

Bond Case Briefs

Municipal Finance Law Since 1971

EMINENT DOMAIN - KANSAS

Creegan v. State

Supreme Court of Kansas - March 24, 2017 - P.3d - 2017 WL 1101774

Property owners in subdivision brought inverse condemnation action against State and Kansas Department of Transportation (KDOT), seeking compensation for KDOT's violation of restrictive covenants burdening subdivision property.

The District Court granted summary judgment in favor of State and KDOT. Property owners appealed. The Court of Appeals reversed. KDOT petitioned for review, which was granted.

The Supreme Court of Kansas held that:

- As matter of first impression, KDOT's nonconforming use of its subdivision parcels in violation of restrictive covenant running with subdivision land that required property to be used for single-family residence purposes constituted a "taking" under the Fifth Amendment of property owners' interests in real property, and
- District Court would be required on remand to determine the amount of just compensation due to property owners.

The violation of a restrictive covenant running with subdivision land by a party with the power of eminent domain is a compensable taking of a private property interest in real estate possessed by an owner of a dominant subdivision parcel, and that owner may sue in inverse condemnation.

Kansas Department of Transportation's (KDOT) nonconforming use of its subdivision parcels in violation of restrictive covenant running with subdivision land that required property to be used for single-family residence purposes constituted a "taking" under the Fifth Amendment of interests in real property possessed by property owners of dominant subdivision parcels. KDOT's nonconforming use extinguished owners' restrictive covenant as to those parcels and would continue to do so as long as KDOT owned the parcels, and owners were deprived of all economic value of their right of control under the covenant.

District Court would be required on remand to determine the amount of just compensation due to property owners in inverse condemnation action for Kansas Department of Transportation's (KDOT) taking of owners' interests in real property through its nonconforming use of its subdivision parcels in violation of restrictive covenant that required subdivision property to be used for single-family residence purposes. District court would be required to determine amount of compensation for any qualifying damage caused to owners' property by the nonconforming use and the value of the right of legal control over the use of KDOT's parcels that owners involuntarily forfeited.