



December Case Law Update December 18, 2007

Wisconsin Supreme Court

Tie Vote on the Use of Temporary Moratoria

In a rare turn of events, the Wisconsin Supreme Court deadlocked in a 3 to 3 tie in [*Wisconsin Realtors v. Town of West Point*](#), the case involving local government authority to declare a temporary moratorium on subdivisions under Wisconsin Statutes section 236.45. Oral arguments before the Wisconsin Supreme Court were held on November 29th. Chief justice Shirley Abrahamson, Justice Ann Walsh Bradley, and Justice Patience Drake Roggensack voted in support of the Town. Justices Patrick Crooks, David Prosser, and Louis Butler voted against the town. The seventh Supreme Court Justice, newly elected Annette Ziegler, did not participate in the case because she had received campaign contributions from the Realtors Political Action Committee and the Build A Better Wisconsin Committee, a political action committee of the Wisconsin Builders Association. Justice Ziegler disclosed to the parties in the case that she had received funding from these organizations. Since both the Wisconsin Realtors Association and the Wisconsin Builders Association are parties in this case, the Town of West Point objected to Justice Ziegler's participation in the case.

This case had gotten to the Wisconsin Supreme Court without a decision by the Wisconsin's intermediate appellate court, the Wisconsin Court of Appeals. When the case was originally before the Court of Appeals, the Court of Appeals declined to decide the case because of the significant issues of first impression presented in the case. As allowed under Wisconsin law in these types of situations, the Court of Appeals certified the case to the Wisconsin Supreme Court for a decision and the Wisconsin Supreme Court agreed to hear the case. However, since the Supreme Court deadlocked on the case, the Supreme Court, in a seldom used procedure, vacated its order granting certification of the case from the Court of Appeals and sent the case back to the Court of Appeals for a decision. The Court of Appeals must now decide the case.

The Court of Appeals has not yet issued any order setting forth the time frame for how it will handle the appeal. The ultimate resolution of this case is still up in the air.

Several media reports on this case attempt to paint this case as a decision on Wisconsin's 1999 comprehensive planning law, commonly referred to as the "smart growth" law. The case actually deals with local government authority under the State's enabling laws for local subdivision ordinances found in section 236.45 of the Wisconsin Statutes, authority that dates back to the mid 1950s. It just so happens that in this specific case, the Town was in the process of updating its comprehensive plan and subdivision ordinance when the Town imposed the temporary moratoria. However, the same issue regarding local government authority to impose moratoria could have arisen if the town imposed a temporary moratorium on subdivisions for other reasons such as preparing a sewer service area plan, a transportation corridor plan, the adequacy of public facilities to handle new development, just amending a subdivision ordinance, or the public health and safety concerns.

The Wisconsin Chapter of the American Planning Association, along with its parent organization, the American Planning Association, filed a friend of the court brief in the case in support of the use of moratoria. A copy of the brief is available at <http://www.planning.org/amicusbriefs/pdf/wisconsinrealtors.pdf>. The Wisconsin Towns Association and the League of Wisconsin Municipalities also filed friend of the court briefs supporting the use of moratoria. The Wisconsin Transportation Builders Association and Aggregate Producers of Wisconsin filed a friend of the court brief against the use of moratoria.

Wisconsin Court of Appeals published opinions

No planning related cases to report.