



October Case Law Update October 31, 2013

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

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

Wisconsin Supreme Court Opinions

[No planning related decisions to report.]

Wisconsin Court of Appeals Opinions

Encroaching Properties Do Not Rebut Street Width for Entire Street

In [Village of Brown Deer v. Balisterri](#), the Wisconsin Court of Appeals addressed the issue of whether the Village of Brown Deer needed to take property for its street improvement plan. The dispute surrounded the interpretation of Wis. Stat. § 82.31(2)(a) providing that an unrecorded highway that has been worked as a public highway is presumed to have a width of 66 feet. Some residents of the Village challenged the presumption that the streets were 66 feet wide because three properties on one street encroached upon the 66 foot street width. The residents contended that the rebuttal of the 66 foot street width for the three properties extended to the entire street. The circuit court disagreed. The Court of Appeals affirmed the lower court's decision that the rebuttal of the 66 foot street width for three properties did not extend to the entire street.

The decision is recommended for publication.

Presumption of Just Property Tax Assessment difficult to Overcome

[Bonstores Realty One, LLC, v. City of Wauwatosa](#), involved a challenge to the City of Wauwatosa's property tax assessment for the Boston Store department store located at Mayfair Mall. Bonstores contended the assessment was excessive and presented an appraisal in support of this contention. Under Wis. Stat. § 70.49(2), local property tax assessments are presumed to be just and equitable. The circuit court concluded that Bonstores failed to overcome by "significant contrary evidence" the statutory presumption that the property was justly assessed. The Wisconsin Court of Appeals affirmed the decision of the circuit court. The Court of Appeals concluded the statutory "presumption is not 'overcome' just because contrary evidence (even 'substantial' contrary evidence) is presented."

The decision is recommended for publication.