

In the Indiana Supreme Court

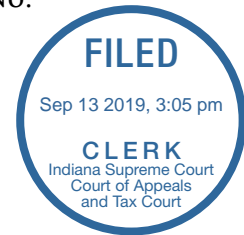
David Guzzo, et al.,
Appellants,

v.

Town of St. John, Lake County, Indiana,
Appellee.

Supreme Court Case No.
19S-PL-00147

Trial Court Case No.
45D11-1403-PL-00037



Published Order

On July 31, 2019, Appellants, the Guzzos, filed a “Notice of Change in Law and Verified Motion for Remand.” The motion argues that recent amendments to Indiana Code chapter 32-24-4.5 governing the procedures for transferring ownership of real property condemned through eminent domain from one private person to another should be applied retroactively to this case. We agree with the Guzzos and find the General Assembly intended the amended statute to apply retroactively. We remand to the trial court to proceed under the amended statute and to entertain any constitutional arguments why the facially retroactive statute ought not to apply here.

Generally, a statute applies prospectively unless it expressly states otherwise. *O’Laughlin v. Barton*, 582 N.E.2d 817, 820 (Ind. 1991). By its plain terms, the amended statute applies retroactively to this case. Effective July 1, 2019, the General Assembly amended Indiana Code chapter 32-24-4.5 to define “residential property” as “real property that consists of: (1) a single family dwelling that is not owned for the purpose of resale, rental, or leasing in the ordinary course of the owner's business; and (2) the land on which the dwelling is located,” Ind. Code § 32-24-4.5-6, and to clarify that owners of residential property condemned through eminent domain are entitled to 150% of the “fair market value of the parcel as determined under IC 32-24-1.” Pub. L. No. 88-2019, 2019 Ind. Acts 1411 (adding I.C. § 32-24-4.5-6.2 and amending I.C. § 32-24-4.5-8). Subsection 8(b) applies amended subsection 8(a)(2) retroactively to a defined category of pending cases:

(b) Subsection (a)(2) applies:

(1) only to residential property occupied by the owner as a residence, in the case of an eminent domain proceeding:

(A) initiated before July 1, 2019; and

(B) with respect to which the fair market value of the parcel has been determined under IC 32-24-1 before July 1, 2019; and

(2) to all residential property, regardless of whether the property is occupied by the owner as a residence, in the case of an eminent domain proceeding initiated:

(A) after June 30, 2019; or

(B) before July 1, 2019, and with respect to which the fair market value of the parcel has not been determined under IC 32-24-1 before July 1, 2019.

I.C. § 32-24-4.5-8(b).

The Guzzos and the Town of St. John disagree about whether the present case fits under subsection 8(b)(1) or 8(b)(2) of the retroactive statute. Both parties agree that the eminent domain proceeding was initiated before July 1, 2019. But they disagree whether the fair market value was determined according to the eminent domain procedures before July 1, 2019. I.C. ch. 32-24-1.

Indiana Code chapter 32-24-1 provides that after the filing of a complaint to determine damages under the eminent domain statute, the trial court appoints three residents of Indiana “to assess damages . . . that the owner or owners severally may sustain, or be entitled to, by reason of the acquisition.” I.C. § 32-24-1-7(c). The court-appointed appraisers

shall determine and report all of the following:

- (1) The fair market value of each parcel of property sought to be acquired and the value of each separate estate or interest in the property.
- (2) The fair market value of all improvements pertaining to the property, if any, on the portion of the property to be acquired.
- (3) The damages, if any, to the residue of the property of the owner or owners caused by taking out the part sought to be acquired.
- (4) The other damages, if any, that will result to any persons from the construction of the improvements in the manner proposed by the plaintiff.

I.C. § 32-24-1-9(c). Any party “aggrieved by the assessment of benefits or damages in a report of the appraisers” may file an exception to the report. I.C. § 32-24-1-11(b). In cases where an exception to the appraisers’ report is filed, the proceedings include a trial of exceptions held before the court or a jury. *See* I.C. §§ 32-24-1-11(c) & (d)(6). Ultimately, “the fair market value of property appropriated is a question of fact for the [fact-finder] to determine.” *State v. Jordan Woods, Inc.*, 248 Ind. 208, 216, 225 N.E.2d 767, 771 (1967).

The Town argues the fair market value of the property is “determined under IC 32-24-1” when the court-appointed appraisers file their report. The Town also argues that “fair market value,” as used in the statute, refers to the appraisers’ report and “damages” refers to a determination by the factfinder. But it is well-established that the basic measure of damages in an eminent domain case is the “fair market value at the time of the take.” *State v. Bishop*, 800 N.E.2d 918, 923 (Ind. 2003) (quoting *State v. Church of the Nazarene of Logansport*, 268 Ind. 523, 526, 377 N.E.2d 607, 608 (1978)).

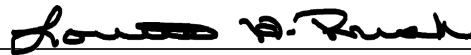
Finding the Town's argument unconvincing, we conclude that fair market value is determined under Indiana Code chapter 32-24-1 either by the agreement of the parties or by the trier of fact. Under chapter 1, the appraisers' report is an initial estimation meant to provide the property owner with some access to funds and to facilitate settlement by the parties. See I.C. §§ 32-24-1-11(d), -12; see also I.C. § 32-24-1-9(e) ("in estimating the damages specified in subsection (c), the appraisers may not deduct for any benefits that may result from the improvement"). When an exception to the appraisers' report is filed, a trial is required. *Indiana & Michigan Elec. Co. v. Louck*, 247 Ind. 24, 27, 206 N.E.2d 871, 872 (1965). During trial on the exceptions, the appraisers' report is not admissible as evidence. *Jordan Woods, Inc.*, 248 Ind. at 216, 225 N.E.2d at 771–72. If the General Assembly intended the assessors' report be the relevant determination for retroactivity, it could have cited Indiana Code section 32-24-1-7 directly; instead the General Assembly cited generally to all of chapter 1, thus invoking all the procedures therein.

Aside from its semantic argument, the Town also argues that if the Guzzos were correct, subsection 8(b)(1) would be meaningless because it could not apply to any case. But it is not difficult to imagine an eminent domain case in which the trial court entered a fair-market-value determination before July 1, 2019, and for which an appeal was still pending when these amendments went into effect. Without deciding the question, we observe that subsection 8(b)(1) may apply to such a case. The existence of subsection 8(b)(1) clarifies that subsection 8(b)(2) does not apply to cases where there has already been an agreement by the parties or a determination by the trier of fact concerning fair-market value.

Finally, the Town argues that the recent amendments should not be applied retroactively to this case because to do so would violate a vested right. Given the posture of this case, we decline to address this as-applied challenge because the argument is premature for our consideration. Whether the Town has a vested right that the General Assembly cannot alter is the kind of question we will answer only after full consideration by lower courts.

We find that subsection 8(a)(2) on its face applies here because fair market value has not yet been determined under Indiana Code chapter 32-24-1. We thus dismiss this appeal without prejudice and remand to the trial court to determine the fair market value of the Guzzos' property and assess whether they are entitled to enhanced compensation. The parties are free on remand to argue whether there is any constitutional limitation on applying the amended statute to this case.

Done at Indianapolis, Indiana, on 9/13/2019.



Loretta H. Rush
Chief Justice of Indiana

Rush, C.J., and David, Massa, Slaughter, and Goff, JJ., concur.