

Bond Case Briefs

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EMINENT DOMAIN - OREGON

State, ex rel. Dept. of Transp. v. Alderwoods (Oregon), Inc.

Court of Appeals of Oregon, En Banc. - September 17, 2014 - P.3d - 2014 WL 4823607

In connection with highway project the Oregon Department of Transportation brought a condemnation action against landowner to acquire land that abutted the highway. The project involved the reconstruction of the sidewalk and the elimination of curb cuts and driveways that had allowed vehicular access from property to the highway.

Before trial, the trial court granted the state's motion *in limine* to exclude evidence of the diminution in the value of the land as a result of its loss of access to the highway. The court thereafter entered a general judgment awarding defendant just compensation of \$11,792. Defendant appealed the judgment and assigned error to the order granting the state's motion *in limine*.

The appeals court affirmed, holding that the denial of access resulting from the elimination of the curb cuts and driveways constituted a denial of access to promote the efficient and safe use of the highway, that is, a regulatory restriction on access to the highway to promote its use as a highway and, consequently, that the denial of access as a result of those restrictions did not constitute a taking of the access for which compensation would be due.

"In summary, the state condemned defendant's access rights in the context of a project that would—and did—result in a regulatory denial of access to Highway 99W to promote the safe and efficient use of the highway as a highway. Whatever the measure of damages could be in those circumstances, it is not the diminished value of the land resulting from the loss of access to Highway 99W because, as a result of the regulatory elimination of the curb cuts and driveways, the property has no lawful access to Highway 99W irrespective of the condemnation of the access to the highway. As the trial court correctly concluded, evidence addressed to a measure of damages based on the loss of access was irrelevant. I conclude, therefore, that the trial court's judgment should be affirmed."