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NextMedia Outdoor, Inc. v. Village of Howard

Court of Appeals of Wisconsin - April 14, 2015 - Slip Copy - 2015 WL 1637200

NextMedia Outdoor, Inc. (NextMedia) owned a legal, nonconforming billboard sign in the Village of Howard (the Village) that was displaced as the result of a Wisconsin Department of Transportation (DOT) highway project. NextMedia sought to have the sign “realigned”—i.e., moved to a different spot on the same property—pursuant to a newly enacted state law. Accordingly, it filed an application for realignment with the Village, which the Village denied under a local ordinance implementing the new state law. NextMedia appealed to the Zoning Board of Appeals of the Village of Howard (the Board), which reversed the Village’s decision and authorized NextMedia to realign the sign with certain conditions.

The DOT objected to the Board’s decision, advising the Village it had acquired, by condemnation, NextMedia’s permit rights to the sign months prior to the Board’s decision. The Village then filed a motion for reconsideration, and the Board held a second hearing on the matter. The Board reversed its earlier decision, concluding NextMedia’s right to apply for realignment ceased when the DOT acquired NextMedia’s permit rights. NextMedia sought certiorari review, and the circuit court agreed with NextMedia and entered a judgment concluding the Board lacked reconsideration authority and erred as a matter of law by considering the evidence submitted during the reconsideration proceedings.

The Court of Appeals reversed, holding that the Board had inherent authority, based on long-standing Wisconsin precedent, to reconsider a decision based on mistake, such as occurred here.

The Court further concluded that the evidence submitted on reconsideration was sufficient to establish that the Board’s earlier decision was fundamentally rooted in its mistaken beliefs that NextMedia still owned permit rights to the sign and that the DOT had proposed realignment of the sign.

The Court also rejected NextMedia’s other arguments, including that the Board erred as a matter of law, that it should be estopped from reconsidering its prior decision, and that the Board’s reconsideration decision was unreasonable and contrary to the concepts of due process and fair play.