STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

BOARD OF COUNTY ROAD COMMISSIONERS
OF GRAND TRAVERSE COUNTY, a body
corporate,
Petitioner,

File No. 93-11801-CC
vs HON. PHILIP E. RODGERS

JAMES L. BEATTIE and AMY R. BEATTIE,
Husband and Wife; and RANDY D. CHILDS
and KAREN CHILDS. Husband and Wife,
Respondents.

Richard W. Ford (P13569)
Attorney for Petitioner

James M. Olson (P18485)
Lawrence R. Elliott (P47893)
Attorneys for Respondents Beattie

DECISION AND ORDER

This case arises out of the Petitioner's proposed expansion of Hammond Road in Grand Traverse County. The Respondents initially contested both the necessity of the project and whether Petitioner's offer to purchase was made in "good faith." A necessity hearing was scheduled for February 17,.1994. At the time of the hearing, the parties had resolved the issue of necessity and their written settlement agreement was received and adopted by the Court. See, Respondents' Exhibits A and B.

The only issue which remained to be resolved was whether the Petitioner had made a good faith offer to purchase the Respondents' property. The Court received the testimony of witnesses, admitted exhibits, and entertained the oral arguments of counsel. The matter was then taken under advisement. The Court will now provide its findings of fact and conclusions of law. MCR 2.517.

Both parties recognize that a property owner's right to just compensation is guaranteed by the Michigan Constitution. Art 10, Sec 2. Additionally, it is agreed that Petitioner is exercising the power of eminent domain pursuant to the Uniform Condemnation Procedures Act (UCPA), MCLA 213.51, et sea., MSA 8.265(1), et seq. Section 5 of the UCPA states, in relevant part, as follows:

(1) Except as provided in Section 25(4), before initiating negotiations for the purchase of property, the agency shall establish an amount which it believes to be just compensation for the property and promptly shall submit to the owner a good faith offer to acquire the property for the full amount so established. The amount shall not be less than the agency's appraisal of just compensation for the property. The agency shall provide the owner of the property and the owner's attorney with an opportunity to review the written appraisal, if an appraisal has been prepared, or if an appraisal has not been prepared, the agency shall provide the owner or the owner's attorney with a written statement and summary, showing the basis for the amount the agency established as just compensation for the property. If an agency is unable to agree with the owner for the purchase of the property, the agency may file a complaint for the acquisition of the property in the circuit court in the county in which the property is located.

It is undisputed, then, that Petitioner has an obligation to make a "good faith" offer to the owner of land it seeks to condemn prior to filing a complaint in an eminent domain action. The parties do not dispute that appraisals were completed and offers communicated; but, rather, the Respondents contend that the

appraisals are not "competent" and that the offers communicated to them are not the "good fa$th" offers required as a condition precedent to submitting this action. It remains, then, to analyze the nature of the offers made by the Petitioner prior to the filing of its Complaint on December 15, 1993.

A central figure in the determination of Petitioner's offer is its expert appraiser, John C. Burns. The parties recognized Mr. Burns' qualifications and his testimony was received as that of an expert within his field. Mr. Burns first reviewed the Beattie property at the Petitioner's request on December 12, 1992. This was an exterior evaluation only, as the Respondents did not wish to have the interior inspected. The property was an improved parcel, `42 feet in width and 160 feet deep.

Mr. Burns initially completed a part-take evaluation. This type of evaluation appraises the value of the land actually proposed for condemnation and the improvements on it; e.g., signage or landscaping. This appraisal was received as Petitioner's

Exhibit l and valued the parcel taken at $12,750.00.

Mr. Burns was subsequently contacted in the spring of 1993 and asked to do a distinctly different type of analysis called a before and after appraisal. The distinction between this analysis and the part-take evaluation is its attempt to determine the impact on the value of the residual parcel by removing a portion of it. Towards this end, an on-site inspection took place on May 18, 1993. The Respondents expressed certain concerns, agreed to reduce them to writing; and to submit them to Mr. Burns. Both the interior and exterior of the property were reviewed on this date.

