

A matter of discretion

Michigan Court of Appeals

By Molly F. Dilbeck, Esq.

"Again, we disagree."

This was a frequently used phrase in a recent Michigan Court of Appeals decision that thwarted each and every attempt made by the City of Detroit to appeal a trial court ruling awarding Detroit Plaza Limited Partnership (DPLP) \$25 million — plus expert and attorney fees — for the condemnation of DPLP's property.

In the late 1990s, the City of Detroit began its Waterfront Reclamation and Casino Development Project and began negotiat-

ing with DPLP to purchase DPLP's 6.3 acre property, located on the riverfront and two blocks east of the Renaissance Center.

However, when the city's efforts to buy the property failed, it shifted gears and filed a condemnation suit to take DPLP's property by eminent domain.

At trial, defendant DPLP challenged the taking on grounds that

just compensation was not offered by the plaintiff city. The plaintiff's expert witness testified the property's fair market value was \$13,712,500, whereas the defendant's expert witness found the value to be more than twice that amount.

Ultimately, the jury awarded the defendant \$25 million as just compensation for the property

and, subsequently, the defendant was also awarded expert and attorney fees.

However, based on a host of alleged evidentiary errors relating to the just compensation determination, the plaintiff sought review in the Michigan Court of Appeals.

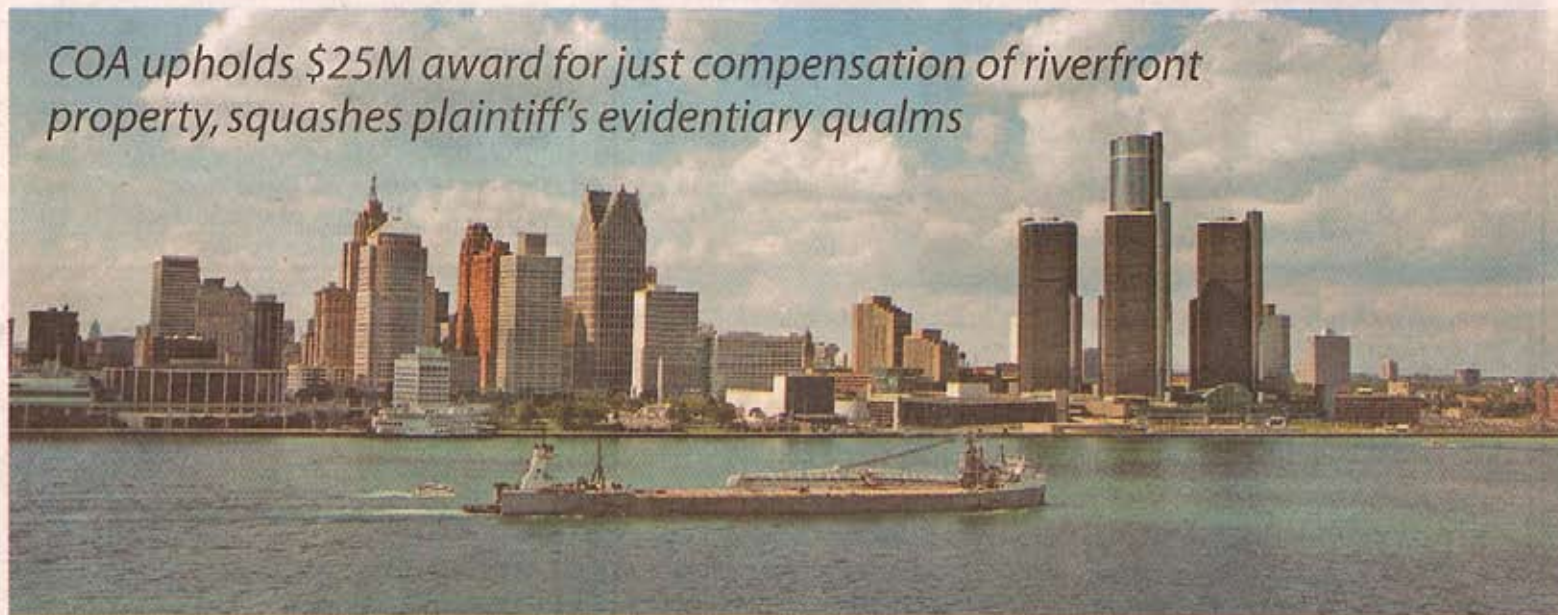
Writing on behalf of a unanimous panel that included Chief Judge William C. Whitbeck and Judge Kirsten Frank Kelly, Judge Joel P. Hoekstra engaged in a lengthy analysis of each of the plaintiff's challenges and determined that

none of them held water.

Accordingly, the judge left intact each of the trial court's rulings on such issues as the exclusion of evidence regarding a "transaction involving the exchange of property ... as evidence of market value," the admission of "after-the-date-of-valuation sales," and the exclusion of "partnership disputes" and previous offers to sell.

The 20-page case is *City of Detroit v. Detroit Plaza Ltd. Partnership, et al.*, Lawyers Weekly No. 07-61260. *Continued on page 31*

COA upholds \$25M award for just compensation of riverfront property, squashes plaintiff's evidentiary qualms



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Challenge to evidentiary rulings has no effect on \$25M condemnation verdict

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Maintaining status quo

Birmingham attorneys Jerome P. Pesick and H. Adam Cohen — who represent the defendant — told Lawyers Weekly they considered the decision to be in keeping with the way past eminent domain cases have been handled.

Pesick explained he believed “the ruling of the court was very consistent with how these evidentiary issues have been treated in eminent domain cases over the years” because it is customary for the trial court to have “broad discretion regarding the admissibility of evidence.”

