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EMINENT DOMAIN - NEW JERSEY

Borough of Saddle River v. 66 East Allendale, LLC

Supreme Court of New Jersey - October 21, 2013 - A.3d - 2013 WL 5676872

Borough brought action to acquire property by authority of eminent domain to use as a public park. After a jury trial, the Superior Court entered judgment on verdict in favor of property owner in the amount of $5.25 million. Parties appealed and cross-appealed.

The Supreme Court of New Jersey held that:

- Trial court was required to hold a pretrial hearing to determine the admissibility of evidence regarding a zoning change affecting the property, and
- Owner's experts failed to establish foundation for opinions that zoning change was reasonably likely.

In this matter, the jury was allowed to hear evidence about the probability of a zoning change that should have been ruled on by the judge both in advance and outside of the jury's presence. Only if the court first determined that there was a reasonable probability that a zoning change would have been approved based on the standards governing such approval should the evidence have been presented to the jury for its consideration in connection with the jury's evaluation of just compensation. The evidence that the jury heard on the likelihood of the zoning change in issue here was not assessed properly in accordance with that standard, and the quality of the evidence that the jury was allowed to consider undermined the soundness of the jury's property valuation determination. The errors necessitate a new trial on the issue of just compensation

In an eminent domain condemnation action, during the jury's actual determination of a just compensation award that takes into account a premium based on the reasonable probability of a zoning change, the jury first must value the property in its current condition, considering the zoning at the time of the taking, which establishes the base value; second, the jury may consider the probability of the future zoning change or variance approval in determining the premium a buyer and seller would fix to the property, which premium is added to the base value and includes an assessment of the risk of the change occurring or being approved.

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