

RIVERWALK BRIDGE OBSCURED NEIGHBORS' VIEW

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Generally, a property owner whose property abuts a lake, river, or stream possesses certain riparian rights associated with ownership of such a property. The term "riparian rights" indicates a bundle of rights that turn on the physical relationship of a body of water to the land abutting it. Riparian rights are special rights pertaining to the use of water in a waterway adjoining the owner's property. Riparian rights of the owners of lands fronting navigable waters are derived from common law as modified by statute.

In the case of *Center Townhouse Corporation v. City Of Mishawaka* (Ind.App. 2/20/2008), Center Townhouse Corporation ("CTC") and individual townhome owners ("landowners") brought an action against the City of Mishawaka and its Parks and Recreation Board in response the planned construction of a pedestrian bridge connecting a Lincoln Park and Kamm Island. In their complaint, plaintiffs claimed their riparian rights included a view of the river which was obstructed by the pedestrian bridge. As a result, plaintiffs claimed they were entitled to compensation for the loss of view caused by the city's construction project.

FACTS

In May 1999, a redevelopment plan for the "Riverwalk Project" was submitted to the city of Mishawaka, Indiana. The plans included the construction of a pedestrian footbridge across the St. Joseph River to connect city-owned Lincoln Park to city-owned Kamm Island. Kamm Island is located entirely within the St. Joseph River and is separated from the south shore of the river by a channel.

The private landowners each owned a condominium unit which was situated at an angle along the St. Joseph River and the channel. CTC is the condominium association owned a condominium building and the common area surrounding the townhomes. Lincoln Park is immediately west of the CTC common area property.

In September 2002, CTC and the landowners filed a complaint alleging construction of the pedestrian bridge between Lincoln Park and Kamm Island constituted inverse condemnation of their riparian rights. In December 2003, the city proceeded with the construction of a bridge approximately 140 feet long, seven feet high, twelve feet wide, and roughly parallel to the waterfront side of the condominium building.

In February 2004, the trial court determined that the city had taken the landowners' riparian rights without just compensation as required by the Indiana and United States Constitutions. The order included the following language:

Considering all the rights of riparian owners and all the riparian rights of these plaintiffs, there has been a substantial loss in value based upon the loss of view and the loss of free use and enjoyment of the property, including the right to

ingress and egress, the right to construct a pier, wharf or boat dock and the right to boat and fish in the river.

The city filed a motion to reconsider, arguing “not only that no taking had occurred, but also that Indiana does not recognize a right to a view as part of the bundle of riparian rights belonging to a landowner along a river.” The trial court granted the motion to reconsider in part, changing only its ruling with respect to the existence of a right to a view.

Thereafter, the trial court directed selected appraisers to assess the amount of just compensation owed to the landowners. The appraisers determined that the damage to the landowners for the loss of their riparian rights was \$144,500. Following a jury trial on the issue of damages for the taking by the city, the jury returned a verdict of zero damages. (Perhaps the jury believed the Riverwalk may have actually increased the value of the condominium and townhomes.) The landowners appealed the zero damage award. The city appealed the determination that there was a taking of the landowners' riparian rights.

TAKINGS

As noted by the appeals court, “[b]oth the Indiana and United States Constitutions prohibit the taking of private property for a public purpose without just compensation.” Further, the appeals court noted that “[t]he term ‘property’ as used in the Takings Clause includes the entire group of rights inhering in a citizen's ownership.” In general, the court found “riparian rights are property rights that cannot be constitutionally taken without just compensation.”

A taking or destruction of, or any actual and material interference with, riparian or other water rights that causes special injury to the owner is grounds for the recovery of compensation under eminent domain provisions.

Moreover, the appeals court found that private property rights associated with ownership of waterfront property “are protected by the Takings Clause from governmental invasion.”

A riparian landowner does not own the water in a stream that runs along his property, but he does own the right to the reasonable use of the stream as part of the title to his real estate. Where the state makes an improvement that destroys riparian rights, the owners are entitled to compensation for the loss suffered.

In this particular instance, the trial court had determined that the city's construction of the pedestrian bridge had interfered with the owners' riparian rights and “caused a loss in value to the property.” The city challenged this determination. In so doing, the city claimed the trial court had erred in finding any interference with plaintiffs' property because:

(1) the bridge was built entirely on City-owned land, and, therefore, the city did not physically take any real property; (2) the bridge did not substantially interfere with landowners' riparian rights; and (3) the bridge did not diminish the value of landowners' properties.

As a result, the city claimed "the evidence was insufficient to establish that "an actual taking has occurred."

In determining whether "the bridge connecting Lincoln Park to Kamm Island effected a taking of landowners riparian rights," the appeals court noted that the city itself "may have admitted that, at least to some degree, the bridge adversely affected landowners' riparian rights." Specifically, the findings of fact by the trial court stated that "the city admitted that the bridge was an intrusion and occupation of the area of the river where the plaintiff [sic] have riparian rights that can no longer be fully exercised."

INVERSE CONDEMNATION

On appeal, the primary issue before the court was "[w]hether riparian rights in Indiana include the right to an unobstructed view of the body of water that created those riparian rights." The private landowners contended that "the judgment for the city should be reversed and the case remanded for a new trial on damages in which the concept of loss of view is included as a compensable element of damages." Specifically, the private landowners asserted that the city's bridge project gave to rise to an "inverse condemnation claim" requiring compensation for their alleged loss of riparian rights, i.e., the loss of "their view of the Channel and the St. Joseph River."

