

Bond Case Briefs

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EMINENT DOMAIN - WISCONSIN

Hoffer Properties, LLC v. State, Dept. of Transp.

Supreme Court of Wisconsin - February 4, 2016 - N.W.2d - 2016 WL 418826 - 2016 WI 5

Landowner sought judicial review of amount of compensation provided by Department of Transportation (DOT) for elimination of property's direct connection to state highway. The Circuit Court granted partial summary judgment to DOT. Landowner appealed. The Court of Appeals affirmed. Landowner filed petition for review, which was granted.

The Supreme Court of Wisconsin held that:

- Replacement of direct highway access with circuitous access was exercise of police power not compensable under eminent domain statute, and
- Diminution in value based on loss of direct access points could not be included in compensation for taking of land.

After a valid controlled-access designation of a highway has been made by the Department of Transportation (DOT), the DOT may change an abutting owner's access to the highway without compensation, pursuant to the controlled-access highway statute, in whatever way it deems necessary and desirable, as long as it provides other access that does not deprive the abutting owner of all or substantially all beneficial use of the property; after a valid controlled-access designation is made, the abutting owner's rights are curtailed—and the DOT subsequently acts—pursuant to a duly authorized exercise of the police power.

Replacement of abutting landowner's direct access points to highway with circuitous access, following designation of highway as controlled-access by Department of Transportation (DOT), was done pursuant to exercise of police power duly authorized by the controlled-access highway statute, and thus diminution in value of property due to loss of direct access was not compensable under eminent domain statute. DOT validly designated highway as controlled-access, upon that designation, landowner lost its right to be compensated under eminent domain statutes for a change to existing access resulting in circuitry of travel, landowner's right of access was curtailed to the controlled right to access, DOT determined it was necessary or desirable to change landowner's access to highway, and DOT provided alternate access to property.

Diminution in value of abutting landowner's property based loss of direct access points to highway following by designation of highway as controlled access by Department of Transportation (DOT) could not be included in compensation for DOT's taking of .72 acres of landowner's property, which did not contain direct access points. Landowner did not lose direct access points to highway because of taking of land, but rather it lost its direct access points due to DOT's decision to restrict access to the highway as part of another highway's relocation project, two separate acts occurred, namely the taking of the land and the elimination of the direct access points, and diminution in value was not consequence of taking of land.

