



July Case Law Update

July 31, 2014

A summary of Wisconsin court opinions decided during the month of July 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

Lawsuit Against DOT For Relocation Expenses Barred By Sovereign Immunity

[Aesthetic and Cosmetic Plastic Surgery Center, LLC, v. Wisconsin Dept. of Transp.](#) involved a dispute between a property owner and the Wisconsin Department of Transportation (DOT) over the payment of relocation expenses arising from a taking of property for a road-improvement project in Milwaukee County. The property owner alleged that the DOT agreed to relocation payments for two moves (a temporary move and a permanent move). The DOT disagreed, saying it was only to make a relocation payment for one move.

The property owner filed this lawsuit seeking a declaratory judgment that he was entitled to a two-move relocation plan. The DOT countered that the declaratory judgment action was barred by the State's sovereign immunity. The Court of Appeals agreed with the DOT that the suit was barred by sovereign immunity. The common law concept of sovereign immunity provides that State cannot be sued without its consent and the legislature directs the manner in which suits may be brought against the State. Wisconsin's eminent domain statutes provide that claims for damages must be filed after the damages upon which they are based have fully materialized. Wis. Stat. § 32.20. This lawsuit did not follow that statutory process. As a result, it was barred by the State's sovereign immunity.

The case is recommended for publication in the official reports.

Yesterday Meets Today -- The Harsh Realities of Land Use in Wisconsin

[Golden Sands Dairy, LLC, v. Fuehrer](#), presents an interesting reminder of the varied context of land use planning and regulation in Wisconsin. The case involved a denial of a building permit application submitted by Golden Sands to construct seven farm buildings as part of a new dairy operation in the Town of Saratoga in Wood County. Golden Sands initiated the lawsuit to compel the Town's building inspector to issue a building permit for the dairy.

The Town of Saratoga is governed by Wood County's zoning ordinance, adopted in 1934. The ordinance, which continues to be operative, harkens back to the early days of zoning in Wisconsin when the State pioneered the concept of enabling the use of zoning in the rural areas as part of an effort to confront the lingering economic devastation in northern Wisconsin resulting from clear-cutting Wisconsin's forests. The zoning ordinance includes two types of land use districts -- a "Forestry and Recreation" district (intended to help with the reforestation of northern Wisconsin) and an "Unrestricted" district that could be used for any purpose whatsoever. The proposed dairy buildings were located in an area zoned as unrestricted.

In 2007, the Town adopted a comprehensive plan under the 1999 comprehensive planning law. The Town's plan designated the area of the proposed dairy for "Rural Preservation" where "large agricultural uses" would be prohibited. The Implementation Element of the Town's comprehensive plan provided for the adoption of a town zoning ordinance by 2012. Following the guidance of the plan, the Town plan commission began developing a zoning ordinance in 2008. When Golden Sands applied for a building permit in June 2012, the Town had not yet adopted town zoning and only had an incomplete draft of a zoning ordinance. The Town's authority was therefore limited to the Town's building code. The Town is responsible for administration of the State Uniform Dwelling Code for the construction of one- and two-family dwellings. The Town's building code also stated it applied to farm buildings even though the State dwelling code explicitly exempts such buildings.

In July 2012, the Town Board adopted a moratorium ordinance on the issuance of building permits for activities inconsistent with existing land uses. A week later, Golden Sands initiated this lawsuit to compel issuance of the building permit. The circuit court agreed with Golden Sands and required the Town to issue the building permit. The Town then appealed to the Wisconsin Court of Appeals. The main issue addressed by the Court of Appeals was whether Golden Sands had a vested right in the building permit. The Court of Appeals also agreed that Golden Sands had a vested right in the issuance of the building permit.

Under Wisconsin law at the time of the initiation of the lawsuit, rights vest at the time a complete application is filed. The Town argued that Golden Sands did not have vested rights to the permit because the application it submitted was incomplete and because Golden Sands could not rely on the Wood County zoning ordinance. The Court of Appeals was not persuaded by the argument that the application was incomplete based in part by the fact that State law exempts farm buildings from the application of the State dwelling code and State law expressly forbids local governments from adopting additional requirements to the State dwelling code. The Court of Appeals also was not persuaded that the Wood County zoning ordinance should not apply because the Town was in the process of preparing its own zoning ordinance. The Court noted the Town only had an incomplete draft of a zoning ordinance and still had several steps to follow before final adoption of the ordinance at some point in the future. The Court of Appeals agreed that the Town must issue the building permit.

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