

# **Bond Case Briefs**

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## **EMINENT DOMAIN - COLORADO**

### **Town of Monument v. State by and through State Board of Land Commissioners**

**Colorado Court of Appeals, Division VII - October 4, 2018 - P.3d - 2018 WL 4781388 - 2018 COA 148**

Town brought action against state, seeking to use its eminent domain power to construct water tank on subdivision lot with restrictive covenant prohibiting such structures, and subdivision lot owners intervened, arguing that town could not eliminate covenant without compensation for loss in property value.

After the District Court held that intervenors had compensable property interest in proceeding, and denied town's eminent domain request, town and board stipulated to dismissal of the case with prejudice. Town appealed.

The Court of Appeals held that:

- Trial court's order was final and appealable; and
- Restrictive covenant was not a compensable property interest.

Order determining that town could not use eminent domain power to overcome restrictive covenant was final and appealable; order completely resolved parties' rights and, even if the initial order was not a final judgment, it was followed by a dismissal with prejudice, which was final.

Restrictive covenant that prohibited town from constructing a municipal water storage tank on subdivision lot was not a compensable property interest for eminent domain purposes.

Town's decision to buy subdivision lot subject to restrictive covenant which barred construction of municipal water storage tank was not an agreement to be bound by the covenant, even if town was aware of covenant when it bought the lot.