



Measure of Damages

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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The normal measure of damages in an inverse condemnation case is the same as in any other condemnation case. ^[89] Where a permanent regulatory taking has occurred, the measure of damages is as previously discussed. Where a temporary taking occurs, the property owner is entitled to the value of the use of the property during the time of the temporary taking. ^[90] The value of the temporary use of property normally is measured by the difference in rental value resulting from the imposition of the regulation. ^[91] Some courts, however, have permitted the property owner to recover in excess of the rental value of the property based on the fair market value of the right to develop the property. ^[92]

Notes:

[89] *McKinney v. Smith County*, 1999 WL 1000887 (Tenn. App. 1999); *Shelby County v. Barden*, *supra*.

[90] *City of Tampa v. Ridner*, 852 So.2d 270 (Fla. App. 2003); *First English Evangelical Lutheran Church v. County of Los Angeles*, *supra*; *Yuba Natural Resources, Inc. v. United States*, 904 F.2d 1577 (Fed Cir. 1990); *Wheeler v. City of Pleasant Grove*, 896 F.2d 1347 (11th Cir. 1990) (Wheeler IV); *Wheeler v. City of Mt. Pleasant Grove*, 833 F.2d 267 (11th Cir. 1987) (Wheeler III); *Nemmers v. City of Dubuque*, 764 F.2d 502 (8th Cir. 1985); *Front Royal and Warren County Industrial Park Corp. v. Town of Front Royal*, 749 F.Supp. 1439 (W.D. Va. 1990).

[91] *Kimball Laundry Co. v. United States*, 338 U.S. 1, 69 S. Ct. 1434, 93 L.Ed. 1765 (1949); *Yuba Natural Resources, Inc. v. United States*, *supra*; *Front Royal and Warren County Industrial Park Corp. v. Town of Front Royal*, *supra*.

[92] *Wheeler v. City of Pleasant Grove*, *supra*, (Wheeler IV); *Nemmers v. City of Dubuque*, *supra*. See also *Corrigan v. City of Scottsdale*, 149 Ariz. 538, 720 P.2d 513 (1986) (discussing a variety of measures of damages for temporary takings).

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