

SUPREME COURT OF WISCONSIN

United America, LLC v. Wisconsin Department of Transportation

2021 WI 44, 392 Wis. 2d 335, 944 N.W.2d 38 · No. 2018AP2383 · Decided May 18, 2021

SUMMARY

The Wisconsin Supreme Court held that a diminution in property value caused by a change in the grade of an abutting highway is not compensable as "damages to the lands" under Wis. Stat. § 32.18 when no taking occurs. The court affirmed the court of appeals and rejected United America's claim for compensation based solely on reduced property value and lost convenient access.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Rebecca Frank Dallet, J.; Ann Walsh Bradley, J.; Rebecca Grassl Bradley, J.; Daniel Kelly, J.; Patience D. Roggensack, J.; Rebecca F. Dallet, J.; Annette K. Ziegler, C.J.; Brian Hagedorn, J.; Jill J. Karofsky, J.
JURISDICTION	Wisconsin
DECIDED	May 18, 2021
DOCKET	2018AP2383
DISPOSITION	affirmed
PROCEDURAL POSTURE	United America petitioned for review of the Wisconsin Court of Appeals' published decision reversing a circuit court judgment awarding United America damages under Wis. Stat. § 32.18.
STANDARD OF REVIEW	De novo review of the interpretation and application of Wis. Stat. § 32.18.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Wisconsin Department of Transportation v. United America, LLC

TOPICS

statutory interpretation legislative history eminent domain real estate appellate procedure

PRACTICE AREAS

real estate eminent domain statutory interpretation appellate procedure remedies

QUESTIONS PRESENTED

1. Whether a diminution in property value caused by a change in the grade of an abutting highway is compensable as 'damages to the lands' under Wis. Stat. § 32.18.
2. Whether United America had an independent property right to the flow of highway traffic or an indirect-access claim.

HOLDINGS

1. A diminution in property value caused by a change in the grade of an abutting highway is not compensable under Wis. Stat. § 32.18 because it is not 'damages to the lands.'
2. United America could not recover on a theory that it possessed a property right to the flow of highway traffic, and it had no independent indirect-access claim because its predecessor had been compensated for surrendering direct access rights.

KEY QUOTATIONS

“We conclude that the diminution in property value occasioned by a change in an abutting highway's grade is not an injury compensable under Wis. Stat. § 32.18 because such damages are not "damages to the lands.” (¶10)

“Therefore, we conclude that an abutting landowner is not entitled to compensation for its diminution in property value under § 32.18.” (¶17)

“We conclude that the plain meaning of "damages to the lands" in Wis. Stat. § 32.18 does not encompass United America's diminution in property value.” (¶22)

FACTUAL BACKGROUND

United America operated a gas station and convenience store on property abutting Highway 51 and Northstar Road. The Department of Transportation converted the prior at-grade intersection into a bridge, declined to provide ramps preserving convenient access, and thereby caused highway traffic to largely stop patronizing the business. United America's revenue and property value declined, and it sought compensation for the diminution in value under Wis. Stat. § 32.18.

PROCEDURAL HISTORY

After the Wisconsin Department of Transportation changed the grade of a highway intersection, United America sought compensation for the resulting diminution in its property's value. Following a bench trial, the Lincoln County Circuit Court entered judgment for United America. The court of appeals reversed, holding that § 32.18 did not cover diminution in property value. The Wisconsin Supreme Court granted review and affirmed the court of appeals.

DISPOSITION

affirmed

CASES CITED

- Moreschi v. Vill. of Williams Bay, 2020 WI 95, 395 Wis. 2d 55, 935 N.W.2d 318
- State ex rel. Kalal v. Cir. Ct. for Dane Cnty., 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110
- Strenke v. Hogner, 2005 WI 25, 279 Wis. 2d 52, 694 N.W.2d 296
- Nick v. State Highway Comm'n, 13 Wis. 2d 511, 109 N.W.2d 71 (1961)
- Jantz v. DOT, 63 Wis. 2d 404, 217 N.W.2d 266 (1974)
- Voigt v. Milwaukee Cnty., 158 Wis. 666, 149 N.W. 392 (1914)
- Augsburger v. Homestead Mut. Ins. Co., 2014 WI 133, 359 Wis. 2d 385, 856 N.W.2d 874
- Solie v. Emp. Tr. Funds Bd., 2005 WI 42, 279 Wis. 2d 615, 695 N.W.2d 463
- Schneider v. Div. of Highways, 51 Wis. 2d 458, 187 N.W.2d 172 (1971)
- 118th Street Kenosha, LLC v. DOT, 2014 WI 125, 359 Wis. 2d 30, 856 N.W.2d 486
- Piper v. Jones Dairy Farm, 2020 WI 28, 390 Wis. 2d 762, 940 N.W.2d 701
- State v. A.L., 2019 WI 20, 385 Wis. 2d 612, 923 N.W.2d 827
- Westmas v. Creekside Tree Serv., Inc., 2018 WI 12, 379 Wis. 2d 471, 907 N.W.2d 68
- Stamnes v. Milwaukee & S.L. Ry. Co., 131 Wis. 85, 109 N.W. 100 (1906), modified on reh'g on other grounds, 131 Wis. 85, 111 N.W. 62 (1907)