



December Case Law Update December 31, 2015

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

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Wisconsin Supreme Court Opinions

[No planning-related cases to report.]

Wisconsin Court of Appeals Opinions

[No planning-related cases to report.]

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

Regulation of Sexually-Oriented Business and Free Speech

BBL, Inc. v. City of Angola involved the denial of a preliminary injunction in a Frist Amendment action brought by BBL against the City of Angola, Indiana. BBL purchased a restaurant in the City and planned to convert it to an adult-entertainment venue featuring nude dancing. Within days of the purchase, the City amended its zoning ordinances to prevent its use as an adult-entertainment venue. BBL subsequently initiated this lawsuit in federal court.

In a footnote, the Court of Appeals addressed the impact of the recent U.S. Supreme Court's decision in *Reed v. Town of Gilbert* on government regulation of adult entertainment. (See the September 2015 APA-WI Case Law Update for more information about the *Reed* case.) The *Reed* case announced a new standard for evaluating whether government regulations are not content-based in violation of First Amendment Freedom of Speech protections. While nude dancing is recognized by the Court as expressive conduct protected by the First Amendment, the Court has allowed limited regulation of adult businesses. The regulation of adult businesses is not content neutral. The *Reed* case did not discuss how the new standard for prohibited content-based regulations applied to adult business regulations. In examining this issue, the Seventh Circuit Court of Appeals concluded: "We don't think *Reed* upends established doctrine for evaluating regulation of businesses that offer sexually explicit entertainment...."

The 7th Circuit applied the U.S. Supreme Court tests for evaluating government regulation of adult business that requires the regulation be narrowly tailored to serve a substantial governmental interest and that the regulation allows for alternative avenues of communication. The U.S. Supreme Court has

acknowledged that evidence of negative secondary effects of adult business is a sufficient justification for the regulation. In this case, BBL stipulated to the City's secondary-effects justification. BBL also acknowledged that the City identified other sites where adult businesses could locate allowing alternative avenues of communication. As a result, the 7th Circuit upheld the denial of a preliminary injunction in the case.