

Bond Case Briefs

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EMINENT DOMAIN - NEBRASKA

Douglas County School District No. 10 v. Tribedo, LLC

Supreme Court of Nebraska - November 6, 2020 - N.W.2d - 307 Neb. 716 - 2020 WL 6533474

Landowner sought review of board of appraisers' award of \$2.6 million for school district's condemnation of approximately 43 acres of landowner's 74-acre tract, which landowner planned to develop into a mixed-use development, for a new high school site.

The District Court entered judgment upon jury verdict awarding landowner \$4.6 million in just compensation. School district appealed.

The Supreme Court held that:

- Trial court acted within its discretion in admitting expert testimony regarding diminution of market value to remaining property;
- Any error in trial court's refusal to give proposed jury instruction relating to remaining property did not prejudice school district;
- Sufficient evidence supported jury's \$4.6 million award; and
- Trial court acted within its discretion in awarding landowner \$591,000 in attorney fees.

Trial court acted within its discretion in admitting expert testimony of developer's real estate appraisers regarding diminution of market value to developer's remaining property following the taking of portion of its 74-acre tract for new high school site, where experts detailed numerous elements that influenced their valuations, including dirt fill and leveling costs, and both appraisers testified that their references to damages related to a reduction in fair market value.

Any error in trial court's refusal to give condemnor's proposed jury instruction relating to remaining property following the taking, which stated that the "costs to cure" could be considered only if they had an impact on fair market of remaining property, did not prejudice condemnor, even though instruction was a correct statement of law, where substance of proposed instruction was consistent with instructions the court gave on measure of damages to remaining property.

Sufficient evidence supported jury's total award of \$4,625,967 as compensation for both the taken property and diminution to fair market value of the remainder, for the condemnation of approximately 43 acres of a 74-acre tract that condemnee planned to develop into a mixed-use development instead of new high school site that was the reason for the taking, where condemnee's first real estate appraiser valued total compensation at \$5,890,000, condemnee's second appraiser valued total damages at \$7,022,000, and condemnor's real estate appraiser valued total damages at \$2,601,600.

Trial court acted within its discretion in awarding condemnee \$590,924.89 in attorney fees in condemnation proceeding resulting in judgment of \$4,625,967 for condemnee, where condemnee offered affidavits of three members of State Bar who testified that they reviewed fees charged by condemnee's attorneys, that they received a detailed summary of work provided by counsel, and that

they found requested fees to be reasonable, and court provided detailed explanation for fee award, including an acknowledgment that judgment exceeded condemnation award by more than 75%, that judgment was believed to be one of largest jury awards in a condemnation matter in a reported decision in state, that litigation was fairly complex, and that litigation persisted for over two and one-half years.