The Respondents kept their promise and submitted a list of concerns to Mr. Burns which were addressed at pages 24 through 27 of his second appraisal. This appraisal was received as Petitioner's Exhibit 2 and suggested fair compensation to the Respondents in the amount of $12,489.00. As described at page 4 of Exhibit 2, this sum was composed of two components; i.e., the loss in value to the parcel of $4,600.00 and the cost to cure certain improvement in the amount of $7,839.00.

Mr. Burns s testified that the costs to cure focused on landscaping, improvements such as planters, a sign, and a significant concern with lost parking. To support his cost of cure analysis, Mr. Burns received actual bids to relocate parking space at the rear of the property and place a new septic tank and tile field. See, Petitioner's Exhibit 3.

In assessing the impact on the value of the remaining parcel, Mr. Burns testified that he considered both an income and market approach. He did not review replacement cost due to the age of the building and the fact that it was a residential structure in a commercial area. To complete his market analysis, he reviewed comparable properties. The income approach was assessed by analyzing rental income and capitalizing the value of the property. For the taking, Mr. Burns determined that the highest and best use of the property would generate a value of $90,000.00; and, after the taking, that value would be reduced to $85,400.00, for a net loss of $4,600.00.

A significant part of the cross examination of Mr. Burns was directed at his failure to do an analysis which would add the costs of cure ($7,839.00) to the value of the land as determined by the part-take appraisal ($12,750.00). The Respondents were also concerned with his failure to value the lower level of the

structure as an apartment.

Mr. Burns explained that his failure to value the lower level as an apartment was due to the fact that it was an illegal use. The lower level was then valued as basement or storage space. Mr. Burns did not speculate as to other potential future uses of the property or determine the cost of obtaining variances for non-conforming uses. In Mr. Burns' opinion, market value must be based upon the current configuration and lawful use of the property in today's market and not upon speculative future uses.

Mr. Burns also explained that the cost of cure cannot be added to a part-take appraisal. The latter form of appraisal simply values the property taken and does not consider the resultant impact on the remaining parcel. Costs of cure are only relevant to an analysis of the impact on the value of the residual parcel. Interchanging components of these two distinct analyses is not consistent with recognized appraisal standards and would be "mixing apples and oranges."

It is this Court's conclusion that Mr. Burns' appraisals did conform with applicable standards and generated a maximum value for the property proposed for condemnation of $12,750.00. Mr. Burns appropriately did not attempt to appraise speculative future land uses in the determination of a good faith offer of just compensation.l

Larry Belcher, Assistant to the Manager of the Grand Traverse County Road Commission, also testified. His duties include right-of-way acquisition for the Hammond Road expansion project. As a part of his duties, he became familiar with the Respondents' property and had contact with the Respondents regarding Petitioner's proposed acquisition of a portion of their land.

Mr. Belcher's contact with the Respondents included providing Respondents with the part-take and before and after appraisals and arranging and attending an on-site meeting with a consulting engineer, the Respondents, their counsel, and others, to review parking and septic/drain field concerns. Mr. Belcher believed that the result of this meeting was the design of a parking lot and septic field which would satisfy the Respondents' concerns. However, the Respondents would not provide Petitioner with permission to seek a permit to carry out the design. See, Petitioner's Exhibit 4.

It may be that the proposed plan will not be sufficient to

obtain the necessary Health Department approval. However, the only reason that issue is not resolved is the Respondents' refusal to make application for a permit and receive an answer. While the Respondents may not be required to provide this approval, the decision to withhold it can hardly support an attribution of bad |faith to this aspect of Petitioner's offer to purchase. In fact, the Petitioner's efforts in this regard were appropriate and professionally conducted in an effort to resolve important questions raised by the land owner facing potential condemnation.

In fact, Petitioner's efforts included an inspection by John Meyers, a registered sanitarian with the Grand Traverse County

Footnote 1: James Beattie testified at length regarding his plan to convert the residence into a bar/restaurant. No capitalized value can be placed on a speculative new business venture in a highly competitive market. To the extent any commercial use is legal, its impact on land value is reflected in Petitioners' before and after appraisal.

