

Bond Case Briefs

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EMINENT DOMAIN - NEW HAMPSHIRE

Kingston Place, LLC v. New Hampshire Department of Transportation

Supreme Court of New Hampshire - May 22, 2015 - A.3d - 2015 WL 2437609

Landowner brought declaratory judgment and inverse condemnation action against Department of Transportation (DOT), alleging that DOT's long delay in taking a portion of landowner's property had created cloud on petitioner's title. The Superior Court granted summary judgment to DOT. Landowner appealed.

The Supreme Court of New Hampshire held that:

- Vote by special committee, determining that there was an occasion to lay out proposed limited access highway, was not a vote by a commission to acquire property through condemnation proceedings, and therefore vote did not trigger application of statute requiring that a condemnor provide notice of its offer to purchase property to condemnee within a reasonable time following vote, and
- Any delay by DOT did not constitute a taking that would support an inverse condemnation action.

Vote by special committee of Department of Transportation (DOT), determining that there was an occasion to lay out proposed limited access highway, was not a vote by a commission to acquire property through condemnation proceedings, and therefore vote did not trigger application of statute requiring that a condemnor provide notice of its offer to purchase property to condemnee within a reasonable time following vote, despite argument that plans for proposed limited access highway included a drainage easement on landowner's property. Vote was merely by a special committee and was only the first step in the two-step process for the commission itself to vote on whether to acquire property.

Any delay between vote of special committee of the Department of Transportation (DOT) and a vote by a DOT commission to initiate eminent domain proceedings to acquire portion of landowner's property did not constitute a taking, as could support landowner's inverse condemnation action, despite argument that delay impacted ability of existing structures on property to be expanded and precluded landowner's ability to construct an additional building. Such delay alone did not amount to an invasion of property or deprivation of use and enjoyment of property.