

# **Bond Case Briefs**

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## **INVERSE CONDEMNATION - NEBRASKA**

### **6224 Fontenelle Boulevard, L.L.C. v. Metropolitan Utilities District**

**Court of Appeals of Nebraska - May 5, 2015 - N.W.2d - 22 Neb.App. 872**

Metropolitan Utilities District installed a gas regulator station in the public right-of-way in front of home. Homeowner brought an inverse condemnation proceeding alleging that MUD had engaged in a taking which caused damage to the property through the installation of a “dangerous, obnoxious, and unsightly” gas regulator station.

The District Court granted MUD’s motion for summary judgment and homeowner appealed.

The Court of Appeals noted that this case featured a question of first impression, due to the fact that the homeowner had alleged an inverse condemnation action where there had been no physical intrusion or taking of its property, but only a damaging of the property by virtue of a loss of value to the property. “Thus, we ask, In an inverse condemnation action, must there be an actual physical taking or invasion of the landowner’s property?”

The court concluded that, in an action for inverse condemnation due to a governmental taking or damaging of a landowner’s property without the benefit of condemnation proceedings, actual physical construction or physical damaging is not necessary for compensation. As such, the district court erred, as a matter of law, in determining that the homeowner was not entitled to the benefit of inverse condemnation proceedings based on there being no actual taking or physical invasion of the property.

However, the court also found that a diminution in property value alone was not a taking or damaging of the property, but, instead, is a measure of just compensation when such taking or damaging is otherwise proved.