

DOCKET NO.: UWY X06 CV 03 0183606 S : SUPERIOR COURT  
NEW ENGLAND ESTATES, L.L.C. : JUDICIAL DISTRICT  
V. : OF WATERBURY  
TOWN OF BRANFORD, ET AL. : COMPLEX LITIGATION DOCKET  
SEPTEMBER 24, 2007

**Defendant Town of Branford's Motions to Set the Verdicts Aside and for Judgment Notwithstanding the Verdicts and/or for a New Trial and/or for Remittitur and Motion for Status Conference**

Pursuant to General Statutes §§ 52-228b and 52-216a and Practice Book §§ 16-35 et seq., the defendant, the Town of Branford ("Town"), respectfully requests that Court set the verdicts aside and enter judgments for the Town and/or grant a new trial and/or order a remittitur. The Town respectfully submits that the verdicts should be set aside and judgments entered for the Town and/or a new trial granted and/or a remittitur ordered, on the basis of, *inter alia*,<sup>1</sup> the following grounds:

- a. Plaintiff New England Estates, L.L.C. ("NEE"), as a matter of law, did not have an interest in the 77 acres that was protected under the Takings Clause of the Fifth Amendment;
- b. NEE, although it contract rights, had no interest in the 77 acres of land itself;
- c. The plaintiffs<sup>2</sup> having pursued just compensation, and the Town's \$1.167 million deposit having been disbursed, the plaintiffs are barred, as a matter of law, from challenging the lawfulness of the Town's acquisition, by eminent domain, of the 77 acres;

<sup>1</sup> The Town has ordered the trial transcript and reserves the rights to raise additional issues in their memorandum in support of these motions following receipt and review of the transcript.

<sup>2</sup> Cross-claim plaintiffs Mr. Santa Barbara and Mr. Perrotti, and plaintiff NEE are referred to, collectively, as the plaintiffs.

- d. NEE's claimed compensatory damages, having been based on conjecture and speculation, are not recoverable as a matter of law, and, consequently, NEE is entitled, at the very most, to an award of nominal in the amount \$1.00 or less;
- e. Assuming, for purposes of argument, that NEE's claimed compensatory damages were not based on improper conjecture and speculation (which they were), such claim is barred by the doctrines of res judicata and collateral estoppel;
- f. The Court improperly applied the doctrine of collateral estoppel to preclude the Town from contesting NEE's theory that it would have obtained all local and state approvals necessary to the development of the specific 354-unit affordable housing development;
- g. Whether a purpose constitutes a proper public purpose is a matter of law for the court, not a matter of fact for the jury;
- h. The Court's instruction to the jury regarding the standard applicable to a claim of bad faith taking under the federal constitution was incorrect;
- i. Before sending the case to the jury, the Court allowed the plaintiffs to amend their complaint/cross claim to include two additional theories of liability in violation of the Town's rights to due process and fundamental fairness;
- j. The Court improperly precluded the Town from pleading the statute of limitations as special defenses to the additional theories of liability;

- k. The Court's instruction regarding the plaintiffs' theories that the Town's actions were "unreasonable" and "an abuse of power" misstated the law applicable to takings claims brought under the federal constitution;
- l. The Court improperly instructed the jury that the Town action at issue was limited to the votes of the RTM;
- m. The Court improperly precluded the Town from introducing evidence of subjective intent;
- n. The Court improperly precluded the Town from introducing evidence regarding Town officials' knowledge of the substantial liabilities faced and incurred by other municipalities as a result of property development adjacent to municipal landfills;
- o. The Court allowed NEE to introduce evidence related to information received from Triton after the RTM vote, and improperly precluded the Town from introducing evidence of information received from Fuss & O'Neill regarding the bona fides of the Triton information;
- p. The Court improperly precluded the Town from introducing evidence related to the temporary injunction hearing, including but not limited to, the court's decision denying injunctive relief, the court's findings regarding the Triton information and other findings of fact;
- q. The Court improperly failed to provide the jury with a proper instruction regarding the timing applicable to calculation of NEE's claimed damages;

- r. The Court improperly allowed Mr. Kappel to opine regarding the time frame for measuring NEE's claimed damages;
- s. The Court improperly allowed Mr. Kappel to opine that NEE should be awarded prejudgment interest at the rate of 22.85% through the date of trial;
- t. The Court improperly submitted the issue of prejudgment interest to the jury;
- u. The Court improperly precluded the Town from using the Michaud Report –which NEE introduced as evidence in the just compensation proceeding – to impeach Mr. Kappel.

The Town respectfully requests that the Court schedule a status conference for the purpose of establishing a briefing schedule for the submission of memoranda of law by the Town in support of these motions and by the plaintiffs in opposition thereto.

WHEREFORE, the Town respectfully requests that requests that its motions to set the verdicts aside and enter judgment for the Town and/or grant a new trial and/or for a remittitur be granted. In addition, the Town respectfully request that the Court order a status conference to establish a briefing schedule.

Respectfully submitted,  
DEFENDANT,  
TOWN OF BRANFORD

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