

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,

Plaintiff

vs

File No. 93-11148
HON. THOMAS G. POWER

CECIL EDGEcomb; JOHN EDGEcomb and
ANNE EDGEcomb, Husband and Wife,
Defendants.

vs

FILE No. 11149

ELIZABETH MacGIRR; JOHN C. EDGEcomb
and ANNE EDGEcomb, Husband and Wife;
and NORTHWESTERN SAVINGS BANK AND
TRUST, a Michigan Corporation,
Defendants.

vs

File No. 93-11150

DEAN F. EDGEcomb and VICTORIA
EDGEcomb, Husband and Wife; JOHN C.
EDGEcomb and ANNE EDGEcomb, Husband
and Wife; FARM CREDIT SERVICES OF
MICHIGAN'S HEARTLAND, PCA, f/k/a
PRODUCTION CREDIT ASSOCIATION OF
TRAVERSE CITY a federally chartered
corporation,

Defendants.

vs

File No. 93-11151

CECIL EDGEcomb; JOHN C. EDGEcomb and
ANNE EDGEcomb, Husband and Wife; and
MICHIGAN DEPARTMENT OF NATURAL RESOURCES,
Defendants.

Richard W. Ford (P 13 5 6 9)

Attorney for Plaintiff

Michael J. Lemcool (P31566)
Attorney for all Defendants except
Department of Natural Resources

Kevin T. Smith (P32825)
Attorney for Defendant Department
of Natural Resources

DECISION AND ORDER

Defendants in the above-captioned cases filed a Motion for Fees and Expenses. The Court issued a Pre-Hearing Order directing the filing of a response and a reply. Plaintiff filed a response and Defendants filed a reply. Pursuant to MCR 2.119(E)(3), the Court dispenses with oral arguments.

The Board of County Road Commissioners of Grand Traverse County brought the above-captioned actions pursuant to the Uniform Condemnation Procedures Act, MCL 213.51, et seq. The Board sought to acquire property for a road improvement project. The Uniform Condemnation Procedures Act, at MCL 213.66(2), provides:

If the property owner, by motion to review necessity or otherwise, successfully challenges the agency's right to acquire the property, or the legal sufficiency of the proceedings, and the court finds the proposed acquisition improper, the court shall order the agency to reimburse the owner for actual reasonable attorney fees and other expenses incurred in defending against the improper acquisition."

The property owners challenged the Road Commission's right to acquire their property and the legal sufficiency of the proceedings. The captioned cases, together with other similar cases, were consolidated for hearing before the Honorable Philip E. Rodgers, Jr. The property owners prevailed; and, in an Order entered September 28, 1993, it was held that:

"IT IS FURTHER ORDERED that whereas
Defendants...CECIL EDGECOMB, JOHN EDGECOMB,

ANNE EDGECOMB, ELIZABETH MacGIRR, JOHN C. EDGECOMB, ANNE EDGECOMB, DEAN F. EDGECOMB, VICTORIA EDGECOMB, . . . successfully challenged the Road Commission's right to acquire property and the legal sufficiency of the proceedings, consistent with Section 16(2) of the Uniform Condemnation Procedures Act, MCL 213.66(2), MSA 8.265(16)(2), the Court shall order the Grand Traverse County Road Commission to reimburse said Defendants for actual attorneys' fees and other expenses upon motions duly made by such Defendants with accompanying documentation to support such motions."

The motions of John Edgecomb, Anne Edgecomb, Elizabeth MacGirr, John C. Edgecomb, Anne Edgecomb, Dean F. Edgecomb and Victoria Edgecomb are now before this Court.

Defendants' motion seeks \$6,283.32 as attorney fees and expenses. The Road Commission's sole objection to this amount is the April 22, 1993, attorney fees for the preparation of six deeds. The objection contends that the expense is not reasonably related to defending against the acquisition. In reply, Defendants assert that the deeds were necessary to create an ownership interest by John Edgecomb and all the "Edgecomb" parcels so that he might represent the interests of all Defendants. It is asserted that only \$60.00 of the April 22, 1993, attorney fee relates to the deed preparation.

The Court, upon review of the motion, response and reply, concurs with the Road Commission. The Defendants were all represented by the same law firm. Therefore, the Road Commission was limited to contacts with the Defendants' attorneys. The amount of attorney fees and expenses shall be reduced by the amount of \$60.00. The Road Commission has not objected to the reasonableness or necessity of the balance of the attorney fees and expenses. The Court, upon review, finds the attorney fees and the expenses both reasonable and necessary. Therefore, Defendants shall be allowed \$6,223.32 as attorney fees and expenses.

Defendants' motion further seeks expert fees for appraisals in the amount of \$8,600.00 pursuant to MCL 213.66. The Road Commission objects and asserts the expense was not reasonably incurred for the motions upon which Defendants prevailed. The

appraisals were prepared in regard to the issues of just compensation; and, therefore, the Road Commission contends the appraisals were not necessary. Defendants respond that they could not await the outcome of the preliminary motion to determine the necessity of appraisals. In *Escanaba & Lake Superior Railroad Co v Keweenaw Land Assoc Ltd*, 156 Mich App 804, 815 (1986), the Court held:

"The legislative intent behind the Uniform Condemnation Procedures Act is to 'place the owner of the property in as good a position as was occupied before the taking.' *Detroit v Michael's Prescriptions*, 143 Mich App 808, 811; 373 NW2d 219 (1985)."

In the cases before this Court, the appraisals would not have been necessary but for the Road Commission's actions seeking to acquire the properties through condemnation. Although the Defendants did in fact ultimately prevail in the preliminary hearings, it cannot be expected that they would idly sit by and not prepare themselves to proceed on the issues of just compensation should they not prevail preliminarily. The appraisal fees were reasonably necessary for the owners to prepare for trial; and, pursuant to MCL 213.66(4), shall be allowed. It is noted that the Road Commission makes no objection to the amount sought, only that the appraisals were not necessary. The Defendants shall be reimbursed the amount of \$8,600.00 for expert fees.

IT IS SO ORDERED.

HON. THOMAS G. POWER
Circuit Court Judge
Dated: 12/2/93