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VIRGINIA

IN THE CIRCUIT COURT FOR CULPEPER COUNTY

COMMISSIONER OF HIGHWAYS,	)
	)
Petitioner,	)
	)
v.	) **<u>Case No.</u> CL14001271-00**
	)
MICHAEL AND GINA HELMICK,	)
	)
Respondents.	)

ORDER ON MOTIONS *IN LIMINE*

THIS MATTER came before the Court on March 10, 2017 on Petitioner's Motion *in Limine* and Respondents' First and Second Motions *in Limine*; and

IT APPEARING that the Court took the matter under advisement, and issued a letter opinion dated March 12, 2017 (the "Letter Opinion"), which is incorporated herein by reference, and based on the findings set forth in the Letter Opinion it is hereby

ORDERED, ADJUDGED and DECREED as follows:

i) Petitioner's Motion *in Limine* is DENIED; with the exception that any evidence as to just compensation as though the property were rezoned at the time of the take is excluded.

w Judge

ii) Respondents' Motion *in Limine* to admit pre-settlement evidence related to the Alan A. Armstrong appraisals is GRANTED and evidence regarding the pre-settlement appraisals prepared by Alan A. Armstrong shall be admissible at trial;

iii) Respondents' Motion *in Limine* to allow evidence as to the reasonable probability of rezoning is GRANTED and evidence regarding the reasonable probability of rezoning the subject property as of the date of the taking shall be admissible at trial;

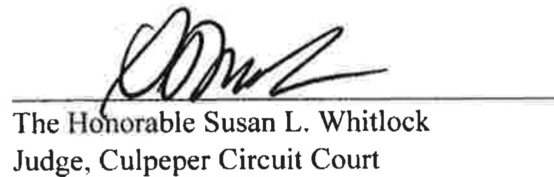
iv) Respondents' Motion *in Limine* to exclude evidence of unconstitutional exactions is GRANTED and any evidence of unconstitutional exactions is inadmissible;

v) Respondents' Motion *in Limine* to exclude evidence in violation of the scope of the project rule is GRANTED and any evidence of the property's pre-take value because of the influence of the project is inadmissible; and

vi) Respondents' Motion *in Limine* to exclude enhancement evidence is GRANTED and any evidence in violation of Virginia Code § 25.1-230 regarding enhancement of the Helmicks' property is inadmissible.

THIS MATTER IS CONTINUED.

ENTERED March 18th, 2017.



The Honorable Susan L. Whitlock
Judge, Culpeper Circuit Court

WE ASK FOR THIS:

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CULPEPER, VIRGINIA

In Re: Commissioner of Highways
v.
Michael Helmick, et als
Case No. CL14001271-00

Dear Counsel:

This matter comes before the Court on Petitioner's Motion *in Limine* seeking exclusion of (1) hypothetical rezoning of property from Agricultural (A1) to Industrial or Commercial before, on, or after the date of take on August 8, 2014; (2) use and value of the subject property based on an envisioned future change from the existing zoning of Agricultural (A1) to Industrial or Commercial; (3) owner's Retrospective Appraisal Report of VDOT Eminent Taking of a Portion of Tax parcel 42-41F in Culpeper County, Virginia, prepared by the owner's appraiser, Charles T. Dennis; and (4) the opinion that "it is reasonably probable that, at the time of VDOT TAKE, the subject property would be rezoned from A-1 (Agricultural) to LI (Light Industry) if application were made by the landowners", and the reasons therefor, according to owner's land planner Charles F. Carter. Also before the Court, are Defendant's Motion *in Limine* seeking to ADMIT (1) Pre-Settlement Appraisal Evidence related to the Allen A. Armstrong appraisal or in the alternative, admit portions: (a) unit value of the property (price per square foot); (b) conclusion of damages to the residue; (c) impact of the various easements; (d) market value of all acquired land, improvements, easements cost to cure items and damages to the residue; and (e)

highest and best use conclusion; (2) Evidence of the Highest and Best Use as expressed in Dennis' report; (3) Evidence of the reasonable probability of rezoning; and (4) Evidence of the fair market value; and to EXCLUDE evidence of unconstitutional exactions in violation of Virginia Code § 15.2-2208.1; and Defendant's Second Motion *in Limine* seeking to EXCLUDE (1) unconstitutional exactions; (2) evidence in violation of the scope of the project rule; (3) enhancement beyond any construction or improvement on Respondents' property (see Virginia Code § 25.1-230); and ADMIT both appraisals prepared by VDOT.

