

# **Bond Case Briefs**

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## **EMINENT DOMAIN - WISCONSIN**

### **CED Properties, LLC v. City of Oshkosh**

**Supreme Court of Wisconsin - April 3, 2018 - 380 Wis.2d 399 - 909 N.W.2d 136 - 2018 WI 24**

Property owner appealed city's special assessment and conclusion that owner received special benefits from the construction of a roundabout, after owner had obtained summary judgment on a challenge to a previous assessment.

The Circuit Court granted city's motion for summary judgment. Owner appealed. The Court of Appeals affirmed. Owner's petition for review was granted.

The Supreme Court of Wisconsin held that:

- "Special benefits" means an uncommon advantage in both the eminent domain statute and the assessment statute;
- Special benefits in eminent domain statute are restricted to local improvements that affect market value;
- Special assessments are not conditioned on conferral of special benefits affecting market value of property;
- Failure to raise special benefits in eminent domain action does not preclude municipality from levying special benefits via special assessment; and
- Genuine issues of fact regarding validity of special assessment precluded summary judgment.

"Special benefits" has the same meaning, an uncommon advantage, in both the statute governing the determination of just compensation in eminent domain proceedings and the statute governing the general rules applicable to special assessments.

In the eminent domain statute, special benefits are restricted to those local improvements that affect the market value of the property for purposes of determining whether to offset compensation to the owner of property taken for a planned public improvement.

The statute governing the general rules applicable to special assessments does not condition special assessments on the conferral of special benefits affecting the market value of the property; the work or improvement must only provide an uncommon advantage specific to that property.

City was not judicially estopped from specially assessing property owner for special benefits resulting from roundabout construction, even though city conceded no special benefits arose in condemnation action; special benefits in condemnation actions were limited to immediate or imminent increases in property's fair market value, and city asserted special benefit in special assessment action based on substantial increases in accessibility, which included safer, lower cost, and shorter travel times for customers, deliveries, and employees.

Construction of roundabout was improvement that could be basis for special assessment, rather than service which was arguably not properly subject of special assessment; statutory examples of

services have in common removal or rectification of temporary but recurring occurrences, such as snow, weeds, and dead animals, along with repair of sidewalks, curbs, or gutters, but not construction of permanent structure.

Genuine issues of material fact regarding validity of special assessment city levied on property for construction of roundabout precluded summary judgment for city in property owner's challenge to assessment.