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EMINENT DOMAIN - VIRGINIA

Helmick Family Farm, LLC v. Commissioner of Highways

Supreme Court of Virginia - August 29, 2019 - S.E.2d - 2019 WL 4071862

Commissioner of Highways petitioned to condemn approximately two acres of land in agricultural zone, along with some easements, to build a highway interchange.

The Circuit Court entered order confirming county commissioners' award of compensation. Landowner appealed.

The Supreme Court of Virginia held that:

- As a matter of first impression, evidence of the reasonable probability of a rezoning of the land taken is admissible to establish fair market value in a condemnation proceeding;
- Landowner presented sufficient evidence concerning the reasonable probability of rezoning to create a jury issue;
- Testimony from landowner's appraiser using discounted valuations based on sales of properties in other zones was admissible in determining value; and
- Trial court acted within its discretion denying admission of certain documentary evidence in support of opinion of landowner's representative as to value.

The trial court must make the preliminary determination of whether there is sufficient evidence of a reasonable probability of rezoning to permit the landowner to offer testimony regarding market value based on such a probability, and if the court determines that the evidence falls short, as a matter of law, of showing any reasonable probability of rezoning within the reasonably near future, it must then exclude all such evidence and opinions of value based upon a use permitted only by the rezoning.

Factors that are relevant to establish a reasonable likelihood of rezoning of the land taken, as needed to admit evidence concerning the reasonable probability of rezoning to establish fair market value in a condemnation proceeding, include the rezoning of nearby property, growth patterns, change of use patterns and character of neighborhood, demand within the area for certain types of land use, sales of related or similar properties at prices reflecting anticipated rezoning, physical characteristics of the subject and of nearby properties and, under proper circumstances, the age of the zoning ordinance.

Fair market value of condemned property for which there is a reasonable probability of rezoning must not be evaluated as though the rezoning were already an accomplished fact; it must be evaluated under the restrictions of the existing zoning and consideration given to the impact upon market value of the likelihood of a change in zoning.

Landowner's evidence was sufficiently concrete to create a jury issue concerning the reasonable probability of a future rezoning, in determining fair market value in condemnation proceeding arising from a taking of land in agricultural zone to construct highway interchange, where landowner pointed to land use map which designated property as commercial and to nearby land

being used for light industrial purposes, landowner proffered evidence of recent rezoning of properties from agricultural to commercial, and landowner also proffered evidence that the property benefited from road frontage and proximity to water and sewer services.

Testimony from landowner’s appraiser using discounted valuations based on sales of properties in other zones was admissible in determining value of agricultural property that was taken for a highway project and that was subject of potential rezoning.

Trial court acted within its discretion denying admission of certain documentary evidence in support of opinion of landowner’s representative, who was a real estate developer and licensed real estate broker, as to value of agricultural land that was taken for a highway project, where court allowed representative extensive latitude to establish the basis of his opinion, and representative was not qualified or even offered as an expert appraiser.

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