SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1651-14T4

COUNTY OF ESSEX,

Plaintiff-Respondent/
Cross-Appellant,

v.

GERALD RUBIN and THE GRACE ARAMANDA TRUST,

Defendants-Appellants/
Cross-Respondents,

and

CHRISTIAN FEIGENSPAN & CO.; ORATON INVESTMENT CO.; CITY OF NEWARK; and NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, BUREAU OF TIDELANDS MANAGEMENT,

Defendants.

Submitted October 11, 2016 – Decided August 2, 2017

Before Judges Sabatino, Nugent and Haas.

On appeal from Superior Court of New Jersey, Law Division, Essex County, Docket No. L-981-10.

Law Office of W. Lane Miller, and Paul V. Fernicola & Associates, LLC, attorneys for

appellants/cross-respondents; Mr. Miller, of counsel; Mr. Miller and Robert Moore, on the briefs).

DeCotiis, FitzPatrick & Cole, LLP, attorneys for respondent/cross-appellant; Mr. Frino, of counsel; Michael J. Ash, on the briefs).

PER CURIAM

Plaintiff, County of Essex ("the County"), filed this condemnation action under the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 to -50 ("the Act") to acquire land owned by defendants Gerald Rubin and the Grace Aramanda Trust ("the owners"). The Act includes, among four possible dates for determining just compensation to the owners, "the date possession of the property being condemned is taken by the condemnor in whole or in part" and "the date on which action is taken by the condemnor which substantially affects the use and enjoyment of the property by the condemnee." The trial court determined on summary judgment the former was the appropriate valuation date.

The owners appeal from the March 22, 2013 implementing order. They also appeal from the trial court's May 6, 2013 order that denied their motion for reconsideration, and from the October 23, 2014 order that entered final judgment on the jury's valuation verdict.

The County cross-appeals from the order of judgment, arguing the trial court improperly permitted the owners' expert to include

part of a vacated street in his valuation of the condemned land. The County also contends the trial court twice erred during the trial; first, when it precluded plaintiff's expert from testifying about the motivation of a buyer for buying comparable property; second, when it refused to instruct the jury that the condemned property was subject to regulation by the New Jersey Department of Environmental Protection ("NJDEP").

For the reasons that follow, we affirm the three orders.

I.

A.

The condemned property consists of four lots (collectively, "the condemned tract") designated on the Newark City tax map as Block 2025, Lot 20, Block 2473, Lots 1 & 2, and Block 2473.01, Lot 4. The first three lots border the Passaic River along one side and, to a considerable extent, the Morris Canal Bed along the other. The fourth lot borders the opposite side of the Morris Canal Bed along one side and Raymond Boulevard along the other. A section of Brill Street perpendicular to Raymond Boulevard provided access to the condemned tract. The City of Newark vacated this section of Brill Street in 1999.

The County filed a verified complaint on January 29, 2010, seeking, among other relief: a determination that it had duly exercised its power of eminent domain; an order authorizing it to

deposit funds upon the contemporaneous filing and recording of a declaration of taking; and the appointment of commissioners to render an equitable appraisal of the condemned tract. The trial court granted the relief the County sought, the owners appealed, and we affirmed the trial court's August 24, 2010 order for judgment and appointing commissioners. Cty. of Essex v. Rubin, No. A-0714-10T3 (App. Div. June 24, 2011).

Lengthy discovery ensued. Following completion of discovery, the County filed a motion for partial summary judgment seeking an order fixing the date for valuation of the condemned tract. The trial court granted the motion on March 22, 2013, and entered an order providing "the date of valuation for the condemnation value litigation shall be April 14, 2010 in accordance with N.J.S.A. 20:3-30(a)", the date the County filed the declaration of taking. On May 6, 2013, the court denied the owners' motion for reconsideration.

At the conclusion of a July 23, 2014 hearing, the court determined that the owners' expert would be permitted to opine at trial that a 4043.6 square foot portion of the vacated Brill Street should be included in the condemned tract's valuation. The court explained that the County could cross-examine the expert and "maybe, even offer witnesses at some future date to offer contrary opinions. I don't know about that."

