

Expert's limited analysis results in \$590K verdict in condemnation case

Attorney for homeowners says real estate appraiser 'testified in a vacuum'

By Douglas Levy

The testimony and analysis of two real estate appraisers in a \$590,000 condemnation/eminent domain lawsuit against Lenawee County was a contrast in preparation, according to Detroit-based attorney Stephon Bagne.

The three-day jury trial before Judge William Collette (of Ingham County, sitting by assignment) was on claims that the value and safety of Robert and Michelle Gardner's home were diminished when Lenawee County Airport expanded its runway and allowed for larger planes.

The airport classification change meant that the Gardners' home in Madison Township was now in the runway protection zone, and that planes could fly as close as 7 feet above their house.

Bagne said his appraisal expert, David Burgoyne, had looked at all of Lenawee County Airport's planning documents that the county produced going back to the 1950s. Burgoyne also read the transcripts

and reports from both Bagne's and the county's aviation and piloting experts, and incorporated them into his analysis.

But Bagne said the real estate appraiser for the county did not do any of that, and was only going on a limited analysis.

"The [county's] appraiser is an excellent appraiser — well-spoken, intelligent and qualified — but he essentially testified in a vacuum," Bagne said. "It's as though the county didn't trust their position and didn't trust their own expert to analyze the issues and reach the conclusion they wanted him to reach when he analyzed those issues."

A Verdicts & Settlements report on *Lenawee County v. Gardner, et al.* can be found [here](#).

Effective cross-examination

Bagne said that in the case, the county did not give a commissioned report from its aviation expert, the underlying documents leading up to the 530-foot expansion of the runway, or transcripts of Bagne's deposition of the county's aviation expert to its real estate appraiser.

Bagne added that interrogatory answers revealed that the county could not identify the types of uses that would be allowed at the airport. It also could not identify whether common domestic technology was, or could in the future become, banned from the Gardners' home because of the larger airplanes and extended runway.



Clark Hill attorney **Stephon Bagne**

He explained that those answers indicated that the county anticipated the uses that would be prohibited on the properties expanding over time. But those answers were never given to the appraiser.

"So when the [county] appraiser reached his conclusion, he concluded that there was a minimal impact on these properties," Bagne said. "But he never did the analysis. He never analyzed the background documents, he never understood what an RPZ entailed, and he never read the reports of the respective experts."

This made his cross-examination with the county appraiser short but effective in

continued from page 1



Lenawee County Airport's decision to expand its runway and allow for larger planes resulted in five nearby homes filing condemnation/ eminent domain lawsuits.

the jury's eyes: "It basically gave me the opportunity to go, 'Did you look at this plan? Or this plan? Did you know this and then recite a conclusion that had been reached by the aviation experts?'"

as a jury trust a conclusion of an expert who never even analyzed the issues that you, as a jury, are being asked to analyze, most of which is coming from documents that the county created?"

"So when the [county] appraiser reached his conclusion, he concluded that there was a minimal impact on these properties," Bagne said. "But he never did the analysis. He never analyzed the background documents, he never understood what an RPZ entailed, and he never read the reports of the respective experts."

At closing arguments, Bagne compared what each side's appraisers knew when issues were analyzed, then asked: "How can you

Similar suits to follow

Bagne and co-counsel Bruce Benz of Ann Arbor also handled a June 2012 trial

against the county on similar claims. There, the jury awarded David and Barbara Wagley \$470,000 for the value of their home.

Two other condemnation lawsuits have been consolidated for a trial that has yet to be scheduled. A settlement was reached for a fifth house that was next to, but not in, the Lake Madison subdivision, where the other four homes are.

The Gardners' award of \$590,000 is the value of the home that Bagne's real estate appraiser valued for 2005, the year of the expansion project. Per Uniform Condemnation Procedures Act, MCL 213.23, the county must pay an additional \$147,500 (25 percent) in just compensation if it opts to take title to the home.

Messages for Bloomfield Hills attorney Boris Yakima, who represented the county, were not returned.

Bagne said the county has filed an appeal.

He added that the best takeaway from the Gardners' case is that experts must have all the facts on the table.

"It ultimately doesn't do you any good to get an expert to take the position you want them to take, if they're only able to do that by an incomplete analysis," he said. "I wouldn't want to go into trial with an appraiser with a hugely inflated number to try to create a spread if the number is ultimately not credible."

Stephon B. Bagne's expertise in representing property owners in condemnation cases is widely recognized. Stephon has represented all types of property owners in a variety of situations including vacant and improved property, partial and total takings, easement and fee acquisitions, involving commercial and residential properties. Stephon has successfully challenged the necessity of takings and negotiated less onerous acquisitions in partial taking matters. He regularly speaks and writes about eminent domain and other real estate law issues for a variety of professional organizations. **Contact him at: sbagne@clarkhill.com or 313-965-8897**

CLARK HILL

www.clarkhill.com