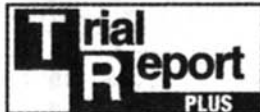


Condemnation Case Proves Costly For State Transportation Dep't

Litigation Can Lead To A Large Jury Verdict



Where the state took part of a property owner's land through condemnation to widen a road and still hadn't completed the project five years later, could the landowner get damages from the state for the devaluation of the remaining property caused by the delay?

A recent \$1.25 million jury verdict indicates that the answer is "Yes."

According to the property owners' lawyer, H. Adam Cohen of Southfield, the case demonstrates that — despite obstacles — these cases are winnable if attorneys follow a few simple, but important guidelines.

Cohen, who handled the case with lead counsel Walter B. Mason, recommended that attorneys confronting similar condemnation issues take the following steps:

- stress the diminished value of the property to a "willing and knowledgeable purchaser";

- use an expert who is prepared to draw analogies so jurors can consider some of the complicated concepts in various contexts; and

- employ a real estate appraiser who can communicate the real-world market value factors to the jury.

The case is *Michigan Dep't of Transportation v. Palazzolo, et al.*

Just Compensation?

In the late 1980s, the defendant property owners commenced development activity in connection with their 29.80 acres of land located at the corner of Hall and Heydenreich roads in Macomb Township.

In early 1990, the Michigan Department of Transportation (MDOT) contacted the defendants and informed them that they intended to acquire part of the property for the purpose of widening Hall Road.

At that point, the defendants ceased their development activity and the land remained vacant.

The MDOT eventually offered the defendants \$706,000 as compensation for the portion of the land it intended to acquire. The defendants rejected the offer.

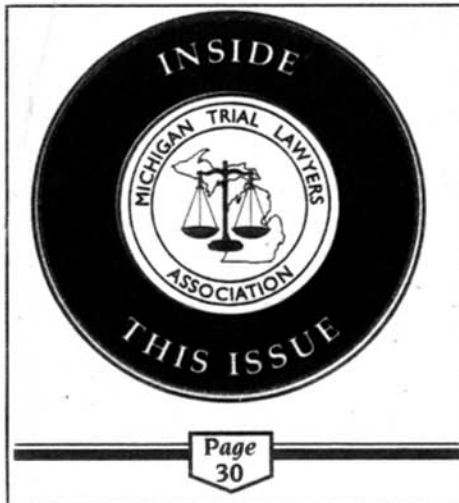
On Feb. 24, 1992, the MDOT filed a condemnation action for the purpose of taking approximately 5.34 acres of the property. Of that taking, the MDOT acquired 1.47 acres in the form of an easement and 3.87 acres in fee.

Five years later, the MDOT had not completed its construction project.

At trial, the MDOT argued that local property values, as of the date of taking, were depressed and requested an award of \$615,000.

The defendants argued that property values were much higher than the MDOT alleged and that the unreasonable and prolonged delay of the MDOT's construction project rendered the defendants' remaining

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property far less valuable than it had been prior to the taking.

The jury agreed with the defendants and awarded damages of \$1.25 million.

Willing Buyer, Willing Seller

Cohen said the key to the case was convincing the jury that the unreasonable and prolonged delay and uncertainty surrounding the MDOT's construction project would have caused a willing and knowledgeable purchaser to pay less than he would otherwise.

"On one hand, you've got land on Hall Road that can't be developed for six years because of the MDOT's project," Cohen explained. "On the other hand, you've got identical property that can be developed immediately. The MDOT said that a willing buyer would pay the same for both. We said 'no way.'"

Cohen said that, despite the complicated issues involved, the case really came down to one simple fact.

"It boiled down to this: a willing and knowledgeable buyer would have discounted the purchase price for the property to reflect the delay and uncertainty and inability to immediately develop the property as a result of the MDOT's taking," he said.

"The jury, as a matter of law, must consider any change in the property's utility or desirability as a result of the taking. That's what the jury did and they were right."

Cohen said that the MDOT tried to discount the impact of its delay and that the MDOT's position was the biggest obstacle he and Mason had to overcome.

"We believe the MDOT tried to characterize the case as involving mere inconvenience as opposed to true impact on market value,"

"The MDOT didn't make a fair offer of just compensation."

— H. Adam Cohen, attorney for property owners

he explained. "We had to show that they were wrong."

Appraiser Praise

Cohen said that it was crucial to show that the property was commercially viable and that the property value was not going down.

To do this, he used a real estate appraiser.

"[The appraiser] was able to communicate real-world market value factors and the jury understood this," Cohen said.

According to Cohen, the appraiser performed a before-and-after appraisal of the property in which he appraised the value of the total property before the taking and the property that remained after the taking, and then subtracted the after-value from the before-value to arrive at an estimate of just compensation.

In his initial appraisal, the appraiser con-

sidered two primary factors bearing upon the property's "after-value": the likelihood that Hall Road would be expanded into an expressway in the future, and the degree to which the desirability and utility of the defendants' remaining property was affected by a prolonged and unreasonable construction delay and the surrounding uncertainty.

Cohen said that he and Mason focused on the second factor and that the appraiser's ability to simplify the issue and help the jury understand it was key to the case.

"Our real estate appraiser was excellent," he said. "His ability to communicate with the jury on a level they could understand was very important."

Cohen said that he believes this case sends a message that "the MDOT didn't make a fair offer of estimated just compensation."

The MDOT has appealed the case to the Michigan Court of Appeals. Briefs have not yet been filed.

— LYNN PATRICK INGRAM