



# APA-WI Court Case Summaries

A summary of court opinions decided during January 2024 affecting planning in Wisconsin.

## Wisconsin Court of Appeals

[City of New Lisbon v. Muller, 2023 WI App 65, 410 Wis. 2d 309, 1 N.W.3d 761.](#) (Final publication on January 18, 2024)

- **Summary:** The City of New Lisbon (“City”) sought to raze a vacant building due to hazardous conditions. The property was reportedly infested with rats, lacked running water and contained generally dilapidated and hazardous conditions. After providing the property owner with multiple notices and orders to correct, the City filed a lawsuit seeking a raze order.
- The property owner challenged the raze order, arguing, among other things, that a jury should hear the case, that the special inspection warrant that was obtained to inspect the interior of the property was deficient because the owner had never refused entry, and that the City should have allowed him to make repairs as an alternative to razing the property.
- The Court of Appeals dismissed the property owner’s arguments. First, it held that the property owner, who argued the matter without an attorney, did not file any documents that properly disputed the facts alleged by the City. Without such documents, no triable, factual issues existed for a jury to decide. Thus, there was no need for a jury in this matter. Second, the court determined that the special inspection warrant was valid. Although the property owner was technically correct that he never affirmatively refused entry for inspection purposes, the fact that he ignored all notices and never responded to City staff was deemed to be a refusal that formed a basis for the warrant. Finally, the court decided that the City was not required to allow the owner to make repairs because the evidence showed that the cost of such repairs exceeded 50% of the building’s value. In that case, Wis. Stat. §66.0413(1)(c) provides that any repairs are presumed unreasonable. Ultimately, the court found in favor of the City and affirmed the raze order.
- **Key Takeaway:** This case provides a very good summary of the raze procedure in Wisconsin. I recommend reviewing it prior to proceeding with a raze order. Additionally, although the statute allows a municipality to issue a raze order, as the City of New Lisbon did here, I always recommend issuing a “raze or repair” order instead to avoid issues in litigation involving the cost of repairs and the value of the property, which require expert testimony



## United States District Court, Eastern District of Wisconsin

[Cellco P'ship d/b/a Verizon Wireless v. City of Milwaukee, No. 23-CV-1581-BHL, 2024 WL 329001](#), at \*11  
(E.D. Wis. Jan. 29, 2024)

- **Summary:** In the summer of 2021, the Milwaukee Bucks competed for and won the NBA championship. Many of those games were played at the Fiserv Forum in downtown Milwaukee. Outside of the Fiserv Forum, there exists a public pedestrian plaza known as the Deer District. During the Bucks' championship run, tens of thousands of fans gathered in the Deer District to watch the games, which were displayed on large screens. During this time, Verizon Wireless observed significant connection problems in the area due to the large mass of people attempting to connect to their network. Thus, the inability to make a phone call or connect to the internet using a device connected to the Verizon network was not uncommon for anyone in the Deer District during a 2021 Bucks playoff game.
- The summer of 2024 is anticipated to draw a large number of people to the Deer District, akin to the 2021 NBA playoffs. It has been announced that Fiserv Forum will host the 2024 Republican National Convention, which is expected to draw 50,000 people to the area from July 15-18. In an attempt to avoid the same network connection difficulties experienced in 2021, Verizon submitted permit applications to the City of Milwaukee (the "City") for the installation of six poles that would support additional small cell wireless facilities to bolster network service. These permits were submitted on August 3, 2023.
- Both federal and state law require municipalities to issue a written decision on applications for small wireless facilities within 90 days of application submission. On October 26, 2023, the City denied four of the six applications for two stated reasons: (1) the proposed poles were too close to existing poles and (2) the proposed poles failed aesthetic requirements and were unsightly or out of character for the area. Two weeks later, after the 90-day deadline had passed, the City informed Verizon of an additional reason for the denial: that the City had no control over the Deer District due to a sub-lease agreement giving full control of the area to the owners of the Milwaukee Bucks.
- Judge Ludwig ruled against the City. Although the court decimated the City's assertion that it did not control the Deer District due to the sub-lease, the court would ultimately only consider the reasons provided before the 90-day "shot-clock" expired. The court explained that reasons given outside of the 90-range were not legally admissible to deny the applications. The court also found that the City's initial reasons for denial were conclusory and not adequately explained. Finally, the court determined that those reasons were also pretextual, and that the real reason that the City denied the permits was an attempt to do the owners of the Deer District a favor, since it was revealed that the Deer District was planning its own network and, once launched, could require Verizon to use that system (for a \$10 million fee).
- **Key Takeaway:** If your community decides to deny a small cell installation application, make sure such a denial is delivered within 90 days of the date the application was submitted and contains substantial explanation for the denial.



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