



## May Case Law Update May 31, 2021

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

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

#### **Diminution in Property Value Not Compensable Under Wisconsin's Eminent Domain Law**

In [United America, LLC, v. Wisconsin Department of Transportation](#), 2021 WI 44, the Wisconsin Supreme Court held that diminution in property value does not qualify as “damages to land” under Wisconsin eminent domain law. The case involved a change in the grade of Highway 51 in Lincoln County. United America operated a gas station on land abutting Highway 51 and Northstar Road. Customers travelling along Highway 51 accessed the gas station via an at-grade intersection for Northstar Road. The Wisconsin Department of Transportation (DOT) made Northstar Road a bridge over Highway 51. DOT did not provide on- and off-ramps for Northstar Road resulting in a longer indirect route to reach the gas station. Business at the gas station declined and its property value decreased.

United America sought compensation for the diminished value from DOT under Wisconsin's eminent domain law. Section 32.18 of the Wisconsin Statutes requires that DOT compensate property owners for “any damage to said lands occasioned by such change of grade.” DOT denied the claim and United American commenced the present action. In a 6-1 decision written by Justice Dallet, the Wisconsin Supreme Court held that the diminution in property value resulting from a change in an abutting highway's grade is not compensable under the statute because such damages are not “damages to the land.” Justice Rebecca Bradley was the lone dissenter to the decision.

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

#### **Challenging Raze or Repair Orders**

In June 2015, the Convent of the Sisters of the holy Nativity in the City of Fond du Lac, was vandalized and partially set on fire. The following September the City issued a raze or repair order giving the Convent 90 days to make repairs specified in the order. The Convent had 30 days to contest the order in court under Wis. Stat. §§ 66.0413(1)(h) and 893.76. The Convent elected to make the repairs and completed essential repairs to the building. The City approved the initial repairs and advised that there was no rush to complete remaining cosmetic repairs. The Convent believed that it had satisfied the raze or repair order and that the remaining repairs were not subject to any timeline. About a year later, the City identified an additional 16 items for repair. The items were different than the repairs identified in the original order. The City did not provide a deadline for completing the repairs.

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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/)

Five months later, the City approved a bid to raze the building. The Convent sued the City. The circuit court dismissed the challenge ruling that Wis. Stat. § 66.0413(1)(h) requires that a challenge to a change order must be made within 30 days of issuance and the Convent had not done so.

The Convent appealed to the Wisconsin Court of Appeals. The Court concluded that the circuit court erred. According to the Court of Appeals, the 30 day period to challenge a raze or repair order applies only to claims premised on the reasonableness of the order to raze. It does not apply to the Convent's challenge based on acts occurring during the subsequent repairs required under the order. The Court of Appeals reversed the circuit court's decision and remanded the case to the circuit court for further proceedings consistent with the Court of Appeals decision.

The case is [1033 North 7<sup>th</sup> Street v. City of Fond du Lac](#) and it 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.]