

FROM THE COURTS

Court: More Than 'Stockpiling' Required for Eminent Domain Redevelopment



In a contested eminent domain case, the condemning authority must present to the court some evidence that sets out reasonable support for the need, Appellate Division Judge Jack Sabatino said.

by Charles Toutant

A New Jersey appeals court has ruled that a municipality or redeveloper whose condemnation of property in a redevelopment zone is challenged must articulate a definitive need that goes beyond the mere "stockpiling" of real estate.

In a contested eminent domain case, the condemning authority must present to the court some evidence — consisting of facts, expert opinion, or both — that sets out reasonable support for the need, the Appellate Division said Monday in *Borough of Glassboro v. Grossman*.

The court reversed a trial court's decision allowing Glassboro to acquire a piece of property after the town failed to offer any support for the assertion in its complaint that the land was needed for future public parking.

The ruling, which also vacated the trial court's appointment of condemnation commissioners to value the property, was made without prejudice so that Glassboro may file a new complaint with evidentiary support.

According to the court's decision Monday, Glassboro sought to acquire a one-acre plot one block from an ongoing, \$450 million redevelopment project set to include retail space, apartments, student housing, classrooms and a park. The property at issue is within a redevelopment area that was designated by Glassboro in 2000.

The property at issue is owned by Jack Grossman and Matthew Roche, who entered into an agreement in September 2016 to sell it to Dan DeSilvio for \$125,000. DeSilvio is buying the land in a series of installments through 2020. DeSilvio said he plans to construct residential, commercial and retail buildings on the site, the decision said.

But in January 2017, Glassboro filed a condemnation complaint against Grossman, Roche and DeSilvio, which stated that the acquisition was for "the specific purpose of increasing the availability of public parking" in Glassboro, according to the court.

The defendants argued that Glassboro failed to demonstrate a valid public purpose necessitating the acquisition. At a hearing on an order to show cause, Glassboro acknowledged that the complaint's asserted purpose of using the land for parking is only one possible

use, and the property might be used for some other purpose related to redevelopment, according to the decision.

Gloucester County Assignment Judge Benjamin Telsey rejected Glassboro's argument that it could take any property within the redevelopment zone at any time, without providing a reason, but concluded that Glassboro had demonstrated an adequate public purpose to establish that the taking of the property at issue was necessary.

On appeal, the defendants — joined by the amicus curiae Institute for Justice, a public-interest law firm that focuses on property-rights cases — took the position that courts should strictly construe the Local Redevelopment and Housing Law, and that courts should not approve a redevelopment taking that is not supported by actual evidence of necessity.

Presiding Appellate Division Judge Jack Sabatino, joined by Judges Michael Haas and Thomas Sumners Jr., said in Monday's decision that the question of what evidential showing a condemning agency must provide when taking property under the Local Redevelopment and Housing Law creates tension between two values: flexibility in the redevelopment process and public accountability.

Sabatino, writing for the court, rejected Glassboro's position that necessity can be established under the statute solely based on the fact that the parcel to be taken is located in a zone designated for redevelopment. Such an approach disregards the statute's requirement that property under acquisition is "necessary" for a redevelopment project. The statute's necessity requirement "signaled that the mere inclusion of a parcel within a designated redevelopment area does not authorize that parcel to be taken on a whim at any time," Sabatino wrote.

In addition, Sabatino said Glassboro erred in its argument that it could satisfy the necessity requirement under the statute merely by declaring the desire to stockpile a parcel for some possible future need in a redevelopment area.

The necessity requirement, if challenged, must be justified by a "reasonable presentation of supporting proof," Sabatino wrote.

Charles Toutant is a litigation writer for the New Jersey Law Journal, an ALM affiliate of the Daily Business Review. Contact him at ctoutant@alm.com.



