



February Case Law Update February 21, 2008

Wisconsin Supreme Court

No planning related cases to report.

Wisconsin Court of Appeals published opinions

Condemnation: “Unit Rule” Held Unconstitutional

[*City of Milwaukee v. Redevelopment Authority*](#), recommended for publication by the Wisconsin Court of Appeals, held that the “unit rule” for valuing property was unconstitutional as applied to the unique facts in this case. The unit rule in condemnation cases requires that the property taken must be valued as a single entity, as if there were but one owner.

This case involved the condemnation of a hotel building located near Marquette University in downtown Milwaukee. The hotel was constructed in 1961 on property owned by the VFW. The VFW conveyed the property in exchange for a valuable leasehold interest. Under the terms of the lease, for \$1 per year for 99 years (plus an option to renew for another 99 years), the VFW could use 5250 square feet of the building. Like some leases, the lease did not include a forfeiture provision that stated the VFW as lessee would forfeit all rights upon condemnation.

The hotel was sold to Maharishi Vedic University in 1994, subject to the VFW lease. The Maharishi never occupied the building. The Redevelopment Authority for the City of Milwaukee began the process of acquiring the building for redevelopment. The Authority made a jurisdictional offer of \$440,000 that was allocated \$140,000 to the Maharishi and \$300,000 to the VFW for its leasehold interest.

The VFW appealed the adequacy of the award. The Maharishi did not join the appeal. The unit rule was used to value the property taken so the issue focused on the fair market value of the building as a whole. Following a trial on the issue of just compensation, the jury returned a verdict that the hotel building had no value. Because of the application of the unit rule, the VFW was prohibited from proving the value of its lease to the jury even though it was undisputed that the leasehold interest had great monetary value. The Wisconsin Court of Appeals found that the application of the unit rule in this unique situation would result in “manifest injustice of the prepaid long-term leaseholder receiving nothing for its interest in the property. It would not receive *any* compensation, let alone *just* compensation.” (Emphasis by the court.) The Court of Appeals therefore concluded that the use of the unit rule in this case was unconstitutional and sent the case back to the trial court for a determination of the value of the VFW lease.