



## May Case Law Update May 31, 2014

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

For previous Case Law Updates, please go to: <http://www.wisconsinplanners.org/lawandlegislation.html>

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

[No planning-related cases to report.]

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

#### **Challenge to WPDES Permit Requires Exhaustion of Administrative Remedies**

In [\*Clean Water Action Council of Northeast Wisconsin v. Wisconsin Department of Natural Resources\*](#), 2014 WI App 61, the Clean Water Action Council of Northeast Wisconsin (CWAC) brought a lawsuit in circuit court challenging the reissuance of the Wisconsin Pollutant Discharge Elimination System (WPDES) permit for Appleton Coated LLC. The circuit court dismissed the case because CWAC proceeded directly to judicial review of the DNR's actions without first obtaining a contested case hearing before the DNR for review of WPDES permit decisions as provided under Wisconsin law. The Wisconsin Court of Appeals affirmed the dismissal by the circuit court.

The case is recommended for publication in the official reports.

#### **Employee Safety Outweighs Disclosure of Public Records**

In [\*Ardell v. Milwaukee Board of School Directors\*](#), the Wisconsin Court of Appeals recognized a limited exception to the disclosure of public records under Wisconsin's Public Records Law when there are documented and well-founded safety concerns for the public employee who is the subject of the public records request.

Wisconsin law includes a presumption favoring disclosure of public records. However, the Court of Appeals acknowledged that the presumption is not absolute. In this case, the person requesting the documents had a history of violence against the employee about whom he was requesting documents. While the school district originally indicated it would turn over the records, the district later decided against disclosure of the records. This lawsuit was an effort to compel the school district to disclose the documents. Based on the requestor's history of violence and harassment of the employee, the circuit court and the Court of Appeals determined that the records request was not a legitimate one. Rather the intent was to continue to harass and intimidate the employee. Both the circuit court and the Court of Appeals agreed that the schools district properly withheld the disclosure of the records.

The case is recommended for publication in the official reports.

## **City Must Disclose Vote Taken During Closed Meeting**

[\*Journal Times v. City of Racine Board of Police and Fire Commissioners\*](#), involved a newspaper's request for the motions and roll call votes taken at a closed meeting to discuss the search for a new police chief. There were three finalists for the position - two minority candidates and one nonminority candidate. The nonminority candidate withdrew his application. At the closed meeting to discuss the withdrawal, the Commission decided to reopen the search to review a "broader pool of candidates." Wisconsin Open Meetings law expressly requires that motions and votes be recorded for closed meetings as part of the public record. The City initially refused to release the information but made it available after the newspaper initiated this lawsuit since the City did not have any basis for withholding the information. Wisconsin's public records law allows for the awarding of attorney fees if the lawsuit was a reason for the release of the information. The Wisconsin Court of Appeals remanded the case back to the circuit court to decide if the lawsuit was a reason for the release of the information and , if so, the amount of attorney fees and costs to be awarded.

The case is recommended for publication in the official reports.