

No. 14-0428 *West Virginia Department of Transportation v. Newton*

FILED

May 13, 2015

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Justice Ketchum, concurring:

I am writing to point out to lawyers handling eminent domain cases that there is an exception to the rule that property is valued as of the date of taking. When there is a decrease in the value of the condemned property prior to the date of taking which is caused by the public improvement project, the decreases, in some instances, may be disregarded in determining just compensation.

In *Huntington Urban Renewal Authority v. Commercial Adjunct Co.*, 161 W.Va. 360, 242 S.E.2d 562 (1978) we held:

Any decrease, not of a general character, in the fair market value of real property prior to the date of valuation, caused by the public improvement for which such property is acquired, or by the likelihood that the property will be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, would be disregarded in any determination of the just compensation to be awarded the property owner for the property.