

Development-focused Appraisals in Eminent Domain

The City of Sunny Isles Beach (“City”) appealed the denial of its motion for a new trial, arising from a jury verdict in an eminent domain case. The City took a portion of the landowner’s undeveloped canal to build a bridge for use as an emergency evacuation route to the mainland from the barrier island on which the City is located. The jury awarded the landowner \$855,000 (the full the amount sought). The jury rejected the City appraiser’s opinion of the fair-market valuation of \$1,000 for the entire parcel. The City argued on appeal that the trial court had made an evidentiary error by admitting conceptual site plans to establish the highest and best use of the property as a private docking facility. The Third District Court of Appeal of Florida (“Third DCA”) found no evidentiary error and affirmed the jury’s award to the landowner.

The property at issue, a man-made finger canal, consisted of 2.81 acres of predominantly dredged submerged land. Before the taking, the canal provided unobstructed access to the Intracoastal Waterway and access to other communities to the north and south. The landowner had made no efforts to develop the property before receiving notice of the taking from the City.

In 2012, the City took .18 acres of the property to build a bridge which now intersects the canal property and impedes marine access to the Intracoastal Waterway for most of the remaining canal property. Although the landowner made no effort to develop the property, it contended at trial, based upon conceptual site plans prepared by a testifying expert, that the highest and best use for valuation of the injury to the property caused by the taking is that of a private docking facility for the adjoining residents comprised of forty-six boat docks.

The City countered that the landowner never took affirmative steps to develop the property, the proposed docking facility was only thought up for the purpose of the trial, and that the proposed facility was not reasonably probable or economically viable because it would require extensive permitting from multiple federal, state, and local authorities. The City appraiser opined the fair-market value for the entire parcel was \$1,000. The jury rejected the City’s proffer and awarded the landowner the amount sought, \$855,000 as the fair and just compensation for the taking, including the reduction in value to the remaining parcel resulting from lack of access to the Intracoastal Waterway.

On appeal, the Third DCA relied on *Boynton v. Canal Authority*, 265 So. 2d 722 (1st DCA 1972) to analyze the landowner’s expert appraiser’s “development approach” to determine the market value of the property. *Boynton* explains that under the development approach: (1) the property is valued as of the date of the taking; (2) the question for the appraiser is what a willing buyer would pay for the property in its then-existing condition on that date, for development into its highest and best use; and (3) the highest and best use may be a prospective use. *Id.* at 724.

The *Boynton* case was very similar to this case, as the highest and best use of the property before the taking was determined to be for “water oriented recreational development,” and the taking eliminated water access. The court in *Boynton* found that the value determined by the expert appraiser was based on the property being sold for development at the time of taking and nothing had to be done to the property to enhance its value. *Id.* at 723-24. The *Boynton* court ruled that the appraiser should be allowed to testify as to what the property could be sold for, with the riparian rights attached, in keeping with his opinion that the property is presently suitable for sale to a recreational developer. *Id.*

The Third DCA held that the landowner’s testifying expert’s evaluation was not speculative because the landowner did not seek compensation based upon what could or might later be done to make the land more valuable and then solicit evidence on what it might be worth. The court found the testimony was based upon the actual value of the property at the time of the taking if sold for the development of a private docking facility, its highest and best use. The court affirmed the award made to landowner.