

[Verdicts & Settlements]

‘Special land use approval’ contested by MDOT

Business seeks interruption damages, land value from relocating twice

\$1,104,550

In this condemnation action, plaintiff Michigan Department of Transportation (MDOT) seized property owned by the defendant Gilling family.

Gillings Nursery, a retailer, wholesaler and designer of landscape and nursery installations, comprised nearly 4 acres on M-24 in Lapeer County. Although the site was zoned “AE — Agricultural Estates,” which generally limits county property to residential and agricultural use, the Gillings used their property for business purposes under a “special land use approval” they had obtained in 1987.

At trial, MDOT argued that the Gillings’

Type of action: Condemnation

Type of injuries: Taking of real estate and business-interruption damages

Name of case: *Michigan Dept. of Transportation v. Gilling, et al*

Court/Case no./Date: Lapeer County Circuit Court; 05-036453; April 10, 2008

Tried before: Jury

Name of judge: Michael P. Higgins

special land use approval did not significantly contribute to the property’s market value. Its experts urged that the property’s value was limited by its agricultural zoning and residential master plan designation. MDOT’s appraiser reasoned that, as AE property, the land value was \$101,000.

Conversely, the Gillings contended that, while their property’s market value should not reflect full commercial zoning,

Verdict amount: \$1,104,550 (plus costs, interests and attorneys’ fees)

Most helpful experts: Andrew Charbelain, real estate appraiser, Berkley; O. Fredrich Pertner, financial analyst, Northville

Attorney for plaintiff: Withheld

Attorney for defendant: H. Adam Cohen, Jerome P. Pesick

the site’s special land use approval ran with the land. That transferable asset, coupled with the Gillings’ historically successful commercial operations on the property, supported just compensation between residential and commercial values (i.e. \$585,000).

Also, as a result of MDOT’s seizing the property, the Gillings relocated their business operations twice — first to an in-

terim location, then to a permanent site. The Gillings sought business interruption damages for the costs associated with both moves, arguing that the unique circumstances of MDOT’s taking justified the dual relocation plan.

MDOT, however, said it did not have to pay just compensation, as a prior “administrative payment” was sufficient to compensate for the relocation costs.

The jury deliberated three hours and found for the defendants, who were awarded \$1,104,550 — \$585,000 for the land and \$519,550 for business interruption damages. The Gillings also will recover costs, interest and attorneys’ fees.