The matter was tried in September 2014 and the jury returned a verdict of $5,045,000 as just compensation to the owners for the County's acquisition of their property. This appeal followed.

B.

The summary judgment motion record consisted mostly of undisputed facts and disputed expert reports. The record established three periods of activity relevant to this appeal. During the first period, from 1996 to 2003, the County sought to acquire the condemned tract but abandoned its efforts to do so. During the second period, 2003 through 2005, the County informed the owners of its renewed intention to acquire the condemned tract, the parties engaged in unsuccessful negotiations concerning just compensation, and the owners ultimately filed an inverse condemnation action. The third period, from 2006 through 2010, culminated in the County filing a declaration of taking and depositing the sum it believed to be just compensation for its acquisition.

The first event of the first period occurred in 1996 when the City of Newark agreed to allow the County to build a jail in the city on the condition the County build a minor league baseball stadium and soccer stadium on County land located in Newark. Essex Cty. Improvement Auth. v. RAR Dev. Assocs., 323 N.J. Super. 505, 510 (1999). The County agreed to use Riverbank Park as the

location of the stadiums. Ibid. The County also agreed to build a "replacement park" near Riverbank Park. Id. at 510-11.

The Essex County Improvement Authority ("ECIA") identified the condemned tract as the then-anticipated site for the replacement park. RAR Development Associates ("RAR") owned the condemned tract. Defendant Rubin was RAR's general partner. Id. at 511. After making two offers to buy the condemned tract from RAR and taking preliminary steps to acquire the tract through eminent domain, ECIA abandoned its efforts. Ibid. Litigation ensued and a Law Division judge determined ECIA was precluded "from continuing to prosecute the present condemnation action against RAR." Id. at 528. The judge declared the condemnation of RAR's property abandoned. Ibid.

In July 2001, RAR filed a development application with the Newark Board of Adjustment seeking a use variance and site plan approval for the proposed construction of ninety townhouses and a playground on the condemned tract. Newark's zoning officer rejected the application because, among other reasons, the application "appear[ed] to include properties not owned by the applicant . . ., namely, the Morris Canal Bed"; and because the site was "subject to the WaterFront Development Permit process and regulations with the [NJDEP]." RAR did not further pursue the

condemned tract's development, though it repeatedly threatened to do so during the second period relevant to this appeal.

The second relevant period began on December 3, 2003, when, during a town council meeting, the City of Newark adopted two ordinances, both intended to facilitate the County's acquisition of the condemned property and construction of a park. During the meeting, a council member publicly stated the County Executive had made a commitment to build the park. The council member also stated that as soon as the ordinances were adopted, "they will move into condemning the . . . property, obtaining the property and move on in building the replacement park."

Two days later, on December 5, 2003, ECIA Special Counsel wrote to defendant Rubin, stating:

> [t]he County and the City of Newark have been working on a cooperative basis to restart the Replacement Park Project.
>
> . . . .
>
> Hopefully, the RAR Property can be acquired by the County or the ECIA through a mutually acceptable Purchase and Sale Agreement. If mutually acceptable terms concerning such property acquisition cannot be reached, the County or the ECIA will seek to acquire the RAR property through exercise of their respective powers of eminent domain.

The December 5, 2003 letter triggered more than a year's exchange of letters and meetings among RAR, Rubin, and County

Counsel concerning the condemned tract's value. Rubin asserted the condemned tract's value had been affected by the longstanding "threat of condemnation." Rubin also threatened to "commence active development plans for the RAR properties." Nonetheless, the parties continued to negotiate while the County obtained appraisals for the condemned tract.

The County obtained two appraisals. On July 20, 2004, County Counsel wrote to Rubin and confirmed the County had offered $4,200,000 to purchase the condemned tract. In a lengthy response dated July 26, 2004, Rubin memorialized RAR's rejection of the offer and confirmed he had been told the offer was final. Consequently, Rubin expected the County to "either file a Declaration of Taking or abandon the [p]roperty as a proposed park." He concluded: "[i]f we do not get a response to this letter within fifteen (15) days, we will assume the County is abandoning its interest in the [p]roperty as a proposed park and my client will immediately proceed with development plans."

