

No. 96-2591

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT I

---

OGDEN DEVELOPMENT GROUP, INC.

PLAINTIFF-APPELLANT,

v.

DOLORES M. BUCHEL, CARL G.A. GRISAR,  
CHRISTINE R. SWANNELL, CAROL NAWROCKI,  
MYRON STIRMEL, KENNETH J. GONNERING,  
INDIVIDUALLY AND AS MEMBERS OF THE  
BOARD OF APPEALS, VILLAGE OF  
WEST MILWAUKEE AND DONNA M. BUSE,  
AS CLERK FOR BOARD OF REVIEW,

DEFENDANTS-RESPONDENTS.

---

ERRATA SHEET

---

Marilyn L. Graves  
Clerk of Court of Appeals  
P.O. Box 1688  
Madison, WI 53701-1688

Peg Carlson  
Chief Staff Attorney  
119 Martin Luther King Blvd.  
Madison, WI 53703

Court of Appeals District I  
633 W. Wisconsin Ave., #1400  
Milwaukee, WI 53203-1918

Court of Appeals District II  
2727 N. Grandview Blvd.  
Waukesha, WI 53188-1672

Court of Appeals District III  
740 Third Street  
Wausau, WI 54403-5784

Court of Appeals District IV  
119 Martin Luther King Blvd.  
Madison, WI 53703

Jennifer Krapf  
Administrative Assistant  
119 Martin Luther King Blvd.  
Madison, WI 53703

Hon. Jacqueline D. Schellinger  
Milwaukee County Courthouse  
901 N. 9th Street  
Milwaukee, WI 53233

Jon W. Sanfilippo, Clerk  
(L.C. #95-CV-009582)  
901 N. 9th Street, Room G-8  
Milwaukee, WI 53233

H. S. Riffle  
Arenz, Molter, Macy & Riffle, S.C.  
P.O. Box 1348  
Waukesha, WI 53187-1348

Jonathan B. Levine  
Jonathan B. Levine Law Offices  
757 N. Water Street  
Milwaukee, WI 53202

Eric J. Larson  
Arenz, Molter, Macy & Riffle, S.C.  
P.O. Box 1348  
Waukesha, WI 53187

Richard J. Rakita  
Rakita Law Firm  
735 N. Water St., Ste. 1100  
Milwaukee, WI 53202-4105

PLEASE TAKE NOTICE that the attached page 6 is to be substituted for page 6 in the above-captioned opinion which was released on December 30, 1997.

Dated this 5th day of January, 1998.

can reasonably infer that by signing the document, Swannell meant to express her agreement with the document's contents. Thus, the petition was a clear statement by Swannell indicating that she had considered Ogden's proposal, and had strongly decided that it should be rejected. Given such clear evidence of prejudice, we must conclude that Ogden's right to an impartial decision-maker has been violated.

The Board, however, makes two arguments in defense of its decision. First, the Board argues that Swannell's statements in opposition to Ogden's previous proposal do not show that Swannell prejudged Ogden's current proposal because, in its view, the two proposals are "completely different." The Board specifically claims that the current proposal is "much different" than the earlier proposal because the previous proposal was for a development "50% larger" than the current proposal. We conclude that the small difference in size between the first proposal, for three apartment buildings, and the second proposal, for two buildings, is immaterial. The signers of the petition, including Chairperson Swannell, were opposed to Ogden's previous proposal not because of its size, but because of Ogden's plan to construct apartments instead of condominiums. Nearly all of the thirteen reasons given in support of the petition's position involve an assessment of the unfavorable aspects of apartment buildings in comparison to condominiums. In addition, the petitioners stated that they would "vehemently support" their opposition to the construction of 100% rental units on the land in question. The current Ogden proposal, like the earlier proposal, is for 100% rental apartments. Therefore, Swannell's opposition to the previous proposal logically relates equally to the current proposal, and thus creates an impermissibly high risk of bias.