

## **Jury: Future freeway expansion entitled landowner to \$5.34 M for Johns Island tract**

By: greg.froom January 14, 2008

A Charleston County jury in a highway department takings case gave the owner of a Johns Island tract exactly what it asked for: \$5.34 million.

The verdict came Dec. 4 in a dispute over what the state Department of Transportation owed for condemning a swath of riverside property needed to extend Interstate 526, also known as the Mark Clark Expressway.

"First time I have ever seen it," Richard D. Bybee, the landowner's lawyer, said in regard to the jury's returning a verdict that mirrored his client's demand.

"I'm not saying it's the first time ever and there may have been occasions where it happened, particularly on smaller numbers that I wouldn't be familiar with. To my knowledge, it is the first time on such a big number, at least in this area of the state," Bybee told *Lawyers Weekly*.

The case involved a roughly 200-acre tract that lay within Charleston's city limits. About 85 acres of the property were marsh; the rest was highlands. The land was unimproved, wooded and primed for development, according to the Mount Pleasant attorney.

The landowner, Park on the Stono, LLC, bought the parcel in 2004 for about \$4 million. It had intentions to build residential developments on the site, but that was before the company discovered DOT's plans for extending I-526. According to the condemnation notice, DOT needed 10.775 acres of the property for the project. It offered \$1,824,500 a sum too small for the landowner.

Park on the Stono claimed it was entitled to \$5.34 million, and the jury agreed. Bybee said that DOT tendered a check for the verdict amount, plus interest, after the decision was reached last month. DOT doesn't plan to appeal, he said, leaving attorney fees as the only remaining issue.

DOT's lawyer was out of state and unavailable for comment when *Lawyers Weekly* tried to contact him.

The case is *S.C. Dep't of Transportation v. Park on the Stono, LLC, and First National Bank of Spartanburg*, Charleston County Civil Action No. 06-CP-10-2990. Judge Thomas L. Hughston Jr. presided at trial.

### **A Line On The Map**

The origins of the case made it somewhat out of the ordinary in the takings field, according to Bybee. The issue was touched off before DOT took any steps toward condemning the property.

Park on the Stono was in the process of securing the city's approval for the creation of subdevelopments. "During the course of that process, it became known that there was a problem with the DOT's line for the expressway," Bybee said. "There had been no taking; it was just a line on the map."

That line traversed the parcel in such a way that the future freeway would lop off about 15 acres. "A highly valuable part of the property that could have been developed with marsh views and river frontage had been severed and, in fact, lost," Bybee said.

Since DOT had not yet brought a condemnation action at that point, the landowner was theoretically free to build on the entire parcel, according to Bybee.

Under such circumstances where a taking looms but is not officially under way the city code required City Council to either vote on approving the proposed development or undertake its own condemnation action, he said. DOT got involved at that point, filing a condemnation notice on Aug. 2, 2006.

"To my knowledge, it's the first time that a city code like that actually triggered a condemnation. At the time they filed their condemnation notice, DOT didn't have their funding in place, they hadn't done their environment documents, they hadn't done their planning," Bybee said. "They don't have the plans to this day."

The Charleston vested rights ordinance, based on a 2004 statute, allowed the landowner to get a final ruling on whether it could develop the site, despite the road's stalled embryonic state.

"That's eminently fair, because the landowner shouldn't just sit there and wait while government decides," Bybee said.

### **What's It Worth?**

At trial, the landowner took issue with DOT's offer. Bybee said the DOT figure didn't take into account several important aspects of the property's value.

"They were ignoring the development steps and the vested rights that had accrued. They were also ignoring the fact that this particular area of the city was in the urban zone, not the rural zone.

"There's a whole lot of controversy on Johns Island about what can be developed and where. This property was in the area where all government authorities were giving the green light to development," Bybee said.

Another favorable trend that DOT didn't consider: Charleston's real estate market was hot during the period from 2004 to 2006, according to Bybee.

"Those three factors, I think, explain why our number was this and their number was that," he said.

Contracts the landowner had with developers also played a role in its push for better compensation. Bybee said his client stood to net somewhere between \$5 million and \$7 million on two contracts to sell lots on a wholesale basis. Those collapsed when the road plans were discovered.

The landowner also relied on the value established by its expert, Chris Donato. The Mount Pleasant appraiser came up with the \$5.34 million figure adopted by the jury.

"I think we had the right story with respect to the facts just falling into place," Bybee said.

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