

Bond Case Briefs

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INVERSE CONDEMNATION - TEXAS

City of San Antonio v. Kopplow Development, Inc.

Court of Appeals of Texas, San Antonio - February 5, 2014 - S.W.3d - 2014 WL 462294

Landowner brought inverse condemnation action against city alleging that city's storm water detention facility, which was built adjacent to landowner's property and across a portion of owner's easement, would subject owner's land to flooding in the event of a 100-year-flood. City filed counterclaim for statutory condemnation. Following jury trial, the District Court entered judgment in favor of landowner for \$694,600, representing value of part taken and remainder damages. Both parties appealed.

The Court of Appeals affirmed in part on statutory takings claim, but reversed award of remainder damages. Petition for review was granted. The Supreme Court of Texas reversed and remanded, holding that landowner could recover remainder damages.

On remand, the Court of Appeals held that:

- Trial court erred in excluding evidence of landowner's claimed damages for the violation of his vested rights, and
- Trial court's erroneous exclusion of evidence regarding violation of landowner's vested rights required reversal and remand for new trial on issue of remainder damages, as evidence landowner sought to admit on issue of vested rights could have entitled him to greater award of remainder damages.

Landowner preserved for appellate review, in inverse condemnation action against city, its argument that city's construction of flood water detention facility adjacent to owner's property and across portion of owner's easement, and city's decision to raise minimum flood plain elevation requirements, violated landowner's vested rights. Although trial court issued an interlocutory order resolving vested rights issue in favor of city, such order was subsumed into the trial court's final judgment, such that landowner was not entitled to take an interlocutory appeal from the order addressing issue of vested rights, and landowner objected to the exclusion of vested rights evidence and made an offer of proof as to damages before the trial court, which was sufficient to preserve error.

Statutory exemption providing that floodplain regulations established by a federal flood control program apply retroactively, even against vested rights holders under the Local Government Code, did not bar recognition of landowner's vested rights, as affected by city's decision to amend city ordinance to raise minimum flood plain elevation requirements, and thus, trial court erred in excluding evidence of landowner's claimed damages for the violation of his vested rights at trial. New ordinance raising minimum floodplain elevation requirements was not established by a "federal flood control program," but rather was established by city, and city's floodplain regulations were more stringent than those adopted by Federal Emergency Management Agency (FEMA).

Where landowner claimed damages to his vested rights arising out of city's construction of flood water detention facility across a portion of landowner's easement and decision to raise minimum

flood plain elevation requirements, which thereby caused landowner to incur additional costs to fill property by two feet to meet new floodplain elevation requirements, trial court's erroneous exclusion of evidence regarding landowner's claimed damages for city's violation of his vested rights was harmful, thus requiring reversal of jury's award of remainder damages to landowner in inverse condemnation action against city and remand for new trial on issue of remainder damages. Although jury awarded landowner portion of requested remainder damages, landowner provided expert testimony of engineer and appraiser regarding cost to fill property by two feet to meet city's amended floodplain elevation requirements, which was relevant to issue of remainder damages and which could have entitled landowner to greater damages award.