

MUNICIPAL LAW NEWSLETTER

BOARDMAN^{LLP}
LAW • FIRM

Volume 11, Issue 12, December 2006

IN THIS ISSUE

- *ELECTRIC*
- *EMINENT DOMAIN*
- *EMPLOYMENT*
- *ENVIRONMENTAL*
- *IMPACT FEES*
- *LAND USE & ZONING*
- *MISCELLANEOUS*
- *MUNICIPAL LIABILITY*
- *OPEN RECORDS/
OPEN MEETINGS*
- *PROPERTY TAXATION*
- *PUBLIC CONTRACTORS*
- *REGULATION*
- *TELECOMMUNICATIONS*
- *WATER & WASTEWATER*

CUMULATIVE TOPICAL INDEX OF ARTICLES 2005 TO 2006

ELECTRIC

- Court Okays PTF-II Coal Plants *Vol. 10, Issue 7-8, July-August 2005, p. 7*
- Court Upholds Arrowhead-Weston
Power Line Approval *Vol. 10, Issue 3, March 2005, p. 2*
- Energy Policy Act of 2005
(Mostly) Good For Public Power. *Vol. 10, Issue 11, November 2005, p. 2*
- FCC Adopts Order on Broadband
Over Power Lines. *Vol. 11, Issue 9-10, September-October 2006, p. 3*
- FERC Transmission Update:
Day 2 Market Steams Ahead *Vol. 10, Issue 3, March 2005, p. 1*
- FERC Update *Vol. 11, Issue 9-10, September-October 2006, p. 2*
- In Wake of PSC Report, ATC Announces Plans
to Build Paddock-Rockdale Line *Vol. 11, Issue 5, May 2006, p. 5*
- Judge Invalidates PSC's Approval of
WE's "Power the Future" Plants *Vol. 10, Issue 1, January 2005, p. 1*
- MISO Day 2 Market Launched *Vol. 10, Issue 5, May 2005, p. 2*
- PSC Reverses Course on Kewaunee Sale *Vol. 10, Issue 5, May 2005, p. 4*
- PSC Votes to Reopen Its Kewaunee Docket *Vol. 10, Issue 2, February 2005, p. 3*
- State Steps Up Efforts to
Promote Renewable Energy *Vol. 11, Issue 11, November 2006, p. 2*

EMINENT DOMAIN

- Ability To Take Possession of Condemned
Property Is Thrown Into Confusion and
Potential Cost Rises Dramatically. *Vol. 11, Issue 3, March 2006, p. 1*
- Appeal From Condemnation Award Not Thwarted By
Technical Defects In Notice *Vol. 11, Issue 3, March 2006, p. 3*
- County Entitled To Interest On Deposit of Condemnation
ward Pending Outcome of Litigation *Vol. 11, Issue 8, August 2006, p. 4*
- Good Faith Negotiation Essential Before
Condemning Property. *Vol. 11, Issue 7, July 2006, p. 5*
- Guidance Offered on Benefit Owed to Businesses
Relocated Due to Condemnation *Vol. 11, Issue 4, April 2006, p. 2*
- Legislature Bars Use of Condemnation For
Purely Economic Development. *Vol. 11, Issue 5, May 2006, p. 1*
- Legislature Limits Municipal Power to Remove
Nonconforming Signs and Billboards. *Vol. 11, Issue 2, February 2006, p. 3*
- Revocation of CUP Does Not
Constitute A Taking *Vol. 10, Issue 7-8, July-August 2005, p. 4*
- Supreme Court Rejects Speculative Evidence
of Value in Condemnation Case. *Vol. 11, Issue 2, February 2006, p. 4*
- The Hype Over *Kelo*:
Have Property Rights Vanished? *Vol. 10, Issue 7-8, July-August 2005, p. 1*

EMPLOYMENT

- Court Upholds Municipal Authority to Set Minimum Wage *Vol. 10, Issue 6, June 2005, p. 2*
Madison's Minimum Wage Ordinance In Full Swing *Vol. 10, Issue 3, March 2005, p. 3*
Municipal Power Removed By New Minimum Wage Law *Vol. 10, Issue 7-8, July-August 2005, p. 5*
Supreme Court Confirms Narrow Scope of
Age Discrimination Based on Disparate Impact *Vol. 10, Issue 5, May 2005, p. 5*
Supreme Court Narrows First Amendment Protection of Public Employee Speech *Vol. 11, Issue 7, July 2006, p. 3*
-

