

Bond Case Briefs

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EMINENT DOMAIN - OHIO

State ex rel. Wasserman v. Fremont

Supreme Court of Ohio - July 8, 2014 - N.E.3d - 2014 -Ohio- 2962

Property owners petitioned for writ of mandamus to compel city and mayor to initiate eminent domain proceedings with respect to alleged partial taking of owners' drainage easement over city property, and also sought injunction to prevent further encroachment on easement pending resolution of such proceedings. The Court of Appeals issued alternative writ, in which it ordered city to initiate eminent domain proceedings or show cause as to why they had not done so. City filed motion to dismiss, motion to strike, and motion for attorney fees. The Court of Appeals granted writ.

The Supreme Court of Ohio held that city's rerouting of original pathway of drainage easement did not constitute a taking of property owners' drainage easement over city property, and therefore property owners were not entitled to mandamus to compel city to initiate eminent domain proceedings. Easement provided property owners with the right to construct and maintain a drainage tile, but provided city with right to fix the line and depth of the drainage tile, and the rerouted pipe still accomplished purpose of draining water from the property owners' property into a creek.