In response, County Counsel wrote to Rubin on August 9, 2004, pointing out the County had delivered copies of appraisals to Rubin. The valuations in the appraisals "ranged from a low of $3,698,000 to a high of $4,300,000." The County further pointed out that its offer of $4,200,000 "exceeded both appraisal valuations where RAR had no interest in the Morris Canal [B]ed."

In an October 28, 2004 letter, Rubin confirmed a meeting in which he countered, on behalf of RAR, with an offer to sell the condemned tract for $5,000,000 "to settle this matter even though [RAR] believes that the fair market value of the [p]roperty is substantially in excess of $5,000,000."[1] Rubin further confirmed the County had rejected RAR's counteroffer and insisted it would not purchase the condemned tract for more than $4,300,000.

On March 9, 2005, in response to County Counsel telling Rubin he had offered no evidence that the County's appraisals were inaccurate, Rubin provided a report from Appraisal Consultants Corp. ("Appraisal Consultants"). In the February 1, 2005 appraisal, the value of the condemned tract, based on the assumption RAR had no right or interest in the Morris Canal Bed, was $9,460,000. Assuming RAR had rights in the Morris Canal Bed, the condemned tract's value was $11,000,000. The parties exchanged additional correspondence in which County Counsel enclosed reports from the County's appraisers challenging as unreliable the data relied upon by RAR's appraisers.

The parties' negotiations ended on May 25, 2005, when Rubin wrote to County Counsel confirming RAR had rejected the County's

[1] We discern no violation of N.J.R.E. 408 in discussing the history of the parties' settlement negotiations in this context, given the special relevance of the negotiations to the condemnation issues.

final "firm" offer of $4,700,000. Rubin concluded his three-page letter by stating, "[i]t is the position of my client that the County's actions have resulted in a condemnation of their property. We are in the process of instituting a suit against the County taking the position that the County's actions have resulted in the condemnation of their property. We will file that suit within two weeks unless we can reach a mutually acceptable agreement with respect to the status of my client's property."

In November 2005, JAGR Three Realty, L.L.C., successor to RAR, filed an inverse condemnation action against the City of Newark, the County, and ECIA. Later that month, counsel for Rubin and JAGR wrote a letter to County Counsel confirming the County had once again offered to purchase the condemned tract for $4,700,000, and the offer had once again been rejected. JAGR agreed to accept the sum of nine million dollars as the purchase price.

Thereafter, the owners leased portions of the condemned tract. According to the County, the court dismissed JAGR's inverse condemnation action on September 20, 2007, pursuant to Rule 1:13-7 for lack of prosecution.[2]

[2] According to the County's brief, the Essex County Superior Court Clerk's file was destroyed on April 17, 2009.

The third period relevant to this appeal began on December 2, 2009, when the County offered to purchase the condemned tract for $3,330,000. The owners rejected the offer, and on January 29, 2010, the County filed a verified complaint seeking the following relief: a determination that it was authorized to, and had, duly exercised its power of eminent domain; an order instructing the County to deposit funds equal to the appraised value of the condemned tract upon the filing and recording of a declaration of taking and declaring that the County was authorized to take possession of the condemned tract; and the appointment of commissioners to make a just and equitable appraisement of the value of the condemned tract and to fix compensation to be paid for its acquisition. The owners filed an answer in which they alleged, among other things, the proper date of valuation of the condemned tract was November 3, 2005.

On August 24, 2010, the trial court entered judgment as requested by the County. The owners appealed, arguing the County failed to engage in bona fide negotiations to acquire the condemned tract and failed to serve them with the appraisal before filing the verified complaint. We affirmed the August 24, 2010 order for judgment and appointing commissioners. Cty. of Essex, supra, No. A-0714-10. Thereafter, appointed commissioners filed an award, which was rejected.