ENVIRONMENTAL

- 7th Circuit Upholds Local Ban on Fertilizers Containing Phosphorous *Vol. 11, Issue 2, February 2006, p. 2*
Court of Appeals Enforces City Lead Abatement Order Against New Property Owner *Vol. 11, Issue 4, April 2006, p. 3*
-

IMPACT FEES

- Impact Fee Collected for "Aquatic Center" Can Pay for "Spray Ground" *Vol. 10, Issue 6, June 2005, p. 1*
New Limitations on Impact Fees *Vol. 11, Issue 6, June 2006, p. 3*
Recent Amendment To the Impact Fee Law Raises Concern *Vol. 11, Issue 7, July 2006, p. 1*
Retroactive Application of Amendment to Impact Fee Statute *Vol. 11, Issue 5, May 2006, p. 5*
-

LAND USE & ZONING

- 50% Limit Applies to Nonconforming Properties Defined by Use Not Structure *Vol. 10, Issue 5, May 2005, p. 1*
A Classic "Rock and a Hard Place" Dilemma Confronts the Wisconsin Supreme Court *Vol. 11, Issue 5, May 2006, p. 2*
A Divided 7th Circuit Federal Court Deals with
Whether Fair Housing Laws Override Zoning *Vol. 10, Issue 7-8, July-August 2005, p. 5*
Annexation Issues Newly Addressed by Court of Appeals *Vol. 10, Issue 6, June 2005, p. 5*
Another Ruling on Board of Adjustment Appeals of Conditional Use Decisions *Vol. 10, Issue 6, June 2005, p. 4*
Circuit Court Upholds Town Subdivision Moratorium Ordinance *Vol. 11, Issue 11, November 2006, p. 1*
Conditional Use Permit For Wind Farm Upheld *Vol. 11, Issue 8, August 2006, p. 5*
County-Town Land Use Powers Considered in Two Cases *Vol. 10, Issue 7-8, July-August 2005, p. 3*
Court of Appeals Affirms County Board of Adjustment Substantial Evidence Standards *Vol. 11, Issue 4, April 2006, p. 2*
Court of Appeals Confirms That A Navigable Stream Does Not Divide A Parcel Into Two Lots *Vol. 11, Issue 7, July 2006, p. 4*
Court Rejects Assessed Value of Section 515 Subsidized Housing Project *Vol. 11, Issue 4, April 2006, p. 1*
Denial of Rezoning Imposes Substantial Burden Under RLUIPA *Vol. 10, Issue 4, April 2005, p. 4*
Effect of Severability Clauses Weakened in Unpublished
Court of Appeals Decision. *Vol. 11, Issue 9-10, September-October 2006, p. 2*
Enforcement of Pre-annexation Agreement. *Vol. 10, Issue 7-8, July-August 2005, p. 7*
Failure To Seek Certiorari Review From Zoning Board Decision Precludes Collateral Attack *Vol. 11, Issue 5, May 2006, p. 4*
Flexible Approach to Valuing Partial Takings *Vol. 11, Issue 9-10, September-October 2006, p. 1*
Important Plan Consistency Question Almost Answered *Vol. 10, Issue 9, September 2005, p. 5*
Inclusionary Zoning Is Not Illegal Rent Control *Vol. 10, Issue 11, November 2005, p. 1*
New Notice Requirements for Some Zoning and Plan Enactments. *Vol. 11, Issue 6, June 2006, p. 2*
Noncompliant Retaining Wall Allowed To Stand
Based, In Part, On Landowner's Good Faith Reliance on Contractor. *Vol. 11, Issue 7, July 2006, p. 2*
Pigeon People Lose Appeal: 7th Circuit Upholds Chicago Bird Ban *Vol. 11, Issue 2, February 2006, p. 1*
Previously Reported Case on ADA Applied To
Zoning Advances To En Banc 7th Circuit Decision. *Vol. 11, Issue 11, November 2006, p. 3*
Retroactive Effects of the Ziervogel Variance Case Further Explained. *Vol. 10, Issue 10, October 2005, p. 3*
Seventh Circuit Finds No Constitutional Violation
In Sale of Religious Monument by City of LaCrosse *Vol. 10, Issue 2, February 2005, p. 2*
Wisconsin Supreme Court Further Explains
How Equitable Estoppel Works in the Context of Zoning *Vol. 10, Issue 7-8, July-August 2005, p. 6*
Wisconsin Supreme Court Provides Guidance to Zoning Boards of Appeals *Vol. 10, Issue 9, September 2005, p. 1*
Zoning Board of Appeals Statute Amended To Eliminate 4 Vote Requirement. *Vol. 11, Issue 2, February 2006, p. 3*
Zoning Boards of Adjustment Regain *De Novo* Review Powers *Vol. 10, Issue 9, September 2005, p. 3*
-

