



June Case Law Update June 30, 2009

Wisconsin Supreme Court

No planning related cases to report

Wisconsin Court of Appeals opinions

Role of Project Influenced Valuation Evidence in Eminent Domain Actions

[Spanbauer v. State of Wisconsin Department of Transportation](#), involves an effort to exclude certain comparable property evidence used by the appraiser for Mr. Spanbauer in response to a condemnation action initiated by the Wisconsin Department of Transportation to take the Spanbauer land for a roundabout in the Town of Oshkosh in Winnebago County.

Wisconsin's eminent domain statutes state that any increase or decrease in the fair market value of the subject property caused by the public improvement may not be taken into consideration in determining just compensation. WIS. STAT. § 32.09(5)(b). The appraiser for Mr. Spanbauer used a comparable property sale to Kwic Trip in the determination of fair market value of the Spanbauer property. Kwic Trip purchased the property after the announcement of the plans for the highway project. The Wis.DOT argued that the sale to Kwic Trip was influenced by the highway project and Wisconsin's project influence statute created a bright-line prohibition against including project influenced comparable sales in an eminent domain action. The DOT argued that the evidence of the Kwic Trip sale should be excluded from the case.

The Wisconsin Court of Appeals, however, disagreed. The Court of Appeals found that knowledge of a highway project did not automatically mean that the sale was project influenced. Rather, the Court concluded that this case presented a factual dispute regarding whether the sale to Kwic Trip was influenced by knowledge of the project. As a result, the Court held that it was appropriate for the trial court to send the information about the Kwic Trip sale to the jury for their determination if the Kwic Trip sale was project influenced.

The case is recommended for publication.

Lawsuit Against City for Stormwater Damage Not Brought in Time

The Hockings purchased their home in the City of Dodgeville prior to the development of the surrounding land. Following the development of the surrounding land, storm water run-off from the new development began to collect on the Hocking property, both inside and outside their

residence, causing damage to their home and erosion of the land. The Hockings sued the City alleging the City was negligent in the approval of the surrounding development and negligent in the maintenance of the City streets in the surrounding development. The Wisconsin Court of Appeals upheld the trial court's dismissal of the case because it was not brought in a timely fashion.

WIS. STAT. § 893.89(2) provides, in relevant part, that:

“no cause of action may accrue and no action may be commenced against any person involved in the improvement to real property after [10 years immediately following the date of substantial completion of the improvement to real property] for any injury to property arising out of any deficiency or defect in the design, land surveying, planning, supervision [of construction of, or] construction of the improvement to real property.”

This statutory bar does not apply to a person who expressly warrants or guarantees the improvement to real property, for the period of that warranty or guarantee, or for damages resulting from negligence in the maintenance, operation or inspection of an improvement to real property.

In this case the Hocking's initiated their lawsuit more than 10 years after the completion of the surrounding development. The Court of Appeals also found that the exceptions to this 10 year limitation did not apply. First, the Court found that the City did not warrant or guarantee the development. Second, the Court of Appeals found that the flooding of the Hocking property was the result of City actions that occurred when the streets were constructed during the development of the surrounding property and were not the result of the City's maintenance of those streets.

The case, [*Hocking v. City of Dodgeville*](#), is recommended for publication.