



## February Case Law Update

February 28, 2017

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

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### ***Wisconsin Supreme Court Opinions***

[No planning-related cases to report.]

### ***Wisconsin Court of Appeals Opinions***

#### **City Property Tax Assessment of Billboard Permits Upheld**

[Clear Channel Outdoor, Inc. v. City of Milwaukee](#) involved the issue of whether the City of Milwaukee properly assessed the billboard permits of Clear Channel Outdoor. Clear Channel had permits for billboards it owned on land leased from different landowners. The City assessed the permits separate from the property tax bills issued to the owners of the land underlying the billboard structures.

Clear Channel argued that the property tax assessments of the billboard permits were invalid because the permits did not expressly fit the definition of real property in the Wisconsin Statutes. In this decision, the Wisconsin Court of Appeals disagreed, relying on the Wisconsin Supreme Court decision in *Adams Outdoor Advertising, Ltd., v. City of Madison*, 2006 WI 104, 294 Wis. 2d 441, 717 N.W.2d 803, that held billboard permits are real property.

Clear Channel also argued that the billboard permits should not be taxed because the Wisconsin Statutes did not include a method for imposing a tax on billboard permits. The City identified each permit by GPS coordinates and valued the permit based on estimates of rent earned by Clear Channel from advertisers. The Court held that the City method was consistent with state law. The Court also rejected Clear Channel's claims that the City's practices violated Equal Protection under the U.S. Constitution and the Uniformity Clause of the Wisconsin Constitution.

The case is recommended for publication in the official reports.

#### **Use of Term “Organizer” in Ordinance Not Unconstitutionally Vague**

[City of Oshkosh v. Kubiak](#) Involved a special events ordinance adopted by the City of Oshkosh in 2011. The ordinance requires that the “organizer” of an event apply for a permit and pay the City to help

defray the extra costs (such as additional police needed for security) incurred by the City. While the ordinance defines many of its terms, it does not define the term “organizer.”

For several years Joseph Kubiak, acting on behalf of Oshkosh Pub Crawl, LLC., applied for a permit and made the payment for the extra city services. The Pub Crawl has been held consistently twice a year on the second Saturday in April and October. After several years, however, Kubiak stopped applying for a permit and no longer paid for the extra City services. The City then initiated this lawsuit against Kubiak.

The circuit court concluded the meaning of “organizer” was unconstitutionally vague and dismissed the lawsuit. The City appealed to the Court of Appeals. While Kubiak argued that he was not in fact the “organizer” of the Pub Crawl, the Court focused only on the question of whether the term “organizer” as used in the ordinance was unconstitutionally vague. The Court of Appeals reversed the decision of the circuit court and found that the use of “organizer” was not unconstitutionally vague. According to case law, a statute or ordinance is unconstitutionally vague when it “is so obscure” that people of common intelligence must necessarily guess at its meaning and differ as to its applicability.” The Court of Appeals concluded that the ordinance did not need to be written with exact precision and that people of ordinary intelligence could read and sufficiently understand the requirements of the Ordinance.

The case is recommended for publication in the official reports.

## ***U.S. Court of Appeals for the 7<sup>th</sup> Circuit Opinions***

[No planning-related cases to report.]

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### **Stay tuned . . .**

Oral arguments before the U.S. Supreme Court in the regulatory takings case *Murr v. Wisconsin* are scheduled for Monday, March 20<sup>th</sup>. A decision in the case should be expected by mid-June. The American Planning Association and the Wisconsin Chapter filed a friend of the court brief in the case.

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