COURT OF APPEALS DECISION DATED AND FILED

September 17, 2009

David R. Schanker
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2008AP3103

Cir. Ct. No. 2008CV199

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

ANNA M. THRELFALL AND RICHARD V. BAUM,

PLAINTIFFS-APPELLANTS,

V.

TOWN OF MUSCODA,

DEFENDANT-RESPONDENT.

APPEAL from a judgment and an order of the circuit court for Grant County: ROBERT P. VANDEHEY, Judge. *Affirmed*.

Before Dykman, P.J., Vergeront and Bridge, JJ.

¶1 DYKMAN, P.J. Anna Threlfall and Richard Baum appeal from an order granting summary judgment to the Town of Muscoda and dismissing their action to void Muscoda's condemnation proceedings. Threlfall and Baum argue that (1) Muscoda acted beyond its authority when it condemned a fee interest in

their land; (2) Muscoda failed to comply with several statutory procedural requirements prior to issuing its jurisdictional offer, thus voiding the offer; and (3) Muscoda's jurisdictional offer itself was defective, and thus void. We reject each of these contentions. Accordingly, we affirm.

Background

¶2 In September 2006, the Town Board of the Town of Muscoda adopted a Highway Order and Relocation Order stating its intent to purchase property along Sand Branch Road for a highway improvement project. As part of that project, Muscoda sought property owned by Threlfall and Baum.

¶3 Muscoda then had a portion of Threlfall and Baum's property appraised to estimate the fair market value of the property Muscoda intended to acquire. In October 2006, Muscoda's appraiser offered to meet with Threlfall and Baum at their property during the course of the appraisal. Threlfall and Baum declined, because they were not able to travel the necessary nine hours for the meeting.

¶4 By letter dated April 10, 2007, Muscoda offered to purchase a portion of Threlfall and Baum's property for $3,450. Muscoda included its appraisal of Threlfall and Baum's property, a plat map of the area included in the Sand Branch Road project, and a list of the other affected property owners. The letter informed Threlfall and Baum that they had the right to submit a reciprocal appraisal and identified the deadline for receiving the appraisal as the end of the business day on June 12, 2007. Threlfall and Baum received Muscoda's offer letter on April 16, 2007.

¶5 Threlfall phoned Muscoda's agent twice to voice her concern that she and Baum were not given a full sixty days from April 16, 2007, the day on which they received the letter, to submit their reciprocal appraisal. She informed the agent that they needed additional time to adequately prepare a reciprocal appraisal. Muscoda's appraiser did not allow Threlfall and Baum the additional time that Threlfall requested.

¶6 Threlfall and Baum's appraiser was able to perform the reciprocal appraisal and submit it to Muscoda's appraiser by June 12, 2007, but, due to time constraints, could not allow Threlfall and Baum to review the document before submitting it, as they had requested. Muscoda reimbursed Threlfall and Baum for the cost of performing the reciprocal appraisal.

¶7 After reviewing Threlfall's reciprocal appraisal, Muscoda again offered to purchase a portion of Threlfall and Baum's property by letter dated November 29, 2007, this time for $10,300, by warranty deed. Threlfall responded by letter that she and Baum were considering the amount of the offer, but believed any transfer of property should be by quitclaim deed, rather than by warranty deed. In response, Muscoda made the same monetary offer for Threlfall and Baum's property via quitclaim deed. Threlfall responded to this offer by voicing her concern about several other non-monetary issues that she and Muscoda's appraiser had discussed in the past.

¶8 After the Muscoda Town Board rejected Threlfall's proposals concerning the collateral issues that she raised in her last correspondence, Muscoda issued its jurisdictional offer to purchase Threlfall and Baum's property for $10,300.00. Threlfall and Baum did not agree to this jurisdictional offer. After Threlfall and Baum refused to accept the jurisdictional offer, Muscoda

mailed the award of damages and compensation check to Threlfall and Baum and filed the award with the register of deeds.

