

MASSACHUSETTS Lawyers Weekly

Injuries alleged: Land Taking

Name of case: Emerald Holdings, LLC v. MassDOT

Court/case: Norfolk County Superior Court - MICV 1882-01171

Tried / Settlement: Settlement

Amount: \$250,000.00

Date: September 22, 2022

Attorneys for plaintiff: Jason R. Scopa, Peter E. Flynn
Law Offices of Peter E. Flynn, P.C., Saugus

Attorney for defendant: Withheld

Other useful information:

Client owned commercial property in Canton, Massachusetts. On October 9, 2015, by an Order of Taking recorded with the Norfolk County Registry of Deeds, MassDOT took 5,357 s.f. of land in fee as well as a temporary easement over an additional 1,531 s.f. area of the property. The temporary easement was for 5 years. MassDOT paid the plaintiff a total of \$46,400 at the time of the taking.

Plaintiff subsequently filed suit challenging the amount of compensation and took the position that the severance damage or consequential damage to his remaining land was extensive. Most importantly, the reduced size of the parcel after the taking arguably made it a nonconforming use under town zoning. Therefore, according to the plaintiff, the hypothetical willing buyer would now pay substantially less for the property. One of the problems facing the landowner was the fact that market data showed no decrease in the fair market value of his property after the taking or during the lifetime of the

temporary easement. Nevertheless, the plaintiff's appraiser opined that, but for the taking, the property's value in the market would have been substantially more. Property values were skyrocketing during the time period for measuring damages, but the plaintiff's property value only enjoyed a modest increase in value, which he attributed to the taking.

The parties mediated the case but a resolution was not reached until weeks later. MassDOT ultimately paid the plaintiff an additional \$203,600, which brought the total compensation to \$250,000. The settlement was promptly approved by the Court and has been paid.