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EMINENT DOMAIN - FEDERAL

[Collective Edge, LLC Ferg's Sports Bar & Grill, Inc.](#)

United States Court of Federal Claims - May 16, 2024 - Fed.Cl. - 2024 WL 2227724

Landowners adjacent to and underlying railroad easement brought separate inverse condemnation actions against the United States after Surface Transportation Board (STB) issued notice of interim trail use or abandonment (NITU) that resulted in railbanking and an easement for interim trail use, and the cases were consolidated.

After the government conceded liability, landowners sought damages for the diminished value of their land attributable to the new recreational trail use easement which trumped their prospective fee simple ownership upon the extinguishment of the historical railway easement. The United States thereafter filed a motion for reconsideration with respect to the nature and extent of the alleged Fifth Amendment taking, the parties filed cross-motions for partial summary judgment related to the size of one parcel of land vis-à-vis the railway easement, and a trial was held on damages.

The Court of Federal Claims held that:

- Execution of trail use agreement and transfer of ownership of railway easement through a duly-recorded quitclaim deed during the pendency of NITU constituted a taking, even if STB years later decided to reopen the matter years afterward and rescind its authorization post hoc;
- Court would discount first property owner's appraisal of parcel in the "before" condition by 15%, while accepting proffered property valuation in the "after" condition;
- Court would discount second property owner's appraisal of restaurant parcel in the "before" condition by 10%, while accepting proffered property valuation in the "after" condition;
- Court would adopt second landowner's appraiser's opinion as to parking lot property's "before" and "after" value and award \$1.361 million;
- Third landowners failed to establish ownership of easement area;
- Highest and best use of third landowners' property was consistent with permissible "grandfathered" uses at sites zoned industrial traditional; and
- Court would value third landowners' property by taking the Government's appraisal, multiplying it by 300% to arrive at the "before" figure, and then using the Government's concession as to the value of the remainder property.