

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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