

# Ohio Court Rules Property Owner Can Recover Attorney Fees When Eminent Domain Case Is Dismissed by the Taking Authority

## By Jeremy S. Young

In the case of *N. Ridgeville v. Zilka*, 9th Dist. Lorain No. 23CA012047, 2024-Ohio-2468, Ohio's Ninth District Court of Appeals addressed the ability of a property owner in an eminent domain action to recover attorney fees where the appropriating authority voluntarily dismissed its petition to appropriate.

In *Zilka*, the City sought to acquire a portion of a property owned by Sharon Zilka for a roundabout project. When the parties were not able to agree on a voluntary conveyance, the City filed eminent domain proceedings.

Zilka moved to dismiss the case on the basis that the City's resolution authorizing the taking was defective. The City attempted to fix the issue and amended its petition. Zilka then moved to dismiss the amended petition, and in response the City voluntarily dismissed the case. Zilka then moved to recover her attorney fees based on the City's abandonment of the appropriation, and the court granted the motion.

Under Ohio Revised Code Section 163.21(A), an appropriating authority can abandon an eminent domain action where it has not yet taken possession of the property, but if it does so the court is required to enter judgment in favor of the property owner for any attorney fees, witness fees (including expert appraisal fees), and other expenses actually incurred in defending against the action.

On appeal in *Zilka*, the City argued that the trial court lacked jurisdiction to award attorney fees where the action had been voluntarily dismissed. The court of appeals rejected that argument, noting that "[w]hile a voluntary dismissal...generally divests a court of jurisdiction, a court may consider collateral issues not related to the merits of the action after a dismissal[, including] new collateral matters authorized by a statute or rule." The court held that this included an award of attorney fees under R.C. 163.21(A).

*Zilka* is consistent with the general rule that an appropriating authority in Ohio has the discretion to abandon a project without potential liability to a property owner up until the time the petition is filed.

### Jeremy S. Young

614.723.2030 | [jyoung@ralaw.com](mailto:jyoung@ralaw.com)

### Benjamin Chojnacki

216.377.1492 | [bchojnacki@ralaw.com](mailto:bchojnacki@ralaw.com)

### Edward L. Filer

312.582.1627 | [efiler@ralaw.com](mailto:efiler@ralaw.com)

### Stephen Funk

330.849.6602 | [sfunk@ralaw.com](mailto:sfunk@ralaw.com)

### William Hanna

216.377.1246 | [whannah@ralaw.com](mailto:whannah@ralaw.com)

### R. Todd Hunt

216.290.6062 | [rthunt@ralaw.com](mailto:rthunt@ralaw.com)

### Stephen D. Jones

614.723.2005 | [sjones@ralaw.com](mailto:sjones@ralaw.com)

**Michael Scotti**  
312.582.1605 | [mscott@ralaw.com](mailto:mscott@ralaw.com)

**Nick Ziepfel**  
513.748.1109 | [nziepfel@ralaw.com](mailto:nziepfel@ralaw.com)

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