

WisDOT loses Highway J lawsuit

by Sean Ryan

Published: September 15th, 2009

Sean Ryan

sean.ryan@dailyreporter.com

The Wisconsin Department of Transportation had better fix its public hearing process and justify its decisions or it will end up back in court, according to grass-roots organizers who won a federal case against the state.

"If the DOT is smart," said Jeff Gonyo, a member of the Highway J Citizens Group steering committee, "what the DOT will do is they'll look at this decision and say, 'Let's take these things to heart, let's correct these problems and do it voluntarily, so that way citizens don't have to sue us.'"

Gonyo's group was one of two to emerge victorious when a federal court in Wisconsin ruled Monday afternoon in favor of those who oppose widening the Highway J/164 corridor from two to four lanes. The WisDOT project was scheduled for Highway J in Waukesha County and Highway 164 in Washington County before the citizens group and Waukesha County Environmental Action League filed their lawsuit in 2005.

The court's decision wiped out federal approval for the Highway J widening and forced WisDOT to return to the project drawing board. But the local organizers who filed the lawsuit say they want the ruling to serve as a lesson for future projects.

The lawsuit targeted WisDOT, the U.S. Department of Transportation, the Federal Highway Administration and the U.S. Army Corps of Engineers.

Doug Hecox, FHWA spokesman, said the department does not comment on litigation. Peg Schmitt, WisDOT spokeswoman, said the agency needs to review the ruling. According to an e-mail attributed to Shannon Bauer, U.S. Army Corps of Engineers deputy chief of public affairs, the agency cannot comment on the case because the judge's decision is not yet final.

Lawsuit participants will have a telephone conference Oct. 29 to consider whether any issues in the case were not settled by the decision. The decision will be made final sometime after that conference, with the timing dependent on the outcome of the conference. Once the decision is final, the state and federal agencies will have 60 days to appeal.

The federal ruling criticizes highway planners for drawing conclusions without offering adequate support of their decisions in the Highway J

project's environmental impact statement. The project planners, for example, decided expanding the highway would not influence development even though they offered not "one sentence explaining how defendants reached the conclusion," according to the decision by the U.S. District Court for the Eastern District of Wisconsin.

The agencies did not adequately study the effect the project would have on air pollution and did not consider alternative projects to alleviate traffic on Highway J, according to the ruling.

The court also criticized WisDOT's public hearing process for the project. Instead of letting residents testify in public, the department used an open house format in which people gave testimony to court reporters in a secluded room. The format does not satisfy federal requirements for public participation, according to the ruling.

"It sends a message to the DOT and other agencies that they're taking a big risk if they hold an open house," said Charles Barr, who represented the Highway J and Waukesha County groups.

Allen Stasiewski, the Waukesha group's vice president, said he wants the decision to make WisDOT more responsive to public comments during planning.

"We hope that public input will be heard, and we hope that we won't be just, well, I can't even think of a way to say it," he said. "I think an important conclusion of this decision would be that the DOT includes regular citizens in the planning process from the very, very beginning and that public hearings are held in the way they were intended to be held."

The ruling is good, Gonyo said, but he wants more. He said he will work with other citizens groups to make sure the higher standard for planning set by the court decision is followed on other WisDOT projects.

For instance, Gonyo said, he will use the lawsuit to press WisDOT to hold new public hearings for the Zoo Interchange reconstruction in Milwaukee County and the Connections 2035 long-term transportation plan.

The department used open house hearings for both.

"They're going to have to go back and consider those things," he said. "And I'm sure the citizens that are going to be affected by those projects are going to be checking on those things."

Complete URL: <http://dailyreporter.com/blog/2009/09/15/wisdot-loses-highway-j-lawsuit/>