

# **Bond Case Briefs**

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## **EMINENT DOMAIN - PENNSYLVANIA**

### **Pileggi v. Newton Township**

**Commonwealth Court of Pennsylvania - January 5, 2021 - A.3d - 2021 WL 29266**

Landowners brought inverse condemnation against township alleging de facto taking arising from township's denial of landowners' submissions for alternative sewage treatment facility that was not permitted under township's official sewage facilities plan which was approved by Department of Environmental Protection (DEP) or under sewage disposal ordinance.

The Court of Common Pleas granted township's preliminary objections and dismissed. Landowners appealed.

The Commonwealth Court held that:

- Township acted pursuant to its police power and not power of eminent domain;
- Township did not engage in a regulatory taking; and
- Landowners' claims of unreasonable and discriminatory actions by township and DEP were impermissible collateral attacks.

Township acted pursuant to its police power and not power of eminent domain in denying landowners' submissions for alternative sewage treatment facility that was not permitted under plain terms of township's official sewage facilities plan and sewage disposal ordinance, and therefore no de facto taking occurred, even if a member of township's planning commission stated that the undesired result of all of landowners' lots becoming buildable would occur if landowners put in sewage system, where there was no evidence that impetus for regulations was a concern for visual appearance of township's sewer infrastructure, and township's plan and ordinance detailed steps to obtain a permit to construct on-lot sewage system and explained which sewage facilities were acceptable.

Township did not engage in a regulatory taking in denying landowners' submissions seeking alternative sewage treatment facility that was not permitted under plain terms of township's official sewage facilities plan and sewage disposal ordinance; landowners' interest in obtaining sewer service was nothing but an inchoate interest in the conferral of a benefit to enhance market value and, assuming that landowners would not obtain approval of desired alternative treatment plan, it was possible that landowners could still use a community on-lot or an individual on-lot sewage system if they decided to pursue such a course of action.

Landowners' assertions, in inverse condemnation action, that township and Department of Environmental Protection (DEP) engaged in unreasonable, arbitrary, and discriminatory actions in handling or disposing of landowners' submissions seeking approval of proposed alternative sewage treatment facility were impermissible collateral attacks on validity of administrative decisions; any error in that regard should have been pursued through the administrative appeal process.

