

Bond Case Briefs

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EMINENT DOMAIN - MASSACHUSETTS

Rodman v. Com.

Appeals Court of Massachusetts, Norfolk - October 7, 2014 - N.E.3d - 2014 WL 4975948

Condemnees brought action against state, seeking to recover greater damages than pro tanto award. The Superior Court entered judgment requiring condemnees to repay difference between pro tanto award and lesser amount that was awarded by jury and issued order denying condemnees' motion for new trial. Condemnees appealed.

The Appeals Court held that:

- Evidence as to property's potential uses, which included hotel, manufacturing, and warehouse uses, was admissible;
- Trial court's error of excluding evidence as to property's potential uses was not harmless;
- Proper measure of damages was whole subdivision approach, not individual lot method; and
- Pro tanto award was inadmissible.

While a judge in an eminent domain proceeding may infer that a property owner's failure to develop the property in accordance with what the property owner now claims to be its best and highest use suggests that the potential use was not reasonably likely, a judge is not bound to that inference where other evidence suggests that a reasonable buyer would recognize the reasonable likelihood of the potential use.

That a potential use of property is prohibited or restricted by law at the time of the taking of the property does not preclude its consideration in awarding damages in an eminent domain proceeding if there was a reasonable prospect of rezoning or acquiring a special permit.

Judge has a range of discretion in an eminent domain proceeding in deciding whether to admit evidence that a potential use of the property is reasonably likely in the foreseeable future, particularly when that determination turns on whether the grant of a special permit is reasonably likely.

Task for the judge in an eminent domain proceeding is to avoid unreasonably restricting the efforts of the property owner fairly to show the effect of the taking upon the market value of the affected property at the time of the taking without permitting damages to be inflated by unduly detailed and confusing proof of speculative future uses of property having no very direct relationship to market values at the time of the taking.

Trial court's error of excluding evidence as to property's potential uses, which included hotel, manufacturing, and warehouse uses, was not harmless in condemnees' action to recover greater damages than pro tanto award. Condemnees were unfairly precluded from giving testimony bearing upon relevant aspects of value, and excluded testimony impacted credibility of testimony of condemnees' engineering and appraisal experts.

Pro tanto award regarding taking of property by state Department of Highways was inadmissible in

condemnees' action to recover greater damages than pro tanto award, as the award was in essence a settlement offer.