



## October Case Law Update October 31, 2017

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

For previous Case Law Updates, please go to: [www.wisconsinplanners.org/learn/law-and-legislation](http://www.wisconsinplanners.org/learn/law-and-legislation)

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

[No planning-related cases to report.]

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

#### **“Good Fences Make Good Neighbors”: Cities and Villages Must Administer Law Regulating Fences on Farming and Grazing Land**

Chapter 90 of the Wisconsin Statutes, a law dating back to the 1800s, requires that occupants of adjoining lands keep and maintain partition fences or markers between the lands when one of the adjoining properties is used for farming or grazing purposes unless the occupants of the lands on both sides mutually agree otherwise. Wis. Stat. § 90.03. Construction and maintenance of the fence is shared equally between the adjoining property owners. Chapter 90 is enforced by “fence viewers,” defined in Chapter 90 as “[t]he supervisors in their respective towns, the alderpersons of cities in the respective aldermanic districts, and the trustees of villages in their respective villages.” Wis. Stat. § 90.01. If an adjoining property owner has a dispute about the construction or maintenance of the fence, Chapter 90 establishes a process for the fence viewers and their local government to resolve the dispute.

In [\*White v. City of Watertown\*](#), the Wisconsin Court of Appeals addressed the issue of whether cities and villages are responsible for administering and enforcing Chapter 90 when the adjoining lands are within their borders. Stuart and Janet White own land in the City of Watertown that they use as a farm, including livestock. Chapter 90 requires that the Whites maintain a partition fence between their land and the adjacent lands. The adjacent lands are residential properties. The Whites have a dispute with their neighbors about sharing the cost and maintenance of the fence as provided in Chapter 90. The Whites asked the City to assume Chapter 90 duties to resolve the dispute but the City refused. The Whites then initiated this lawsuit.

Chapter 90 is ambiguous. With the exception of the definition of “fence viewers” quoted above, most of the references to local government in Chapter 90 only include towns. After examining the legislative history of Chapter 90, the Wisconsin Court of Appeals concluded that the law also applied to cities and villages and that the City of Watertown had to assume Chapter 90 duties to resolve the dispute over the fence.

The case is recommended for publication in the official reports.

### **Jurisdictional Offer Higher than Appraisal in Condemnation Upheld**

[Otterstatter v. City of Watertown](#) involved a challenge to the City of Watertown’s condemnation of Otterstatter’s property as part of an airport expansion project. The City’s appraisal valued the Otterstatter property at \$240,000. The City offered to purchase the property for this price but Otterstatter refused to consider the City’s offer. The City later increased the offer to \$270,000 but Otterstatter did not respond to the offer. The City then sent Otterstatter its jurisdictional offer of \$270,000 informing Otterstatter that if he did not accept the jurisdictional offer within 20 days, the City would proceed with condemnation.

Otterstatter then filed this action challenging the City’s right to condemn his property based on the City’s alleged failure to provide him with an appraisal upon which the jurisdictional offer of \$270,000 was based, as required by Wisconsin Eminent Domain law. According to Otterstatter, the \$270,000 offer was \$30,000 more than the City’s appraisal and therefore was not “based upon” that appraisal in violation of Wisconsin law.

The Wisconsin Court of Appeals held that “based upon” does not mean that the jurisdictional offer must equal the appraisal. Rather the appraisal must be a “supporting part or fundamental ingredient of the jurisdictional offer.” Based on the evidence, the Court concluded the City’s \$230,000 appraisal was a supporting part and fundamental ingredient of the \$270,000 jurisdictional offer.

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.]