

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **EMINENT DOMAIN - HAWAII**

### **Leone v. County of Maui**

**Supreme Court of Hawai'i - October 16, 2017 - P.3d - 2017 WL 4604836**

Landowners brought action against county claiming inverse condemnation and equal protection and due process violations, and seeking punitive damages.

The Circuit Court granted county's motion to dismiss. Landowners appealed and the Intermediate Court of Appeals vacated. After a jury trial on remand, the Circuit Court entered judgment in favor of county. Landowners appealed, county cross-appealed, and county's application for transfer to the Supreme Court was granted.

The Supreme Court of Hawaii held that:

- Property value was a relevant factor for analysis of whether land had economically viable uses;
- Real estate appraiser was qualified to opine as expert on economically beneficial use;
- Regulations that leave land in its natural state do not always constitute a taking;
- Shifting burdens of production regarding economically beneficial use of property did not apply;
- A jury is not required to be informed on the effect private restrictive covenants have on a regulatory takings analysis; and
- Whether land retained some economically beneficial use was for jury.

Property value was relevant factor for analysis of whether land had economically viable uses, and therefore testimony from real estate appraiser regarding investment use of land was admissible in landowners' regulatory taking action against county; even though property value could not have been sole focus of economically viable use inquiry, evidence that landowners could have waited for land to increase in value was not precluded, and trial court gave jury instruction explaining that whether land had economically beneficial use did not turn on whether land had value.

Real estate appraiser was qualified to opine as expert on economically beneficial use in landowners' regulatory taking action against county, despite contention that appraiser's expertise was in value rather than use of land; appraiser had been working as appraiser for more than 35 years, appraiser had to determine highest and best use of properties he evaluated as part of his work, and appraiser had conducted highest and best use test in connection with thousands of properties.

A regulation could potentially require land to be left substantially in its natural state and still not be considered a regulatory taking; regulations that leave land in its natural state do not always constitute a taking.

Shifting burdens of production regarding economically beneficial use of property did not apply to landowners' regulatory taking action against county, and therefore jury instruction on shifting burdens was not warranted; case was tried by jury, rather than by court, and instruction on shifting burdens would have confused jurors.

The existence of private restrictive agreements cannot saddle the government with liability in a

takings analysis; at all times in a takings analysis, it is solely the government action that must be evaluated.