MISCELLANEOUS

- Attorneys Fees Not Available For Frivolous Prosecution
of Municipal Ordinance Violation *Vol. 10, Issue 11, November 2005, p. 2*
Boardman Law Firm Welcomes New Municipal Special Services Paralegal *Vol. 11, Issue 3, March 2006, p. 3*
-

Lower Burden of Proof Now Applies in State Court Excessive Force Claims	<i>Vol. 11, Issue 1, January 2006, p. 3</i>
No Bad Faith in Village Policy of Returning Shoplifted Items to Store	<i>Vol. 11, Issue 1, January 2006, p. 3</i>
Tips for Serving Notice of Claim Denials.	<i>Vol. 11, Issue 6, June 2006, p. 3</i>
U.S. Supreme Court Preview	<i>Vol. 10, Issue 1, January 2005, p. 3</i>

MUNICIPAL LIABILITY

Governmental Employee Held Immune from Liability for Assembly of Office Chair	<i>Vol. 10, Issue 1, January 2005, p. 2</i>
Has the Wisconsin Supreme Court Marked the end for Liability Waivers?	<i>Vol. 10, Issue 4, April 2005, p. 1</i>
Milwaukee's Lawsuit Against Lead Paint Manufacturers Allowed To Proceed	<i>Vol. 10, Issue 1, January 2005, p. 5</i>
Supreme Court Clarifies Nuisance and Immunity Rules In Dispute Over Water Main Break	<i>Vol. 10, Issue 5, May 2005, p. 2</i>

OPEN RECORDS/OPEN MEETINGS

Court Rebuffs Efforts by the Attorney General to Characterize a Private Entity as Covered by the State Public Records Law	<i>Vol. 11, Issue 4, April 2006, p. 3</i>
Internal Investigation Documents Shielded from Open Records Law.	<i>Vol. 10, Issue 9, September 2005, p. 4</i>
Little-known Exception To Public Records Law Protects Bank Account Information	<i>Vol. 11, Issue 9-10, September-October 2006, p. 3</i>

PROPERTY TAXATION

County Stuck With Closed Landfill Taken By Tax Deed	<i>Vol. 11, Issue 8, August 2006, p. 1</i>
Court of Appeals Denies Tax Exemption for Leased Property	<i>Vol. 11, Issue 8, August 2006, p. 2</i>
"Life Lease" Retirement Community Not Exempt from Property Taxes	<i>Vol. 11, Issue 1, January 2006, p. 1</i>
Proper Tax Assessment Method for Billboards Certified to Supreme Court	<i>Vol. 11, Issue 2, February 2006, p. 5</i>
Property Tax Exemption Committee in Disarray	<i>Vol. 10, Issue 2, February 2005, p. 1</i>

PUBLIC CONTRACTING

Bidding Error Ruling Could Impact Public Contracting Procedures.	<i>Vol. 10, Issue 10, October 2005, p. 1</i>
New Law Increases Public Bidding Threshold	<i>Vol. 11, Issue 5, May 2006, p. 2</i>

REGULATION

Anti-Trust Claim Against Voluntary Limits on "Drink Specials" Dismissed But on Appeal.	<i>Vol. 10, Issue 6, June 2005, p. 5</i>
---	--

TELECOMMUNICATIONS

FCC Releases Video Competition Report.	<i>Vol. 10, Issue 4, April 2005, p. 5</i>
Federal Court Upholds Local Regulation of AT&T's Video Programming Service	<i>Vol. 11, Issue 6, June 2006, p. 1</i>
House Commerce Committee Releases Draft Telecom Bill.	<i>Vol. 10, Issue 11, November 2005, p. 3</i>
The Public Service Commission of Wisconsin Approves New Wireless 911 Rules.	<i>Vol. 10, Issue 1, January 2005, p. 2</i>
U.S. Supreme Court Rejects Municipal Liability Under Section 1983 in Cell Tower Cases	<i>Vol. 10, Issue 5, May 2005, p. 3</i>
U.S. Supreme Court Rules Cable Modem Service Is an Information Service.	<i>Vol. 10, Issue 7-8, July-August 2005, p. 3</i>
U.S. Supreme Court to Decide Availability of Attorney's Fees in Cell Tower Cases.	<i>Vol. 10, Issue 1, January 2005, p. 5</i>

