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Wisconsin Chapter

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

For previous Case Law Updates, please go to: www.wisconsinplanners.org/learn/law-and-legislation

Wisconsin Supreme Court Opinions

Assessment Using Mass Appraisal Technique Was Appropriate

Metropolitan Associates v. City of Milwaukee, 2018 WI 4, involved an excessive assessment action against the City of Milwaukee related to property taxes for seven properties owned by Metropolitan.

Apartment properties owned by Metropolitan were initially assessed by the City using a "mass appraisal" technique, a process whereby an assessor values entire groups of property using systematic techniques and allowing for statistical testing. The City also conducted a more individual analysis of the property using a comparative sales approach that arrived at a value higher than that produced with the initial mass appraisal.

Metropolitan challenged the City's assessment of the properties based on the mass appraisal technique. An appraiser for Metropolitan concluded the properties had a lower value than reflected in the City's assessment. Following a trial, the circuit court determined that the City's assessment was more reliable and upheld the City's assessment. The Wisconsin Court of Appeals upheld the Circuit Court's decision.

The Wisconsin Supreme Court, in a decision written by Justice Ann Walsh Bradley, affirmed the decision of the Court of Appeals. According to the Court majority, the City's assessment of the Apartments complied with Wis. Stat. § 70.32(1). The City appropriately used mass appraisal for its initial assessment and confirmed its initial assessment with single property appraisals demonstrating that the assessment was not excessive. The Court declined Metropolitan's request to upset the circuit court's findings of fact because they were not clearly erroneous.

Justices Rebecca Bradley and Daniel Kelly filed a dissenting opinion.

Water Law

Movrich v. Lobermeier, 2018 WI 9, involved a lawsuit between a brother and a sister over the rights of owners of waterfront and waterbed property on the Sailor Creek Flowage in Price

County. In 1941 a landowner granted the Town of Fifield the perpetual right to flood their land so the Town could construct a dam across Sailor Creek. The landowner retained ownership of the submerged land. The submerged land was subsequently sold. In the present case, Lobermeier (the brother) had acquired the fee simple interest (owned) in submerged property that was part of the flowage waterbed created in 1941 and Movrich (the sister) owned the abutting upland waterfront property. For a number of years, the sister made use of the flowage in various ways (wading, fishing, etc.). She allowed her brother to use their dock for fishing and to moor his boat. Then the brother and sister had a falling out and the brother asserted that he had exclusive rights to the waterbed. The sister then sued her brother seeking a declaration of their riparian rights as owners of waterfront property.

The case presented the Court with issues based on the interplay between private property rights, riparian rights, and the public trust doctrine. A majority of the Wisconsin Supreme Court Justices concluded that any riparian rights the Movriches may enjoy in regard to the man-made body of water created by the flowage easement must be consistent with Lobermeiers' property rights. Because the placement of a pier is inconsistent with Lobermeiers' fee simple interest and does not arise from the flowage easement that supports only public rights in navigable waters, Movriches' private property rights are not sufficient to place a pier into or over the waterbed of the Flowage without Lobermeiers' permission.

The Court majority also concluded that while the public trust doctrine applies to the flowage waters, the publics trust doctrine conveys no private property rights. While the Lobermeiers' property rights are modified to the extent that the public may use the flowage waters for recreational purposes, no private property right to construct a pier arises from the public trust doctrine. While the Movriches were not entitled to place a pier into the water from their property, consistent with the public trust doctrine (the water is owned by the public), the Majority concluded the Movriches had the right to access and exit the Flowage directly from their shoreline property.

The Majority opinion was written by Chief Justice Roggensack. Dissenting and concurring opinions were filed by Justice Rebecca Bradley joined by Justices Abrahamson and Ann Walsh Bradley.

Wisconsin Court of Appeals Opinions

City's Interpretation of Sign Ordinance was Reasonable

Adams Outdoor Advertising v. City of Fitchburg, involved a dispute over the City of Fitchburg's denial of Adams Outdoor Advertising's application for a permit to convert a panel of an existing standard billboard to a digital billboard. The issue in the case centered on the City's interpretation of its sign ordinance.

The City's sign ordinance stated:

> No flashing, alternating, rotating, or swinging sign, operated by mechanical means or wind driven, whether illuminated or not, is permitted, except time and temperature signs may be permitted by issuance of a conditional use permit by the plan commission. No flashing, alternating, rotating or swing flood, spot or beacon light is permitted for the purpose of illuminating any sign.

The Ordinance defined a "[f]lashing sign" as "a sign where any part is varied in brightness, color or message at intervals more frequently than once every two minutes." Adams Outdoor Advertising's application stated the sign would change no more frequently than once every 2 minutes so it was not prohibited as a "flashing sign." However, the City denied the sign as an "alternating" sign operated by mechanical means.

The Sign Ordinance did not define "alternating." The City's zoning administrator looked to the Merriam-Webster dictionary definition of "alternating" as "occurring ... in or forming a repeated series or used to describe something that happens one time, does not happen the next time, happens again, etc." The City acknowledged that billboard technology had changed since the City enacted the Sign Ordinance. At the time the Ordinance was drafted, an alternating sign was a three-sided paper sign that would switch a message. However, the City argued that a digital sign had the same fundamental characteristics as conventional alternating billboards. The Wisconsin Court of Appeals concluded that it was reasonable for the City to determine that the digital sign proposed by Adams, which would change "from one static image to another, no more frequently than once every two minutes," was an alternating sign consistent with the dictionary definition.

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

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

[No planning-related cases to report.]

[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, 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.