



November Case Law Update November 30, 2011

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

Wisconsin Supreme Court Opinions

[No planning related decisions to report.]

Wisconsin Court of Appeals Opinions

[No planning related decisions to report.]

News from other states

In the absence of any Wisconsin cases to report this month, here is an interesting case from California related to consistency and comprehensive plans for some enjoyable Holiday reading:

In a recent case decided by the Sixth Appellate District Court of Appeal of California entitled *Pfeiffer v. City of Sunnyvale City Council* (October 28, 2011), a group of property owners sued the city over a proposed expansion of a medical facility. The appellants, a group of property owners, argued that the city council abused its discretion in determining that the proposal to demolish three single-family residences and replace them with the medical facility is consistent with the City's general plan, since, in appellants' view, the general plan expressly provides that the property is to be used exclusively for single-family detached homes.

Under California law, every county and city is required to adopt "a comprehensive, long-term general plan for the physical development of the county or city." A general plan provides a "charter for future development" and sets forth a city or county's fundamental policy decisions about such development. These policies "typically reflect a range of competing interests."

A city's land use decisions must be consistent with the policies expressed in the general plan. "An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." The California courts do not require perfect conformity between a proposed project and the applicable general plan – "it is nearly, if not absolutely, impossible for a project to be in perfect conformity with each and every policy set forth in the applicable plan. ... It is enough that the proposed project will be compatible with the objectives, policies, general land uses and programs specified in the applicable plan."

The California courts give “great deference” to the city’s determination. “This is because the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan’s policies when applying them, and it has broad discretion to construe its policies in light of the plan’s purposes. A reviewing court’s role is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies.”

According to the California courts, “[a] city’s findings that the project is consistent with its general plan can be reversed only if it is based on evidence from which no reasonable person could have reached the same conclusion.” As a result, “the party challenging a city’s determination of general plan consistency has the burden to show why, based on all of the evidence in the record, the determination was unreasonable.”

In the present case, the city council determined that the proposed project is consistent with the land use and transportation policies stated in the City’s general plan. Relevant to this appeal, the city council specifically determined that (1) the project is consistent with the community character goal C1 (“Preserve and enhance an attractive community, with a positive image and a sense of place, that consists of distinctive neighborhoods, pockets of interest, and human-scale development”) because “the proposed redevelopment would be designed in accordance with the existing medical office buildings surrounding [the] site.” The city council also determined that the project is consistent with neighborhood goal N1 (“preserve and enhance the quality character of Sunnyvale’s industrial, commercial and residential neighborhoods by promoting land use patterns and related transportation opportunities that are supportive of the neighborhood concept”) because “[t]he project proposes medical office uses on a site that is located near major roadways ... and served by regional transit.” Finally, the city council determined that the project was consistent with the land use goal 2.1C (“allow growth and change in the community which can be served within the capacities of existing and planned facilities”) because it “proposes to redevelop existing medical office uses.”

The Court determined that appellants did not meet their burden to show that the city council abused its discretion in finding that the project is consistent with the City’s general plan for three reasons. First, appellants’ inconsistency argument was based on an appendix to the general plan that stated, “The low density residential sub-category allows 0-7 dwelling units per acre. It is used exclusively for single family detached homes and is implemented by the R-0 and R-1 Zoning Districts.” While the general plan designated the property as “low density residential,” the property was zoned low-medium density residential with an office/planned development combining district, R-2/0/PD. Thus, the record did not reflect that the area has been used exclusively for single-family detached houses.

Second, appellants did not provided any authority for the proposition that a statement in an appendix to the general plan regarding the designation of low density residential constitutes a general plan mandate that property designated low density residential must be used exclusively for single-family detached houses. The Court stated that the low density residential designation

in the general plan may be interpreted, at best, to limit land use exclusively to single-family detached houses only where the low density residential designation is, as stated in appendix A, "implemented by the R-0 and R-1 Zoning Districts."

Finally, the Court found that appellants failed to show that the city council did not consider the applicable policies and the extent to which the proposed project conforms with those policies. The appellants made no showing that the city council's determination of consistency with respect to these general plan goals was un-reasonable. Since appellants did not discuss all of the evidence in the record pertinent to the issue of general plan consistency, appellants failed to meet their burden to show that the determination of general plan consistency was unreasonable. As a result, the court found no merit in the appellants' claim that the city council abused its discretion in finding that the project is consistent with the City's general plan.