

Bond Case Briefs

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EMINENT DOMAIN - NORTH DAKOTA

Lenertz v. City of Minot

Supreme Court of North Dakota - February 21, 2019 - N.W.2d - 2019 WL 759559 - 2019 ND 53

Property owner filed a claim for inverse condemnation against city.

The District Court dismissed the claim and awarded city costs and disbursements. Property owner appealed.

The Supreme Court of North Dakota held that:

- Evidence supported finding that there had been a partial taking of property owner's property;
- Exclusion of testimony from property owner's expert appraiser as to the measure of damage sustained to property was not an abuse of discretion.

Evidence supported finding that there had been a partial taking of property owner's property, in property owner's inverse condemnation action against city; the city's construction of road and storm sewer project caused three flooding events of property owner's property, city established that owner's property continued to have economic value despite the flood events, the buildings on the property were occupied before and after the flood events, owner did not lose any tenants as a result of the flood events, and owner earned on average \$85,000 in gross rental income.

The trial court's exclusion of testimony from property owner's expert appraiser as to the measure of damage sustained to property was not an abuse of discretion, during inverse condemnation proceeding; expert opined the property should have been valued at \$750,000, but was worthless, because of recurring flooding, the court explained it refused to allow expert to testify because his valuation was at odds with the court's conclusion only a "partial taking" occurred, and the court reasoned that because owner did not establish a total taking of his property, the diminution in value was not total and expert's testimony would not assist the jury in deciding damages.