

# **Bond Case Briefs**

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## **EMINENT DOMAIN - NORTH DAKOTA**

### **City of Fargo v. Wieland**

**Supreme Court of North Dakota - December 12, 2019 - 936 N.W.2d 55 - 2019 ND 286**

City brought eminent domain action, seeking to acquire landowner's property for flood protection purposes.

The District Court granted partial summary judgment, concluding that permanent flood protection was public use authorized by law and that the taking of landowner's property was necessary to the use, and following a trial, jury awarded landowner \$850,000 as just compensation for the taking. Landowner appealed.

The Supreme Court held that:

- City's flood protection project was for "public use" for purposes of eminent domain action;
- Information presented by engineers to city was sufficient to satisfy requirements of statute, governing plans and specifications for public improvement contract;
- City's proposed taking of landowner's property for flood protection was necessary for the public use;
- Permanent flood protection was a more necessary public use than any existing easements or drain dedication on landowner's property; and
- City's failure to provide landowner a pamphlet outlining her rights had no affect on validity of the eminent domain action.

City's flood protection project was for "public use" for purposes of eminent domain action brought by city, seeking to acquire landowner's property for flood protection purposes; legislature declared flood control projects to be a "public use" by giving municipalities the power to control such projects.

Although statute required that complete plans and specifications for dike had to be presented first to the state engineer, this statute pertained to operations of water resource districts, not municipalities, and thus, city's resolution of necessity for taking landowner's property for flood protection was not invalid in eminent domain action because plans were not submitted to state engineer.

Information presented by engineers to city was sufficient to satisfy the requirements of statute, governing plans and specifications for public improvement contract, for purposes of eminent domain action brought by city, seeking to acquire landowner's property for flood protection purposes; city worked with its own engineers for years to address city's flooding problems, engineers presented various plans and proposals, and city was provided detailed site plans and maps of the proposed project.

In eminent domain action, city's proposed taking of landowner's property for flood protection was necessary for the public use; after years of extensive professional studies on permanent flood protection for the area, landowner's home could not remain at its location, and because of the

setback distance from drain and the necessary maintenance area, levee was required to be constructed on landowner's property.

In eminent domain action, permanent flood protection was a more necessary public use than any existing easements or drain dedication on landowner's property; existence of easements on landowner's property were not in conflict with the intended use of the property by city, easements and the earthen levee, when constructed, could co-exist, levee was necessary to protect waters rising from the drain and to protect people and property in area, and drain dedication, drain easement, and utility easement would not be repealed or extinguished by the levee.

City's failure to provide landowner a pamphlet outlining her rights had no affect on validity of the eminent domain action; receipt of pamphlet, describing eminent domain laws, was not a condition precedent to eminent domain action, pamphlet requirement in statute, requiring attorney general to publish eminent domain information, was not mentioned in eminent domain statute, statute, requiring publishing of eminent domain information, did not provide remedy for condemning authority's failure to provide pamphlet, and landowner was not prejudiced because she was represented by attorney during her negotiations with city before the city made offer.