¶9 Threlfall and Baum filed this action against Muscoda in March 2008, seeking a judgment declaring that Muscoda lacked authority to condemn their property and that the jurisdictional offer was void. Both parties moved for summary judgment, and the circuit court granted summary judgment to Muscoda. Threlfall and Baum appeal.

Standard of Review

¶10 We review summary judgments de novo, employing the same methodology as the circuit courts. ***Snyder v. Badgerland Mobile Homes, Inc.***, 2003 WI App 49, ¶¶7-8, 260 Wis. 2d 770, 659 N.W.2d 887. We construe the pleadings to do substantial justice to the parties and only uphold a summary judgment dismissing a case when it is quite clear that there are no circumstances under which the plaintiff can recover. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 317, 401 N.W.2d 816 (1987).

¶11 We interpret statutes and apply them to undisputed facts de novo. ***State v. Abbott***, 207 Wis. 2d 624, 628, 558 N.W.2d 927 (Ct. App. 1996).

Discussion

¶12 Threlfall and Baum argue first that Muscoda lacked authority to condemn a fee simple interest in their property. They contend that towns have authority to condemn only easements under WIS. STAT. § 82.14 (2007-08),[1] which

[1] All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

authorizes towns to utilize WIS. STAT. § 32.05 condemnation procedures to acquire "rights to land" to lay out or alter a town highway. Threlfall and Baum assert that the phrase "rights to land" in § 82.14 does not include a fee simple interest because (1) if the legislature intended to authorize towns to condemn fee interests under § 82.14, it would have specifically said so; and (2) before the legislature enacted the current version of WIS. STAT. § 82.14, Wisconsin case law established that towns could only condemn an easement for purposes of highway improvement, and there is no basis to conclude that § 82.14 was intended to overturn that settled precedent.

¶13 Muscoda responds that towns have the authority to condemn a fee interest for a highway improvement under WIS. STAT. § 82.03(2), which provides that town boards have the duty to provide materials to maintain and repair highways, and thus may use WIS. STAT. ch. 32 condemnation procedures to acquire "interests in land" under WIS. STAT. § 83.07. WISCONSIN STAT. § 83.07(1), in turn, provides that town boards may acquire "any lands or interest therein" to fulfill the provisions of WIS. STAT. ch. 83, entitled "County Highways," and specifies that they may do so by the condemnation procedures under ch. 32. Muscoda contends that the terms "interests in land," "any lands or interest therein," as well as the term "rights to land" under WIS. STAT. § 82.14, plainly include a fee interest. It asserts that the case law Threlfall and Baum have cited does not establish a precedent prohibiting towns from condemning fee interests in property to improve highways.

¶14 Threlfall and Baum reply that WIS. STAT. §§ 82.03(2) and 83.07 are inapplicable to this case. They contend that the only statute at issue here is WIS. STAT. § 82.14, because Muscoda is seeking to acquire land to alter a highway. They acknowledge that they have not cited condemnation cases to support their

position that towns are prohibited from condemning fee interests to improve highways, but argue that those cases establish that a condemnor acquires only an easement unless a statute specifically authorizes the taking of a fee interest.

¶15 We conclude that whether a town proceeds under WIS. STAT. § 82.14(1) or WIS. STAT. § 82.03(2), it is authorized to condemn a fee interest. We begin our statutory analysis, as we must, with the plain language of the statutes. *See* ***State ex rel. Kalal v. Circuit Court for Dane County***, 2004 WI 58, ¶¶44-45, 271 Wis. 2d 633, 681 N.W.2d 110. WISCONSIN STAT. § 82.14(1) authorizes a town to condemn "rights to land" necessary to alter a town highway; WIS. STAT. § 82.03(2) authorizes towns to condemn "interests in land" for highway repair purposes. Because the statutes do not define these terms, we are aided by their ordinary dictionary definitions. *See* ***Milwaukee Symphony Orchestra, Inc. v. DOR***, 2009 WI App 69, ¶23 n.7, _Wis. 2d_, 767 N.W.2d 360. Black's Law Dictionary defines a "right," *inter alia*, as "[t]he interest, claim, or ownership that one has in tangible or intangible property." BLACK'S LAW DICTIONARY 1322 (7th ed. 1999). It defines "interest," *inter alia*, as "[a] legal share in something; all or part of a legal or equitable claim to or right in property." ***Id.*** at 816. Thus, by their ordinary dictionary definitions, the terms "rights to land" and "interests in land" are general terms that plainly encompass *any* rights or interests in land. Because the statutes use these general terms without limiting language, they authorize towns to condemn any interest, including a fee interest.[2]