The Court heard argument on March 10, 2017 and took the matters under advisement. Following a thorough review of the pleadings, the memoranda submitted in support of and in opposition to the Motions, and the law, the Court finds as follows:

This Court recently ruled in the case of Commissioner of Highways v. Helmick Family Farm, LLC, that "the evidence at trial must be limited to the value of the property, in the condition it is in, and not the value after future rezoning.... The measure of compensation for property taken is the fair market value of the property at the time of the taking, considering its adaptability and suitability for any legitimate purposes, having regard to the existing business of the community or such as may be reasonably expected in the near future. The true test of damages to the residue of the land not taken is the difference in value before and immediately after the taking and in ascertaining such damages there may be considered every circumstance, present or future, which affects its then value. Remote and speculative profits and advantages are not to be considered in either instance. *Appalachian Elec. Power Co. v. Gorman*, 191 Va. 344, ___, 61 S.E.2d 33, 37 (1950)(internal citation omitted). Here, Helmick relies on a Future Land Map wherein the 31.5 acres are identified as rezoned to Light Industrial or Commercial. However, this is not an assurance of community acceptance or a commitment to development by the County. As in the case of the *City of Virginia Beach v. Susan Oakes, Administratrix of the Estate of Pauline Belcher, et al*, 263 Va. 510, 561 S.E.2d 716, this hypothetical rezoning is too speculative and remote to be considered.... [E]vidence at trial must be limited to the value of the property, in the condition it is in, and not the value after future rezoning." In clarifying its ruling from the bench before the beginning of the hearing which later resulted in a mistrial, the Court stated, "[s]o the Court is not going to prevent them from testifying, but they're not to testify as to the rezoning. The Court has not said that the fact that the property is shown on a future plan as appropriate for light industrial or – I forget what the – was it commercial? The Court has not said that that cannot be referenced. It could be considered as a factor, but it cannot be valued as though it had been rezoned."

This issue is complicated in the case at bar by the Commissioner's presentation of its initial appraisal prepared by Allen A. Armstrong pursuant to Virginia Code § 25.1-417 to the owners. Relying on the recent case of *Ramsey v. Comm'r of Hwys*, 770 S.E.2d 487, 2015 Va. LEXIS 43 (Va., April 16, 2015), Helmick argues that the Armstrong appraisal is a pre-condemnation statement and should be admissible as an admission by the Commissioner.

For the sake of brevity in this ruling, I adopt my earlier analysis regarding *Ramsey* and its application in this case as set forth in my letter opinion of February 7, 2017, regarding Respondent's Motion to Compel. The Court granted the Motion to Compel but stopped short of ruling on the admissibility of the Anderson appraisal as such ruling was premature.

In *Ramsey*, the Supreme Court of Virginia held that because the first appraisal was given to the landowners pursuant to Virginia Code § 25.1-417(A)(2) before any offer to purchase was made and/or settlement negotiations were initiated, the landowners could introduce evidence of the higher, pre-condemnation valuation to rebut a second lower valuation. Here, the Petitioner earlier proffered that on behalf of VDOT Ronnie Van Cleve, Jr. provided a copy of the Armstrong appraisal together with VDOT's offer to purchase to the owners and, therefore, settlement negotiations had been initiated. The Petitioner, further suggests in its Reply Memorandum and Memorandum in Opposition to the Owner's Memorandum in Support of Their Motion *in Limine*, that the owners' failure to remember when they received the Armstrong appraisal, defeats their reliance on *Ramsey*. Based on Petitioner's Van Cleve proffer, the Court finds this argument to be disingenuous.

Helmick argues that to bar the Respondents from introducing the Armstrong appraisal because it was first presented with the offer is inconsistent with *Ramsey* wherein the Supreme Court held that "[w]hile *Code §* 33.2-1023 (H) bars the admission into evidence of any amount deposited with the trial court with a Certificate of Take, nothing in *Code §§* 25.1-204 or 417 bars the admission of the fair market value of the entire property determination in the pre-settlement appraisal. **Had the General Assembly intended to exclude such evidence it could have plainly said as much."** *Ramsey* at 490, **8 (emphasis added).

Therefore, and incorporating Respondents' Memoranda in Support and in Opposition, the Court grants the Respondent's Motion *in Limine* to admit the Pre-Settlement Evidence related to the Allen A. Armstrong appraisal, with the following caveat.

This Court has consistently held that evidence shall be excluded as to just compensation as though the property was rezoned as it is too speculative and remote; however, evidence may be introduced as to the property's highest and best use and the future development plan of the County, a factor which may be considered by the Commissioners. In light of this determination, the Motion *In Limine* as to the reasonable probability of rezoning is also granted for the reasons set forth in Respondents' Memoranda.

The Court also concurs with Respondents' reasoning regarding unconstitutional exactions as clearly defined by *Bd. of Sup'rs of James City County v. Rowe*, 216 Va. 128, 216 S.E.2d 199 (1975) holding that "local governing bodies are constitutionally prohibited from requiring dedication as a condition of zoning where the need for such dedication is substantially generated

by public traffic demands rather than by the proposed development", and grants its Motion *in Limine* excluding evidence of unconstitutional exactions.

Likewise, evidence in violation of the scope of the project rule should be excluded in accordance with Virginia Code § 25.1-417(3) which provides that when making an offer "[a]ny decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation for the property." Any evidence of the property's pre-take value **because of the influence of the project is inadmissible.**

Finally, any evidence in violation of Virginia Code § 25.1-230 regarding enhancement of the Helmicks' property caused by the taking is inadmissible.

The Court notes that the majority of the Petitioner's arguments in opposition to Respondents' Motions *in Limine* go to the weight of the evidence and not to its admissibility.

Counsel for Helmick is directed to draft an order reflecting this Court's ruling, circulate it for endorsement and forward the fully endorsed Order to the Court for entry.

Sincerely,

Susan L. Whitlock, Judge
Sixteenth Judicial Circuit Court