

SUPREME COURT OF WISCONSIN

Oliveira v. City of Milwaukee, 2001 WI 27, 242 Wis. 2d 1

624 N.W.2d 117 (2001) · No. 98-2474 · Decided April 3, 2001

SUMMARY

The Wisconsin Supreme Court reviewed whether Milwaukee was required to provide additional statutory and constitutional notice before considering duplicate zoning amendments referred to a different common council committee. The court held that the original properly published notices and hearing satisfied Wis. Stat. § 62.23(7)(d)2. and due process because the duplicate proposals were substantively identical and affected the same persons in the same manner. The court reversed the court of appeals and affirmed dismissal of the plaintiffs' complaint.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Shirley S. Abrahamson, Chief Justice; David T. Prosser, Justice
JURISDICTION	Wisconsin
DECIDED	April 3, 2001
DOCKET	98-2474
DISPOSITION	reversed
PROCEDURAL POSTURE	Review of a published court of appeals decision reversing the circuit court's dismissal of plaintiffs' declaratory and injunctive action challenging Milwaukee zoning amendments.
STANDARD OF REVIEW	Questions of law, including statutory interpretation, are reviewed independently. The court also reviewed the validity of the zoning enactments and due process issues de novo.
PRECEDENTIAL VALUE	precedential
PARTIES	Rosemary K. Oliveira, Shawnette J. Smart, Robert E. Klavetter v. City of Milwaukee, American Stores Properties, Inc.

TOPICS

zoning municipal law statutory interpretation procedural due process real estate

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether class 2 notices and a hearing on original zoning amendments were sufficient under Wis. Stat. § 62.23(7)(d)2. to permit enactment of substantively identical duplicate amendments referred to a different municipal committee without additional published notices.
2. Whether due process required additional statutory notices because the duplicate amendments had different file numbers and were considered by a different committee.
3. Whether the common council's alleged failure to follow its own committee-assignment procedures invalidated the zoning amendments.
4. Whether the City of Milwaukee was estopped from asserting the plaintiffs' failure to comply with the statutory notice-of-claim requirement.

HOLDINGS

1. Wis. Stat. § 62.23(7)(d)2. did not require a second class 2 notice and hearing because the duplicate zoning amendments were substantively identical to the original amendments and affected the same people in the same manner.
2. The city did not violate constitutional due process by failing to publish additional notices for the duplicate zoning amendments.
3. The alleged failure to follow the common council's internal committee-assignment procedures did not provide a basis for invalidating the zoning amendments.
4. The City of Milwaukee was estopped from asserting that the plaintiffs' failure to comply with Wis. Stat. § 893.80(1)(b) barred the action.

KEY QUOTATIONS

“No substantive difference exists between the original proposed zoning amendments, for which § 62.23(7)(d)2. notices were given, and the duplicate files containing the proposed zoning amendments that were adopted.” (242 Wis. 2d at 17-18)

“The generally accepted rule is that a legislature, even a municipal one, should control its own procedures.” (242 Wis. 2d at 21-22)

“a question of policy for legislative, not judicial, determination.” (242 Wis. 2d at 22)

FACTUAL BACKGROUND

Milwaukee introduced two zoning amendments needed to permit American Stores Properties, Inc. to construct a Jewell/Osco store. The city published class 2 notices and held a public hearing before the zoning committee, but the committee twice held the proposals without action. The common council president then introduced duplicate files, referred them to the steering and rules committee, and the council enacted them after a hearing preceded by

mailed notice but not by another class 2 publication. The duplicate amendments affected the same property and persons in the same substantive manner as the original proposals.

PROCEDURAL HISTORY

The Milwaukee County Circuit Court dismissed the complaint, finding that the plaintiffs lacked standing and rejecting their substantive legal challenges. The Wisconsin Court of Appeals reversed, concluding that the city was required to provide a second set of statutory notices after duplicate zoning amendments were referred to a different committee. The Wisconsin Supreme Court reversed the court of appeals and affirmed the circuit court's dismissal.

DISPOSITION

reversed

CASES CITED

- Oliveira v. City of Milwaukee, 2000 WI App 49, 233 Wis. 2d 532, 608 N.W.2d 419
- Gillen v. City of Neenah, 219 Wis. 2d 806, 580 N.W.2d 628 (1998)
- State v. Seymour, 24 Wis. 2d 258, 128 N.W.2d 680 (1964)
- Fritsch v. St. Croix Central School District, 183 Wis. 2d 336, 515 N.W.2d 328 (Ct. App. 1994)
- Herdeman v. City of Muskego, 116 Wis. 2d 687, 343 N.W.2d 814 (Ct. App. 1983)
- Gloudeman v. City of St. Francis, 143 Wis. 2d 780, 422 N.W.2d 864 (Ct. App. 1988)
- Anderson v. Judd, 404 P.2d 553 (Colo. 1965)
- State ex rel. Kling v. Nielsen, 144 N.E.2d 278 (Ohio Ct. App. 1957)
- Gricus v. Superintendent and Inspector of Buildings of Cambridge, 189 N.E.2d 209 (Mass. 1963)
- State ex rel. La Follette v. Stitt, 114 Wis. 2d 358, 338 N.W.2d 684 (1983)
- State ex rel. Nagawicka Island Corp. v. City of Delafield, 117 Wis. 2d 23, 343 N.W.2d 816 (Ct. App. 1983)
- State v. P. Lorillard Co., 181 Wis. 347, 193 N.W. 613 (1923)

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