

MASSACHUSETTS Lawyers Weekly

Action: Real property – Eminent Domain

Injuries alleged: Total taking

Case name: Congregation of The Sisters of St. Joseph of Boston v. City of Framingham

Court/case no: N/A

Jury and/or judges: N/A

Amount: \$9,000,000

Date: October 18, 2023

Attorneys for Plaintiff: Peter E. Flynn and Jason R. Scopa, Saugus, MA
Christopher A. Quinn, Newton, MA

The Congregation of Sisters owned a 35-acre parcel, which had been identified by the City in the last few years as a highly desirable location for a new elementary school. The City notified the owner of their interest to acquire the parcel by purchase or by some means that would avoid litigation.

As it turns out, the Congregation had no objection to the project and retained counsel for purposes of working with City in hopes of avoiding litigation over compensation, constitutionality, validity of taking, etc. The Sisters welcomed the prospect of a portion of their vacant land being utilized for what they considered a worthy cause for the citizens of Framingham. Meetings took place between City representatives and the Congregation with the understanding that, if eminent domain was necessary, it would be undertaken with an agreement regarding the Fair Market Value of the property. The Congregation did not dispute that the school project was a public purpose, for which there could be a valid eminent domain taking pursuant to M.G.L. c. 79. Nevertheless, the parties agreed to engage consultants and expert real estate appraisers that would analyze all of the issues relevant to the Highest and

Best Use and value of the property. All of the appraisers involved were familiar with the eminent domain process and held the General Certification license, which is the highest certification recognized by the Massachusetts Board of Licensing for Real Estate Appraisers. The appraisers hired by the respective parties shared information, including market data and comprehensive engineering plans.

Negotiations between city officials and counsel for the Congregation went on for months but were not contentious. Through the City's Chief Operating Officer and its Mayor, the city conveyed its vision to the Congregation, its attorneys and real estate appraisers while the City considered the Congregation's concerns about certain aspects of the project as well as receiving just compensation.

In the end, thanks to an open line of communications and understanding between the Congregation's attorneys and the City's C.O.O., the Mayor, City Council and City Solicitor, a balance was reached such that the landowner was justly compensated while the taxpayers of Framingham were protected. The City paid \$9,000,000 for the parcel of 35 acres, and a deed was recorded in October 2023 conveying the parcel to the City.

The Massachusetts School Building Authority was advised that the City now owns the property outright. If the City decides in the future to seek funding assistance and approvals for a school project, it will not be facing litigation over ownership, control, the value, or the validity of the taking. This is a significant advantage for the City with respect to MSBA eligibility.