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ACCO Unlimited Corp. v. Johnston, 611 N.W.2d 506 (Iowa 2000)

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The supreme court next turned to Stafford's assertion that Weaver interfered with his water rights. This allegation arose from the fact that Weaver made changes to an irrigation lateral that provided water to both parties' property. While the precise facts of the changes to the lateral are complicated, Stafford basically contended Weaver prevented him from receiving water. The court dismissed this argument as non-meritorious because Stafford produced no evidence of historic flow rate and because Stafford filled in the very ditch that would have received irrigation water from the pipe Weaver installed.

Because Stafford failed to provide evidence of a prescriptive easement or right-of-way by agreement, the supreme court affirmed the district court's decision that Stafford trespassed and that he demonstrated a willful disregard for Weaver's property rights by erecting a new fence and excavating a new ditch without Weaver's permission. In addition, the supreme court affirmed the denial of Stafford's negligent interference with water rights claim.

M. Elizabeth Lokey

IOWA

ACCO Unlimited Corp. v. Johnston, 611 N.W.2d 506 (Iowa 2000)

(holding a city's condemnation of property owner's land did not violate either the owner's procedural or substantive due process rights, or his equal protection rights).

Andrew Christenson ("Christenson") owned eighteen acres in Johnston, which he leased to ACCO Unlimited ("ACCO"), his solely owned corporation. The land resides within a "100-year floodplain," an area which has a one percent chance of flooding each year. The City of Johnston ("City") condemned Christenson's land in an effort to obtain federal flood relief from the Economic Development Administration ("EDA") following a massive flood in 1993. The EDA, as a condition to dispensing funds, required the City provide evidence that had it either acquired the Christenson property, obtained restrictive covenants, or rezoned it as a conservation district in order to ensure the land would not be developed. Christenson wanted to develop the land, and sought to have the condemnation nullified, arguing that development could have been discouraged by means other than condemnation.

Christenson filed suit against the City seeking a permanent injunction and declaratory relief. A condemnation commission awarded Christenson and ACCO damages for the taking of the land, the amount of which was subsequently increased upon Christenson's appeal. In the present equity action, the district court ruled in the City's favor. The City filed a motion to dismiss Christenson's appeal of

this action based on election-of-remedy. Christenson made three Constitutional arguments, all of which the court rejected.

Christenson first argued the condemnation violated his procedural due process rights because he could not have improved the land without a floodplain development permit, which the City could have simply denied. Further, he argued the condemnation was a condemnation for conservation purposes, and Iowa law expressly prohibits conservation easements. The court rejected this procedural due process argument reasoning that Christenson's argument assumed the City attempted to obtain a *de facto* conservation easement. Rather, the court found the City simply condemned the land for flood control purposes.

Christenson's substantive due process argument was similar. He argued, that instead of condemning the land, the City should have pursued city council resolution 94-72, under which the City would maintain the flood plain *status quo* by other measures, such as refusal to extend municipal services or restricting development permits. However, Iowa law grants cities the power of eminent domain, as long as such action both reasonably and necessarily is for public purposes. The court held the City condemned the property in order to maintain the floodplain and its water storage capacity, each of which was a reasonable and necessary public purpose.

Finally, Christenson contended the City denied him equal protection due to the disparate treatment between his land and that of another property located in the floodplain, which was not condemned. Because the case involved no fundamental right, the City's action needed only bear a rational relationship to the disparate treatment. While both properties were similarly situated for equal protection purposes, the owner of the non-condemned property agreed not to develop the land, an assurance Christenson did not give. Rather, Christenson intended to develop the property. Thus, the court concluded the City's decision to condemn his property bore a rational relationship to the city's interest in promoting flood control.

Adam B. Kehrli

Organic Techs. Corp. v. Iowa, 609 N.W.2d 809 (Iowa 2000) (affirming an administrative law judge's finding of a compost facility's water quality violations).

Beginning in 1992, Organic Technologies Corporation ("OTC") operated a composting facility in Warren County, Iowa. OTC composted yard waste and other organic waste materials. In June 1992, the Department of Natural Resources ("DNR") issued OTC a one-year developmental sanitary permit to experiment with compost enhancers. In May 1993, DNR issued OTC a permit for "storm water