

FILED
07-22-2021
CIRCUIT COURT
DANE COUNTY, WI
2021CV001729
Honorable Nia Trammell
Branch 6

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH ____

DANE COUNTY

ASSOCIATED BUILDERS &
CONTRACTORS OF WISCONSIN, INC.
5330 Wall St.,
Madison, WI 53718,

COMMERCIAL ASSOCIATION OF
REALTORS WISCONSIN, INC.
250 E. Wisconsin Ave., Suite 725,
Milwaukee, WI 53202,

NAIOP WISCONSIN CHAPTER, INC.
250 E. Wisconsin Ave., Suite 700,
Milwaukee, WI 53202,

WISCONSIN BUILDERS ASSOCIATION,
660 John Nolen Dr., Suite 320,
Madison, WI 53713, and

Case Code: 30701

Case Type: Declaratory Judgment

WISCONSIN REALTORS ASSOCIATION, INC.
4801 Forest Run Road, Suite 201,
Madison, WI 53704,

Plaintiffs,

v.

CITY OF MADISON,
210 Martin Luther King Jr. Blvd.,
Madison, WI 53703,

Defendant.

SUMMONS

THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is: **Dane County Clerk of Courts, 215 South Hamilton Street, Room 1000, Madison, WI 53703**, and to the Wisconsin Institute for Law & Liberty, Plaintiffs' attorney, whose address is: **330 E. Kilbourn Ave., Suite 725, Milwaukee, WI 53202**. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose the right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 22nd day of July, 2021.

WISCONSIN INSTITUTE FOR LAW & LIBERTY

/s/ Electronically Signed by Lucas T. Vebber

Rick Esenberg (WI Bar No. 1005622)
Lucas T. Vebber (WI Bar No. 1067543)
Luke N. Berg (WI Bar No. 1095644)
Anthony F. LoCoco (WI Bar No. 1101773)
330 East Kilbourn Avenue, Suite 725
Milwaukee, Wisconsin 53202
Telephone: 414-727-9455
Facsimile: 414-727-6385
Rick@will-law.org
Lucas@wil-law.org
Luke@will-law.org
ALoCoco@will-law.org

Attorneys for Plaintiffs

**FILED
07-22-2021
CIRCUIT COURT
DANE COUNTY, WI
2021CV001729
Honorable Nia Trammell
Branch 6**

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH ____

DANE COUNTY

ASSOCIATED BUILDERS &
CONTRACTORS OF WISCONSIN, INC.,
5330 Wall St.,
Madison, WI 53718,

COMMERCIAL ASSOCIATION OF
REALTORS WISCONSIN, INC.,
250 E. Wisconsin Ave., Suite 725,
Milwaukee, WI 53202,

NAIOP WISCONSIN CHAPTER, INC.,
250 E. Wisconsin Ave., Suite 700,
Milwaukee, WI 53202,

WISCONSIN BUILDERS ASSOCIATION,
660 John Nolen Dr., Suite 320,
Madison, WI 53713, and

Case Code: 30701

Case Type: Declaratory Judgment

WISCONSIN REALTORS ASSOCIATION, INC.,
4801 Forest Run Road, Suite 201,
Madison, WI 53704,

Plaintiffs,

v.

CITY OF MADISON,
210 Martin Luther King Jr. Blvd.,
Madison, WI 53703,

Defendant.

COMPLAINT

Plaintiffs allege the following as their complaint:

INTRODUCTION

1. The City of Madison has done what the State of Wisconsin explicitly prohibited it from doing: it adopted an ordinance which establishes minimum standards for constructing,

altering, or adding to buildings that do not strictly conform to the uniform statewide building code adopted, as required by state law, by the Department of Safety and Professional Services (“DSPS”).

2. That ordinance, challenged herein, is pre-empted by state law and unlawful, and Plaintiffs seek a declaration that it is void and unenforceable.

