SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION—CIVIL ACTIONS BRANCH

DISTRICT OF COLUMBIA,	*	
	*	
Plaintiff,	*	Civil Case No. 2015 CA 007569 E(RP)
	*	Civil II, Calendar I
v.	*	Judge John M. Mott
	*	
ALL OF THE PARCEL OF LAND IDENTIFIED AS LOT 0013 IN SQUARE 0607 IN THE DISTRICT OF COLUMBIA AND SW LAND HOLDER, LLC, *et al.*,	*	
	*	
Defendants.	*	

ORDER

This matter is before the court on the District of Columbia's (the "District's") Objections and Exceptions to the Appraisement of Just Compensation and defendants' opposition thereto. For the reasons stated herein, the court confirms the appraisement.

Background

The District filed this action under the power of eminent domain to appraise the value of just compensation owed to the owners of a lot that the District seized for use in the construction of Audi Field, a soccer stadium. On October 7, 2015, the District took the property and deposited $21,100,000 into the Court's Registry. The only issue at trial was the amount of just compensation that the District owed defendants to compensate for the fair market value of the property as of October 7, 2015.

The parties presented their evidence to the jury over the course of seven days. After viewing the property, the jury heard extensive testimony, including the opinions of both parties' experts. The District's expert, David Lennhoff ("Lennhoff"), concluded that the fair market value was $13,000,000 to $14,140,000, while defendants' expert, William Harvey ("Harvey"),

found that the property was worth $38,100,000 at the time of the taking. In addition, defendants' corporate designee, Adam Gooch ("Gooch"), testified that during his eighteen years working in real estate development he had never heard of the Level C analysis method employed by Lennhoff and that the company he worked for, Akridge, never used such an analysis when purchasing property similar to the property at issue. After deliberations, the jury returned a unanimous verdict appraising the fair market value of the taken property to be $32,000,000.

Standard

Confirming Jury's Appraisement

In a condemnation proceeding, the court "may vacate and set aside" the jury's appraisement "when satisfied that it is unjust or unreasonable." D.C. Code § 16-1318. If the court vacates the appraisement, the court must select a new jury that will hear the matter and offer a new appraisement. *Id.* The Court of Appeals reviews the decision of whether to confirm the jury appraisement for abuse of discretion. *Duk Hea Oh v. Nat'l Capital Revitalization Corp.*, 7 A.3d 997, 1011 (D.C. 2010). "In a condemnation case, when the jury reache[s] a valuation from the evidence which the trial court confirms, it is not for [the appellate court] to say that it is so inadequate that the trial court abused its discretion." *Id.* (quoting *Certain Land in Washington v. United States*, 355 F.2d 825, 826 (D.C. Cir. 1965)). Thus, when the jury "reache[s] a valuation within the range established by the divergent appraiser's estimates," the court does not abuse its discretion in confirming that award. *Id.*; *DeSilva v. District of Columbia*, 13 A.3d 1191, 1199 (D.C. 2011).

Analysis

The District does not argue that the jury's award is unjust or unsupported by the evidence; instead, the District uses this opportunity to challenge three evidentiary rulings that allegedly "prevented [the District] from having a fair opportunity to present its case at trial." The District takes issue with two rulings in Associate Judge Jennifer Di Toro's October 24, 2017 Order, and argues that: the court should not have excluded an opinion of the value of the property that SW Land Holder presented in a 2010 tax proceeding; and the court should have barred defendants from presenting evidence related to its intended use of the property. In addition, the District asserts that the court, at trial, improperly allowed Gooch to testify about "whether real estate developers apply various appraisal methods," which the District contends amounted to expert testimony beyond the bounds of the "significant leeway [given to a landowner] in testifying about the value of his property."

Defendants argue that the District fails to identify any deficiency in the jury's award and merely seeks reconsideration of certain evidentiary rulings and a "do over" of the trial. Defendants assert that the District fails to identify any errors, let alone "manifest errors," sufficient to warrant reconsideration of the challenged rulings, and that, instead, the District merely copied and pasted arguments from previously submitted unsuccessful motions. In addition, defendants argue that the 2010 tax opinion is irrelevant and that any relevance is outweighed by its prejudicial effect because, among other things, the zoning classification of the property had changed between the time of the evaluation and the date of the taking. Defendants also argue that Judge Di Toro made no error in allowing them to present evidence about the intended use of the property and that "the District waived any objection to the applicable legal standard regarding [the highest and best use] by agreeing to the [highest and best use] jury

instruction at trial." Finally, defendants contend that Gooch never offered an opinion about appraisal methods; instead, he testified that he and his real estate development company have never engaged in the specific appraisal analysis that the District's expert used.

***

The court finds no reason to vacate and set aside the jury's award as unjust or unreasonable. Although only a majority vote is required in a condemnation proceeding pursuant to D.C. Code § 16-1317, the jury in this case reached a unanimous verdict within the range established by the appraisers' estimates. Importantly, while the District objected to the particulars of defense expert Harvey's conclusions, the District never challenged his qualification as an expert. That the unanimous verdict was below the value established by defendants' unchallenged expert is enough to confirm the jury's award as reasonable. *See Oh*, 7 A.3d at 1011; *DeSilva*, 13 A.3d at 1199. Moreover, the District presents no other basis for questioning the jury's appraisement or grounds for finding it to be unjust.

