



## **August Case Law Update** **August 31, 2020**

**A summary of court opinions decided during the month of August affecting planning in Wisconsin<sup>1</sup>**

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

[No planning-related cases to report.]

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

#### **DOR Immune from Suit for Monetary Damages**

[Klein v. Dept. of Revenue](#) involved a lawsuit brought by a group of Ashland County taxpayers claiming that the Wisconsin Department of Revenue (DOR) failed to stop the Town of Sanborn's removal from its property tax rolls of all land belonging to the Bad River Band of Lake Superior Tribe of Chippewa Indians.

A 2006 decision of the U.S. Sixth Circuit Court of Appeals held that property allotted to a Chippewa tribe in Michigan pursuant to a 1854 treaty with the U.S. could not be taxed by the State of Michigan under the terms of the treaty. The Bad River Band in Wisconsin was also allotted land under that treaty. Based on the Sixth Circuit decision, in 2007 the Town of Sanborn passed a resolution giving a blanket exclusion from property taxation to all land owned by the Bad River Band or its members that had been allotted under the 1854 treaty.

Several years later DOR adopted statewide guidance in response to the Sixth Circuit case. DOR endorsed a parcel-by-parcel analysis to determine if land was exempt from property taxes under the case. DOR's guidance also provided that if the land had been conveyed to a nontribal member and repurchased by the Tribe it would not be exempt from property taxes. The taxpayers believed there were certain parcels that should be taxed and petitioned DOR to conduct a town-wide reassessment. The taxpayers also filed claims with the Town for excessive and unlawful taxation. The Town denied the claims and the taxpayers sued the Town. The circuit court ruled in favor of the taxpayers and ordered the Town to place all the properties back on the tax role unless there was evidence presented that an individual property was exempt from taxation in accordance with DOR's guidance. The Town did not appeal the circuit court order.

The taxpayers also filed the present action against DOR alleging that DOR had violated its statutory duties to supervise local assessors. Among other things the taxpayers sought a \$1.5 million refund of taxes paid by Ashland County taxpayers. The taxpayers and DOR filed motions for summary judgment. The circuit court granted the taxpayers motion for summary judgment and DOR appealed. The Wisconsin Court of Appeals agreed with DOR and reversed the circuit court's decision. According to the Court's opinion, the claims for monetary damage were barred by the doctrine of sovereign immunity.

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<sup>1</sup>Previous updates are available at: [wisconsin.planning.org/policy-and-advocacy/law-updates/case-law-updates/](https://www.wisconsinplanning.org/policy-and-advocacy/law-updates/case-law-updates/)

Under the doctrine of sovereign immunity found in the Wisconsin Constitution, the State (and state agencies) cannot be sued unless the legislature specifically consents to the suit. In this case, there was no statute authorizing this type of lawsuit against DOR. The Court also held that DOR's supervision of assessors was a discretionary function and not a ministerial duty that could be compelled by mandamus. The Court reversed the circuit court decision and remanded the case to the circuit court with direction to dismiss the claims against DOR.

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.]**