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Grafft v. Wis. Dep't of Natural Res., 618 N.W.2d 897 (Wis. Ct. App. 2000)

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of sewer or water systems in the Town. Additionally, due to the nature of the inceptor, no financial or impact provision on the Town residents existed. The court concluded the sewer interceptor, constructed by the City, received sewage from main-line sewers but not from laterals or collectors. Also, the interceptor did not permit a property owner to connect with or use the sewer because it was not a part of a sewer system to which an abutting property owner could connect. Thus, the court held the City was not required to seek town approval prior to either the condemnation for or the construction of the contested interceptor.

Most condemnations required that the condemning municipality make a relocation order pursuant to Wisconsin law. Danielson and the Town contended the relocation order was the required first step in the condemnation process. The City disagreed. The court looked to the plain language of the relevant Wisconsin statutory law and determined it was facially unambiguous. The court reasoned that such relevant Wisconsin statutory law permitted several steps to take place before initiating a relocation order. Therefore, the court held that the Wisconsin law clearly and unambiguously permitted a condemning authority to take some steps before making a relocation order.

In sum, the court of appeals affirmed the judgment of the circuit court and held both that Wisconsin law was not applicable to the interceptor and that the Wisconsin law did not require the City to make a relocation order as the first step in the condemnation process.

Kimberley E. Montanaro

Grafft v. Wis. Dep't of Natural Res., 618 N.W.2d 897 (Wis. Ct. App. 2000) (holding the Wisconsin Department of Natural Resources did not exceed its regulatory authority by promulgating the undeveloped shoreline standard).

Grafft applied to the Department of Natural Resources ("DNR") for a permit to construct a permanent boat shelter. DNR denied the permit pursuant to Wisconsin statutory law, finding the proposed project contrary to the public interest. Specifically, DNR concluded the proposed boat shelter did not conform with a Wisconsin administrative regulation code, which provided that permits could only be granted for locations adjacent to developed shorelines. This regulation defined developed shorelines as having at least five visually intrusive structures when viewed from a location on the water. DNR found only four visually intrusive structures and concluded the proposed project was located adjacent to an undeveloped shoreline, thus precluding it from granting Grafft's permit application.

Grafft petitioned the circuit court to review the denial of his permit application. The circuit court concluded that the Wisconsin

administrative regulation was invalid because the DNR exceeded its rulemaking authority. DNR appealed.

Grafft asserted that the enabling statute did not expressly authorize DNR to grant or deny permanent boat shelter permits based on the “undeveloped shoreline” standard. Rather, Grafft argued the statutory language authorized DNR to promulgate rules necessary to effectuate its discretionary authority to either grant or deny a riparian owner the permit to construct a permanent boat shelter adjacent to his or her property.

The court agreed and looked to statutory construction rules in order to determine if the legislature implicitly authorized DNR to promulgate the “undeveloped shoreline” standard. The court noted it had recognized in previous case law that Wisconsin statutory law prohibited structures detrimental to the public interest. Within such case law, the court further recognized that the statute authorized the DNR to weigh relevant policy factors when granting permits. Accordingly, the court determined that the enabling statute implicitly authorized DNR to promulgate its regulation regarding the undeveloped shoreline standard.

In addition, Grafft contended the regulation contradicted the enabling statute’s legislative intent and, thus, DNR had exceeded its authority in promulgating the regulation. The court recognized that the initial enabling statute allowed DNR to promulgate rules to establish minimum standards governing boat shelters’ architectural and aesthetic features. These standards assured the structural soundness and durability of a boat shelter and minimized a boat shelter’s visual intrusiveness with respect to the surrounding body of water and shoreline. The court acknowledged that the amended enabling statute removed any language regarding the aesthetics of boat shelters. The amended statute provided that the rules could neither govern the aesthetic features nor color of boat shelters and were designed to assure boat shelters’ structural soundness and durability. Grafft argued DNR’s “undeveloped shoreline” standard determined the visual intrusiveness of principal structures located adjacent to the proposed boat shelter site. Accordingly, the court concluded DNR exceeded its rulemaking authority when it denied permits based upon such standard.

The court found DNR’s regulation did not conflict with the amended enabling statute. The statute’s legislative intent was to remove regulations based on the aesthetics and color of proposed boat shelters. The court reasoned that the “undeveloped shoreline” standard neither involved the aesthetics, color, nor visual intrusiveness of a proposed boat shelter, but rather, limited the number of boat shelters based on the number of visually intrusive principal structures surrounding the proposed boat shelter site.

Dawn Watts