

Appellant's Reply Brief to Appellee's Responsive Brief in Objection to Appeal

Appellant, MRG Group, LLC, through its attorney, Kendrick B. Yandell, submits the following brief in reply to the Milwaukee Police Department's Responsive Brief in Objection to Appeal.

The Milwaukee Police Department's rejection of MRG's Abatement Plan was arbitrary and capricious and, therefore, an abuse of their discretion. This abuse of discretion has prejudiced MRG. It is in the interest of justice to grant relief to MRG.

MPD's argument that Wis. Stat. § 801.15(1)(b) does not apply because the plan was submitted under a settlement agreement, and not under the ordinance, is unreasonable. Six months into appeal proceedings, MPD and MRG entered into a settlement agreement where MRG agreed to withdraw its appeal and submit an abatement plan according to MCO 80-10-3-b. The whole purpose of the settlement was for MRG to be able to abate its nuisance designation according to the requirements of the Milwaukee ordinances. In their brief, MPD acknowledges that MRG "may prevail" on its argument that the timing requirements under Wis. Stat. § 801.15(1)(b) apply to MCO 80-10-3-b, but since MRG agreed in a settlement to submit the plan the statute should not apply. This argument by MPD produces absurd results. Why would the Wisconsin Statute apply if MRG had submitted a plan before their appeal, but not apply after they withdrew their appeal and agreed to submit the plan? If the Statute applies to the ordinance, then that Statute should apply here where there was an agreement to abate the nuisance according to the ordinance.

The Wisconsin Supreme Court has held several times that Wisconsin State Statutes preempt municipal ordinances where the statute deals with municipal activities, but covers every municipality uniformly or where the matter is of statewide concern. *Van Gilder v. City of Madison*,

222 Wis. 58, 84, 267 N.W. 25 (Wis. 1936). No matter if Wis. Stat. § 801.15(1)(b) was found to affect municipal activities or is of statewide concern since it affects all municipalities uniformly, it would preempt all municipal ordinances. Therefore, the time requirements under MCO 80-10-3-b cannot be more restrictive than the guidelines of Wis. Stat. § 801.15(1)(b).

Further, the unilateral suggestion by a City Attorney that “time is of the essence” cannot bind the Appellant to a more restrictive time requirement. Appellant never agreed that time was of the essence in this matter. The submission of MRG’s abatement plan, of actions already taken, on September 30th was timely.

MPD rejected the Plan submitted by MRG. This rejection is arbitrary and capricious, and an abuse of the discretion given to MPD. MPD is given discretion under the ordinance to accept or reject abatement plans. Rejecting MRG’s plan with no reasonable basis is an abuse of that discretion. MPD’s actions have prejudiced MRG by precluding them from abating the nuisance designation or appealing the nuisance designation.

MRG did not file this second appeal out of regret, it was filed because the improper actions of the MPD backed them into a corner. After MPD rejected their plan and failed to reconsider, MRG had no other option but to swallow that injustice or appeal the decision. If MPD had accepted the plan, or at least given a valid reason for its denial, this appeal never would have been filed.

MPD makes the conclusory statement that it is in the interest of justice to deny the Appellant’s appeal. MPD does not give any reasons that it would be in the interest of justice to rule in their favor. They have not been prejudiced by this action, whereas Appellant has been, and will be even more so if this appeal is denied. A nuisance designation has already affected Appellant in a licensing matter. If it is allowed to remain it would further impact Appellant’s ability to

conduct business at the premises. Appellant complied with the terms of the settlement, and in fact, went above and beyond by providing a plan of actions already taken not just a list of proposed actions. It would be unjust to rule against Appellant where it has exceeded the requirements of the ordinances and the settlement agreements.

Based on this and all the above, Appellant respectfully asks the Board to review its appeal of the cost referral letter and the underlying nuisance designation.

YANDELL LAW OFFICES, LLC
Attorneys for Appellant

/s/ Kendrick B. Yandell
Kendrick B. Yandell
SBN 1097684
757 N. Broadway, Ste. 300
Milwaukee, WI 53202
P: 414.856.5358
F: 414.246.4373
E: ken@kby-law.com