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## April Case Law Update

A summary of Wisconsin court opinions decided during the month of April  
related to planning  
**April 30, 2013**

**We hope you enjoy the new format!!**

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

[No decisions to report for the Month of April.]

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

#### **Notice Pleading and Relation Back statutes Apply to Special Assessment Appeals**

In [\*CED Properties LLC v. City of Oshkosh\*](#), the Wisconsin Court of Appeals held that the notice pleading and relation back statutes apply to special assessment appeals. The case involved the challenge to special assessments levied by the City of Oshkosh on a corner lot for improvements to an intersection abutting the corner lot. The City levied two assessments against the parcel at issue in the case – one for each street abutting the intersection. Under Wisconsin's special assessment laws (Wis. Stat. § 66.0703(12)), a property owner has 90 days after publication of the final resolution imposing the assessment to initiate an appeal of the special assessment in circuit court. The property owner in this case initiated the appeal of one of the assessments within the 90 days. After the 90 day period, the property owner filed an amended complaint that attempted to also appeal the other assessment.

Wisconsin's notice pleading statutes require that the party initiating a lawsuit set forth a short statement of the claim identifying the transaction or occurrence that gave rise to the claim. Wisconsin's relation back statutes allow amendments to pleadings to relate back to the date of filing of the original claim if the amendment applies to the claim set forth in the original pleading.

The Court of Appeals held that the notice pleadings and relation back statutes apply to the special assessment appeal process. However, in this case, the Court of Appeals held that these provisions did not apply because the Court viewed the two special assessments as two separate claims, even though the special assessments were for the same intersection. Since each special assessment represented a separate claim, the Court held that the amendment to include the other special assessment did not relate back to the original complaint and therefore was untimely under the 90 day limitation to challenge special assessments.

The case is recommended for publication.

### **Soil Sampling For Highway Project Did Not Violate 4<sup>th</sup> Amendment Protection From Unreasonable Search and Seizure**

*Wisconsin Central Ltd v. Gottlieb* involved a challenge to the Wisconsin Department of Transportation's (DOT) collecting soil samples from Wisconsin Central's property as part of the planning for a highway overpass over the rail road tracks on Lakeshore Drive leading into and out of the City of Fond du Lac. Wisconsin Central agreed to the overpass to remedy a troublesome railroad crossing. Wisconsin Central also consented to soil sampling as part of the design phase for the project. The DOT's initial sampling discovered a site owned by Wisconsin Central adjacent to the project corridor which prompted DOT to recommend additional investigation. Wisconsin Central objected to this sampling but DOT collected the soil samples nonetheless. Wisconsin Central initiated this

lawsuit arguing that DOT's taking the samples without a warrant was an unreasonable search and seizure in violation of Wisconsin Central's Fourth Amendment rights. The Wisconsin Court of Appeals disagreed. According to the Court, this was not an issue of unreasonable search and seizure since Wisconsin Central had consented to soil sampling as part of the design phase of the project.

The case is recommended for publication.