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EMINENT DOMAIN - NEW YORK

HBC Victor LLC v. Town of Victor

Supreme Court, Appellate Division, Fourth Department, New York - December 23, 2022 - N.Y.S.3d - 212 A.D.3d 121 - 2022 WL 17882656 - 2022 N.Y. Slip Op. 07313

Owner of vacant commercial real property that was formerly occupied by a department store brought action against town under Eminent Domain Procedure Law (EDPL) to annul town's determination authorizing the condemnation of the property.

The Supreme Court, Appellate Division, held that:

- Absent any specification by town of a public purpose for the condemnation, the condemnation was not a valid taking under the EDPL, and
- Remediation of blight, based on property's vacancy alone, did not support town's condemnation of property, since property was not in a blighted condition.

Absent any specification by town of the public purpose for which town had condemned owner's real property, which was connected to a mall and was formerly occupied by a department store, the condemnation was not a valid taking under the Eminent Domain Procedure Law (EDPL), even though the property was allegedly vacant and underutilized, where neither town's condemnation notice nor its determination and findings identified or described a legitimate public project, and the town stated in its determination and findings that "no specific future uses or actions have been formulated and/or specifically identified.

Remediation of substandard conditions, i.e., urban blight, did not support town's determination to condemn owner's real property, which was connected to a mall and was formerly occupied by a department store, even though the property was vacant, where the property was not in a blighted condition, the vacancy had occurred unexpectedly in the midst of the global COVID-19 pandemic, owner had cleaned and maintained the premises since they had become vacant, and owner continued to pay property taxes at the assessed value of more than \$4 million.