



## **October Case Law Update October 31, 2012**

**[A summary of published Wisconsin court opinions decided during the month of October related to planning]**

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

**[No planning related cases to report]**

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

#### **Non-Profit Membership**

Wisconsin does not have many cases dealing with non-profit groups organizations. Recently the Wisconsin Court of Appeals decided such a case, though it is an unpublished decision. The case, entitled [\*Packard v. Madison Audubon Society\*](#), involved a dispute over leadership of the Madison Audubon Society. A group of disgruntled members put together a plan to take over control of the Society from its leadership at the time. The plan was to recruit a sufficient number of new members to attend the annual meeting who would outnumber the votes of existing members who supported the current office holders. The plan succeeded in getting more than enough new members who applied for membership at the annual meeting. They attempted to vote in a new slate of officers.

One of the issues that gave rise to this lawsuit was the interpretation of the Madison Audubon society's by-laws regarding when membership is effective. According to the bylaws: "Membership dues shall be payable at the time of application, and shall be effective from the date of application, and yearly thereafter." The deposed leadership argued that the people who applied for membership at the meeting were not members arguing that there should be some unspecified time for processing of the membership application in case a check fails to clear or there is some other issue. The Court of Appeals did not agree and held that according to the language of the by-laws, they were members on the date they applied for membership. The Court upheld the new slate of officers as the duly elected leaders of the Society.

### ***Federal Court Opinions***

#### **Loss in Value Due to the Economy Was Not Caused by Delay in County Approval of Rezoning**

In *Guth v. Tazewell County*, decided October 17, 2012, the Seventh Circuit Court of Appeals held that the County was not liable for the loss in value of the plaintiff's property due to the downturn

in the economy. The case involved five properties owned by the plaintiff that were located in a mixed rural/ suburban area in central Illinois, nine miles from the City of Peoria and three miles from the Village of Morton. The plaintiff wanted to rezone the properties from agricultural to residential to increase the value of the properties. It took three years, including a lawsuit in state court, to get the properties rezoned. By the time the properties were finally rezoned, the Great Recession had wiped out the increased value the plaintiff would have realized if the properties had been rezoned earlier. The plaintiff then brought this lawsuit. The Court found that the properties had lost value for reasons unrelated to anything the County had ever done so the County could not be held liable for the loss.

### **Village Order to Remove Vacant Mobile Home Did Not Violate Constitutional Protections**

Mildred Billington owned a mobile home in Armington, Illinois, a small village of 349 persons, but no one resided in the home. Because the mobile home that was unoccupied for more than 12 months, it violated the village zoning regulations. The village sent Billington a letter stating that the home had to be removed within 90 days. She arranged for its removal but the home could not be removed without its destruction.

Billington then sued the village alleging that the village's actions violated her rights to due process and equal protection. The Court of Appeals for the Seventh Circuit (includes Wisconsin) held that the village did not deprive her of her property in violation of the Due Process Clause because the village did not remove the mobile home--the owner did so on her own. In addition, the village did not violate her rights under the Equal Protection Clause. The individuals who were allegedly similarly situated to her and who were not subject to any village action were in fact not similarly situated because none of the alleged zoning violations involved unoccupied mobile homes, nor did they involve any kind of residences at all.

The case, decided October 15, 2012 is entitled *Billington v. Village of Armington*.

### **Insufficient Evidence to Uphold Bribery Charges Against Zoning Inspector**

*United State of America v. Owens*, involved the appeal of a conviction of a City of Chicago zoning inspector under the federal program bribery statute, 18 U.S.C.S. § 666(a)(1)(B), for accepting two \$ 600 bribes in exchange for issuing certificates of occupancy for four newly constructed homes. To be convicted under this federal law, the statute requires a minimum bribe valued at \$5000. The Court of Appeals for the Seventh Circuit (which includes Wisconsin) found there was insufficient evidence as to whether the issuance of the certificates of occupancy had a value of \$5,000 or more for a jury to find guilt beyond a reasonable doubt on this element. The case was decided on October 11, 2012.