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TAX - NEW JERSEY

Ciba Specialty Chemicals Corp. v. Township of Dover

Tax Court of New Jersey - August 3, 2017 - 2017 WL 3372554

Tax Court took up the discrete issue of whether on the relevant valuation dates there existed a reasonable probability of a change in zoning for the subject property from industrial/commercial to mixed-use, including residential. "The answer to this question will be a crucial element of the highest and best use analysis used to determine the true market value of the subject property for local property tax purposes."

The municipality argued that a zoning change was reasonably probable on the relevant dates and that the true market value of the subject property should reflect its potential to be developed with a project that includes residential units.

The owner of the subject property argued that a change in zoning was not reasonably probable on the valuation dates and that the parcel should be valued for its potential development only for permitted commercial and industrial uses. Owner argued that because the municipality had not named a licensed real property appraisal expert to offer an opinion on the reasonable probability of a zoning change at the subject property, it was impossible, as a matter of law, for the municipality to meet its burden of proof. Owner also argued that the opinion proffered by the municipality's proposed expert witness is an inadmissible net opinion, providing a separate basis for granting summary judgment in favor of plaintiff on the zoning-change question.

The municipality argued that it may rely on the testimony of a land development planning expert who issued a report and addendum proffering an opinion on how a mixed-use development, including residential units, might be situated on the subject property. The proposed expert's report and addendum included an opinion that a change in zoning at the property to permit such development was likely to occur.

"The court concludes that the motion record does not support a determination that, as a matter of law, the municipality cannot meet its burden of proof with respect to the reasonable probability of a zoning change on the relevant valuation dates. There are no legal precedents in this State holding that only a licensed real estate appraiser can offer an opinion with respect to the reasonably probability of a zoning change. To the contrary, it is well established that the determination of who may provide expert testimony rests with the trial court, which is charged with evaluating the proposed expert's training, knowledge, and experience. It is certainly reasonable to argue that a licensed real estate appraiser is the best professional to offer an opinion on the reasonable probability of a zoning change for purposes of determining the value of real property. However, a witness with training, knowledge, and experience in land development planning may also possess sufficient expertise to offer an opinion on that topic. The most appropriate way for the court to decide whether the municipality's proposed expert is competent to offer opinion testimony on the likelihood of a zoning change at the subject property is for the court to evaluate the evidence adduced at trial regarding the training, knowledge and experience of the witness."

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