Health Department, who expressed his approval for the proposed relocation plan upon which Mr. Burns had relied, in part, in constructing his cost to cure analysis. See, Petitioner's Exhibit 5..

The Court views the objections raised by the Respondents as questions more appropriately to be determined by a jury in an ultimate valuation of the costs to cure and not as bases to impeach the Petitioner's good faith offer. See, for example, Respondent's Exhibits E, F, G and H.

Michael Dillenbeck also testified as the Manager of the Grand Traverse County Road Commission. Mr. Dillenbeck had not visited the Respondents' property, but is responsible for overseeing the right-of-way acquisition process. Mr. Dillenbeck stated that after the resolution of necessity was promulgated on September 14, 1993, the Board made a determination of just compensation and resolved to offer the Respondents $13,254.00 in its Resolution 93-25, adopted unanimously on December 1, 1993. See, Petitioner's Exhibit 7. Mr. Dillenbeck stated that the offer was increased above the appraised values due to his review of issues that had arisen in post-appraisal meetings with the Respondent; specifically, the need to make a provision to move the Respondents' water well rather than simply monitor it. Although Mr. Dillenbeck agreed with Mr. Burns that the Respondents' proposed use of the basement was speculative,

the Petitioner also included some value in its offer in an attempt |to resolve the issue with Respondents.

Hence, the determination of just compensation made by the Petitioner included the residual impact on the resultant parcel, together with current costs to cure including relocation of the well, sign, and landscaping costs, plus a settlement component. This offer was communicated to the Respondents by letter. See, Petitioner's Exhibit 8, dated November 26, 1993, and Petitioner's Exhibit 9, correspondence from Petitioner's counsel to Respondents' counsel dated December 9, 1993. The offer was not accepted, and the condemnation action filed shortly thereafter.

While the Respondents have cited a number of cases to the Court that deal with the issue of just compensation, none of them would support a finding by this Court that the offer made by the Petitioner was not a good faith offer. While the taxpayers may wish to criticize the Petitioner for making an offer in excess of the appraised value, Petitioner's efforts at determining just compensation and communicating an offer to the Respondents hardly be characterized in any terms other than good faith. a part-take and before and after appraisal were completed, and Petitioner subsequently increased its offer over those appraisals in an effort to be fair to the Respondents by including a component for relocation of the water well and a value for an acknowledged speculative future use of the property.

The ultimate determination of just compensation will be made by a jury. The fact finder may well determine that the Petitioner's offer was less than its opinion of just compensation, or it may accept the before and after appraised value. Here, the Court is satisfied that the offer was one made in good faith consistent with Section 5 of the UCPA. Indeed, no other opinion regarding value was received other than those offered by Petitioner.

Petitioner's expert, Warren W. Studley, acknowledged that his expertise does not include the establishment of land values.

`Rather, he offered an opinion regarding problems in relocating the drain field and the resultant need to make a municipal sewer and water connection. If this opinion is accepted by the fact finder, then just compensation will be increased. However, there is a reasonable basis to support the opinions upon which Petitioner's offers were made. Mr. Studley's views do not impart bad faith to offers predicated upon reasonable opinions held by other experts.

This is especially true when one recognizes that Mr.-Studley based his opinion upon the inspection of land covered by snow and had not reviewed any of the Department of Natural Resource findings

pertaining to wetlands adjacent to the Hammond Road expansion. fact, Mr. Studley was unaware that the DNR had not mad!e any wetlands determination or that it had issued a permit for this road expansion. Mr. Studley had not made any soil borings of the type generally required for a wetlands analysis and had not reviewed the soil borings described in Respondents' Exhibit I. Mr. Studley acknowledged that his expertise was as a soils scientist and environmental consultant and that he was not a civil engineer expert in the area of managing the run-off from 100-year rain storms, nor was he an hydrological engineer.

For all the foregoing reasons, the Court denies the Respondents' Motion for Summary Disposition and hereby enters its Order granting Petitioner possession of the disputed right-of-way. The Court Administrator is hereby directed to set for trial the question of just compensation.

IT IS SO ORDERED.

HON PHILIP E. RODGERS, JR.
Circuit Court Judge
Dated: 6/07/94