

Landowners Win \$1.1M Verdict In MDOT Condemnation Suit

Appraisal Of Comparable Properties Was Key

By TODD C. BERG

todd.berg@mi.lawyersweekly.com

Can landowners in a condemnation action command \$85 per square foot as “just compensation” for the taking of their parking lot property in downtown Detroit, even though the Michigan Department of Transportation valued a similar parcel at roughly \$42 per square foot?

A \$1.1 million verdict in Wayne County indicates the answer is “yes.”

Southfield attorney H. Adam Cohen, who represents the majority landowners, told Lawyers Weekly the key to victory was convincing the jury of the appropriate appraisal theory and the “highest and best use” of the property.

“One of the factors that really helped us was establishing that our valuation position was fair and equitable,” Cohen stated. “With that as our theme, the main issue in this case ended up being whether the property’s value was more dependent on the neighborhood in which it was located or on the use to which it was put.”

Cohen stressed the driving force behind the case was not the lawyers but the appraisers brought in by both sides.

“The state’s appraiser believed the continued use of the property as a parking lot could not generate sufficient income to justify its use as a parking lot, and he believed that the property’s highest and best use was to sit there and await redevelopment, probably for some casino-related use. That’s how he got to \$42 [per square foot],” Cohen said. “Our appraiser believed the best way to value the property was to compare it to other parking lots that had sold in recent years and, on that basis, he believed that the property was worth \$85 per square foot.”

Cohen said the time he spent educating the jury about the process of valuing a prop-



H. ADAM COHEN
Highest and best use is critical

erty proved to be an excellent investment.

“The jury must understand how your expert’s analysis fits into appraisal theory because there are all different ways to appraise a property,” he noted. “After explaining the appraisal theory we were using and applying our appraiser’s analysis, we showed why the two fit together.”

Finally, Cohen explained the jury’s verdict sent a strong message about the role fairness plays in condemnation cases.

“You never know exactly what point or points tipped the scales this way or that, but very often by the end of a trial, one side or the other is perceived as overreaching — either the government is being unfair with its offer or the owner is asking too much,” he observed. “Juries are very sensitive to this and will penalize the party that is overreaching.”

According to Cohen, attorneys can win cases like this if they:

- identify and apply the proper appraisal theory;
- zero in on the “highest and best use” of

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- the property;
- pick the right “comparables”; and
- emphasize the fairness of their client’s position.

Detroit attorneys Carl Rashid Jr. and Michael G. Latiff represented the minority landowners.

A Verdicts & Settlements Report of the case, *MDOT v. McQuade*, can be found on page 5 of this issue and on our website, www.milawyersweekly.com.

The Taking

Plaintiff Michigan Department of Transportation (MDOT) filed a condemnation action to take, by eminent domain, the McQuade family’s land in downtown Detroit.

The plaintiff wanted to convert the property — a 13,000 square foot commercial parking lot located near the Joe Louis Arena and Cobo Hall and Convention Center — into a transportation facility.

As “just compensation” for the property, the plaintiff offered \$520,000, then \$545,000. By the time of trial, the offer had climbed to \$605,000, which worked out to approximately \$40-\$46 per square foot.

Based on the fact that an adjacent property, on which an abandoned factory had been located, recently sold for \$42 per square foot, the plaintiff reasoned the property’s “highest and best use” was as development property, not its continued use as a parking lot.

Meanwhile, the defendants — the McQuade family — insisted that just compensation for their property was \$1.1 million, or \$85 per square foot. They based their valuation on the market sale prices of other parking lots in the downtown area, urging the property’s highest and best use was its continued use as a parking lot.

Although the trial lasted five days, it took the jury only one hour to return a verdict for the defendants, awarding them the \$1.1 million they had requested.

Appraisal Theory

Cohen stated there are several schools of thought on the theory of appraising real estate.

“One is the cost approach where you take the cost to build the improvements

plained, came with applying the market approach to arrive at a value for the defendants’ property.

Highest And Best Use

Cohen explained that “highest and best use” is a term of art describing the highest and best use for a property as long as there is market demand for that use.

“Sometimes, as in this case, appraisers for different sides have different ideas of

it to other properties in the neighborhood that have sold for commercial use.”

Cohen attributed the parties’ varied valuations of the defendants’ property to the clash over “comparables.”

According to Cohen, the plaintiff took the position that the defendants’ parking lot property, which was located on the fringe of the downtown area, could not be compared to parking lots in the central business district and had to be compared with other parcels — though not necessarily parking lots — in the neighborhood that had recently sold for development purposes.

He said the defendants countered by arguing that because an operational, income-producing parking lot existed on their property, the only suitable comparison would be to the parking lots in the central business district, with adjustments to the price to reflect the differences in the properties.

“Just because the defendants’ property and the plaintiff’s comparable property were located in the same physical proximity did not mean that they share the same highest and best use,” Cohen asserted. “I had to convince the jury that it was unfair to the [defendants] to compare their family’s property to an abandoned, crumbling factory that would have to be demolished or redeveloped at an enormous cost.”

Cohen also credited the defendants’ expert with helping convince the jury of his argument’s fairness.

“He was able to communicate how his analysis made sense in terms of the dollars we were asking for and, by basing it on sales of other parking lots throughout the downtown Detroit area, he created a cross-section of sales which allowed the jury to see that our just compensation request was reasonable,” Cohen declared.

“You never know exactly what point or points tipped the scales this way or that, but very often by the end of a trial, one side or the other is perceived as overreaching — either the government is being unfair with its offer or the owner is asking too much. Juries are very sensitive to this and will penalize the party that is overreaching.”

— *Southfield attorney H. Adam Cohen*

new, then you add the land and you subtract the depreciation of the improvements,” he noted. “Another approach is called the income approach where you ask how much the building or property could generate in rent and then you translate that rent into a value.”

He stated the approach taken by the appraisers for both sides in this case was a third approach, called the “market approach,” where a property’s value is determined by analyzing what similar parcels have recently sold for on the market.

Cohen cautioned that one should not read too much into the fact that the appraisers agreed on the approach, given that it is the most common appraisal analysis.

The major point of contention, he ex-

plained, came with applying the market approach to arrive at a value for the defendants’ property.

For example, the plaintiff argued that continued use as a parking lot was not the property’s highest and best use because it did not generate enough income, Cohen added.

Moreover, he explained that highest and best use also “identifies the kinds of property the appraiser is going to compare to the subject property,” noting that “if an appraiser determines that the highest and best use of a property is for a house, then he’s going to compare it to other houses, whereas if the appraiser determines that the highest and best use of the property is to demolish the house and redevelop it for commercial use then he’s going to compare