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Chance to recognize condemnation value rule lost - by Elliott Pollack

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In an unanimous opinion sustaining an almost \$3 million increased condemnation award for the taking of property near a baseball stadium to be constructed in Hartford, now tenanted by the Hartford Yard Goats, the opportunity to establish an important concept (sometimes called the “project rule”) limiting eminent domain compensation was rejected by the Connecticut Supreme Court because the issue was not properly presented in the appeal.

Although the Supreme Court agreed that the lower court’s decision “appears to support the (city’s) view that the lion’s share of the (increased award) arises ... from the effect on surrounding property values of the City’s plan to construct a ballpark,” for some reason the City did not properly press this argument on appeal and focused on other aspects of the lower court’s opinion.

“Accordingly,” associate justice Andrew McDonald ruled, “we have no occasion in this opinion to consider whether a principle articulated by some ... jurisdictions, namely, that the fair market value of property taken shall not include any increase (or decrease) in the value attributable to a redevelopment project for which the property is taken” is applicable in this case.

Associate justice McDonald was referring, somewhat delphically, to a number of state and federal decisions, including two rulings by the United State Supreme Court that “the (government) as condemner may not be required to compensate a condemnee for elements of value that the (g)overnment has created ...” Put another way, “(w)here multiple properties ... are condemned for a particular public project, the (g)overnment must pay pre-existing market value for each. Neither the (g)overnment nor the condemnee may take advantage of an alteration in market value attributable to the project itself.”

As a result, it will be left to future litigation whether to establish a sound principle in Connecticut eminent domain proceedings which is well accepted elsewhere.

City of Hartford v. CBV Parking Hartford, LLC, Docket No. SC 20044 (September 11, 2018).

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