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Can Use Variance Grants Be 'Reasonably Probable'?

Christopher Stracco and Kate Coffey wrote an article, "Can Use Variance Grants Be 'Reasonably Probable'?," for *Law360*. The article examines the significance of the case *New Jersey Transit Corp. v. Franco*. The case involved the condemnation by New Jersey Transit Corp. of adjoining properties in Hoboken, Union City and Weehawken. New Jersey Transit offered $934,500 for the taking (subject to remediation of contamination), and the condemnation commissioners awarded compensation of $1.35 million to the defendants/condemnees. On appeal to the Law Division, the defendants' appraisal report valued the property at approximately $9 million. The defendants' experts assumed Weehawken would not need to approve a use variance for the cul-de-sac which would constitute the sole use of the Weehawken parcel. Alternatively, the defendants' experts contended that the street could be dedicated to Weehawken without need for a use variance. The Appellate Division directed the Law Division to hold a hearing to determine whether or not the grant of a use variance was "reasonably probable." In so doing, the Appellate Division rejected the plaintiff condemnor's position that testimony showing a reasonable probability of a use variance would be improper because approval is not certain. Mr. Stracco and Ms. Coffey argue in their article that the outcome of a variance application should never be preordained, predictable or reasonably probable, until all the testimony is heard by the volunteer citizens who sit on these boards, a record is created, and a resolution is memorialized and ordered a new trial on the issue of just compensation. Therefore, a court cannot predict whether a use variance can be granted with any degree of reasonable probability or certitude.

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