

Bond Case Briefs

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EMINENT DOMAIN - NEBRASKA

Hike v. State Department of Roads

Supreme Court of Nebraska - May 9, 2014 - N.W.2d - 288 Neb. 60

In eminent domain proceeding, after parties were unable to negotiate pre-taking fair market value of property, jury trial was held to determine compensation. The District Court entered judgment on jury's verdict for owners for \$53,209. Owners appealed.

The Supreme Court of Nebraska held that:

- Evidence of Nebraska Department of Roads (NDOR) intent to convert United States highway, which adjoining property owners accessed solely by easement over neighbor's land that connected to driveway that led to highway, into freeway at least ten years prior to taking, was relevant to determination of fair market value of property;
- Testimony of NDOR's appraiser did not mislead jury into believing that NDOR did not have to compensate owners for taking of easement;
- Appraiser's testimony as to pre-taking fair market value was not based on misapplication of law;
- Appraiser's consideration of State's future land use plan in calculating pre-taking value of property, although impermissibly conjectural and speculative, did not render determination of pre-taking fair market value unreliable;
- NDOR's former staff appraiser's proposed testimony that he told owners that property was suitable for commercial use and about comparable commercial sale was inadmissible evidence of conduct or statements made in compromise negotiations;
- Structural damage to owners' property caused by NDOR's post-taking improvement to highway was not relevant to determination of property's pre-taking fair market value;
- Evidence did not warrant instructions prohibiting jury from considering any change in fair market value of property caused by public improvement or by knowledge that improvement would be constructed or that owners' access to improvement would be taken or relating to taking of new permanent easement;
- Owners were not prejudiced by trial court's refusal of proffered instructions regarding nature of permanent easement and its compensability; and
- Comment by attorney for NDOR during closing argument that "[w]e're the Nebraska Department of Roads[,] not the Nebraska State Lottery," although improper hyperbole, did not warrant mistrial.