



November Case Law Update November 30, 2018

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

Previous Case Law Updates are available at: [wisconsin.planning.org/policy-and-advocacy/law-updates/case-law-updates/](https://www.wisconsinplanning.org/policy-and-advocacy/law-updates/case-law-updates/)

Wisconsin Supreme Court Opinions

[No planning-related cases to report.]

Wisconsin Court of Appeals Opinions

Neighbor Lacked Standing to Challenge Variance

The facts in [Van Handel v. Pritzl](#) are as follows. Pritzl purchased .84 acres of property in the Town of Center in Outagamie County. Pritzl knew at the time he purchased the land that the Town zoning ordinance required a minimum one acre lot to build a residence. Pritzl nevertheless applied for a permit to construct a single-family, two-story home on the property. The Town's building inspector issued the permit. Pritzl then began construction on the home. About two weeks later the building inspector informed Pritzl to stop work on the home. The next day Pritzl contacted the town chairman, who informed Pritzl that he could proceed with construction if he included a provision in the property deed specifying that only this house could be built and could never be expanded. A few weeks later the Town revoked the building permit. Pritzl then sought a variance and the Town granted the variance based on undue hardship. Van Handel, an adjacent property owner, brought this lawsuit challenging the Town's grant of the variance.

The issue before the Wisconsin Court of Appeals was whether Van Handel had standing to bring the lawsuit. The Court of Appeals concluded that Van Handel did not have standing because he was not aggrieved by the Town's granting the variance. Van Handel claimed loss of value to his property but failed to prove any diminution in the value of his property due to Pritzl building the house. Van Handel also cited the complaints of other neighbors as proof that Pritzl's planned home would affect the enjoyment of property owners who moved "to the country" for "more space" and not "a subdivision." The Court of Appeals, however, determined complaints by neighbors about Pritzl's house "do not, on their own, establish an infringement on the 'rights, duties or privileges' of adjacent property owners." The Court of Appeals dismissed the lawsuit.

The case is not recommended for publication in the official reports.¹

¹ What is an "unpublished" opinion? 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,

Court Upholds Order to Remove Nonconforming Billboard

In [Lamar Central Outdoor, LLC, v. State of Wisconsin Division of Hearing & Appeals](#), the Wisconsin Court of Appeals upheld the Wisconsin Department of Transportation (WisDOT) order to remove a billboard that lost its legal nonconforming status.

In 1999, Lamar Central Outdoor acquired an outdoor advertising sign located adjacent to Interstate Highway 39 in Portage County. At that time, the sign was legal but nonconforming under Wisconsin law. Several years after acquiring the sign, Lamar put extension panels on the sign that added to the previous area of signage. In 2012, WisDOT determined that the entire sign must be removed because Lamar's enlargement of the sign caused it to lose its nonconforming status and become an illegal sign subject to removal. After a contested case hearing, the Division of Hearings and Appeals (DHA) affirmed WisDOT's order to remove the sign. The Portage County Circuit Court affirmed the DHA decision, and Lamar appealed. The Court of Appeals agreed with WisDOT that the sign is illegal under Wisconsin law and affirmed the order to remove the sign.

The Court held that the nonconforming sign provisions found in Wis. Stat. § 84.30 and Wis. Admin. Code § TRANS 201 apply and not the nonconformities law related to zoning. The Court also determined that the recent changes to Wis. Stat. § 84.30 made by 2017 Wisconsin Act 320 which provide new protections to legal nonconforming signs did not apply because Lamar's sign lost its legal nonconforming status prior to the enactment of that law.

The case is not recommended for publication in the official reports.²

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

[No planning-related cases to report.]

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.

² Id.