



November Case Law Update November 30, 2013

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

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Wisconsin Supreme Court Opinions

Standard of Judicial Review of Municipal Nonrenewal of Alcohol Licenses

In [Nowell v. City of Wausau](#), 2013 WI 88, the Wisconsin Supreme Court held that challenges to municipal decisions not to renew an alcohol license are subject to certiorari review by the courts. The case involved a challenge to the City of Wausau's decision not to renew a Class B alcohol license for the "IC Willy's" tavern due to a number of problems including excessive noise, nudity, and failing compliance checks involving underage persons. The City followed all the appropriate notice and hearing procedures for the decision. The issue for the Supreme Court was to determine the appropriate standard of review for a court to apply when reviewing the substance of local government decisions not to renew alcohol licenses.

There are generally two standards of judicial review of local government decisions -- certiorari review and de novo review. De novo review affords more limited deference to local decisions. It involves a new hearing of the matter, conducted as if the original hearing by the city never occurred. Certiorari review affords greater deference to local decisions. Under certiorari review, the reviewing court presumes the local government's decision is correct and valid. The court limits its review to: 1) whether the municipality kept within its jurisdiction; 2) whether it acted according to law; 3) whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably make the order or determination in question.

In this case, the circuit court applied the certiorari standard of review and upheld the decision of the City. Upon appeal, the Wisconsin Court of Appeals held that the de novo standard of review was appropriate and reversed the decision of the circuit court. (The Court of Appeals decision was reported in the August 2012 *Case Law Update*.) The Wisconsin Supreme Court accepted review of the case and held that certiorari is indeed the correct standard of review and reversed the decision of the Court of Appeals. The Court based its decision on the legislative history of the alcohol licensing enabling statute, prior cases, and the Court's historic deference to legislative police power functions like regulating alcohol. According to the Court, the granting of a liquor license is a legislative function and "[p]ermitting a circuit court to determine de novo whether a liquor license should be granted would, in essence, improperly transfer that legislative function from the municipality to the court."

Wisconsin Court of Appeals Opinions

Diminution in Value of Property Due to Loss of Direct Access is Admissible Evidence

[118th Street Kenosha, LLC v. Wisconsin Dept. of Transp.](#) involved an appeal of a circuit court decision to prohibit the property owner from introducing evidence of the diminution in value of its property due to a loss of direct access to a public road. As part of a highway reconstruction project, the Wisconsin Department of Transportation (WisDOT) eliminated access to a shopping center from 118th Avenue in the City of Kenosha. WisDOT created a new entrance by taking a temporary easement along a private road that lead to 118th Avenue.

The property owner contested the damage award for the taking. WisDOT requested that the circuit court exclude evidence related to the loss in value to the property due to the loss of direct access. WisDOT argued that the loss of access and the taking of property for a new access were two distinct acts. According to WisDOT, since the taking of property for the new access did not result in the loss of direct access, the evidence should be limited to the cost of taking the temporary easement. The circuit court agreed.

On appeal, the Wisconsin Court of Appeals determined that WisDOT's argument "ignores reality." Since the taking of the easement was for an access to replace the access eliminated by WisDOT, the Court of Appeals held that the taking of the easement was integrally connected with the property's loss of direct access so the circuit court should have allowed the evidence in determining the fair market value of the property taken. The Court of Appeals reversed the circuit court's decision and remanded the case to the circuit court for proceedings consistent with the Court's opinion.

The decision is recommended for publication.

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