



August Case Law Update August 20, 2007

Wisconsin Supreme Court

Supreme Court Accepts Review in Moratoria Case

The Wisconsin Supreme Court has accepted the certification of the *Wisconsin Realtors Assoc. v. Town of West Point* case. As reported in the July Case Law Update, the Wisconsin Court of Appeals declined to decide the issues in the case and certified the case to the Wisconsin Supreme Court because the case involves important issues that are a matter of first impression in Wisconsin. The case deals with the authority of local governments to impose moratoria on subdivisions during a planning process. WAPA filed a “friend of the court” brief with the court of appeals in this case and will file another “friend of the court” brief with the Supreme Court. A decision by the Supreme Court is still several months away.

Tax exempt property

In [**Milwaukee Medical Center v. City of Wauwatosa**](#), 2007 WI 101, the Wisconsin Supreme Court held that land that the Milwaukee Regional Medical Center (MRMC) leases from Milwaukee County, as well as a day care facility that the MRMC built on the land are not exempt from property taxation as county property. The child care facility is managed and operated by a for-profit corporation. The Court found that, while the county retained legal ownership of the land, under the terms of the lease agreement with the County, the MRMC was the beneficial owner of the land and building. Since MRMC was the beneficial owner, and not the county, the property was not tax exempt.

Wisconsin Court of Appeals published opinions

Zoning variances

In [**Block v. Waupaca County Board of Zoning Adjustment**](#) the Wisconsin Court of Appeals upheld the Board of Adjustment’s denial of a variance to retain a non-conforming deck because the variance request was based on personal inconvenience rather than unnecessary hardship. The Blocks owned a lake home with a deck that did not conform to the County’s Shoreland Zoning Ordinance which requires a 50 foot setback from the ordinary high water mark. The Blocks obtained a building permit to add a second story to their house after entering into a mitigation plan as required under the County’s Shoreland Zoning Ordinance. In the mitigation plan, the Blocks agreed to remove their nonconforming deck.

The Blocks completed their addition but did not remove the deck. Rather, they applied for an area variance to retain the deck. The Board of Adjustment denied the variance. The Circuit Court, however, overturned the variance denial finding that the Board of Adjustment did not apply the correct legal standard. The Circuit Court was concerned that if the deck was removed, the steep slope under the deck rendered that area useless.

While the Court of Appeals found that the Board's written decision was inadequate to show the board applied the correct legal theory, the Court of Appeals was able to rely on the transcript of the Board's proceedings to conclude that the Board applied the correct legal standard of unnecessary hardship. According to the transcript, the board stated that the purpose of its shoreland zoning ordinance was to maintain a 50 foot setback between structures on the land and that the purpose of the mitigation agreements was to try to bring nonconforming structures in accord with the ordinance. The Board determined the property was not unique and that any hardship claimed by the Blocks was self-created because they agreed to the mitigation plan requiring the removal of the deck. In response to the Circuit Court's concerns, the Court of Appeals noted that there is no requirement that a property owner have another use for a steep slope under their deck.

The case is recommended for publication.