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EMINENT DOMAIN - INDIANA

Town of Linden v. Birge

Court of Appeals of Indiana - April 18, 2022 - N.E.3d - 2022 WL 1132791

Property owners brought inverse condemnation action against town, county, and county officials after improvements to an existing regulated agricultural drain to alleviate flooding issues in town and surrounding areas caused flooding on their property.

The Circuit Court granted town's motion to dismiss. The Court of Appeals reversed and remanded. On remand, the Circuit Court entered an order finding that there had been a permanent physical invasion of owners' property and set matter for determination of damages. Defendants filed interlocutory appeal.

The Court of Appeals held that:

- Temporary but frequent flooding of landowners' property did not constitute a per se taking;
- Evidence regarding highest and best use of landowners' property was irrelevant for purposes of establishing whether a taking had occurred; and
- Sufficient evidence supported finding that flooding on landowners' property was caused by improvements to drain.

Temporary but frequent flooding of landowners' property, allegedly caused by improvements to regulated agricultural drain that ran through pre-existing drainage easement on landowners' property in order to alleviate flooding issues in town and surrounding areas, did not constitute a per se taking as a permanent physical invasion of landowners' property; instead, whether temporary but frequent flooding of landowners' property was compensable taking was required to be analyzed under expanded *Penn Central* factors.

Evidence regarding highest and best use of landowners' property was irrelevant for purposes of establishing whether a taking had occurred, and thus was inadmissible in landowners' inverse condemnation action against town, county, and county officials arising after improvements to an existing regulated agricultural drain that ran through pre-existing drainage easement on landowners' property to alleviate flooding issues in town and surrounding areas allegedly caused flooding on landowners' property.

Sufficient evidence supported finding that flooding on landowners' property was caused by improvements to regulated agricultural drain that ran through pre-existing drainage easement on landowners' property, in inverse condemnation action against town, county, and county officials, although defendants presented evidence and expert testimony that flooding was caused by increased rainfall, topology of landowners' farmland, and failure of landowners to connect their private lateral drains to improved drain; landowners presented evidence that they had little issue with flooding prior to improvements to the drain, and landowners' expert witness testified that drain, as reconstructed, caused flooding issues on landowners' property.

In determining whether frequent flooding of landowners' property as an alleged result of

improvements to regulated agricultural drain that ran through pre-existing drainage easement on landowners' property in order to alleviate flooding issues in town and surrounding areas constituted a taking, trial court was to limit its consideration to the impact of the flooding on those portions of landowners' property that were outside of pre-existing 75-foot drainage easement that was created by statute and needed to specify the land affected if a taking was determined.

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