

A Cautionary Lesson in Urban Planning



Joseph
A. Ranney
608-283-5612
jar@dewittross.com



Howard
B. Schoenfeld
262-754-2847
hbs@dewittross.com

■ Cities and other municipalities enjoy many protections against legal claims that private citizens do not have. But there are also special laws that allow citizens who believe they have been harmed by municipalities to make claims. One such law is a federal statute (Title 42, section 1983 of the United States Code) which allows citizens to make claims against states and municipalities that have violated their civil rights.

Many people believe civil rights laws apply only to racial discrimination or acts such as police brutality. That is not so: the civil rights laws can apply to other situations as well. A recent case in the federal district court in Milwaukee, *Peninsula Properties versus City of Sturgeon Bay*, is an example.

In the *Peninsula Properties* case, Sturgeon Bay made a contract in 1996 with private developers to build a hotel/convention center and three residential condominium

buildings on the water as part of a TIF redevelopment project. The project design changed over time but the change was not fully documented in writing. In 1999, a dispute arose. The city wanted the developers to construct all three buildings by the end of 2000; the developers wanted to wait until there was a market demand for the condominiums, and they claimed the city agreed to this. The developers signed a contract amendment containing the city's schedule, but they claimed that Sturgeon Bay forced them to sign by telling them that it would refuse to issue building permits for the buildings until they agreed.

In 2003, another dispute arose. Sturgeon Bay held a mortgage on the construction site. The city had given partial mortgage releases to the condominium purchasers. After one of the development companies involved in the project filed bankruptcy, the city refused to issue any more releases and as a result the developers could not sell any more condominiums. The developers tried to negotiate with Sturgeon Bay, but the city did not tell the developers what it wanted.

The developers sued the city. Sturgeon Bay argued that the dispute was only a contract dispute and did not involve civil rights, but the federal court disagreed. The court said that a municipality does not commit a civil rights violation if it makes an honest mistake of judgment or even if it breaches a contract, but if it uses its governmental powers to force a change in the terms of a contract or if it denies a benefit without giving a fair hearing, that may be a civil rights violation.

At trial, the jury agreed with the developers that Sturgeon Bay had violated their civil rights by refusing to issue building permits unless the developers agreed to a quick construction schedule and by refusing to listen to the developers' requests for partial mortgage releases. The court then ordered Sturgeon Bay to pay the developers more than \$500,000 in damages. Federal civil rights law provides that the losing party has to pay the winning party's legal expenses, and the developers have asked the court

to order Sturgeon Bay to pay them more than \$275,000 in legal expenses in addition to the damages award. *On May 8, 2006, the court issued its Decision and Order that the city of Sturgeon Bay must pay the developers \$804,498.54, including attorneys' fees.*

At this time, it is not certain whether Sturgeon Bay will appeal the court's decision. Whether it does or not, the *Peninsula Properties* case turned out to be an expensive lesson for the city. The case is a reminder that municipalities should maintain good written records; should always be careful to establish fair procedures for dealing with their residents and other private citizens; and should follow those procedures consistently.

Sturgeon Bay appealed the federal court jury verdict to the 7th Circuit Court of Appeals. After the appeal was filed, but before any arguments were presented to the Court of Appeals, Sturgeon Bay paid a substantial amount of money to the developers to settle the lawsuit. ■



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