

Bond Case Briefs

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EMINENT DOMAIN - NEW YORK

Village of Haverstraw v. AAA Electricians, Inc.

Supreme Court, Appellate Division, Second Department, New York - February 26, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 01332

Village brought condemnation proceeding. The Supreme Court, Rockland County, after nonjury trial, awarded condemnee \$6,500,000 as just compensation for taking of its property. Condemnor appealed, and condemnee cross-appealed on ground of inadequacy.

The Supreme Court, Appellate Division, held that:

- Trial court was justified in concluding that subject property's highest and best use was for multi-family residential development, and
- Trial court did not err in valuing subject property on per-acre basis rather than on basis of how many units could be developed thereon.

In a case involving the taking of property, the measure of damages must reflect the fair market value of the property in its highest and best use on the date of the taking, regardless of whether the property is being put to such use at the time.

In a condemnation proceeding, where an increment is added to the value of vacant land to reflect its development potential, the specific increment which is selected and applied must be based on sufficient evidence and be satisfactorily explained. Moreover, it is necessary to show that there is a reasonable possibility that the property's highest and best asserted use could or would have been made within the reasonably near future, and a use which is no more than a speculative or hypothetical arrangement may not be accepted as the basis for a condemnation award.

A condemnee may not receive an enhanced value for its property where the enhancement is due to the property's inclusion within a redevelopment plan. Thus, for example, property zoned for industrial use should be valued in accordance with the industrial zoning designation which would apply if the redevelopment plan did not exist, for a condemnee is only entitled to compensation for what it has lost, not for what the condemnor has gained.

In condemnation proceeding, trial court was justified in concluding that subject property's highest and best use was for multi-family residential development and awarding condemnee \$6,500,000. Condemnee's appraiser sufficiently and credibly explained basis for his selection of comparable properties and relevant adjustments made to valuation of those properties, trial court did not improperly incorporate enhancement to subject property's value based on village's urban redevelopment plan, and trial court adequately explained its reasons for making changes to results presented in condemnee's appraisal.

In condemnation proceeding, trial court did not err in valuing subject property on per-acre basis rather than on basis of how many units could be developed thereon.