WATER & WASTEWATER

Court of Appeals Holds PSC Can Order Municipal Utility to Convey Its Utility Property to Another Utility	<i>Vol. 11, Issue 5, May 2006, p. 3</i>
Municipal Utility Service Contracts Questioned By the PSC.	<i>Vol. 11, Issue 11, November 2006, p. 1</i>
Proposed Great Lakes Agreements Could Significantly Impact All Wisconsin Community Water Systems	<i>Vol. 10, Issue 10, October 2005, p. 2</i>
Supreme Court Clarifies Nuisance and Immunity Rules In Dispute Over Water Main Break	<i>Vol. 10, Issue 5, May 2005, p. 2</i>
Supreme Court Invalidates Sewer Special Assessment Allocated on a Per Taxable Parcel Basis	<i>Vol. 11, Issue 9-10, September-October 2006, p. 3</i>
TABOR Returns Would Also Impact Municipal Utilities	<i>Vol. 10, Issue 2, February 2005, p. 1</i>
Tenants Lack Standing to Challenge Municipal Water and Sewer Rates	<i>Vol. 11, Issue 1, January 2006, p. 2</i>

MUNICIPAL LAW NEWSLETTER

The Municipal Law Newsletter is published monthly by the Municipal Utility and Municipal Special Services Practice Group and the Environmental and Land Use Practice Group of Boardman, Suhr, Curry & Field LLP, Fourth Floor, One South Pinckney Street, Madison, Wisconsin 53701-0927, 608-257-9521. The Newsletter is distributed to our clients and to municipal members of our clients, the Municipal Electric Utilities of Wisconsin and the Municipal Environmental Group - Municipal Drinking Water Division.

If you have a particular topic you would like to see covered, or if you have a question on any article in this newsletter, feel free to contact any of the Boardman attorneys listed below who are contributing to this newsletter.

Please feel free to pass this Newsletter to others in your municipality or make copies for internal use. If you would like to be added to or removed from our mailing list, or to report an incorrect address or address change, please contact Charlene Beals at 608-283-1723 or by e-mail at cbeals@boardmanlawfirm.com.

Richard L. Bolton	283-1789	rbolton@boardmanlawfirm.com
Christopher J. Dodge	283-1777	cdodge@boardmanlawfirm.com
Anita T. Gallucci	283-1770	agallucci@boardmanlawfirm.com
Robert E. Gregg	283-1751	rgregg@boardmanlawfirm.com
Rhonda R. Hazen	283-1724	rhazen@boardmanlawfirm.com
Richard A. Heinemann	283-1706	rheinemann@boardmanlawfirm.com
Lawrie J. Kobza	283-1788	lkobza@boardmanlawfirm.com
Richard A. Lehmann	283-1719	rlehmann@boardmanlawfirm.com
Jennifer S. Mirus	283-1799	jmirus@boardmanlawfirm.com
Mark A. Neuser	283-1725	mneuser@boardmanlawfirm.com
Jon C. Nordenberg	283-1739	jnordenberg@boardmanlawfirm.com
William R. Peck	283-1732	wpeck@boardmanlawfirm.com
Catherine M. Rottier	283-1749	crottier@boardmanlawfirm.com
Mark J. Steichen	283-1767	msteichen@boardmanlawfirm.com
Cynthia A. Van Bogaert	283-7543	cvanbog@boardmanlawfirm.com
Steven C. Zach	283-1736	szach@boardmanlawfirm.com

This newsletter is published and distributed for informational purposes only. It does not offer legal advice with respect to particular situations, and does not purport to be a complete treatment of the legal issues surrounding any topic. Because your situation may differ from those described in this Newsletter, you should not rely solely on this information in making legal decisions.

BOARDMAN^{LLP}
LAW • FIRM

© Copyright 2006, Boardman, Suhr, Curry & Field LLP

Printed on Recycled Paper

ADDRESS SERVICE REQUESTED

BOARDMAN^{LLP}
LAW • FIRM

Boardman, Suhr, Curry & Field LLP
Fourth Floor
1 South Pinckney Street
P.O. Box 927
Madison, WI 53701-0927

PRRSRT STD
U.S. Postage
PAID
Madison, WI
Permit # 1400