

Condemnation/Landfill: New Jersey Appellate Court Analyzes Just Compensation Award



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The Superior Court of New Jersey, Appellate Division (“Court”) addressed in an April 9th Opinion issues related to the condemnation of a landfill. See *New Jersey Sports and Exposition Authority v. Town of Kearney*, 2020 WL 1802844 (N.J. Super. Ct. App. Div. Apr. 9, 2020).

The New Jersey Sport and Exposition Authority (“NJSEA”) appealed from the Town of Kearny’s (“Kearny”) award of \$1,818,000 as just compensation for 104.64 acres.

NJSEA filed in 2016 a verified condemnation complaint with the trial court. The Court affirmed an order granting a final judgment authorizing NJSEA to exercise its power of eminent domain relating to the Keegan Landfill (subject property).

On March 9, 2018, NJSEA served expert reports from Jeffrey D. Kendall and John A. Castner. Kearny made an unsuccessful request for a jury trial nineteen days later. In October 2018, the trial court found that NJSEA’s expert’s evaluation of the property was correct: the fair market value at the time of the taking was \$1,818,000. Kearny appealed this award of just compensation.

Kearny first argued that the trial court erred in relying upon NJSEA’s appraiser’s conclusion that the “highest and best use” of the property is for passive recreation. The town’s appraiser estimated the value of the entire Keegan Landfill, not just the property, to be worth \$23,430,000. The appraiser assumed that the new buyer would purchase the portion of the property already owned by NJSEA (i.e., the portion that was not at issue in this case).

The trial court took issue with Kearny’s appraiser’s calculation. He was stated to have used useless water as a part of the percentage of income and the indemnification of the seller.

Alternatively, NJSEA’s appraiser, whose evaluation was accepted by the trial court, explained that his appraisal values were based on its highest and best use at the termination of the lease between NJSEA and Kearny. This appraisal assumed that the operation of a landfill would cease and the property had limited potential use. Since the trial court’s findings were supported by adequate, substantial, and credible evidence, the Court held that the trial court did not abuse its discretion.

Kearny’s second argument was that the trial court’s finding that the evidence in this case could not point to a single sale of a public landfill to a private entity was both irrelevant to the “highest and best use” analysis and factually incorrect. The Court determined that the trial court’s finding was supported by the testimony of three of NJSEA’s witnesses.

Third, Kearny argued that the trial court erred in finding that its appraiser's use of assemblage was speculative. The Town asserted that, based on consideration of the history of cooperation and the lease agreement between the parties, it was reasonable for Kearny to incorporate the value of property owned by NJSEA into its calculation. The Court held that the trial court was free to reject this calculation.

Kearny then argued that the trial court's finding that a prospective buyer may be concerned with the community's resistance to the landfill has no basis in law or evidence. However, the Court stated that NJSEA provided such evidence by the introduction of a letter from Kearny, which stated it objected to the existence of a landfill in its town. Kearny argued that the letter was irrelevant. However, the Court determined that the letter was not irrelevant because a well-informed buyer's decision could be affected by what Kearny has to say about the matter.

Kearny also argued that indemnity was irrelevant to the "highest and best use" analysis. The Court, however, rejected this argument and stated that whether the purchaser will require an indemnification from the seller is an important consideration regarding the sale of the subject property. This is particularly true in this case, because of the potential exposure due to some sort of environmental mishap that may be present.

Kearny's next argument was that the record was devoid of any evidence to support the trial court's finding that the landfill could not operate solely on the subject property. In its rejection of this argument, the Court pointed to Kearny's own expert. While Kearny's expert stated that it would be technically feasible to operate a landfill on the subject property, it would need various modifications that would require a permit.

In conjunction with this argument, Kearny also asserted that the record was devoid of any evidence that there is too much competition for the Keegan Landfill. The Court pointed to NJSEA's experts, who testified that the landfill faces competition from multiple fronts and had already lost two customers months prior to the taking.

The Court also addressed the admission of testimony of Castner and Kendall and their reports. The Court first rejected the argument that the reports set forth inadmissible net opinions. Expert testimony, according to New Jersey's net opinion rule, are not excluded for merely failing to account for some particular condition or fact which the adversary considers relevant, such as compensation in this case. Further, Kearny raised no objection to Castner's qualification as an expert.

Similarly, Kendall was qualified by stipulation as an expert. This waived all challenges to the admissibility of Kendall's testimony. For these reasons, the Court rejected Kearny's argument. It held that Castner and Kendall sufficiently supported their conclusions.

Finally, Kearny argued that the trial court erred in denying its motion for a jury. Kearny based this argument on the assertion that NJSEA's introduction of two new and highly technical expert reports shortly before the trial constituted good cause.

The Court noted that a condemnation cases allow for an appellant to demand a trial by jury within ten days of service; however, Kearny made its appeal fifteen months after being provided notice. Further, the Court determined that new expert reports do not constitute extraordinary circumstances that warrant good cause. Therefore, Kearny's right to a jury trial was not violated.

For all of these reasons, the Court affirmed the trial court's holding.

A copy of the Opinion can be downloaded [here](#).