

Bond Case Briefs

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EMINENT DOMAIN - INDIANA

Moriarity v. State

Court of Appeals of Indiana - November 15, 2023 - N.E.3d - 2023 WL 7635638

Property owners brought inverse-condemnation action against State, Natural Resources Commission, and Department of Natural Resources (DNR), claiming DNR's order forcing them to modify or remove their illegal dam to comply with the Dam Safety Act constituted a regulatory taking that entitled them to just compensation.

The Circuit Court dismissed complaint. Property owners appealed.

The Court of Appeals held that:

- Order of DNR requiring property owners to modify or remove illegal dam did not constitute compensable per se regulatory taking, and
- DNR's order did not constitute regulatory taking under the Penn Central factors.

Order of Department of Natural Resources (DNR) requiring property owners to modify or remove their illegal dam on their property to comply with Dam Safety Act did not constitute a compensable per se regulatory taking, even if property owners lost all economic productive use of their property; property owners never possessed right to build illegal dam and, as a result, were not entitled to compensation because DNR forced them to remove or modify it.

Order of Department of Natural Resources (DNR) requiring property owners to modify or remove their illegal dam on their property to comply with Dam Safety Act did not constitute regulatory taking under Penn Central factors, and thus property owners were not entitled to compensation under takings clauses of state constitution and Fifth Amendment, even if dam's removal would cause property owners significant economic damages and even if they expected that dam would create thriving ecosystem of fish and wildlife; property owners could not have reasonably expected that they had right to build dam that violated Act, and DNR was acting to promote common good and ensure public safety from risk that potentially deficient dam would fail and flood nearby landowners.