[2] Threlfall and Baum argue that WIS. STAT. ch. 82 also uses the term "right-of-way" to describe road widths, and "right-of-way" is synonymous with easement. Thus, Threlfall and Baum assert, the statutory scheme as a whole makes clear that the legislature intended for towns to acquire only easements, not fee interests. We disagree. While "right-of-way" may mean "easement," that is not the only meaning of the term. The dictionary defines "right-of-way" both as an easement and as "the strip of land devoted to or over which is built a public road."

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¶16 We cannot read the statutes as Threlfall and Baum suggest: that because the statutes do not use the term "fee simple," that interest is excluded.[3] Rather, as Muscoda points out, "rights to land" and "interests in land" are general terms that include the various rights and interests that exist in land. Had the legislature meant to *exclude* fee simple interests, it would have done so by language limiting the type of right a town may condemn. We will not read that language into the statute. *See* ***County of Dane v. LIRC***, 2009 WI 9, ¶33, 315 Wis. 2d 293, 759 N.W.2d 571. Because the language of the statutes is plain, we end our inquiry.[4] *See* ***Kalal***, 271 Wis. 2d 633, ¶45. We therefore conclude that

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WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1956 (1993). WISCONSIN STAT. § 82.50 is entitled "Town road standards," and it delineates the minimum required widths of the various parts of different types of roads. The description of every different road begins with a required width of the right-of-way of the road. Thus, "right-of-way" under § 82.50 refers to a strip of land for a public road, not to an easement.

[3] Threlfall and Baum also argue that because other statutes specifically authorize acquiring a fee interest, statutes that do not specifically state condemnors may acquire a fee interest exclude a fee interest as an option. *See* WIS. STAT. § 84.09(1) ("[T]he department may acquire private or public lands or interests in such lands. When so provided in the department's order, such land shall be acquired in fee simple."); WIS. STAT. § 114.33(6)(b) ("[T]he secretary shall attempt to obtain easements or title in fee simple."). We do not agree that the statutes that specifically require land to be obtained in fee simple dictate that more general descriptions of land interests *exclude* fee interests as an option.

[4] Threlfall and Baum assert that legislative materials demonstrate that a town may only condemn an easement, not a fee interest, to improve a highway. The first part of their argument is that Wisconsin law prior to the 2003 revision of the Wisconsin Statutes limited towns to condemning easements for laying out or improving highways. They cite ***Walker v. Green Lake County***, 269 Wis. 103, 69 N.W.2d 252 (1955), ***Spence v. Frantz***, 195 Wis. 69, 217 N.W. 700 (1928), and ***Mushel v. Town of Molitor***, 123 Wis. 2d 136, 365 N.W.2d 622 (Ct. App. 1985), as stating this rule of law. Next, Threlfall and Baum argue that the Joint Legislative Council prefatory note to 2003 Wis. Act 214, which revised WIS. STAT. ch. 82, states that the legislature did not intend to substantively change any of the statutes that it placed in chapter 82 unless it included detailed notes describing the change. They argue that there are no such notes concerning WIS. STAT. § 82.14(1) and, thus, the legislature did not intend to disturb the precedent that towns are limited to condemning an easement interest for the purposes of highway improvement. However, Threlfall and Baum concede in their reply brief that the cases they have cited establish only that a town cannot condemn more than provided by statute. Additionally, we have concluded that § 82.14 is unambiguous, and thus need not address these legislative material

