



## April Case Law Update April 30, 2018

### A summary of Wisconsin court opinions decided during the month of March related to planning

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### ***Wisconsin Supreme Court Opinions***

#### **Special Benefits has Same Meaning Under Eminent Domain Law As Special Assessment Law**

[CED Properties, LLC, v. City of Oshkosh](#), 2018 WI 24, involved a challenge to a special assessment imposed by the City of Oshkosh following the reconstruction of an intersection into a roundabout. To construct the roundabout, the City used its power of eminent domain to take a portion of property owned by CED Properties, Inc. During the eminent domain litigation, the City's appraisal expert testified during his deposition that the taking did not confer any "special benefit" on CED's property under Wisconsin's eminent domain law. Under that law, special benefits accruing to a property are used to offset the value of the property taken.

The City then imposed a special assessment on CED's property and other commercial properties to help fund construction of the roundabout. Under Wisconsin's special assessment enabling law, cities, villages, and towns can collect special assessment for "special benefits conferred upon the property" by the improvements. CED challenged the special assessment claiming that the project conferred only community or general benefits for better traffic flow and did not confer any special benefits to CED's property. CED argued that because the City conceded "special benefits" did not accrue to CED's property during the eminent domain action, the City forfeited the opportunity to assert "special benefits" to support the special assessment.

In a 5-2 decision (Justices Abrahamson and Ann Walsh Bradley dissenting) the Wisconsin Supreme Court ruled that the term "special benefits" means the same in both the eminent domain and special assessment law but noted that under special assessment law local governments could collect for benefits regardless of the improvement's effect on the property's market value. The City was therefore not foreclosed from trying to levy a special assessment. The Supreme Court remanded the case to the circuit court to determine whether the improvements conferred special benefits on CED's property.

### ***Wisconsin Court of Appeals Opinions***

#### **Court Acknowledges Mistakes Made in Earlier Decision**

The [February 2018 APA-WI Case Law Update](#) included a summary of the Court of Appeals decision in [Lagoon Lane, LLC., v. Rice](#). The summary is entitled "Town Authority in Shoreland Area Mistakenly Construed by Court." On April 25<sup>th</sup>, the Court of Appeals issued a "slightly modified opinion" in that case

to acknowledge the mistake in the earlier opinion but did not change the outcome of the case. The revised decision available [here](#).

The case involves the Town of West Bend's denial of a land division within the shoreland zoning jurisdiction of Washington County. (The Town of West Bend has its own general zoning ordinance and a subdivision ordinance. The shoreland area within the town also falls under the state-mandated County zoning ordinance.) The Court's 2013 decision in [Hegwood v. Town of Eagle Zoning Bd. of Appeals](#), held that towns do not have any authority to zone land in the shoreland area covered by the state-mandated County shoreland zoning ordinance. In its decision in February, the Court of Appeals held that the Town's land division authority overlapped with its zoning power and was unenforceable based on the Hegwood decision. As noted in the February Case Law Update, the Court of Appeals failed to acknowledge 2015 Wisconsin Act 41 passed by the Legislature with the purpose of modifying the Court's decision in the Hegwood case by allowing town general zoning ordinances to apply within the shoreland area. (The changes resulting from Act 41 are summarized in the *Perspectives on Planning* publication "[2015 Legislative Changes Affecting Wisconsin's Shoreland](#).")

Following the release of the Court of Appeals decision in February, the Town filed a motion to reconsider its decision based on the changes following the passage of Act 41. Act 41 became effective before the Town's denial of the land division but the Town only became aware of the changes to Wisconsin law after the Court of Appeals released its decision in the case in February. Since the Town's attorney failed to provide the applicable statutory provisions to the circuit court when it reviewed the case, the Court of Appeals was unwilling to consider arguments raised for the first time on appeal. As a result, the Court of Appeals declined to address the effect of current law on the case. According to the Court, "the parties and public should understand that this opinion does not consider these relevant statutory amendments, but rather proceeds under the assumption that [Hegwood](#) remains unaltered and the statutory authority of towns to zone in the shoreland areas remains as it was at the time [Hegwood](#) was decided.

The original decision in February was recommended for publication. In the modified decision, the Court states that the decision will *not* be published and is "uncitable" (meaning the case does not establish any precedent for other cases).

### **DOT Authorized to Charge for Access to Public Records and to Limit Access to Database**

Media Placement is a Louisiana-based company interested in obtaining motor vehicle accident reports from the Wisconsin Department of Transportation (DOT). Media Placement made a request under Wisconsin's public records law to access high volumes of individual accident reports using DOT's online database without paying for the reports. In [Media Placement Services, Inc. v. Wisconsin Department of Transportation](#), the Wisconsin Court of Appeals concluded that Media Placement is not entitled to free access to the DOT's database because Wisconsin law allows the DOT to charge access fees for certain records and the right to access records does not extend to the right to access databases.

The case is recommended for publication in the official reports.

### **Court Upholds Annexation Ordinance**

In [Town of Lincoln v. City of Whitehall](#), the Wisconsin Court of Appeals upheld the City of Whitehall's annexation of land for a sand mine operation. The annexation followed the "direct annexation by

unanimous approval” process under Wisconsin law that allows property owners in a town to petition a city or village to annex their land. The Court notes that these grassroots led annexations present a city or village with a “take it or leave it” decision.

In this case, the annexation was to occur in four phases. Phase one consisted of approximately 277 acres and shared a border with the City of approximately 3/4<sup>th</sup> of a mile. Phase 2 consisted of 292 acres along a ribbon of land approximately ¼ mile wide. Phase three consisted of approximately 380 acres connected to phase two at its southern edge for about ¼ mile. Phase four consisted of approximately 300 acres located to the west of phase three and shared a ½ mile border with phase three. The Town of Lincoln in Trempealeau County sought review of the annexation from the Wisconsin Department of Administration. The Department concluded the annexation violated the contiguity because the territory was an impermissible “balloon-on-a-string” configuration.

While the Town raised several issues with the annexation, the Court concluded that the Wisconsin Statutes limit the Town’s challenge to the contiguity issue. The Court concluded that the annexed territory was not of an exceptional shape and thus met the contiguity requirement. The Court affirmed the dismissal of the Town’s challenge to the annexation.

The case is recommended for publication in the official reports.

### ***U.S. Court of Appeals for the 7<sup>th</sup> Circuit Opinions***

[No planning-related cases to report.]