



## January Case Law Update January 31, 2013

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

For previous Case Law Updates, please go to: <http://www.wisconsinplanners.org/lawandlegislation.html>

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

[No cases to report.]

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

#### **Remedy in Property Tax Assessment Challenge Should Not Include Windfall**

In [3301 Bay Road LLC v. Town of Delevan](#), a group of lakefront property owners challenged their property tax assessments as both excessive and in violation of the tax uniformity clause of the Wisconsin Constitution. The circuit court found the Town violated the uniformity clause because the Town under-assessed non-lakefront property at forty-five percent below fair market values but the Town did not provide a similar reduction for lakefront properties. The circuit court also determined that the lakefront property assessments were excessive and adopted the fair market values presented by the property owners to calculate refunds for excessive assessments. The circuit court based the property owners' refund on the amount the property owners would have paid in property taxes if the under-assessed properties had been properly assessed.

The property owners appealed the decision of the circuit court to the Wisconsin Court of Appeals arguing that the refund should have been calculated at forty-five percent below the fair market values of the properties. The Court of Appeals disagreed with the property owners. The Court of Appeals acknowledged the discretion given to the circuit court in fashioning an equitable remedy in property tax assessment appeals. The Court of Appeals found that the circuit court did not erroneously exercise its discretion in calculating a refund that did not include a "windfall reduction" based on the underassessment of other properties.

The case is recommended for publication.

#### **Challenge to Tax Assessment Must Begin with the Board of Review**

[Northbrook Wisconsin, LLC, v. City of Niagara](#), involved a lawsuit for excessive 2011 assessment for a hydroelectric plant. The City moved to dismiss Northbrook's complaint. The City argued Northbrook was required under Wis. Stat. § 74.37(4)(a) to challenge the 2011 assessment before the Board of Review prior to filing an excessive assessment claim. Northbrook responded it was not required to

object before the Board of Review because the City did not send it a notice of assessment, pursuant to Wis. Stat. § 70.365. In reply, the City asserted under that statute it was not required to send Northbrook a notice of assessment because the assessed value of Northbrook's property did not change between 2010 and 2011. The circuit court agreed with the City and dismissed the challenge to the assessment. The Court of Appeals agreed with the circuit court and upheld the dismissal. According to the Court, the City was not required to send Northbrook a notice of assessment in 2011, and, consequently, the City's failure to send a notice of assessment did not exempt Northbrook from objecting before the Board of Review.

The case is recommended for publication.

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