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Wisconsin Chapter

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March Case Law Update
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A summary of court opinions decided during the month of March affecting planning in Wisconsin[1]

Wisconsin Supreme Court Opinions

Half-cent County Sales Tax Upheld to Fund Proposed Capital Projects

In Brown County v. Brown County Taxpayers Association, 2022 WI 13, the Wisconsin Supreme Court held that Wis. Stat. § 77.70 authorizes counties to impose a sales and use tax for the specific purpose of directly reducing the property tax levy, while leaving the means to accomplish that purpose up to the county.

Prior to 1985, counties had the authority to impose sales and use taxes, but the Wisconsin Department of Revenue was required to distribute all the net proceeds of such taxes to towns, cities, and villages within the county imposing the tax. Presumably because they could not keep the revenue collected, few, if any, counties imposed a sales and use tax. In 1985, Section 77.70 was amended "to allow county governments to retain the net proceeds of the sales and use tax," if those proceeds are used for the purpose of directly reducing the property tax levy.

On May 17, 2017, the Brown County Board of Supervisors enacted an ordinance providing for a 0.5 percent sales and use tax that would be in effect for a period of 72 months. The tax was intended to reduce the property tax levy by funding specific capital projects totaling $147 million including: (1) $15 million for the Expo Hall project; (2) $60 million for infrastructure, roads, and facilities projects; (3) $20 million for jail and mental health projects; (4) $20 million for a library project; (5) $10 million for maintenance at the Resch Expo Center; (6) $10 million for medical examiner and public safety projects; (7) $1 million for a museum project; (8) $6 million for parks and fairgrounds; and (9) $5 million for a STEM research center project. Without the sales and use tax, the County stated that these capital improvements would have been funded through new borrowing and the accompanying issuance of debt obligations.

Shortly after the County's budget was adopted, the Brown County Taxpayers Association (BCTA) filed suit against the County arguing that the sales and use tax ordinance violates Wis. Stat. § 77.70 because it did not directly reduce the property tax levy. BCTA contended that there is only one way to occasion a "direct" reduction in the property tax levy -- a dollar-for-dollar offset of the levy corresponding to the revenue collected through the sales and use tax. Preventing a hypothetical increase in the property tax levy, BCTA argued, is not the same as "directly reducing" it as the statute requires.

[1] Previous updates are available at: wisconsin.planning.org/policy-and-advocacy/law-updates/case-law-updates/

A majority of the Wisconsin Supreme Court disagreed with BCTA's argument. According to the Court majority, because the County's ordinance does in fact directly reduce the property tax levy by funding projects that would otherwise have been paid for through additional debt obligations, the ordinance is permissible. There is not one exclusive way to attain the "purpose" of reducing the property tax levy. The same reduction in the property tax levy can be accomplished from a dollar-for-dollar offset as can be attained by budgeting specific items which otherwise would have been paid for from property tax revenue. Either way, the purpose of directly reducing the property tax levy is accomplished. Thus, Wis. Stat. § 77.70 allows revenue generated from county sales and use tax to be used to fund any project that could otherwise have been paid for from property tax revenue.

Wisconsin Court of Appeals Opinions

Raze Order Applied Wrong Standard

U.S. Black Spruce Enterprise Group, Inc. v. City of Milwaukee, involved a challenge to raze orders issued by the City of Milwaukee under Wis. Stat. § 66.0413. Black Spruce owns vacant buildings that are part of the former Northridge Mall which closed in 2003. The City issued orders to have the buildings razed. The orders stated that the buildings were to be razed because they were vandalized, dilapidated, and out of repair; the cost to repair the buildings exceeded 50% of the value of the buildings and therefore, the cost to repair the buildings was presumed to be unreasonable; and the buildings were unsafe and, therefore, public nuisances.

Black Spruce petitioned the circuit court seeking to enjoin the raze orders. The circuit court found that the raze orders were reasonable and upheld them. Black Spruce appealed the circuit court's decision to the Wisconsin Court of Appeals. Black Spruce argued that the buildings are currently vacant, unoccupied buildings that are closed to the public and, therefore, the costs to repair the buildings were improperly calculated and inflated as the result of the improper calculation.

Black Spruce argued that the City's raze orders are unreasonable because it inflated the "cost of repairs" by improperly including repairs to bring the buildings up to code for developed buildings open to the public. According to Black Spruce, the cost of repairs should reflect the current intended use as vacant, unoccupied buildings that are closed to the public, and that Black Spruce should be allowed to maintain the buildings in their current state taking the necessary measures to secure the buildings. In other words, Black Spruce argued that the costs to repair should reflect the costs necessary to making each building safe for use as a vacant, unoccupied building that is closed to the public.

The Court of Appeals agreed with Black Spruce. The Court of Appeals concluded that the circuit court applied the wrong standard in calculating the cost to repair the buildings and improperly calculated the cost to repair based on an intended use as buildings that are redeveloped and open to the public. According to the Court of Appeals, the cost of repairs should reflect Black Spruce's current intended use of the buildings as vacant, unoccupied buildings from which the public is excluded. Under Wisconsin law, the standard is whether the cost of repairs exceeds 50 percent of the value of the building. If the cost exceeds this standard, the repairs shall be presumed unreasonable, and the building is a public nuisance. The Court of Appeals reversed the circuit court's order upholding the City's raze orders as reasonable, and remanded the case to the circuit court to apply the appropriate standard.

The case is recommended for publication in the official reports.

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

[No planning-related cases to report.]