As defined by the appeals court, inverse condemnation is "a process provided by statute that allows individuals to be compensated for the loss of property interests taken for public purposes without use of the eminent domain process." As described by the court, a landowner's inverse condemnation claim is reviewed in two stages to determine whether the government has violated "the constitutional prohibition of the taking of property without just compensation."

The first stage determines whether a compensable taking has occurred. At this stage the landowner must show that he has a property interest that has been taken for a public use without having been appropriated pursuant to eminent domain laws. If the trial court, acting as finder of fact in the first stage, determines that a taking has occurred, the matter proceeds to the second stage, at which the court appoints appraisers, and damages are assessed.

According to the appeals court, "[o]ne who suffers a 'mere inconvenience' likely possesses an extraordinarily weak takings claim." On the other hand, the court noted that "[a] taking can occur where real property is not actually taken," but there is a "substantial interference with private property which destroys or impairs one's free use and enjoyment of the property or one's interest in the property."

Whether the interference is substantial is a factual question, which must be resolved in each case by the trier of fact [i.e., jury]. A principal consideration in determining whether a taking has occurred is whether the impact of government action "has interfered with distinct investment-backed expectations."

In this particular instance, the landowners claimed the “right to a view” was included in their riparian rights and the pedestrian bridge substantially interfered with their enjoyment of their view of the river from their property. According to the appeals court, riparian rights in Indiana included “the right to a reasonable use of the water for general purposes such as boating, domestic use, etc.” State law, however, defined riparian rights to include building, maintaining and enjoying “a pier, wharf, dock, or harbor” in a navigable stream bordering the owner’s land. According to the appeals court, it was “not clear” whether this state law was intended as “a complete definition of riparian rights or is meant only as a limitation on what types of obstructions a riparian owner may place in a stream or river.”

As noted by the appeals court, “some courts in other states have recognized a riparian right to an unobstructed view as a legally protected use.” In so doing, the court cited a Florida decision which had held the loss of view of waterway from landowner's property caused by government bridge was compensable, even though none of landowner's property was taken by bridge. *Lee County v. Kiesel*, 705 So.2d 1013 (Fla. Ct. App. 1998). Similarly, a Mississippi court had determined that riparian rights included an unobstructed view and ingress and egress to and from the water. *Treuting v. Bridge and Park Comm'n*, 199 So.2d 627, 633 (Miss. 1967). Also, in a condemnation action, a New Jersey court had found loss of ocean view and access were elements for which damages could be awarded. *Ocean City v. Maffucci*, 326 N.J. Super. 1, 740 A.2d 630 (N.J. Super. 1999). Moreover, a Georgia court had allowed a claim against the operators of a marina because the marina's docks obstructed landowners' view of water. *DBL, Inc. v. Carson*, 262 Ga. App. 252, 585 S.E.2d 87 (Ga. Ct. App. 2003).

While Indiana courts “had not expressly done so,” the landowners in this case had urged the appeals court to “follow suit and hold that, in Indiana, riparian rights include the right to an unobstructed view of the water creating those riparian rights such that a loss of view is compensable in an inverse condemnation action.” The appeals court, however, was unwilling to extend riparian rights to include an unobstructed view of the water.

According to the appeals court, it would be “inappropriate, if not impossible” for the court to decide “the scope of a landowner's view (how high, how far, from what vantage point, etc.), and, if obstructed in some way for some reason, determining how much obstruction is too much” In the opinion of the appeals court, “[t]he scope of a landowner's view, whether of the water or otherwise, is a policy decision best left to the legislative branch generally and the local zoning authorities specifically.” According to the appeals court, local zoning authorities are better able to “determine appropriate and reasonable setbacks, maximum height requirements, and the like, suitable to the plan or design of that particular region, area, or neighborhood.”

Those authorities, not an appellate court, should decide on proper views over and across neighboring properties and waterways, as they are in the best position to prescribe reasonable restrictions in order to protect people who have paid large sums of money in order to border Indiana's lakes, rivers, and streams. To determine the appropriate scope of an owner's view is beyond the role of this court.

JUNE 2008 LAW REVIEW

Even if we were to recognize a view of the water as a compensable property right, which we do not, we observe that the taking of that right would be subject to the same taking standard as any other property right: Does the loss of view result in "substantial interference with private property which destroys or impairs one's free use and enjoyment of the property or one's interest in the property?" Generally, a "mere inconvenience" is not sufficient.

Applying this reasoning to the facts of the case, the appeals court found that the landowners' loss of view affected by the pedestrian bridge "may not have been substantial" enough to result in a taking.

Here, according to the trial court's findings, the pedestrian bridge was 140 feet long, seven feet high, and twelve feet wide. While we do not have the benefit of a visual view of the building, according to the record before us, the condominium units were three stories tall. A court finding noted landowners could see over the proposed bridge from the "second or third stories" of their respective condominium units. Under these circumstances, if landowners' view was affected by the pedestrian bridge, the loss of view may not have been substantial.

As a result, the appeals court affirmed the judgment of the trial court in which the jury returned a verdict of zero damages for the landowners.