



## July Case Law Update July 31, 2017

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

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

#### **Interior Home Viewing By Assessor Unconstitutional**

[Milewski v. Town of Dover](#), 2017 WI 79, involved a challenge to the tax assessor's revaluation of their property in the Town of Dover in Racine County. The Milewski's challenged the Town's interpretation of state property tax law that allowed the Town to inspect the interior of the Milewski home as part of the revaluation process. In a majority opinion written by Justice Kelly, the Wisconsin Supreme Court held that a tax assessor's inspection of a home's interior is a search within the meaning of the U.S. Constitution's 4th Amendment protection against unreasonable searches and so it is presumptively unreasonable and therefore unconstitutional in the absence of a warrant. The Town offered nothing that overcame that presumption, leading the majority to find that a tax assessor's warrantless search of a home would be unconstitutional without consent.

The majority opinion also held that applying Wisconsin property tax law to require submission to a tax assessor's inspection of the interior as a precondition to challenging the revaluation of their property violated the Milewskis' due process rights as guaranteed by the 14<sup>th</sup> Amendment to the U.S. Constitution, and Article I, section 1 of the Wisconsin Constitution. The Court remanded the case to the circuit court for further proceedings consistent with the opinion.

Chief Justice Rogensack wrote a concurring opinion, as did Justice Ziegler. Justice Gableman joined Justice Ziegler's opinion. Justice Abrahamson wrote a dissenting opinion, joined by Justice Ann Walsh Bradley.

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

#### **No Inverse Condemnation Action for Billboard Obstructed by Bridge**

[Adams Outdoor Advertising v. City of Madison](#) involved an inverse condemnation action against the City of Madison due to the construction of a bridge for a pedestrian/bicycle overpass that obstructed the view of one side of a billboard owned by Adams Outdoor Advertising. Applying

regulatory takings jurisprudence, the Wisconsin Court of Appeals upheld the dismissal of the inverse condemnation claim because the billboard as a whole retained some value since the bridge did not obstruct the other side of the billboard.

Adams also argued that the City denied it equal protection in violation of the U.S. and Wisconsin Constitutions because the City allowed Culver's to change a sign for one of its restaurants near the bridge but it did not allow Adams to change the position of the billboard. The Court found that the on-premises signage (Culver's) versus off-premises signage (billboard) was a sufficient rational basis for the different treatment and dismissed the equal protection claim.

The decision is NOT recommended for publication.

**What is an "unpublished" decision?**

Under Wisconsin law, an unpublished opinion may not be cited in any Wisconsin state court as precedent or authority. However, an unpublished opinion issued on or after July 1, 2009, may be cited for its persuasive value with certain exceptions. Because an unpublished opinion cited for its persuasive value is not precedent, it is not binding on any court of this state. A court need not distinguish or otherwise discuss an unpublished opinion and a party has no duty to research or cite it.

***U.S. Court of Appeals for the 7<sup>th</sup> Circuit Opinions***

[No planning-related cases to report.]