

# **Bond Case Briefs**

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## **EMINENT DOMAIN - NEW YORK**

### **Village of Haverstraw v. Ray River Co., Inc.**

**Supreme Court, Appellate Division, Second Department, New York - February 24, 2021 - N.Y.S.3d - 2021 WL 710499 - 2021 N.Y. Slip Op. 08191**

Condemnees brought action against village as condemnor seeking compensation arising from the taking of condemnees' real property.

Following nonjury trial, the Supreme Court, Rockland County, issued order awarding condemnees \$8,950,000 as just compensation. The Supreme Court subsequently entered judgment upon the order in favor of condemnees in the principal sum of \$6,810,000. Village appealed, and condemnees cross-appealed.

The Supreme Court, Appellate Division, held that:

- Record established that highest and best use of condemnees' real property was 80-unit townhouse configuration;
- Contract of sale for the subject property was not a reliable indicator of the subject real property's value; and
- Sufficient evidence supported village's adjustments for market conditions and topography in determining fair market value of subject real property.

Record established that highest and best use of condemnees' real property on title vesting date was 80-unit townhouse configuration, for purposes of calculating damages for village's taking of the property; condemnees' proposed mix of 131 units in five-story high rise dwelling, representing the maximum number of units permitted under zoning code, did not consider construction costs, and lacked data to substantiate their expert's assertion that proposal would be profitable due to high absorption rates for residential properties in area, whereas village's appraiser opined that 80-unit townhouse configuration avoided additional costs associated with condemnees' proposal and his appraisal included exhibits detailing construction and development costs underlying his analysis.

In action by condemnees for compensation for taking of their real property, contract of sale for the subject property was not a reliable indicator of the subject property's value, and thus trial court providently declined to afford any weight to it, where contract was dated over 14 years earlier, and the purchaser admitted at trial that he conducted almost no due diligence before or after consummating it.

Sufficient evidence supported village's market conditions adjustment and topography adjustment for purposes of determining fair market value of subject real property, in condemnees' action to determine just compensation of real property condemned by village, where village's appraiser provided sufficient facts, figures, and calculations to support both adjustments, including charts depicting change in housing prices around the time of the vesting date.