Following discovery, the County filed a motion for partial summary judgment, seeking an order fixing a valuation date for the condemned tract. The County argued the valuation date should be April 14, 2010, the date on which the County became vested with title and possession of the condemned tract by filing the Declaration of Taking and depositing the estimated compensation. The owners argued the valuation date should be July 1, 2005, the date they claimed the use and enjoyment of the condemned tract was substantially affected by the County's actions.

The summary judgment record included appraisal reports prepared for the owners. The reports were included in the County's moving papers. One, prepared by Appraisal Consultants, dated June 1, 2012, concluded that as of July 2, 2005, the fair market value of the condemned tract was $9,460,000 assuming no rights, title or interest in the Morris Canal Bed; and $11,000,000 assuming full rights, title or interest in the Morris Canal Bed. Another, prepared by Blau Appraisal Company and dated November 13, 2009, appraised the value of the condemned tract as of November 2, 2005, at $11,825,000 assuming no rights in the Morris Canal Bed, and $13,750,000 assuming full rights in the Morris Canal Bed.

According to both reports, the highest and best use of the condemned tract was residential development. The Appraisal Consultants' report stated:

> [d]ue to the County's actions and inactions as of July 1, 2005[,] the property owner could . . . [o]nly rent the property on a short term basis[; could n]ot prepare [and file] a development plan[,] . . . make any substantial development plans to enhance the property's value[, or] sell the property to a developer or lease the property on a long term basis to a user who required substantial improvements be made to the property.

The report also stated:

> In conjunction with the property's loss of use and enjoyment there would also be a significant loss in its market value resulting from its loss of its bundle of rights and relegating the use and utility of the property to short term rental status for use solely as outside storage. No purchaser or developer would give any value to the property for development to its highest and best use which is and was for residential or for any other development use.

The report's author opined that sellers and buyers would have no motivation to sell or buy the property "for development for residential use (its highest and best use), for development for an industrial building, office building, retail, or any other use that necessitated making substantial improvements to the [p]roperty due to the significant uncertainties (cloud) hovering over" the property. He continued:

> The fact that there was no response relating to the March 11, 2004 and April 8, 2005 letters from Rubin to the County and the County's statement that it was "not going to do anything" as a result of impasse in negotiations had a marked deleterious effect

> on the subject property due to its serious chilling [e]ffect on any attempt on the part of the owner to either market or develop the property and therefore caused a substantial downward fluctuation in its value. Given that vacant land's most profitable use is for it to be developed, the loss and value suffered by the [owners] as a result of their inability to effectively develop the property was in excess of $5,000,000 as specifically detailed below.

The author estimated the current value of the condemned tract based on the proposition that "the only use that the land could be used for is for outside storage short[-]term rental." Employing "[a]n accepted valuation technique for estimating land value[, namely,] to capitalize the net rent derived from the rental of the land[,]" the author valued the condemned tract based on current use at $4,436,000 assuming no rights, title or interest in the Morris Canal Bed, and $5,138,000 assuming full rights, title or interest the Morris Canal Bed. The author compared these values to the condemned tract's values based on a highest and best use as residential development: $9,460,000 assuming no rights, title or interest in the Morris Canal Bed, and $11,000,000 assuming full rights, title or interest in the Morris Canal Bed. The author concluded that the cloud over the property due to the County's actions and inactions resulted in a diminution in the property's market value of a minimum of $5,000,000.

The Blau report was prepared for use by JAGR III Realty in its inverse condemnation action against the City of Newark, the County, and ECIA. The purpose of the report was "to develop an opinion of the market value of the [property] as of November 2, 2005." Based upon the Sales Comparison Approach to value, the Blau report's author valued the condemned tract, assuming the owners had no interest in the Morris Canal Bed, at $11,825,000; and, assuming a developable interest in the Morris Canal Bed, at $13,750,000.

The trial court determined a hearing was unnecessary, found the owners had not demonstrated the County engaged in conduct that substantially affected their use and enjoyment of the condemned tract, and fixed April 14, 2010 as the valuation date. In making its determination, the court was "persuaded by the County's argument" that in this case "like the Stanley[3] case, the alleged decrease in property value occurred in the gray shadow in the 2007 and 2008 financial crises." Noting the owners' argument that their expert had selected a July 2005 valuation date based on the "totality of circumstances," the court characterized the Appraisal Consultants' report as "set[ting] forth little more than bare conclusions."

