## **Insights** Thought Leadership



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## Can Use Variance Grants Be 'Reasonably Probable'?

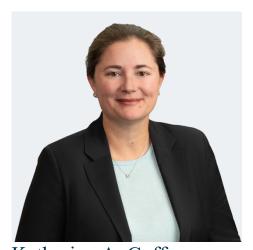
Christopher Stracco and Kate Coffey wrote an article, "Can Use Variance Grants Be 'Reasonably Probable'?," for Law360. The article examines the significance of the case New Jersey Transit Corp. v. Franco. The case involved the condemnation by New Jersey Transit Corp. of adjoining properties in Hoboken, 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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