

## West Virginia Supreme Court Of Appeals Restores Jury Award In Spring Valley Drive Flooding Case

### Court Restores Jury Award In City Flooding Case

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Ben Fields, The Herald-Dispatch

HUNTINGTON — The West Virginia Supreme Court of Appeals ruled Thursday that monetary damages awarded by a Wayne County jury to homeowners on Spring Valley Drive and cut by the judge in the case be restored.

In doing so, the high court noted that it was crafting new case law in how damages in property cases should be assessed.

The lawsuit was filed by 30 residents along Spring Valley Drive whose homes had been damaged by a flood in May 2011, claiming the city of Huntington's failure to maintain a trash rack along Krouts Creek was responsible for the high water.

A jury found the city liable for the damage in a January 2013 verdict and awarded more than \$1 million in compensation to the residents for lost value of their property and to make necessary repairs, raising each home by two feet to get the structures out of the flood plain.

Circuit Judge Darrell Pratt had given instructions that, should the jury rule in the homeowners' favor, it should award money either for repair of the homes or the lost property value, not both.

Therefore Pratt removed the money allocated by the jury for home repairs, which prompted the appeal to the Supreme Court.

The court ruled that the jury was given incorrect instructions based on a misinterpretation of prior case law, and that the state's guidelines for such cases needed to be clarified, according to documents filed Thursday.

The Supreme Court ruled that no specific formula should be applied to property damage cases, and that common sense needed to be used to determine if the cost of repairs and the loss of property value overlap.

In this case, the court ruled they do not, because the homes along Spring Valley Drive will still have a diminished property value even after they are repaired.

"There is a stigma there that these homes are damaged, that this is a bad area because it's been flooding out there for years," said Johnathan Marshall, an attorney with Bailey & Glasser LLP, which represented the plaintiffs.

Marshall said the majority of the cases were settled because most of the plaintiffs did not want to go through with the appeal process.

The Supreme Court's ruling affects five remaining plaintiffs.

"They're not going to get \$1 million or \$500,000," Marshall said. "They're probably going to get something around \$300,000, which is good for those people. We had one plaintiff who was awarded \$71,000 in damages, and that was \$1,000 over the fair market value of the house, so that was struck. How is that fair?"

Marshall said the decision brings state law up to speed with surrounding states, which have had similar rules in place.

"Nothing they decided was very earth-shattering," he said. "The goal is to put the person in the situation they were in before the event happened, and there is no one formula for that."

Marshall has another case involving Spring Valley Drive residents pending.

The area has consistently flooded since the Krouts Creek stormwater management project took place in 2005 to alleviate nuisance flooding within the city of Huntington.

Huntington Mayor Steve Williams had not seen the Supreme Court's ruling as of Thursday evening, but said the city, along with the Army Corps of Engineers, has had to "drastically rework" the Krouts Creek system because of the problems in the area. He said the city has not received any complaints since rectifying the problem.