Golden Sands’ use of the land was not actually and actively occurring at the time the Town amended its zoning ordinance.

The decision is **not** recommended for publication.

What is an “unpublished” decision?

The Court of Appeals opinions summarized in the monthly case law updates include a statement regarding whether the decision is recommended for publication. Questions often arise from APA-WI members about what it means when an opinion is **not** recommended for publication.

Under Wisconsin law, an unpublished opinion may not be cited in any Wisconsin state court as precedent or authority. However, an unpublished opinion issued on or after July 1, 2009, may be cited for its persuasive value with certain exceptions. Because an unpublished opinion cited for its persuasive value is not precedent, it is not binding on any court of this state. A court need not distinguish or otherwise discuss an unpublished opinion and a party has no duty to research or cite it.

U.S. Court of Appeals for the 7th Circuit Opinions

[No planning-related cases to report.]