

Bond Case Briefs

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ZONING - NORTH DAKOTA

Dakota Outdoor Advertising, LLC v. City of Bismarck

Supreme Court of North Dakota - November 9, 2016 - N.W.2d - 2016 WL 6611238 - 2016 ND 210

Applicant for special use permit to erect a digital billboard appealed decision of city's board of commissioners that affirmed decision of city's planning and zoning commission denying the permit.

The District Court affirmed. Applicant appealed.

The Supreme Court of North Dakota held that:

- Applicant's appeal from district court order was not moot; and
- Decision of city's board of commissioners to deny application for special use permit to erect digital billboard less than 300 feet from a residential area was not arbitrary, capricious, or unreasonable.

Applicant's appeal from district court order affirming decision of city's board of commissioners that denied special use permit to erect digital billboard less than 300 feet from a residential property was not moot, though applicable city ordinance was changed shortly after district court's decision so as not to allow for special use permits for digital billboards less than 300 feet from residential properties, where new ordinance was not expressly written to be applied retroactively.

Decision of city's board of commissioners to deny application for special use permit to erect digital billboard less than 300 feet from a residential area was not arbitrary, capricious, or unreasonable. Board had authority to grant special use permit if proposed use would not adversely affect health and safety of public and workers and residents in the area, and board found a high incidence of accidents on street running next to proposed site, found that the North Dakota Department of Transportation Urban High Crash Locations report showed the subject intersection was the seventh most dangerous in the state and the second most dangerous in city, and found that applicant's evidence was inconclusive as to whether digital billboards increased driver distraction.