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Jury orders Lenawee County Airport to buy 2nd Lake Madison house

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ADRIAN -- The Lenawee County Airport is to pay \$737,500 for a second home at Lake Madison after a jury ruled Thursday its value was destroyed by an easement for a runway extension in 2005.

The verdict was returned after a three-day trial in Lenawee County Circuit Court.

Owners of five homes at Lake Madison have demanded the county purchase their entire property after eminent domain was used in 2005 to acquire easements above the houses. The first case went to trial in June. A jury ruled that home's value had been destroyed. The county was ordered to pay \$587,500 for the house and \$183,000 in attorney and expert witness fees. The case is under appeal.

A second jury's decision to order purchase of another home, and at the highest appraised value, was a surprise, said county administrator Martin Marshall.

"Obviously, it's not the decision we were expecting. It's not the direction we were hoping for," Marshall said.

If the county is forced to buy all five houses it will be difficult to continue funding the airport, Marshall said.

"That will definitely be a financial challenge for the county," he said.

"The county has partners in this case, and we will have to consult with our partners and see what direction we can go," Marshall said.

The county has considered the option of buying the five houses and reselling them, he said.

"Use of federal funds would probably preclude the county from doing that," he said. That was the opinion of officials at the Michigan Department of Transportation's aeronautics division, he said.

A verdict that the value of the home of Robert and Michele Gardener was totally destroyed was supported by expert witnesses, said their attorney, Stephon Bagne of Detroit, during final arguments Thursday.

Experts all agreed houses should not be in runway protection zones at the end of airport runways, he said. The easement the county took over the Gardener home, he argued, allows airplanes to fly 7 feet above their roof.

"Does a right to fly 7 feet over their house make a difference?" Bagne asked the jury. "You have to assume the county is going to make full use of these rights. They took the right, they need to pay for it."

County attorney Boris Yakima of Bloomfield Hills argued the Gardener house is safer now than before the project that moved the runway 530 feet further away.

Experts agreed the ideal situation is to not have houses in a runway protection zone, he said. But the issue in the trial is to decide how the value of the existing houses was affected by the airport project and easement for the air space.

"The Gardeners, when they bought this property, must have been aware of the airport,"



Stephon B. Bagne

Yakima told jurors. "They decided, for whatever reason," he said, that the benefits of the location outweighed any detrimental impact of the airport.

"This is a substantial house with a substantial value," he argued.

An appraiser hired by the county testified the runway project had no effect on the home's value that he estimated at \$460,000 in 2005.

An appraiser hired by the Gardeners testified he believed the value in 2005 was \$590,000 and that the house has no market value today.

A Michigan law adding 25 percent to property value as compensation in eminent domain cases was used in the first case and expected to apply to the Gardener house, raising the award to \$737,500.

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

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