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the language of the statutes authorized Muscoda to condemn a fee simple interest in Threlfall and Baum's property.[5]

¶17 Next, Threlfall and Baum argue that Muscoda's condemnation of their property is invalid because Muscoda failed to meet the procedural requirements of WIS. STAT. § 32.05 before issuing its jurisdictional offer. Specifically, Threlfall and Baum argue that, before Muscoda issued its jurisdictional offer: (1) Muscoda's appraiser did not confer with them, violating § 32.05(2)(a); (2) Muscoda did not give them the full 60-day timeframe within which to submit a reciprocal appraisal, violating § 32.05(2)(b); (3) Muscoda did not reimburse them for their reciprocal appraisal before entering into good faith negotiations, violating § 32.05(2)(b) and (2a); and (4) Muscoda did not enter into good faith negotiations, violating § 32.05(2a). We conclude that the undisputed facts in the record establish that Muscoda did not violate any of the procedural requirements of WIS. STAT. § 32.05.[6]

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arguments. *See* ***State ex rel. Kalal v. Circuit Court for Dane County***, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110.

[5] Threlfall and Baum argue that even if Muscoda had authority to condemn a fee interest, it was still required to establish the necessity of taking a fee rather than an easement. *See* ***Toombs v. Washburn County***, 119 Wis. 2d 346, 350 N.W.2d 720 (Ct. App. 1984). However, Muscoda's Highway Order and Relocation Order is the document that established Muscoda's determination of the necessity of a fee interest. *See* ***id.*** at 347 ("The relocation order takes the place of and constitutes a determination of necessity."). Threlfall and Baum have not identified anything in the record creating an issue of fact over whether Muscoda properly determined that a fee interest was necessary.

[6] Because we conclude that Muscoda did not violate any of the procedural requirements of WIS. STAT. § 32.05 prior to issuing its jurisdictional offer, we need not address the parties' arguments over whether the claimed violations were jurisdictional or technical, or whether Threlfall and Baum were prejudiced by the claimed errors. *See* ***Warehouse II, LLC v. DOT***, 2006 WI 62, ¶¶9-10, 291 Wis. 2d 80, 715 N.W.2d 213. We address the issue of jurisdictional versus technical errors in our discussion of Threlfall and Baum's claim that Muscoda's jurisdictional offer itself was defective.

¶18 Threlfall and Baum first argue that Muscoda's appraiser failed to confer with them as required by WIS. STAT. § 32.05(2)(a), which states: "The condemnor shall cause at least one … appraisal to be made of all property proposed to be acquired. In making any such appraisal the appraiser shall confer with the owner … if reasonably possible." Threlfall and Baum concede that they received a letter from Muscoda's appraiser offering to meet at the site of the property to confer about the appraisal, but point out that they were unable to make the nine hour trip to the property. They assert that Muscoda's appraiser's failure to make additional attempts to confer with them at their convenience violates § 32.05(2)(a). We disagree.

¶19 Threlfall and Baum do not provide any legal authority to support their claim that the appraiser's offer to confer at the property site was insufficient or that Muscoda's appraiser was required to accommodate their inability to travel to that location. Thus, we conclude that Muscoda met the procedural requirement of conferring with the landowner, if reasonably possible, under WIS. STAT. § 32.05(2)(a).

¶20 Next, Threlfall and Baum argue that Muscoda did not allow them to "submit a full narrative appraisal to the condemnor within 60 days after the owner receives the condemnor's appraisal," and "submit the reasonable costs of the appraisal to the condemnor for payment," as required by WIS. STAT. § 32.05(2)(b). They assert that although Muscoda's appraisal letter was dated April 10, 2007, they did not actually receive it until April 16, 2007. Because the letter's stated deadline for a reciprocal appraisal was June 12, 2007, Threlfall and Baum assert that Muscoda allowed them only fifty-seven days from the date they received the appraisal to submit a reciprocal appraisal. They assert that Muscoda therefore

failed to follow the procedural requirement of setting the reciprocal appraisal deadline a full sixty days from the date they received Muscoda's appraisal.