PARTIES

3. Plaintiff Associated Builders & Contractors of Wisconsin, Inc. (“ABC”) is a membership-based trade association which promotes merit or performance-based construction. ABC has more than 900-member construction firms who do business throughout Wisconsin, including in the City of Madison. ABC is organized as a non-stock corporation under the laws of Wisconsin and maintains its headquarters and principal place of business at 5330 Wall Street, in Madison, Wisconsin.

4. Plaintiff Commercial Association of Realtors Wisconsin, Inc. (“CARW”) is a membership-based trade association which serves as the voice of commercial real estate brokerage in Wisconsin. CARW supports more than 900 commercial real estate professionals in 500 companies who do business throughout Wisconsin, including in the City of Madison. CARW is organized as a non-stock corporation under the laws of Wisconsin and maintains its headquarters and principal place of business at 250 East Wisconsin Avenue, Suite 725, in Milwaukee, Wisconsin.

5. Plaintiff NAIOP Wisconsin Chapter, Inc., doing business as NAIOP Wisconsin, the Commercial Real Estate Development Association (“NAIOP”), is a membership-based trade association dedicated to creating thriving communities in Wisconsin through successful real estate development. NAIOP represents nearly 400 individual real estate professionals working at more

than 150 businesses and doing business throughout Wisconsin, including in the City of Madison. NAIOP is organized as a non-stock corporation under the laws of Wisconsin and maintains its headquarters and principal place of business at 250 East Wisconsin Avenue, Suite 700, in Milwaukee, Wisconsin.

6. Plaintiff Wisconsin Builders Association (“WBA”) is a membership-based trade association dedicated to advancing the housing industry through government involvement, education, and promotion. WBA has members located and engaged in business throughout Wisconsin, including in the City of Madison. WBA is organized as a non-stock corporation under the laws of Wisconsin and maintains its headquarters and principal place of business at 660 John Nolen Drive, Suite 320, in Madison, Wisconsin.

7. Plaintiff Wisconsin Realtors Association, Inc. (“WRA”) is a membership-based trade association representing the interests of more than 18,000 members statewide, including in the City of Madison. WRA members include practicing real estate sales agents, brokers, appraisers, developers, landlords, and other professionals who touch real estate. The WRA represents its members before the Wisconsin Legislature, state regulatory agencies, and federal, state and local courts on a wide range of issues to promote the interests of the real estate industry and property owners throughout Wisconsin. WRA is organized as a non-stock corporation under the laws of Wisconsin and maintains its headquarters and principal place of business at 4801 Forest Run Road, Suite 201, in Madison, Wisconsin.

8. Defendant City of Madison is a municipality located in the State of Wisconsin. The City of Madison’s administrative offices are located at 210 Martin Luther King Jr. Blvd., in Madison, Wisconsin.

JURISDICTION AND VENUE

9. This court has jurisdiction pursuant to Wis. Stat. § 806.04.

10. Venue is proper pursuant to Wis. Stat. § 801.50(2).

FACTS

11. On August 14, 2020, the Madison Common Council adopted Madison General Ordinance (“MGO”) § 28.129, entitled “Bird-Safe Glass Requirements.”

12. MGO § 28.129 provides that “all exterior construction and development activity” must meet new “bird-safe glass treatment requirements” as outlined in the ordinance.

13. Under MGO § 28.129, Defendant established new minimum standards for glass, requiring dots, patterns, lines, metal screens, or other features “intended to reduce the heightened risk for bird collisions with glass.”

14. MGO § 28.129 went into effect on October 1, 2020 and applies to all buildings over 10,000 square feet, skyways, and other glass features.

15. 2013 Wisconsin Act 270 (“Act 270”) required the Department of Safety and Professional Services to adopt a uniform building code for the State of Wisconsin.

16. DSPS, acting under its Act 270 authority, has adopted the uniform statewide building code. *See* Wis. Admin. Code Chs. SPS 361-366.

