



## March Case Law Update March 31, 2015

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

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### **Wisconsin Supreme Court Opinions**

[No planning-related cases to report.]

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

#### **Survey Mistake Did Not Dedicate Land for Highway**

[Somers USA, LLC, v. State of Wisconsin Department of Transportation](#), involved an inverse condemnation against the Wisconsin Department of Transportation (DOT) for compensation due to the construction of a frontage road and on-ramp on a parcel of land that Somers mistakenly dedicated for future highway purposes. Somers purchased land abutting I-94 in the Town of Somers in Kenosha County for the construction of a truck stop. At the time of the purchase, the DOT was planning a highway improvement project for which it planned to take land for a frontage road and an on-ramp. An engineering firm prepared a certified survey map (CSM) for the truck stop development. The CSM recorded with the County Register of Deeds designated one parcel as “a road reservation for potential future state highway purposes” and another parcel as “Road Dedication for Future Highway Purposes.” None of the approval authorities for the CSM, however, required the dedication of any part of the property for public use and mysteriously none of the individuals involved with the drafting of the CSM knew how the “dedication” language wound up in the document.

The DOT, relying on the “reservation” and “dedication” language in the CSM, subsequently built the frontage road and on-ramp on the two parcels without compensating Somers. Somers initiated this lawsuit seeking just compensation for the taking of the land for the highway facilities. The DOT argued that when a property owner mistakenly inserts the word “dedication” on a certified survey map, the state is free to take that property without compensation. The Wisconsin Court of Appeals disagreed and held that DOT needed to compensate Somers for the taking of the land for the highway improvements. The Court noted that the dedication was not legally valid because the dedication did not comply with the statutory requirements for dedication, namely the acceptance of the dedication by the approving authorities (the Town of Somers and Kenosha County). The DOT also argued that it relied on the CSM prepared by Somers’ engineers and therefore Somers should not be able to proceed with its claim for compensation but the Court did not find this reasonable.

The case is recommended for publication in the official reports.

## ***U.S. Court of Appeals for the Seventh Circuit***

### **Village's Public Nudity Ban Questioned**

In Foxyxxy Ladys Adult World, Inc. v. Village of Dix, 779 F.3d 706 (7th Cir., 2015), The Seventh Circuit Court of Appeals upheld the granting of a motion to dismiss the plaintiffs' challenges to the Village's public nudity ban. The Village of Dix is a "dry" municipality of approximately 500 residents in Illinois. A nightclub featuring nude dancing began operating in the Village. The nightclub did not serve alcohol but allowed customers to bring their own. The Village passed three ordinances -- two limiting the possession of alcohol in public and the third banning public nudity. The Court of Appeals upheld the alcohol regulations as justified by the Village wanting to preserve its "dry" status. The Court, however, was unwilling to dismiss plaintiff's challenge to the public nudity ban. The Court found that the Village had not yet made any affirmative showing of adverse secondary effects justifying the ban as required by the U.S. Supreme Court and prior decision of the Seventh Circuit Court of Appeals. Since this was a motion to dismiss, the Court noted that on remand the Village would have an opportunity supplement the record with evidence the Village relied on to justify the ordinance.