



## **December Case Law Update December 31, 2019**

**A summary of court opinions decided during the month of December affecting planning in Wisconsin<sup>1</sup>**

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

#### **WisDOT Required to Promulgate Rule Before Applying New Statutory Interpretation**

[Lamar Central Outdoor, LLC v. State of Wisconsin Division of Hearing & Appeals](#), 2019 WI 109, involved a billboard owned by Lamar Central Outdoor located next to I-39 in Stevens Point. The billboard was permitted and built in 1991 and complied with applicable laws. At the time the billboard was permitted, I-39 was U.S. Highway 51. In 1996 Highway 51 became I-39 and state and federal laws governing billboards adjacent to interstate highways applied and no longer allowed the billboard. The billboard became a legal nonconforming sign (legal at the time it was built but no longer conforming to the applicable laws). In 2012 Lamar applied to the Wisconsin Department of Transportation (WisDOT) for a permit to remove vegetation that partially obscured the billboard from view. WisDOT reviewed historical photographs of the sign that depicted a temporary extension panel that exceeded the permitted size of the billboard. While the extension was no longer in place, WisDOT determined that when Lamar added the temporary extension the billboard's status changed from "legal, nonconforming" to "illegal" requiring removal of the sign. According to WisDOT, the change in status was irreversible with no opportunity to "cure" the violation. Previous to this case, WisDOT interpreted the statutes to allow the owner of a legal nonconforming sign 60 days to cure the condition that caused the sign to violate the permit.

Lamar contested WisDOT's order to remove the sign in a hearing before the Division of Hearing and Appeals (DHA). DHA determined that the billboard lost its legal nonconforming status and must be removed. Lamar sought judicial review. The circuit court and the Wisconsin Court of Appeals affirmed the DHA's decision. The Wisconsin Supreme Court granted Lamar's petition for review.

Lamar argued that WisDOT could not eliminate the opportunity to cure a violation until it first promulgates a rule to that effect following the procedures of the Wisconsin Administrative Procedures Act (Wis. Stat. Ch. 227). The Wisconsin Administrative Procedures Act requires state agencies to promulgate as a rule each interpretation of a statute it adopts to govern its enforcement or administration of that statute. The Wisconsin Supreme Court in a unanimous decision agreed and reversed the order to remove the billboard.

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

[No planning-related cases to report.]

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

[No planning-related cases to report.]

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<sup>1</sup>Previous updates are available at: [wisconsin.planning.org/policy-and-advocacy/law-updates/case-law-updates/](http://wisconsin.planning.org/policy-and-advocacy/law-updates/case-law-updates/)