



April Case Law Update April 30, 2015

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

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Wisconsin Supreme Court Opinions

[No planning-related cases to report.]

Wisconsin Court of Appeals Opinions

Zoning Board of Appeals Has Authority to Reconsider Decisions in Limited Cases

In [NextMedia Outdoor, Inc. v. Village of Howard](#), the Wisconsin Court of Appeals held that a Zoning Board of Appeals (ZBA) has inherent authority to reconsider a decision that was based on mistaken information. The case involved the proposed realignment of a billboard due to significant changes to Highways 29 and 41 in the Village of Howard planned by the Wisconsin Department of Transportation (DOT). NextMedia owned the sign. The sign continued as a legal nonconforming use after the Village prohibited new billboard signs.

Wisconsin Stat. § 84.30(5r) governs the realignment of nonconforming signs due to state highway projects. “Realignment,” is defined in the statute to mean “relocation on the same site.” Wis. Stat. § 84.30(5r)(a). Under § 84.30(5r), the DOT proposes realignment of a nonconforming sign, after which it must notify the municipality or county (whichever created the ordinance that produced the nonconformity) of the proposal. The municipality or county may then request that the DOT acquire the sign in lieu of realignment. If the DOT, pursuant to the municipality or county’s request, successfully condemns the sign, the municipality or county must then pay to the DOT an amount equal to the condemnation award, minus whatever relocation costs the DOT would have paid if the sign had been realigned instead.

The Village’s ordinance governing nonconforming signs states:

If a highway project of the [DOT] causes the realignment of a nonconforming sign per Section 84.30(5r) of the Wisconsin State Statutes, such sign may be relocated on the same site as long as no modifications or alterations are made to the sign other than those specifically necessary to move the structure. Such realignment or relocation of the sign shall not affect its nonconforming status under this ordinance.

NextMedia was unsuccessful in its efforts to persuade DOT officials to propose realignment of the sign. Because of the changes to the highways, numerous modifications and alterations were proposed so the sign would still be visible. The DOT did not believe that the Village would allow realignment because the modifications and alterations would not be permitted by the Village's ordinance. DOT therefore believed it would be subject to an inverse condemnation claim from NextMedia. As a result, DOT acquired NextMedia's sign rights through condemnation.

Meanwhile, NextMedia applied to the Village to realign the sign on the same parcel. The Village's Director of Code Administration denied the application under the Village's ordinance because of the proposed modifications and alterations. NextMedia appealed the denial to the ZBA. The ZBA perceived the proposal as a realignment proposal initiated by DOT and the ZBA approved the realignment of the sign.

The Village subsequently learned that DOT had acquired all rights to the sign several months before the ZBA's decision. At a subsequent meeting several months later, the ZBA moved to reconsider its earlier decision and upheld the decision of the Director of Code Administration denying the application. The basis for the ZBA's reconsideration was that the ZBA's earlier decision was fundamentally rooted in its mistaken beliefs the NextMedia still owned permit rights to the sign and that the DOT had proposed realignment of the sign.

NextMedia then initiated this lawsuit alleging that the ZBA lacked the authority to reconsider the original decision. The circuit court agreed with NextMedia that the ZBA lacked the authority to reconsider the decision. That decision was appealed to the Wisconsin Court of Appeals. The Court of Appeals disagreed with the conclusion of the circuit court and reversed the decision of the circuit court. The Wisconsin Court of Appeals held that according to Wisconsin case law, "a quasi-judicial body, such as the [ZBA] in this case, retains limited authority to reconsider its own decisions." The Court further states, "[a]lthough the general rule is that reconsideration falls outside the scope of a zoning board's authority, reconsideration is nonetheless justified when the initial decision is based on a mistake of fact or law." While NextMedia argued that the ZBA could have discovered the DOT's acquisition of NextMedia's rights prior to the ZBA's initial decision, the Court of Appeals found that the mistakes in the case based on "critical facts that NextMedia knew at all times but failed to disclose to the Village or the Board," amply warranted the ZBA's reconsideration decision.

The case is not recommended for publication in the official reports.