

# **Bond Case Briefs**

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## **EMINENT DOMAIN - COLORADO**

### **Sos v. Roaring Fork Transportation Authority**

**Colorado Court of Appeals, Div. VII - November 16, 2017 - P.3d - 2017 WL 5493526 - 2017 COA 142**

Landowner brought an inverse condemnation claim against transportation authority after authority built a bus station on the property north of and adjacent to his property.

The District Court entered judgment in favor of landowner, awarding him \$75,000 in damages. Transportation authority appealed.

The Court of Appeals held that:

- Colorado Constitution grants relief to property owners who have been substantially damaged by public improvements abutting their lands, but whose land has not been physically taken by the government;
- Transportation authority damaged landowner's property within the meaning of takings provision of Colorado Constitution;
- Under takings provision of State Constitution, landowner is merely required to show a special injury to the property or its appurtenances;
- Landowner sufficiently demonstrated a special injury under takings provision of State Constitution;
- Restoration costs, rather than diminution of value, was the proper measure of damages for landowner;
- Evidence of landowner's personal and business uses for his property was admissible in order to properly calculate landowner's restoration cost damages; and
- Evidence of engineering expert's designs and expert's testimony regarding cost difference in excavating embankment before and after transportation authority's construction of bus station were admissible in order to properly calculate landowner's restoration cost damages.

By including the word "damaged" in its eminent domain provision, the Colorado Constitution grants relief to property owners who have been substantially damaged by public improvements abutting their lands, but whose land has not been physically taken by the government.

Transportation authority, which built a bus station on the property north of and adjacent to landowner's property, damaged landowner's property within the meaning of takings provision of Colorado Constitution; imposition of force on landowner's embankment was the natural consequence of authority's intentional construction of the bus station wall, and experts indicated that bus station wall imposed new force on landowner's embankment to such a degree that an engineered remedy was now required before the embankment could be excavated, and authority's bus station wall burdened landowner's property by imposing new lateral forces that made it dependent on the embankment area for structural support.

Under takings provision of State Constitution, landowner is merely required to show a special injury to the property or its appurtenances, or an injury affecting some right or interest which the owner enjoys in connection with the property and which is not shared with or enjoyed by the public

generally; the injury must be to some right or interest relating to the property, not a specifically non-personal or non-business use.

Landowner sufficiently demonstrated a special injury under takings provision of State Constitution; imposition of force on landowner's embankment was the natural consequence of transportation authority's intentional construction of the bus station wall, bus station wall burdened landowner's ability to excavate the embankment to facilitate his use of the northeast corner of his property and landowner's proffered uses related to his tire business and snow maintenance.

Restoration costs, rather than diminution of value, was the proper measure of damages for landowner, whose property was damaged, within meaning of takings provision of State Constitution, when transportation authority built bus station on land adjacent to landowner's property; diminution in value, if any, of landowner's property after bus station was built was de minimis, but bus station's construction substantially limited landowner's dominion over, and use and enjoyment of, the embankment area, measuring landowner's damages by the restoration cost, derived from engineering expert opinions, would allow him to excavate the embankment at a cost unaffected by the bus station wall's lateral forces, and landowner wished to excavate the embankment to facilitate use of property to meet his needs without paying increased costs resulting from new lateral forces imposed by bus station's construction, and fact that landowner had not yet excavated embankment did not prohibit the award of restoration costs to compensate him for his loss of the use and enjoyment of the embankment area.

In inverse condemnation case, evidence of landowner's personal and business uses for his property, which was damaged by transportation authority's construction of bus station adjacent to landowner's property, was admissible in order to properly calculate landowner's restoration cost damages; landowner's alleged injury concerned his dominion over, and ability to use and enjoy, his land for property access, equipment storage, and snow maintenance, and it did not concern lost profits or any other injury not independently compensable.

In inverse condemnation case, evidence of engineering expert's designs and expert's testimony regarding cost difference in excavating embankment before and after transportation authority's construction of bus station wall adjacent to landowner's property were admissible in order to properly calculate landowner's restoration cost damages; imposition of force on landowner's embankment was the natural consequence of transportation authority's construction of bus station wall, expert's designs and testimony were not inconsistent with the undisputed evidence, and record indicated that landowner could obtain the required easements.