



February Case Law Update February 28, 2022

A summary of court opinions decided during the month of February affecting planning in Wisconsin¹

Wisconsin Supreme Court Opinions

Public Utility had a Prescriptive Right to Continue Using Natural-Gas Line.

In [Bauer v. Wisconsin Energy Corp., 2022 WI 11](#), a unanimous Wisconsin Supreme Court held that the Wisconsin Energy Corp. (WEC), had established a prescriptive right to continue to use a natural-gas that ran across Bauer's property. In 1980, WEC installed a single half-inch diameter natural-gas pipeline across the property now owned by Bauer to serve a neighboring property. WEC had written permission from the former property owner to install the line. The Bauer's purchased the property in 1996 and did not know the gas line existed. Bauer sued WEC and the former owners claiming that WEC did not have an easement to continue operating the gas line.

Under Wis. Stat. § 893.28(2), a public utility's continuous use of another's real property for at least 10 years establishes a prescriptive right to continue that use. The Wisconsin Supreme Court held that under the 10 year vesting requirement of the Statute, WEC's prescriptive right to continue using the gas line vested prior to Bauer's purchase of the property. As a result, it was proper to dismiss her claims against WEC. (The claim against the former owner of the property was not before the Court.)

Wisconsin Court of Appeals Opinions

[No planning-related cases to report.]

U.S. Court of Appeals for the 7th Circuit Opinions

[No planning-related cases to report.]

¹ 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/)