

# **Bond Case Briefs**

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## **EMINENT DOMAIN - GEORGIA**

### **Evans v. Department of Transp.**

**Court of Appeals of Georgia - March 19, 2015 - S.E.2d - 2015 WL 1244058**

Department of Transportation (DOT) filed petition for condemnation of property for road construction project. The trial court entered judgment on jury verdict, valuing the condemned property at \$50,000. Condemnees appealed.

The Court of Appeals held that:

- Evidence regarding city's zoning ordinance prohibiting mining on the property at issue was relevant to jury's valuation of property;
- Expert real estate appraisers' testimony regarding likelihood of a zoning change was not wholly speculative; and
- Jury instructions on mineral deposits and zoning considerations were not improperly conflicting.

Evidence regarding the city's zoning ordinance prohibiting mining on agricultural property, and the reasonable probability that a special exception for kaolin mining would be granted by the city in the future, was relevant to the jury's valuation of the condemned agricultural property in condemnation case initiated by Department of Transportation (DOT).

Opinion testimony of expert real estate appraisers regarding the likelihood of a change in zoning was not wholly speculative, and thus was admissible in condemnation proceedings involving property containing mineral deposits whose extraction was not permitted under property's present agricultural zoning classification. Experts testified regarding the information they relied upon in forming their opinions on property value, experts concluded that highest and best use of condemned property was its current agricultural use as timberland, experts distinguished a neighboring mine on the ground that it had started operation prior to zoning ordinance and had thus had been grandfathered in, and experts concluded that the grant of a special exception would be unlikely.

In condemnation proceedings involving property containing mineral deposits whose extraction was not permitted under property's present agricultural zoning classification, instructions charging jurors to consider existence of the kaolin deposit on the property in determining its value did not improperly conflict with instructions that jury should consider uses of property that were lawful under the zoning ordinance presently in effect, or uses for which there was a possibility or probability would become lawful under the zoning ordinance in the immediate future sufficient to have an effect on the value of the property; mineral deposits had intrinsic value as part of the land that were to be considered in valuing the property, and consideration of the intrinsic value of mineral deposits did not rule out the jury's also considering the uses to which the property could lawfully be put.