American Planning Association
Wisconsin Chapter

Making Great Communities Happen

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January Case Law Update
January 31, 2017

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

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Wisconsin Supreme Court Opinions

[No planning-related cases to report.]

Wisconsin Court of Appeals Opinions

City Was Appropriate Part in Eminent Domain Proceeding

Haas v. City of Oconomowoc involved the appeal of a compensation award by the Community Development Authority (CDA) of the City of Oconomowoc for the taking of property for a downtown redevelopment project. In the appeal to the Circuit Court, the property owner only named the City and not the CDA. The City moved to dismiss the lawsuit arguing that the CDA was the condemnor of the property, not the City. The circuit court granted the City's motion on the basis that the CDA was doing the condemnation and should have been named.

The property owner appealed to the Wisconsin Court of Appeals. The Court of Appeals disagreed with the circuit court and reversed the circuit court decision. The Court of Appeals looked at documents in the record that showed the City was the condemnor of the property "through" the CDA. While the City argued that the CDA is a separate body politic under Wisconsin law, the Court of Appeals concluded the CDA was acting as an agent for the City meaning the City was the condemnor of the property, thereby allowing the appeal of the compensation award to proceed.

The case is recommended for publication in the official reports.

U.S. Court of Appeals for the 7th Circuit Opinions

Chicago's Zoning Restrictions on Firing Ranges Violate the 2nd Amendment

The January decision by the Seventh Circuit Court of Appeals in Ezell v. City of Chicago ("*Ezell II*") is the latest in a series of cases involving the City of Chicago's efforts to address gun violence. To briefly summarize, in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the U.S. Supreme Court held for the first time that the Second Amendment of the U.S. Constitution protecting the right to bear arms, applied

to state and local governments and invalidated Chicago's ordinance prohibiting handgun possession. In response to the *McDonald* case, the City of Chicago established a permit regime for lawful gun possession and required one hour of range training as prerequisite to a gun permit but prohibited firing ranges everywhere in the City. In *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011) ("*Ezell I*"), the Seventh Circuit Court of Appeals invalidated the City's ban on firing ranges as incompatible with the Second Amendment.

The City then responded to the decision in *Ezell I* with a new set of regulations governing shooting ranges, three of which were at issue in *Ezell II.* First, the City passed a zoning ordinance that allowed gun ranges only as special uses in manufacturing districts. Second, the passed a zoning ordinance that prohibited gun ranges within 100 feet of another range or within 500 feet of a residential district and certain uses such as schools and places of worship. And third, the City prohibited anyone under the age of 18 from entering a shooting range. A group of citizens and several Second Amendment advocacy organizations sued the City alleging the restrictions violated Second Amendment guarantees. The Seventh Circuit Court of Appeals agreed.

The Court found the two zoning restrictions severely restrict the right of Chicagoans to train in firearm use at a range. According to the decision, only 2.2% of the City's total acreage was theoretically available under the manufacturing district limitation and the Court questioned the commercial viability of any of the parcels citing the fact that no commercial gun ranges existed within the City. As for the buffer requirement, the Court was troubled by the fact that the City provided no evidentiary support for its claims that the buffers were needed to protect public health and safety. As stated in the decision: "The City's *own witnesses* testified to the lack of evidentiary support . . . [and] *repeatedly admitted* that they know of no data or empirical evidence to support these claims. . . . [T]he City's zoning administrator conceded that neither she nor anyone else in her department made any effort to review how other cities zone firing ranges." (Emphasis by the Court.)

The Court also found that the City failed to justify the age restriction. The Court noted the City's primary defense was to argue the minors have no Second Amendment rights at all but the City failed to provide sufficient support for the argument. The Court noted that one of the City's own witnesses stated that he took his son to a shooting range when he was 12 and that "I'm well aware of the fact it's okay to teach a young person how to shoot a gun properly."

The Court did conclude, however, that with appropriate justification, the City can regulate the construction and operation of firing ranges to address genuine risks to public health and safety, including rules about where firing ranges may locate and the terms on which minors may enter.

This Just In . . .

The U.S. Supreme Court announced on February 3, 2017, that it will hear oral arguments in the *Murr v. Wisconsin*, a regulatory takings case discussed in the April 2016 Case Law Update. The American Planning Association and the Wisconsin Chapter filed a friend of the court brief in the case. The briefs were due last June. We have been waiting for the Court to schedule oral arguments in the case since that time.