CITY OF DORAL NOTICE OF PUBLIC HEARING

All residents, property owners and other interested parties are hereby notified of a **Zoning Workshop** on **Monday, January 14, 2019 at 6:00 PM**. This meeting will be held at the **City of Doral, Government Center, 3rd Floor Council Chambers located at 8401 NW 53 Terrace, Doral, FL 33166** to consider the following public hearing application:

HEARING NO.: 19-1-DOR-03

APPLICANT: City of Doral

PROJECT NAME: Doral Passive Park Rezoning

PROJECT OWNER: City of Doral

LOCATION: 6255 NW 102nd Avenue Doral, FL 33178

FOLIO NUMBER: 35-3017-001-0360

SIZE OF PROPERTY: 5± Acres

PRESENT LAND USE: Industrial (I)

PRESENT ZONING: General Use (GU)

REQUEST: The City of Doral is requesting to rezone the property from General Use (GU) District to Institutional and Public Facility (IPF).

LEGAL DESCRIPTION: West One-Half (W 1/2) of Tract 61, of Florida Fruit Lands Company's Subdivision Map No. 1, in Section 17, Township 53 South, Range 40 East, according to the Plat thereof, as recorded in Plat Book 2, at Page 17, of the Miami-Dade County, Florida.

Location Map



ZONING WORKSHOP PROCESS: The zoning workshop consists of two sessions:

1. **First Session.** The first session of a zoning workshop shall provide a forum for members of the public to learn about proposed developments within the city. Developments may be presented to the public simultaneously, in several locations within the meeting site. During this session, members of the public are encouraged to ask questions and to provide feedback to the applicant about the proposed development. The applicant shall provide visual depictions, such as renderings, drawings, pictures, and the location of the proposed development. In addition, representatives of the applicant shall be available to answer questions that members of the public may have about the proposed development. The members of the City Council shall not be present during the first session of the zoning workshop. No meeting shall start before 6:00 PM Eastern Standard Time and shall take place at a time and date to maximize public participation.

2. **Second Session.** The second session of a zoning workshop shall provide a forum for the City Council to learn about the proposed developments discussed at the first session of the zoning workshop. No quorum requirement shall apply. Developments shall be presented by the applicants sequentially, one at a time, for the City Council's review and comment. The applicant shall again present visual depictions of the proposed development. In addition, the applicant shall be available to answer any questions that members of the City Council may have about the proposed development.

No quorum requirement shall apply nor will any vote on any project be taken, but roll call will be taken, as it is a publicly noticed meeting.

Information relating to this request is on file and may be examined in the City of Doral, Planning and Zoning Department located at **8401 NW 53rd Terrace, Doral, FL 33166**. All persons are invited to appear at this meeting or be represented by an agent, or to express their views in writing addressed to the City Clerk, **8401 NW 53rd Terrace, Doral, FL 33166**. Maps and other data pertaining to these applications are available for public inspection during normal business hours in City Hall. Any persons wishing to speak at a public hearing should register with the City Clerk prior to that item being heard. Inquiries regarding the item may be directed to the Planning and Zoning Department at 305-59-DORAL.

Pursuant to Section 286.0105, Florida Statutes If a person decides to appeal any decisions made by the City Council with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law. In accordance with the Americans with Disabilities Act, all persons who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the Planning and Zoning Department at 305-59-DORAL no later than three (3) business days prior to the proceeding.

NOTE: If you are not able to communicate, or are not comfortable expressing yourself, in the English language, it is your responsibility to bring with you an English-speaking interpreter when conducting business at the City of Doral during the zoning application process up to, and including, appearance at a hearing. This person may be a friend, relative or someone else. A minor cannot serve as a valid interpreter. The City of Doral DOES NOT provide translation services during the zoning application process or during any quasi-judicial proceeding.

NOTA: Si usted no está en capacidad de comunicarse, o no se siente cómodo al expresarse en inglés, es de su responsabilidad traer un intérprete del idioma inglés cuando trate asuntos públicos o de negocios con la Ciudad de Doral durante el proceso de solicitudes de zonificación, incluyendo su comparencia a una audiencia. Esta persona puede ser un amigo, familiar o alguien que le haga la traducción durante su comparencia a la audiencia. Un menor de edad no puede ser intérprete. La Ciudad de Doral NO suministra servicio de traducción durante ningún procedimiento o durante el proceso de solicitudes de zonificación.

Connie Diaz, MMC
City Clerk
City of Doral