



October Case Law Update October 31, 2011

[A summary of published Wisconsin court opinions decided during the month of October related to planning]

Wisconsin Supreme Court Opinions

[No planning related decisions to report.]

Wisconsin Court of Appeals Opinions

Public Records Applies to Attorney's Invoices

In [*Juneau County Star-Times v. Juneau County*](#) the Wisconsin Court of Appeals held that invoices provided by a contract attorney were required to be disclosed under the "contractors' records" provision of the Wisconsin Public Records law (Wis. Stat. § 19.36(3)). Juneau County is insured by the Wisconsin County Mutual Insurance Corporation under a public entity liability policy. The insurance company retained a private law firm to defend the County in a matter related to an employee disciplinary proceeding. The local newspaper filed a public records request for the bills submitted by the law firm in this matter. The law firm responded by providing redacted copies of the invoices. The law firm stated the redactions were to protect attorney-client privileged information. The County adopted the law firm's response as its own.

The newspaper then filed a complaint against the County alleging the County violated the public records law by adopting the redactions made by the law firm. The parties disputed whether the invoices were subject to disclosure as public records and whether they were protected under the attorney-client privilege. The Wisconsin Court of Appeals found that the invoices were public records subject to disclosure and that the county failed to provide sufficient proof that the redacted information qualified as attorney-client privileged.

The case is recommended for publication.

Deference to Local Decision Making

An unpublished case (meaning it has little precedential value) involving the highly contentious redevelopment of the Edgewater Hotel in Madison, summarizes the limited role of the courts in reviewing the decisions of local governments. The case, [*Mohs v. City of Madison*](#), involved a challenge to the City Council's decision to overturn the decision of the City's Landmarks Commission and issue a Certificate of Appropriateness for the redevelopment. The Certificate was needed under City ordinances because the hotel is located in a locally designated historic

district. The circuit court upheld the City Council's issuance of the Certificate. Upon review, the Court of Appeals noted that while "the appellants believe the Council made an unwise decision . . . courts are not empowered to question the wisdom of decisions like the one made by the Council here." The Court of Appeals noted that its review is "limited to determining whether: (1) the governmental body's decision was within its jurisdiction, (2) the body acted according to law, (3) the decision was arbitrary or oppressive, and (4) the evidence of record substantiates its decision."

The Court of Appeals found that a number of the arguments made by appellants explained why appellants believed the Council's decision was unwise but failed to present a legally cognizable argument. One argument appellants made that did have a developed legal argument was based on the Wisconsin Supreme Court's decision in *Lamar Central Outdoor, Inc. v. Board of Zoning Appeals of Milwaukee*, 2005 WI 117, 284 Wis. 2d 1, 700 N.W.2d 87, that a municipal decision maker, such as the Council, may not grant or deny a request with conclusory statements, but must instead explain why criteria are or are not met. According to the appellants, the Council's decision was made "without analysis or reasoning." The Court of Appeals, however, found that appellants had forfeited this argument because it was not presented to the circuit court.