IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JAYNE HORNER, EMIL P. HORNER, and MARY L. HORNER, Plaintiffs	:	NO. 06 – 00,893
	:	CIVIL ACTION - LAW
vs.	:	
LOYALSOCK TOWNSHIP SCHOOL DISTRICT, Defendant	:	Damages

OPINION AND ORDER

Before the Court is the issue of damages under the Eminent Domain Code[1] as a result of a Declaration of Taking filed by Defendant on September 10, 2001, against certain property owned by Plaintiffs. A de novo hearing[2] was held March 8 and 9, 2010.

The property in question is located on Four Mile Drive in Loyalsock Township, immediately adjacent to an elementary school, and was condemned for the purpose of expanding that school's facilities. The property consists of two five acre parcels[3] and has significant road frontage. The area is zoned Residential-Urban and the property was being farmed at the time of condemnation but remained unimproved. Since the condemnation, the school facilities have been expanded.

The Court heard testimony from two real-estate appraisers who appraised the subject property[4] as well as two engineers who testified regarding certain costs associated with preparing the property for use.[5] Both appraisers used a comparable sale referred to as "Elmcroft" and the Court finds that comparable to be the most compelling as it was located

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[1] 26 Pa.C.S. Sections 1-101 *et seq*. (repealed effec. September 1, 2006, *see now* 26 Pa.C.S. Sections 101 *et seq*.).
[2] Initially, the matter was referred to a Board of View and that Board filed a report on March 28, 2006. Plaintiffs filed an appeal from that decision on April 27, 2006, but through several mis-steps, the merits of that appeal have not been addressed until now, after remand from Commonwealth Court dated February 22, 2008.
[3] The deed describes the parcels as each containing five acres. Surveys, however, show the property at 9.25 acres or 9.9 acres, depending on whether there is included a .65 acre strip along the road which was condemned by the Department of Transportation in 1955 as an easement for purposes of widening the road. Plaintiffs' engineer based his calculations on his interpretation of the deed that the property contains 9.82 acres. See Plaintiffs' Exhibit No. 7.
[4] The Court also heard from an appraiser who "critiqued" the appraisal done by Plaintiff's expert appraiser, but the Court did not find this testimony helpful.
[5] The property is bowl shaped, with a significant decrease in elevation from the level of the road to the bottom and then an increase in elevation toward the "back" of the property.

very close to the subject property (approximately 1000 yards east of the subject property, also fronting on Four Mile Drive), was sold at a time close to the condemnation (sold in November 1998, whereas the condemnation was filed in September 2001), and was sold for a purpose consistent with what the Court believes to be the highest and best use at that time, assisted care living.[6] That property consisted of 6.32 acres and sold for $350,000. Both sides argued that certain adjustments to the comparable needed to be made, however, to account for excess preparation costs and useable space.

With respect to preparation costs, both parties presented the expert testimony of an engineer but each approached the matter from a different angle, it appears. As noted above, the property is bowl-shaped[7], with a forty-one foot drop between the northwest corner and the lowest point which is about two-thirds of the way toward the south and half-way to the east. Thus, to use the property, both experts agreed, it would be necessary to fill it in to some extent. It should be noted that the Elmcroft property had a similar problem: that land consisted of a steep hill which had to be cut into in back and then leveled out in front to make a building site. Plaintiffs' engineer testified that the excavation costs to make the subject property "pad ready" would be quite similar to those required to prepare the Elmcroft site, and thus no adjustment for that factor would be necessary. Defendant's expert, on the other hand, estimated excavation costs at $678,300, but did not compare these to Elmcroft, and based this on a facility approximately three times the size of Elmcroft. There was also testimony that there would be additional costs for sewage pumping stations and miscellaneous expense of about $85,000, but that such should be offset by about $18,000 as Elmcroft had been required to install a deceleration lane but this property would not. Further complicating the matter is the fact that Defendant's expert's estimates were based on prevailing wage rates (as paid during the

[6] Defendant's expert testified that although he believed there were two candidates for highest and best use, general residential and congregate living, he chose general residential for purposes of his appraisal as he believed the market demand favored that classification. The Court finds a lack of support for this choice as while the expert testified that there was significant competition in the market for congregate living, he also testified that there were several residential developments progressing in that area at that time. It is unclear how development in one category constitutes "competition" while development in the other constitutes "evidence of demand". On the other hand, Plaintiffs' expert testified that he believed the demand for assisted care living made it the highest and best use, and supported this belief with research into the numbers behind the demand, an approach which the Court finds lends support to his conclusion.

expansion of the school) but such would not apply to development as proposed. The conclusion drawn by the Court by all of this is that the figures can be manipulated to support just about any position and the figures presented are extremely unhelpful in light of the many variables such as the size of the building proposed, and the engineering of the site.

With respect to the useable acreage of each property, such was also the subject of much disagreement. For example, Plaintiffs' suggested value is based on the assumption that of Elmcroft's 6.32 acres, only 2.43 were useable. The Court finds this position untenable, as it considers only the property directly affected by construction and completely ignores the use of some of the property to fulfill setback requirements and green space requirements. On the other hand, Defendant assumes that all of the subject property is useable, but such does not take into consideration the right-of-way easement for the road, some of which cannot be used. Once again, the Court is left with little helpful information. It appears that general conclusions must instead form the basis of the property's valuation.[8]

Considering all of the evidence, the Court is left with the impression that site preparation costs for the subject property would be higher than those for the Elmcroft property. Once those costs are incurred, however, it appears that a higher percentage of useable acreage would result. Accordingly, the Court feels it appropriate to consider the two factors to offset each other and to simply base the value of the subject property on the value of the Elmcroft property, acre for acre. Since the Elmcroft property sold for $350,000, such represents $55,380.00 per acre. That sale took place in November 1998, requiring an adjustment for inflation to September 2001, and the Court will use 3.5% per year for 2.83 years, to arrive at a figure of $61,050.00 per acre. Therefore, for 9.82 acres,[9] the Court will set the value at $599,500.00.

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[7] At the request of the parties, the Court did a site-view and actually, it would be more accurate to describe it as "bed-pan shaped", as the edge of the bowl opens in a spout-like fashion on the east side of the property.

[8] Adding even more to the quagmire is the fact that the property has been subdivided into two parcels. The Court has not considered this to have increased the value, however, as the highest and best use assumes it will be developed as one parcel.

[9] Although Defendant contended the property consisted of 9.25 acres, such did not include the right-of-way easement and that land is still titled in Plaintiffs' name. Plaintiffs argued that the property contained 10 acres, but their own engineer read the deed descriptions to include 9.82 acres. The Court will therefore use this figure.

ORDER

AND NOW, this 5th day of April 2010, for the foregoing reasons, Plaintiffs are hereby awarded just compensation of $599,500.00 for the taking of the subject property located on Four Mile Drive in Loyalsock Township. Plaintiffs' request for Section 1-608 damages is denied as no evidence to support such request was presented. Plaintiffs are awarded $500 under Section 1-610. Delay compensation is not included in the instant award but, pursuant to Section 1-611, shall be calculated and added to the award upon payment.

BY THE COURT,

Dudley N. Anderson, Judge

cc: John Bonner, Esq.
Cynthia Ranck Person, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson