



## **October Case Law Update October 31, 2018**

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

Previous Case Law 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/)

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

[No planning-related cases to report.]

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

[No planning-related cases to report.]

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

#### **Community Gardens and Weeds**

In [Tucker v. City of Chicago](#), the United States Court of Appeals for the Seventh Circuit (includes Wisconsin) addressed the question of whether a six-month delay between a property inspection and notice of a municipal ordinance citation violates procedural due process protected by the US Constitution?

The City of Chicago sells vacant City-owned lots to local residents for \$1 per lot through its "Large Lot Program." Many of the lots are of minimal value, yet are costly for the City to clean up and maintain. Nanette Tucker purchased a vacant lot under the program on her neighborhood block intending to convert it into a community garden. Approximately 3 months later, a City inspector concluded the vegetation on the lot violated the city's yard weed ordinance that prohibits weeds in excess of 10 inches in height. Six months later, Tucker received a citation for the violation. She contested the citation at a hearing before an administrative law judge but the judge ruled in favor of the City and imposed a \$640 fine. Tucker then appealed the matter to the federal district court alleging the City violated her Constitutional right to due process. The court dismissed her lawsuit finding no due process violation. Tucker then appealed to the Seventh Circuit Court of Appeals. The Court of Appeals affirmed the dismissal by the district court.

The Court of Appeals found that Tucker did not demonstrate how she had been prejudiced by the 6 month delay nor did she provide any authority that the City must initiate prosecution immediately. Tucker also challenged the inspector's interpretation of the City's ordinance but the Court held that the proper interpretation of a local ordinance is a matter for state courts to decide, not the federal courts.

## **Court Upholds Wisconsin's Butter Grading Law**

Continuing the food system theme this month, in [Minerva Dairy, Inc., v. Harsdorf](#), the Seventh Circuit Court of Appeals addressed the Constitutionality of Wisconsin's butter grading law. Under Wisconsin law, it is unlawful to sell any butter at retail unless it has been graded by either a Wisconsin-licensed butter grader or by the United States Department of Agriculture ("USDA"). The grading requirement applies to butter manufactured both in-state and out-of-state.

Minerva Dairy, a family-owned dairy company located in Minerva, Ohio, produces Amish-style butters in small, slow-churned batches using fresh milk supplied by pasture-raised cows. Minerva Dairy does not pay to have its butter graded under the voluntary USDA grading system and has never had its butter graded by a Wisconsin-licensed butter grader. Minerva Dairy has sells its artisanal butter in every state, including Wisconsin. In early 2017 the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) received an anonymous complaint about ungraded Minerva Dairy butter being sold at a retail store called Stinebrink's Lake Geneva Foods. After verifying the complaint, DATCP sent Minerva Dairy a warning letter. The company stopped selling its butter at retail stores in Wisconsin and sued several DATCP officials in federal court alleging that Wisconsin's butter grading statute violates the U.S. Constitution's Due Process Clause, the Equal Protection Clause, and the dormant Commerce Clause.

The United States District Court for the Western District of Wisconsin ruled in favor of DATCP. The dairy appealed the ruling to the Seventh Circuit Court of Appeals. The Court of Appeals affirmed the district court's decision finding that Wisconsin's butter grading law did not violate the Due Process Clause or the Equal Protection Clause because it is rationally related to the state's legitimate interest in consumer protection and that the statute did not violate the dormant Commerce Clause because it did not discriminate against out-of-state businesses.