¶21 The problem with Threlfall and Baum's argument is that they are reading a requirement for the condemnor into the statute that is not there. WISCONSIN STAT. § 32.05(2)(b) states that the condemnor "shall inform the owner of his or her right to obtain an appraisal under this paragraph." It provides that the owner has a right to submit a reciprocal appraisal and to reimbursement from the condemnor for the reasonable costs of the appraisal. ***Id.*** It is undisputed that Muscoda informed Threlfall and Baum of their right to obtain a reciprocal appraisal and for reimbursement from Muscoda; Threlfall and Baum argue only that Muscoda erred by setting a deadline for the reciprocal appraisal that was less than sixty days from the date they received Muscoda's appraisal.

¶22 WISCONSIN STAT. § 32.05(2)(b), however, does not state that the condemnor must provide the landowner a deadline that is sixty days from the date the landowner receives the condemnor's appraisal. It reads: "The owner shall submit a full narrative appraisal to the condemnor within 60 days after the owner receives the condemnor's appraisal." The procedural requirement for the condemnor, therefore, is to inform the landowner that he or she has the right to obtain a reciprocal appraisal and to receive reimbursement from the condemnor. To obtain reimbursement, the landowner is required to submit the reciprocal appraisal within sixty days. In other words, the sixty-day limit for submitting a reciprocal appraisal is an obligation of the landowner if he or she is to obtain

reimbursement for the reciprocal appraisal. The sixty-day period is not a right that the condemnor must communicate to the landowner under § 32.05(2)(b).[7]

¶23 Next, Threlfall and Baum argue that Muscoda's failure to reimburse them for the cost of the reciprocal appraisal before entering into good faith negotiations was a violation of WIS. STAT. § 32.05. They claim that § 32.05 implicitly requires the condemnor to reimburse the landowner for a reciprocal appraisal under para. (2)(b) before entering into good faith negotiations under subsec. (2a). Additionally, they claim that if we allow condemnors to proceed with good faith negotiations before reimbursing landowners for reciprocal appraisals, condemnors could use this flexibility as a tool to coerce property owners into accepting lower prices for their property. They reason that property owners, indebted to their appraisers, will be forced to sell their properties at a reduced price in order to afford the cost of the appraisal. We are not persuaded.

¶24 First, Threlfall and Baum have not identified any language in WIS. STAT. § 32.05 suggesting that there is an implicit requirement for condemnors to meet the requirements of § 32.05(2)(b) before entering into negotiations under subsec. (2a). Nor have they cited any case law to support this argument. Based on the plain language of § 32.05, then, we conclude that there is no requirement to complete the requirements of para. (2)(b) before commencing negotiations under subsec. (2a).

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[7] Because we conclude that Muscoda was not required to inform Threlfall and Baum of the actual statutory deadline for submitting a reciprocal appraisal, we need not address Muscoda's argument that it properly set the deadline according to statute. Additionally, because Threlfall and Baum did submit a reciprocal appraisal and Muscoda did consider it in the course of negotiations, and reimbursed Threlfall, we need not address the consequences under WIS. STAT. § 32.05(2)(b) if a condemnor refuses to consider or pay for a reciprocal appraisal that is submitted within the allotted sixty days.

¶25 Second, Threlfall and Baum's argument that condemnors will abuse the process by delaying to reimburse landowners is a policy argument for the legislature. We cannot read a requirement into the statute based on the possibility that the law as enacted may lead to unfavorable results.

¶26 Next, Threlfall and Baum argue that Muscoda failed to engage in good faith negotiations before issuing its jurisdictional offer for three reasons: (1) Muscoda included collateral issues such as whether the conveyance would be by warranty deed in the negotiations, (2) Muscoda did not allow negotiation as to price, and (3) Muscoda never notified Threlfall and Baum that it was entering into good faith negotiations. We disagree, and conclude that Muscoda met all of the negotiation requirements under WIS. STAT. § 32.05(2a).

