



December Case Law Update December 31, 2011

**[A summary of published Wisconsin court opinions decided during the month of
December related to planning]**

Wisconsin Supreme Court Opinions

Evidence of remediation costs is admissible in condemnation proceedings

In [*260 North 12th Street, LLC v. Wisconsin Dept. of Transp.*](#), 2011 WI 103, the Wisconsin Supreme Court held that environmental contamination and remediation costs can be considered in determining the fair market value of property taken by eminent domain proceedings under Wis. Stat. ch. 32 subject to the discretion of the trial court.

The case involved property acquired by the Wisconsin Department of Transportation (DOT) for reconstruction of the Marquette Interchange in Milwaukee. DOT offered compensation for the property taken in the amount of \$1,348,000 based on deductions for estimated remediation costs due to environmental contamination. The property owner valued the property at \$3,497,000, not taking into account the remediation costs. The jury awarded the property owner \$2,001,725.

The property owner appealed the award arguing the evidence of the environmental contamination and remediation costs was inadmissible in condemnation proceedings. The Court of Appeals disagreed and affirmed the jury award.

In a decision written by Justice Ziegler, the Wisconsin Supreme Court affirmed the decision of the Court of Appeals. According to Justice Ziegler, “We decline to exclude evidence of environmental contamination and of remediation costs in condemnation proceedings as a matter of law, and thereby require the condemnor to always pay more than the property’s fair market value, based on the mere possibility” that the property owner might also be liable for the cost of remediation under environmental laws. “Indeed, in the case of a taking, fairness to the property owner is only half the equation.”

Wisconsin Court of Appeals Opinions

[No planning related decisions to report.]