



February Case Law Update February 29, 2016

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

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Wisconsin Supreme Court Opinions

Diminution in Value Due to Change of Access Not Compensable Under Eminent Domain Laws

[Hoffer Properties v. State of Wisconsin](#), 2016 WI 5, involved the review of an unpublished decision of the Wisconsin Court of Appeals arising from a challenge to the amount of compensation awarded for the taking of land by the Wisconsin Department of Transportation (DOT) to provide a new highway access.

The facts of the case are as follows. Hoffer Properties owns land west of the City of Watertown. Originally the property had direct access to State Trunk Highway 19 via two driveways. DOT later designated the portion of STH 19 bordering the Hoffer property as a "controlled-access" highway. DOT also relocated State Trunk Highway 26 to intersect STH 19 near the Hoffer property. The DOT eliminated Hoffer's direct access to STH 19 and condemned .72 acres of Hoffer's 9.90 acre parcel in order to create a new access to Hoffer's property. The new access was a more circuitous route that required vehicles to travel roughly 1000 feet to reach STH 19. Hoffer received \$90,000 in compensation for the taking of the land for the new access but challenged the award arguing that compensation for the .72 acres must include the diminution of value of the rest of the parcel due to the loss of its direct access to STH 19.

The opinion, written by Justice Gableman, focused on two issues. First, whether DOT is authorized under state law to eliminate an abutting owner's direct access to a controlled-access highway and replace it with a more circuitous route. The second issue was whether the existence of some access precludes the property owner from receiving compensation for the diminution of value for the remaining land caused by the changed access.

As to the first issue, the Wisconsin Supreme Court held that Wisconsin Statute § 84.25(3) authorizes DOT to eliminate a property owner's direct access as an exercise of the police power and DOT is not required to provide compensation as long as alternative access is given that does not deprive the property owner substantially all beneficial use of the property.

As to the second issue, the Wisconsin Supreme Court held that as long as other access is given or exists, a property owner is precluded as a matter of law from challenging the reasonableness of the access and receiving compensation for diminution in value to the remaining parcel due to the changed access.

Justice Abrahamson wrote a concurring opinion in which she was joined by Justice Ann Walsh Bradley. Justice Prosser wrote a dissenting opinion. Justice Rebecca Bradley did not participate.

Wisconsin Court of Appeals Opinions

[No published planning-related cases to report.]

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

[No planning-related cases to report.]