¶27 Threlfall and Baum argue that Muscoda did not enter into negotiations as to price for two reasons. First, they argue that Muscoda never allowed for negotiation as to price because the only offer that Muscoda issued between their submission of the reciprocal appraisal and Muscoda's issuing its jurisdictional offer left no room for negotiation of the price. Threlfall and Baum assert that WIS. STAT. § 32.05(2a) requires the condemnor to wait until it receives the property owner's reciprocal appraisal before it can enter into good faith negotiations. Secondly, they claim that, despite the fact that good faith negotiations are supposed to be grounded in the issue of price, Muscoda erroneously included in the negotiations the collateral issue of the type of deed for conveying the property. We disagree.

¶28 The requirement of good faith negotiations is grounded in the primary purpose of condemnation proceedings: providing just compensation to the property owner. ***Warehouse II, LLC v. DOT***, 2006 WI 62, ¶6, 291 Wis. 2d

80, 715 N.W.2d 213 (citing ***Arrowhead Farms, Inc. v. Dodge County***, 21 Wis. 2d 647, 651, 124 N.W.2d 631 (1963)). WISCONSIN STAT. § 32.05(2a) tells us that "[i]n such negotiation the condemnor shall consider the owner's appraisal under sub. (2)(b)." The supreme court has held that "if a reasonable offer is made honestly and in good faith and a reasonable effort has been made to induce the owner to accept it, the requirements of the statute for an offer to purchase have been met." ***Herro v. Natural Resources Board***, 53 Wis. 2d 157, 171, 192 N.W.2d 104 (1971) (citation omitted).

¶29 There is nothing in the wording of WIS. STAT. § 32.05(2a) preventing Muscoda from making its initial offer and thus beginning good faith negotiations before it received Threlfall and Baum's reciprocal appraisal. Under § 32.05(2a), Muscoda was only required to consider the reciprocal appraisal "[i]n such negotiation." The fact that Muscoda more than doubled the price that it was willing to pay for Threlfall and Baum's property after it received the reciprocal appraisal shows that it did consider Threlfall and Baum's reciprocal appraisal during the negotiations. Muscoda's initial request that Threlfall and Baum convey their property via warranty deed did not mean that Muscoda failed to negotiate in good faith over the price of the property. Moreover, at Threlfall and Baum's request, Muscoda's appraiser agreed to take the property via quitclaim deed for the price that it offered after viewing Threlfall and Baum's reciprocal appraisal. These undisputed facts establish that Muscoda met the negotiation requirements of § 32.05(2a).

¶30 Threlfall and Baum also argue that Muscoda erred by not notifying them that it was entering into good faith negotiations. Threlfall and Baum argue that Muscoda erred in two ways. First, they claim that Muscoda violated WIS. STAT. § 32.05(2a) by not providing them with a list of offerees and a map of the

project. Secondly, Threlfall and Baum argue that Muscoda did not inform them when it was no longer considering collateral issues. Again, we disagree that Threlfall and Baum have identified any violation of § 32.05(2a).

¶31 WISCONSIN STAT. § 32.05(2a) says that "[w]hen negotiating under this subsection, the condemnor shall provide the owner or his or her representative with the names of at least 10 neighboring landowners to whom offers are being made … together with a map showing all property affected by the project." In addition to certain pamphlets that Threlfall and Baum do not contest that they received, this is the only notice of a condemnor's initiating good faith negotiations that § 32.05(2a) requires the condemnor provide the property owner.

¶32 Along with Muscoda's April 10, 2007 letter containing its initial appraisal, Muscoda sent Threlfall and Baum a map of the proposed Sand Branch Road project and a list of every landowner whose property it required. It thus gave Threlfall and Baum the information required by WIS. STAT. § 32.05(2a).

¶33 Additionally, Threlfall and Baum concede that Wisconsin law did not require Muscoda to negotiate over the collateral issues that they entered into the discussion. Threlfall and Baum have provided no basis for us to conclude that condemnors are required to notify property owners when they are no longer considering collateral issues.

