

# **Bond Case Briefs**

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## **ZONING & LAND USE - WISCONSIN**

### **McKee Family I, LLC v. City of Fitchburg**

**Supreme Court of Wisconsin - April 12, 2017 - N.W.2d - 2017 WL 1337663 - 2017 WI 34**

Property owner and purchaser of two lots on property brought action seeking declaratory judgment that city's rezoning of lots from planned development district (PDD) to residential-medium (R-M), which limited purchaser to developing 28 dwelling units for proposed apartment complex compared to 132 dwelling units, was unlawful.

The Circuit Court granted summary judgment for city and denied summary judgment for owner and purchaser. Owner appealed. The Court of Appeals affirmed. Owner petitioned for review, which was granted.

The Supreme Court of Wisconsin held that:

- Property owner's rights to do not vest until developer has submitted application for building permit conforming to zoning requirements in effect at time of application, and
- Planned development district zoning classification does not create contractual expectations upon which developers may rely.

Supreme Court would consider on appeal claim by property owner that it had vested right in developing lots on property under planned development district (PDD) zoning classification due to expenditures incurred based upon reasonable expectations established by government action and that it had claim for damages under Takings Clause, in owner's action seeking declaratory judgment that city's rezoning of lots from PDD to residential-medium (R-M) was unlawful, even though owner did not raise claim before trial court. Claim had been briefed and argued by both parties and, thus, Supreme Court would address claim to clarify important issues of law presented.

Property owner could not recover on its claim that rezoning of two lots on property from planned development district (PDD) to residential-medium (R-M) constituted taking in its action seeking declaratory judgment that city's rezoning was unlawful. Takings claim was contingent on success of claim that owner had vested right in developing property under PDD zoning classification, but vested rights claim failed.