

# **Bond Case Briefs**

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## **EMINENT DOMAIN - INDIANA**

### **City of Carmel v. Barham Investments, LLC**

**Court of Appeals of Indiana - October 30, 2023 - N.E.3d - 2023 WL 7119594**

Following agreed order of appropriation and appointment of appraisers in eminent domain proceeding in which city sought to convert street intersection into a roundabout interchange, city filed motion for partial summary judgment, arguing that commercial landowner was not entitled to compensation for its loss of access to road.

The Circuit Court denied the motion and, following a jury trial, entered judgment on jury verdict awarding landowner \$2.4 million in damages. City appealed.

The Court of Appeals held that:

- Easement did not grant landowner any right to curb-cut access to road from commercial property;
- As a matter of first impression, city's acquisition of road in prior condemnation proceeding extinguished commercial landowner's easement rights in road to access commercial property; and
- Landowner was not entitled to compensation for city's closure of access to road.

Commercial landowner's easement "over, across and under" road "for pedestrian and vehicular traffic, sewer lines, water lines, fire protection lines and other utilities" did not grant landowner any right to curb-cut access to road from commercial property, and thus city's removal of curb-cut access as part of eminent domain proceeding did not substantially interfere with easement and was not compensable.

City's acquisition of road in prior condemnation proceeding extinguished commercial property owner's easement rights in road to access commercial property, and thus there was no easement to take in city's current eminent domain proceeding in which city sought to convert street intersection into a roundabout interchange.

Commercial landowner was not entitled to compensation for city's closure of access to road when using eminent domain to convert road intersection into a roundabout interchange, where landowner maintained sufficient access to another road to run its business, and roundabout project did not interfere with two other access points to the property.