¶34 Finally, Threlfall and Baum argue that Muscoda's jurisdictional offer was defective, voiding the condemnation. They argue that the offer was defective because it impermissibly sought a fee interest rather than an easement in their land; it sought to acquire Threlfall and Baum's property via warranty deed rather than quitclaim deed; and failed to list the location where interested parties

could examine its appraisal of their property, as required by WIS. STAT. § 32.05(3).

¶35 First, we reject Threlfall and Baum's first claim—that the jurisdictional offer was defective because it sought a fee interest—based on our conclusion that Muscoda acted within its authority in seeking a fee interest. Next, we reject Threlfall and Baum's second claim—that the jurisdictional offer was defective because it sought a warranty rather than quitclaim deed—because WIS. STAT. § 32.05(3) does not specify the type of deed that the condemnor can seek in a jurisdictional offer, and Threlfall and Baum do not cite any authority to support their claim that seeking a warranty deed renders the jurisdictional offer defective.

¶36 Lastly, we reject Threlfall and Baum's argument that Muscoda's failure to list the location where its appraisal could be examined rendered the jurisdictional offer defective. WISCONSIN STAT. § 32.05(3)(e) states that a condemnor must include in its jurisdictional offer a statement indicating that "the appraisal … of the property on which the condemnor's offer is based is available for inspection at a specified place by persons having an interest in lands sought to be acquired." Threlfall and Baum argue that Muscoda's failure to include a location for inspecting the appraisal in its jurisdictional offer was a jurisdictional defect. *See* ***Warehouse II***, 291 Wis. 2d 80, ¶¶10-12. They argue that the requirement of listing the appraisal's location for inspection is a requirement within the jurisdictional offer section, and the jurisdictional offer itself is a jurisdictional requirement. *See* ***id.***, ¶9. We do not agree that it follows that failing to list a location to inspect the appraisal is a jurisdictional defect.

¶37 A defect in a condemnation proceeding is jurisdictional if it is "within the particular statute that sets forth the condemnation procedure" and "the

statute expressly or impliedly denies the power of the condemnor to act unless the particular step is taken, and no other statutory remedy is provided for a failure to perform the particular step." ***Id.***, ¶12 (citation omitted). In contrast, a defect that "goes to neither the condemnor's power to act nor to a primary purpose of the condemnation procedure, [which is] providing just compensation to the property owner," is not a jurisdictional defect. ***Id.*** Thus, the ***Warehouse II*** court held that failing to include a proposed occupancy date in a jurisdictional offer to purchase, as required by WIS. STAT. § 32.05(3)(c), was a technical, rather than jurisdictional, defect. ***Id.***, ¶¶11-13. Similarly, we conclude that Muscoda's failure to list a place for the public to inspect the appraisal was a technical defect, as it did not go to providing just compensation for the landowners or to Muscoda's power to proceed. We turn, then, to whether this defect prejudiced Threlfall and Baum. *See* ***id.***, ¶10.

¶38 It is undisputed that Muscoda included a copy of its appraisal in the letter that it sent to Threlfall and Baum on April 10, 2007. Threlfall and Baum argue that other persons who are interested in the proceeding would not know where to inspect the appraisal and there is no guarantee that they still possess their copy of the appraisal. However, they have pointed to nothing in the summary judgment record indicating that any interested persons were unable to view the appraisal or that they no longer have the appraisal in their possession. On the record before us, it is undisputed that Threlfall and Baum have a copy of the appraisal, and thus there is no need for Muscoda to inform them of a location for them to inspect it. Because the undisputed facts in the record establish that Muscoda acted within its authority to condemn a fee interest and did not violate any of the procedural requirements of WIS. STAT. § 32.05, we affirm the summary

judgment order dismissing Threlfall and Baum’s challenge to Muscoda’s condemnation proceedings.

By the Court.—Judgment and order affirmed.

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