



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 5

TO: MEMBERS OF THE SPECIAL COMMITTEE ON DIFFERENCES IN LAWS
APPLICABLE TO CITIES AND VILLAGES

FROM: Don Dyke, Chief of Legal Services, and Ronald Sklansky, Senior Staff Attorney

RE: Application of Section 32.05 Condemnation Procedure to Villages for Certain Housing and Urban Renewal Condemnations

DATE: September 2, 2008

This Memo provides brief background on whether villages have the same authority as cities to use the condemnation procedure under s. 32.05, Stats., for certain housing and urban renewal condemnations. Interest was expressed at the Special Committee's August 5 meeting in having the committee consider this issue.

There are two general condemnation procedures under state statute. One procedure is found in s. 32.05, Stats., the other in s. 32.06, Stats. Under the s. 32.05 procedure, if the condemnor and property owner are unable to agree on the purchase price, the condemnor sets the purchase price and, upon payment of that price to the property owner, title to the property passes to the condemnor. The property owner then has the burden of contesting the compensation, if the property owner so chooses, before the county condemnation commission or circuit court. In contrast, under the s. 32.06 procedure, if the condemnor and property owner are unable to agree on the purchase price, the purchase price is determined by the county condemnation commission before the condemnor acquires title. The condemnor has the burden of bringing the compensation issue before the condemnation commissioners. The condemnor is required to pay the price determined by the commission and title to the property passes upon payment. Thus, considerations of procedure and timeliness may make the s. 32.05 procedure more advantageous to a condemnor than the s. 32.06 procedure.

The introductions to ss. 32.05 and 32.06 specify the applicability of those procedures. The s. 32.05 procedure generally applies to condemnation for highways, streets, storm and sanitary sewers, water courses, alleys, airports, and mass transit facilities. The s. 32.06 procedure generally applies to condemnations to which the s. 32.05 procedure does not apply. In addition to the general categories of condemnation noted above, the s. 32.05 procedure applies to city condemnation for housing under ss.

66.1201 to 66.1211, Stats., and for urban renewal under s. 66.1333, Stats. (A city has the option of using the s. 32.06 procedure for these purposes.) Under s. 66.1339, Stats., villages have all the powers of cities under ss. 66.1201 to 66.1329 and ss. 66.1331 to 66.1337. There is no mention in s. 32.05 of village authority to use the s. 32.05 procedure for housing or urban renewal condemnations.

Clearly, villages have the same authority as cities to condemn for housing under ss. 66.1201 to 66.1211 and for urban renewal under s. 66.1333; the issue is whether the express extension of that condemnation authority to villages also extends to villages, by implication, the authority to use the s. 32.05 condemnation procedure. This issue does not appear to have been resolved by the appellate courts.

Villages were granted the authority to exercise city housing and urban renewal authority under ss. 66.1201 to 66.1329 and ss. 66.1331 to 66.1337 by SEC. 9, Ch. 565, Laws of 1959. At the time of enactment of ch. 565, cities did not have authority to use the s. 32.05 condemnation procedure for these purposes. (In fact, the distinct procedures in ss. 32.05 and 32.06 were established later that session by Chs. 639 and 640, Laws of 1959.) Subsequently, first class cities were given the authority to use the s. 32.05 procedure for housing and urban renewal condemnations (Ch. 596, Laws of 1965). About 25 years later, the option to use s. 32.05 for these purposes was extended to all cities. 1989 Wisconsin Act 89, SEC. 1. There is no documentation in the legislative history* of Act 89 of intent to include villages, or any awareness that it might be argued that villages would be included, in the expanded authority to use the s. 32.05 procedure.

While it apparently has been argued that villages may utilize the s. 32.05 procedure for urban renewal and housing condemnations, the authority to do so is questionable. As noted above, there appears to be no direct legislative history supporting that interpretation. It can be argued that the statutory language itself does not support that conclusion. The language of s. 66.1339 gives villages “the powers of cities under” the pertinent provisions of ch. 66 relating to housing and urban renewal. While the statutes clearly extend condemnation power for these purposes to villages, that is a separate issue from the question of which condemnation procedure may be used. There is no specific cross-reference to s. 32.05 in the pertinent provisions of ch. 66 (there is reference to exercising the power of eminent domain “under ch. 32” or similar language; see ss. 66.1201 (10) (a) and 66.1333 (3) (f) and (5) (b) 1. and 3., and (c) 1r., Stats.). Under the language of ss. 32.05 and 32.06, villages are limited to the s. 32.06 procedure for these purposes. Note, too, that because condemnation is an “extraordinary power,” courts will strictly construe eminent domain statutes.

If the Special Committee concludes that villages should have the same authority as cities to use the s. 32.05 procedure for housing and urban renewal condemnations, it is recommended that the committee consider amending the statutes to expressly provide villages that authority.

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* The Legislative Reference Bureau (LRB) drafting file; the LRB analysis of the legislation that became Act 89; and the fiscal estimates for the latter legislation.