



December Case Law Update December 23, 2008

Wisconsin Supreme Court

No planning related cases to report

Wisconsin Court of Appeals published opinions

Smoking ban upheld

The Wisconsin Court of Appeals upheld the City of Wausau's smoking ban in [City of Wausau v. Jusufi](#). The City of Wausau adopted an ordinance prohibiting smoking in restaurants in 2005. The ordinance included an exception for private clubs operated by non-profit organizations. The owner of a for-profit private club brought this lawsuit claiming the for-profit/non-profit classification under the ordinance violated his equal protection rights under both the U.S. and Wisconsin Constitutions.

The Court of Appeals upheld the City's smoking ban against this challenge finding that the distinction between non-profit and for-profit private clubs was aimed at protecting the health of the greatest number of restaurant patrons and preserving the right to associate in truly private clubs (the for-profit club in this case required that patron's pay a one-dollar, one-time membership fee.)

The case is recommended for publication.

Right of condemnation cannot be lost by waiver or estoppels

In [Andrews v. W.P.S.C.](#), the Wisconsin Court of Appeals held that the power of eminent domain is an inalienable power of the public that cannot be abrogated by the legal doctrines of waiver or estoppel.

The case involves the taking of easements by the Wisconsin Public Service Corporation (WPSC) for the Arrowhead-Weston high voltage transmission line. WPSC initiated a lawsuit to have the court determine WPSC's rights in a 1972 easement over a parcel of land. The circuit court determined that the easement did not allow WPSC to construct a new line. As a result, WPSC commenced a condemnation proceeding for a new easement. The property owner sued arguing that WPSC waived its right to initiate condemnation proceeding because it brought the earlier lawsuit. The Court of Appeals disagreed, holding that the power of eminent domain cannot be waived.

The property owner also argued that the court should stop (estoppel) WPSC from condemning the property because it was inequitable for WPSC to bring the earlier action instead of first negotiating for a new easement. Again, the Court of Appeals held that the power of eminent domain cannot be estopped.

The case is recommended for publication.

Court cannot impose great tax burden

[Trailwood Ventures v. Village of Kronenwetter](#) involved a challenge to a tax assessment. Trailwood and Alliance owned two vacant lots (a 172 acre lot and a 37 acre lot) in the Village of Kronenwetter in Marathon County. In 2005, the 172 acre lot was assessed at \$765,000 and the 37 acre lot was assessed at \$316,000. In 2006, the assessed value of the two lots jumped to \$10,708,800 and \$2,309,500 respectively. The companies appealed the assessments to the Village's board of review which reduced the assessed value to \$7,353,710 and \$1,463,616.

The companies then initiated this court action for excessive assessment. Following a trial on the matter, the circuit court determined that the parcels' values were the higher amounts, not the amounts determined by the board of review. The Court of Appeals reversed the ruling of the circuit court. According to the Court of Appeals, when a taxpayer brings an action for excessive taxation, the worst outcome they should expect would be for the court to find there were no excessive taxes. The court cannot impose a greater tax burden than the one the Village had already agreed to.

The case is recommended for publication.