However, he did not expect the court’s ruling to “have any major impact on how condemnation cases are tried in the future,” even though the “court addressed a couple of evidentiary issues that haven’t been directly considered before by the Court of Appeals.”



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— Birmingham attorney
Jerome P. Pesick

Cohn added the court’s “careful” and “exhaustive analysis” will likely go a long way toward nailing down the rules for the litigation of future condemnation cases.

Ruben Acosta, who represents the plaintiff, did not respond to requests for comments.

Like-kind exchange

Hoekstra began his analysis by considering the plaintiff’s argument that “the trial court erred in excluding evidence regarding a 1996 sale of a riverfront property located directly adjacent” to the defendant’s property.

At trial, the plaintiff wished to introduce evidence of a like-kind exchange between Ford Motor Company and General Motors, in which the two companies agreed to exchange property instead of payment. The plaintiff wanted to use this exchange as evidence of the market value of property in the same vicinity as that of the defendant’s property.

Though it didn’t appear to Hoekstra “that the question of whether transactions involving the exchange of property are admissible as evidence of market value [had] ever been addressed by any Michigan court,” the judge declined to find the trial court abused its discretion in keeping the evidence out.

“Although arguably relevant to the question of just compensation, the probative value of the evidence was substantially outweighed by the danger of unavoidable confusion of the issues and misleading the jury,” Hoekstra said.

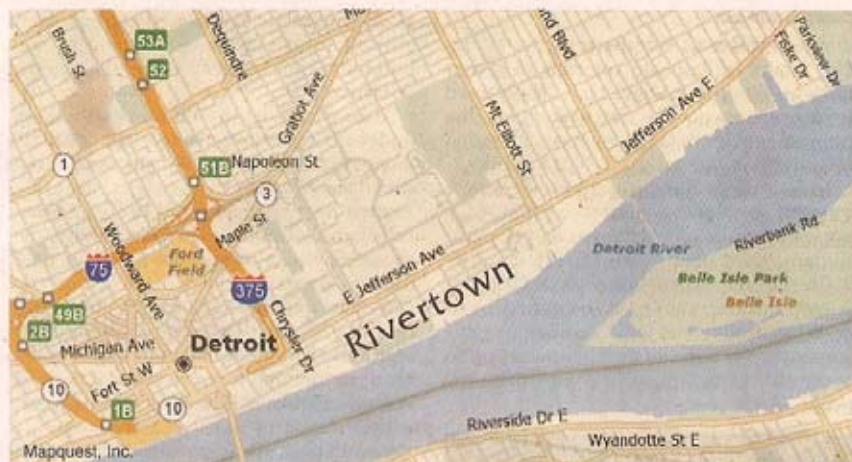
‘For sale’

Next, the judge examined the plaintiff’s challenges to the trial court’s evidentiary admission of sales that “occurred after the applicable date of valuation” of the defendant’s property.

Quoting the Michigan Court of Appeals decision in *Detroit Wayne Co. Stadium Auth. v. Drinkwater, Taylor & Merrill, Inc.* (Lawyers Weekly No. 07-56411), the judge said that “where evidence of a comparable sale or lease is offered, the trial judge may, in his discretion, admit or exclude it considering such factors as time of the transaction ...”

Further, Hoekstra stated that “whether the sale was too remote in time is a matter within the discretion of the trial court.”

However, again quoting *Drinkwater*, the judge stated that “in the usual run of



cases, sales within a year are admitted as a matter of course.”

Therefore, because the “sales at issue each occurred within one year of the date of valuation” of the defendant’s property, Hoekstra ruled the trial court did not abuse its discretion in admitting the sales of other properties occurring after that valuation.

‘Disputed’ evidence

The plaintiff also claimed the trial court “erroneously excluded evidence of certain disputes between partners of DPLP regarding the subject property,” in particular the alleged fact that, before the plaintiff filed its condemnation suit, several of the defendant’s partners disagreed on “various ... proposals for developing the property.”

According to the plaintiff, “the reality of what they went through as a partnership [is] relevant if they are going to take the stand and talk about these plans and use that as a basis for” valuing the property.

However, Hoekstra disagreed, determining “the fact that disputes between the partners may have been a factor in the partnership’s failure to develop the property prior to the taking is simply not relevant to the property’s fair market value on the date of valuation.”

Prior inconsistent statement

Finally, the judge rejected the plaintiff’s challenge “that the trial court erred in excluding evidence of an alleged “negotiated offer” made by two of the defendant’s partners “to sell the property to the city in 1997 at a price of \$7.5 million.”

Hoekstra noted the trial court’s record reflected the offer was oral in nature and that no testimony could establish there was an agreement between the parties on the property’s sale price.

“Thus, there were clearly a number of questions regarding whether and to what extent an agreement for the sale of the property was reached by the parties,” the judge stated noted, adding the trial court’s decision to exclude the evidence was proper, given “the probative value ... was substantially outweighed by the danger that it might confuse the jurors.”

If you would like to comment on this story, please contact Molly F. Dilbeck at (248) 596-2700 ext. 39 or molly.dilbeck@mi.lawyersweekly.com.

Decision in a nutshell

The Issue: Did a trial court err in admitting and excluding certain evidence — including, but not limited to, evidence of like-kind sales, partner disputes, and after-the-date-of-valuations sales — tending to show the “just compensation” value for property taken by eminent domain?

The Ruling: No. The Court of Appeals said the trial court did not abuse its discretion.

The Impact: This decision is likely to provide attorneys with a clear idea as to what is and is not admissible for establishing just compensation in condemnation cases.

The Case: *City of Detroit v. Detroit Plaza Ltd. Partnership, et al.*, Lawyers Weekly No. 07-61260.