[3] Mt. Laurel Twp. v. Stanley, 185 N.J. 320 (2005).

Trial ensued and resulted in the judgment from which the parties appeal.

II.

We first address the owners' arguments. They contend that in fixing the valuation date, the trial court misapplied the summary judgment standard and decided the motion on the papers rather than on evidence presented at a plenary hearing. They also contend the court misapplied relevant case law and improperly took judicial notice of the recession that began in 2007. The owners argue the trial court also erroneously denied their motion for reconsideration.

We review "[a] ruling on summary judgment . . . de novo." Davis v. Brickman Landscaping, Ltd. 219 N.J. 395, 405 (2014) (citing Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 115 (2014)). In determining whether summary judgment was proper, an appellate court applies the same standard as that which governed the trial court and views "the evidence in the light most favorable to the non-moving party." Nicholas v. Mynster, 213 N.J. 463, 477-78 (2013) (citing Murray v. Plainfield Rescue Squad, 210 N.J. 581, 584 (2012)). Rule 4:46-2(c) requires that the trial court grant a summary judgment motion "when the record demonstrates . . . 'there is no genuine issue as to any material fact challenged and

. . . the moving party is entitled to a judgment or order as a matter of law.'" Davis, supra, 219 N.J. at 405-06.

A motion for summary judgment will not be defeated by bare conclusions lacking factual support, Petersen v. Twp. of Raritan, 418 N.J. Super. 125, 132 (App. Div. 2011) (citation omitted), self-serving statements, Heyert v. Taddese, 431 N.J. Super. 388, 414 (App. Div. 2013), or disputed facts "of an insubstantial nature." Pressler & Verniero, Current N.J. Court Rules, comment 2.1 on R. 4:46-2 (2017). "Competent opposition requires 'competent evidential material' beyond mere 'speculation' and 'fanciful arguments.'" Hoffman v. Asseenontv.Com, Inc., 404 N.J. Super. 415, 426 (App. Div. 2009) (citations omitted).

Turning to the Act, the section that addresses the date on which just compensation is to be fixed states in pertinent part:

> Just compensation shall be determined as of the date of the earliest of the following events: (a) the date possession of the property being condemned is taken by the condemnor in whole or in part; (b) the date of the commencement of the action; (c) the date on which action is taken by the condemnor which substantially affects the use and enjoyment of the property by the condemnee; or (d) the date of the declaration of blight by the governing body . . . .
> [N.J.S.A. 20:3-30.]

"The question whether and when a landowner's use and enjoyment of his or her property has been 'substantially affected' under

N.J.S.A. 20:3-30(c) is a mixed question of law and fact." Twp. of W. Windsor v. Nierenberg, 150 N.J. 111, 135 (1997) (citation omitted). For purposes of subsection (c), "[a] substantial effect upon the use and enjoyment of property is occasioned when the condemnor takes action which directly, unequivocally and immediately stimulates an upward and downward fluctuation in value and which is directly attributable to a future condemnation." Id. at 129-30 (quoting New Jersey Sports & Exposition Auth. v. Giant Realty Assocs., 143 N.J. Super. 338, 353 (Law Div. 1976)). "A 'clearly observable and direct interference which is directly related to condemnation' must exist if a substantial effect is to be found." Id. at 130 (quoting New Jersey Sports & Exposition Auth., supra, 143 N.J. Super. at 353-54).

In West Windsor, the Township sent the condemnees a letter notifying them it had received funding to develop a community park on the condemnees' property and might acquire the property. Id. at 117. The Court held "the trial court properly found that the date of the Township's letter set the date of valuation." Id. at 137. The Court cautioned, however:

> That determination should not discourage municipalities from responsibly notifying potential condemnees of an intention to condemn. See N.J.S.A. 20:3-6 (dictating that [the] condemnor must engage in bona fide negotiations that include written offer to purchase before initiating condemnation

> proceedings). Nor should our disposition be viewed as penalizing condemnors. The objective of N.J.S.A. 20:3-30(c) is neither to reward nor to punish either party to a condemnation. Rather, it is to establish value at the time that the condemnor's actions substantially affect the landowners use and enjoyment of her property.
>
> [Ibid. (citation omitted).]