17. Wis. Stat. § 101.02(7r)(a) (which was created by Act 270) states that no city “may enact or enforce an ordinance that establishes minimum standards for constructing, altering or adding to” buildings unless that ordinance “strictly conforms” to the statewide building code.

18. Additionally, under applicable administrative rules adopted by DSPS, a city may not enact or enforce an ordinance that imposes “additional or more restrictive” standards than the uniform building code. Wis. Admin. Code § SPS 361.03(5).

19. The uniform statewide building code, adopted by DSPS pursuant to state law, adopts various national and international building standards, including the International Building Code (“IBC”).

20. The IBC, adopted by DSPS as part of the uniform statewide building code, governs (among many other things) the quality of glass to be used in buildings. *See* 2015 IBC, Ch. 24 (entitled “Glass and Glazing”). The IBC provides comprehensive requirements concerning the materials, design, construction, safety, and quality of glass.

21. The IBC, adopted by DSPS as part of the uniform statewide building code, imposes a requirement on each pane of glass used in a building, including the manufacturer’s identifying mark that must appear on the glass, the framing, the durability of the glass to wind, load, and human impact forces.

22. The IBC also includes provisions specifying the type of glass and the type of installation required for such structures as glass railings and glass walkways.

23. The IBC does not include any bird-safety features, and specifically does not include the requirements contained in MGO § 28.129.

24. Plaintiffs and their members are required to comply with the requirements of MGO § 28.129 for buildings in the City of Madison.

25. Complying with MGO § 28.129 increases building costs, harming development and leading to higher housing costs and commercial rents.

26. Plaintiffs and their members will bear these increased building costs and/or will be harmed by a less competitive market for their services due to increased housing costs and rent.

27. Plaintiffs and their members are injured on an ongoing basis because of this unlawful ordinance.

**COUNT ONE – DECLARATORY JUDGMENT
THAT MADISON GENERAL ORDINANCE 28.129 IS
PREEMPTED BY STATE LAW, UNLAWFUL, AND VOID**

28. Plaintiffs reallege and incorporate the preceding allegations of the complaint.

29. The provisions of MGO § 28.129 do not strictly conform to the statewide building code in violation of Wis. Stat. § 102.02(7r)(a).

30. The provisions of MGO § 28.129 are additional or more restrictive standards than those provided for in the uniform statewide building code adopted by DSPS in violation of Wis. Admin. Code § SPS 361.03(5).

31. The legislature has expressly withdrawn the power of municipalities, including Defendant, to adopt an ordinance such as MGO § 28.129.

32. MGO § 28.129 conflicts with state law.

33. MGO § 28.129 defeats the purpose of state legislation.

34. MGO § 28.129 goes against the spirit of state legislation.

35. Consequently, MGO § 28.129 is pre-empted by state law, is unlawful and void.

36. Unless this Court declares MGO § 28.129 to be unlawful and void, Plaintiffs and their members will continue to be harmed by Defendant's unlawful ordinance.

REQUEST FOR RELIEF

Plaintiffs request the following relief:

- A. Declare that Madison General Ordinance § 28.129 is unlawful and void;
- B. Enjoin Defendant from enforcing Madison General Ordinance § 28.129; and
- C. Award such other relief as the Court may deem appropriate.

Respectfully submitted this 22nd day of July, 2021.

WISCONSIN INSTITUTE FOR LAW & LIBERTY

/s/ Electronically Signed by Lucas T. Vebber

Rick Esenberg (WI Bar No. 1005622)
Lucas T. Vebber (WI Bar No. 1067543)
Luke N. Berg (WI Bar No. 1095644)
Anthony F. LoCoco (WI Bar No. 1101773)
330 East Kilbourn Avenue, Suite 725
Milwaukee, Wisconsin 53202
Telephone: 414-727-9455
Facsimile: 414-727-6385
Rick@will-law.org
Lucas@wil-law.org
Luke@will-law.org
ALoCoco@will-law.org

Attorneys for Plaintiffs