

# **Bond Case Briefs**

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## **INVERSE CONDEMNATION - LOUISIANA**

### **St. Charles Land Co. II, L.L.C. v. City of New Orleans ex rel. New Orleans Aviation Bd.**

**Court of Appeal of Louisiana, Fifth Circuit - December 23, 2014 - So.3d - 14-101 (La.App. 5 Cir. 12/23/14)**

The issue in this inverse condemnation case concerned the amount of compensation due Landowners as a result of the taking of their land by the New Orleans Aviation Board (NOAB). On appeal, Landowners challenged the trial court's judgment finding the amount of just compensation owed by NOAB for taking the subject property to be \$30,740.00.

The trial court heard testimony from the Landowner's appraisers, both of whom valued the property at approximately \$1.5 million. One of NOAB's appraisers valued the property at approximately \$25,000 and the other at approximately \$500,000.

The biggest discrepancy between the testimonies was NOAB's appraisers valued the property as "wet," or undeveloped and outside levee protection, and Landowner's appraisers both valued the property as "high and dry," or cleared and filled and within the protection of a levee system.

In its reasons for judgment, the trial court found the subject property was unimproved wetlands and canal bottom that was outside any hurricane protection system at the time of the taking. It noted the Landowners had presented no competent evidence that the 8.08 acres would have been included in the Army Corps of Engineers' planned hurricane protection system for St. Charles Parish. Conversely, the trial court found NOAB demonstrated that it anticipated providing and ultimately provided hurricane protection for the runway extension, which included the 8.08 acres, at its own expense.

The trial court also concluded that had the 8.08 acres not been included in the runway extension project, the property would not have qualified for a permit to allow development of the wetlands. The trial court further determined the Landowners were not entitled to benefit from any increase in value to the property resulting from the proposed runway project or from any improvements made by NOAB.

The trial court concluded the property should be valued in its condition at the time of the taking, which it determined to be unimproved, unprotected wetlands and canal bottom.

The appeals court found that the trial court committed manifest error in valuing the property at issue as unimproved wetlands and canal bottom outside the levee protection system, or "wet."

The first step in valuing appropriated land is to determine the highest and best use of the property. the current use of the property is presumed to be the highest and best use. However, the landowner may overcome this presumption by proving a different highest and best use based on a potential future use and, in this case, the Landowners had shown that the future use of the property was "high and dry."

Because it found that the trial court was manifestly erroneous in valuing the appropriated property as “wet,” the appeals court conducted a *de novo* review of the record to determine the amount of just compensation owed by NOAB.

The appeals court valued the property at \$497,580.00, agreeing with the appraiser who was instructed by NOAB to value the property as “high and dry.” With this assumption that the property was “high and dry,” that appraiser determined the highest and best use of the subject property was light industrial or commercial property. He explained that according to the Department of Transportation and Development and airport regulations, the land must be appraised without giving any consideration to the existence of the airport. After considering several comparable sales, he concluded that the value of the 8.08 acres as “high and dry” was \$563,000.00.

The appeals court also increased the award of attorneys fees to 25% of the compensation owed to the Landowners.