In the case before us, we conclude the summary judgment record contained insufficient factual support to create a genuine issue as to whether the County's actions directly, unequivocally and immediately stimulated an upward or downward fluctuation in the value of the owner's property as of July 2, 2005 — as stated in the owner's Appraisal Consultants' appraisal.[4] The Appraisal Consultants' report states the condemned track was "substantially affected and as a result thereof its value impacted as of July 1, 2005 by the actions and inactions of the condemning authority (County of Essex)." The expert's selection of that date is arbitrary.[5]

First, the expert opines that as of that date, the owners could not effectively list the property for sale at its highest and best use, prepare a development plan and present the plan

---

[4] Because our review is de novo, our agreement with the trial court's ultimate conclusion should not be read as agreeing with the trial court's reasoning.

[5] The owners do not assert on appeal that November 2, 2005 should be considered as an alternate valuation date.

before a city planning or zoning board of adjustment, make any substantial development plans to enhance the property's value, sell the property to a developer, or lease the property on a long term basis. The expert does not explain why, if these were the critical factors causing a diminution in value, these same factors did not have the same effect in December 3, 2003, when the County sent the letter to the owners notifying them of its intent to exercise its power of eminent domain.

In addition, the February 5, 2005 Appraisal Consultants' report stated the valuation of the condemned tract was $9,460,000 without the Morris Canal Bed, and $11,000,000 with the Morris Canal Bed. The November 13, 2009 Blau appraisal stated the value of the condemned tract as of November 2, 2005, was $11,825,000 without the Morris Canal Bed, and $13,750,000 with the Morris Canal Bed. Considered collectively, these reports suggest there was no change in the condemned tract's value between February and July 2005, but an increase of more than $2,000,000 between July and November. The Appraisal Consultants' report is silent as to what economic conditions were causing such an upward spiral in 2005, whether the same market forces were at work in December 2003 when the County announced to Rubin its intention to acquire the property, and why the value of the condemned property was significantly different in 2010. Throughout those years, the

County's commitment to acquire the condemned tract had not changed. Thus, the owners' selection of July 2005 as the valuation date was arbitrary and perhaps, as the County contends, a date the experts backed into to take advantage of an upward surge in land use values.

Perhaps more significantly, to justify the July 1, 2005 valuation date, the Appraisal Consultants' report emphasizes the author's interpretation of the impact of negotiations between Rubin and the County. We reject the notion that a condemnee's legal maneuvering during negotiations should be a substantial factor in determining a valuation date for condemned land. Such a proposition is unsound and without precedential support.

On appeal, the owners do not insist that July 1, 2005, is necessarily the fixed date for valuation of the condemned tract; rather, they argue "the appropriate date for the valuation was no later than July 1, 2005 when negotiations between the parties had broken off for the voluntary acquisition of the [condemned tract] by the County." The owners note their expert, in the June 1, 2012 Appraisal Consultants' report, "concluded that the concerted actions of the County and the City from December 2003 through July 2005 had substantially affected the use and enjoyment of the [condemned tract], causing a dramatic diminution of the value of

the [condemned tract]." That argument underscores the arbitrary nature of selecting July 1, 2005 as a valuation date.

First, the argument that the valuation of condemned property should be fixed somewhere along a nineteen-month temporal spectrum overlooks the requirement that, to be substantial, the effect of a condemnor's action upon the use and enjoyment of the condemnee's property must "directly, unequivocally, and immediately stimulate[] an upward or downward fluctuation in value." W. Windsor, supra, 150 N.J. at 129 (emphasis added) (citation omitted).

Second, unlike the matters in West Windsor and Stanley, here there was no evidence in the motion record that the County's December 2003 letter had any direct effect on the property's valuation. In West Windsor, the condemnee had filed a development application for a forty-eight-lot residential subdivision before receiving the Township's letter providing formal notification the Township intended to acquire the property for the purpose of establishing a park. Supra, 150 N.J. at 116-17. According to the condemnee's expert, the condemnee's "final plan conformed with the municipal zoning ordinance." Id. at 116. Moreover, the condemnee's attorney testified that "it was 'a relatively straightforward submission.'" Ibid.

In contrast, in the case before us, the owners had filed a development application which had been rejected before the County informed the owners in December 2003 of its intent to exercise its power of eminent domain. The owners had not pursued development of the property in the interim. Thus, unlike West Windsor, the County's letter concerning its intent to acquire the condemned tract had no immediate effect on pending plans to develop the tract.

In short, there was no evidence on the summary judgment motion record that created a genuinely disputed issue of material fact as to when the County's action "directly, unequivocally, and immediately stimulated an upward or downward fluctuation in value . . . directly attributable to a future condemnation," id. at 129-30; and what the value of the condemned tract was at such time. The owners' selection of the July 2005 date was demonstratively arbitrary. The owners' argument that the County's action substantially affected the value of the condemned tract sometime between December 2003 and July 2005 does not satisfy the requirement that a condemnor's action immediately stimulate an upward or downward fluctuation in value.

Lastly, there was no competent evidence in the motion record from which the trial court could have inferred the value of the condemned tract had directly, unequivocally, and immediately been

affected by "[a] 'clearly observable and direct interference which is directly related to condemnation[.]'" Id. at 130 (citation omitted).

For the foregoing reasons, we affirm the trial court's order fixing the date the County filed the declaration of taking as the valuation date.

III.

On cross-appeal, the County contends the trial court committed three errors. First, the County contends the court erred by permitting the owners' expert to include in his valuation the 4043.60 square foot portion of Brill Street (the "Brill Street parcel"). Second, the County contends the court erred by precluding its expert from explaining the purchaser of a property comparable to defendants' had a particular need for a functioning waterfront. Lastly, the County contends the court erred by declining to instruct the jury the property was subject to an NJDEP regulation. These arguments are without sufficient merit to warrant extended discussion. R. 2:11-3(e)(1)(E).

Concerning the County's argument regarding the Brill Street parcel, the court determined the owners' expert could testify about why the Brill Street parcel should be included in the valuation, but permitted the County to adduce contrary expert testimony. Rather than doing so, before trial, the County informed

the owners in a pretrial email, "[y]ou don't need to call [the expert] at trial. We are both valuing 5.346 acres[.]" During voir dire, the court instructed the jury the County "acquired a 5.346 acre property" and the court repeated this in its final instructions. Thus, it appears from the record the County conceded the condemned tract consisted of 5.346 acres.

Next, the trial court acted well within its discretion in determining the County's expert's testimony concerning a comparable parcel's owner's motivation for purchasing the property should be excluded. The decision was not so wide of the mark that a manifest denial of justice resulted. State v. Sands, 76 N.J. 127, 140 (1978); State v. Carter, 91 N.J. 86, 106 (1982). Moreover, the purpose of the testimony was to demonstrate the adjacent property had a bulkhead and deeper water along its riverfront border, thus making it accessible to certain vessels, unlike the condemned tract. For that reason, the County's expert opined that an adjustment had to be made to this "comparable." The trial record demonstrates the court permitted the expert to fully explain these considerations. Consequently, even if it was error to exclude testimony that the comparable party's owner purchased the property for these reasons, the error was harmless. R. 2:10-2.

Lastly, the trial court acted well within its discretion when it declined to give the County's proposed instruction concerning an NJDEP waterfront development regulation. The court refused to give the instruction because the County had presented insufficient testimony through its expert to make the instruction meaningful. We agree that without underlying supporting testimony, the instruction would have been either confusing or meaningless to the jury.

IV.

For all the foregoing reasons, we affirm the orders of the trial court in their entirety, including the order entering judgment.

Affirmed.