The District identifies no reason to question Judge Di Toro's ruling excluding the 2010 tax proceeding opinion. As Judge Di Toro explained, any probative value of SW Land Holder's 2010 evaluation of the property for tax purposes is outweighed by its prejudicial effect because the zoning density changed after that evaluation. This 2010 tax evaluation, as the District notes, corresponds to a $7.2 million value for the property at issue, which, notably, is nearly half of what the District's own expert concluded the property was worth at the time of taking. The fact that SW Land Holder previously valued the property at a lower level does not undermine the jury's appraisement when the District's own expert concluded that the previous evaluation was too low.

In addition, the District fails to show that Judge Di Toro's decision to allow the jury to hear testimony concerning defendants' intended use of the land was in error. Remarkably, the District fails to even reference Judge Di Toro's findings, let alone argue why those findings were erroneous. Instead, as the defendants note, the District merely copies and pastes, verbatim, portions of the arguments it previously submitted. *Compare* Mot. at 14-28 *with* Sep. 20, 2017 Mot. in Limine at 4-24. In substance, the District contends that the court should have applied a four-part test used by some circuit courts when deciding whether to allow a landowner to present evidence of its proposed use. Judge Di Toro applied this test and found that SW Land Holder "met its burden" of proving that the proposed use "1) [] does not require a substantial expenditure of capital; 2) is not highly uncertain; 3) is physically adaptable to the property; and 4) is financially feasible, *i.e.* a market demand exists for the proposed use." The court finds no reason to second-guess these findings, which were supported by evidence at trial, at least to the extent necessary to allow consideration of the defendants' proposed use of the property by the jury.

Moreover, the District ultimately consented to the court's highest and best use instruction, which the court created with input from the District.[1] The court instructed the jury

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[1] This instruction read as follows:

> The fair market value of property is not limited to its value as the owners are using it now. As a factor supporting a higher market value, you may consider any special suitability of the property to some particular use because of its location, surroundings, natural advantages, or other characteristic.
>
> You should award an amount as compensation for the property based on its fair market value as of October 7, 2015 in view of the most valuable use or uses for which the property reasonably can or may be put, and for which there was a demand, on that date.
>
> The most valuable use or uses to which the property can or may be put may include some existing use, but the property's fair market value is not necessarily set as if the land were already used in the more profitable way. Rather, where the moving party (in this case, SW Land Holder, LLC) has established that future use of the property and the availability for the property's potential future use would reasonably impact the market value of the property on October 7, 2015, you should factor in the degree of probability and the timing of such potential future use and its effect on market price in your determination of the property's fair market value on October 7, 2015.

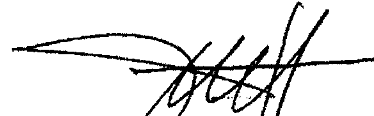
that it was defendants' burden to show that their proposed use of the property and the availability of the property for that use "would reasonably impact the market value," that the jury should factor in the "degree of probability and the timing" of that use, and that there must be "a demand" for that use. This instruction ensured that the jury would properly consider evidence of the proposed use, and, therefore, the court finds that the admission of such evidence did not render the appraisement unjust.

Finally, the court finds that Gooch's testimony concerning his experience with the Level C analysis method employed by the District's expert does not provide a basis for finding the appraisement to be unjust. The court clarified to counsel that it would not allow Gooch to "try to explain something that he wasn't trained on," but would allow him "to say what he knows about it," Trial Tr. vol. 2, 23:20-25, May 22, 2018, and Gooch's testimony was consistent with this ruling. Gooch, as a non-expert, would still be qualified to offer certain lay-opinions that are rationally based on his perception, helpful to the jury, and not based on technical knowledge. *King v. United States*, 74 A.3d 678, 681 (D.C. 2013) (citing Fed. R. Evid. 701). Here, however, Gooch was not even offering inferences or conclusions that would amount to opinions; instead, he offered factual testimony regarding his personal lack of knowledge of the analysis at issue. Allowing the jury to hear about Gooch's ignorance of the Level C analysis does not render the appraisement unjust.

Accordingly, it is this **20th** day of **July, 2018**, hereby

ORDERED that the Objections and Exceptions to the Appraisement of Just Compensation are **DENIED**, and it is further

ORDERED that the jury's appraisement is hereby **CONFIRMED**.



The Honorable John M. Mott
Associate Judge
(Signed in Chambers)

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AND SW LAND HOLDER, LLC, *et al.*,	*	
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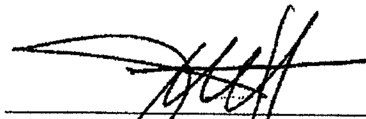
Defendants.	*	

JUDGMENT

The court, on this 20th day of July, 2018, confirms the jury's appraisement of $32,000,000 in this condemnation proceeding. Defendant previously paid $21,100,000 into the Court Registry. Pursuant to D.C. Code § 16-1314 (b), any judgment for compensation in a condemnation proceeding "shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of the taking, from that date to the date of payment."

Accordingly, it is this **20th** day of **July, 2018**, hereby

ORDERED that judgment is entered in favor of defendants and against plaintiff in the amount of $10,900,000, plus interest at the rate of 6% per annum from October 7, 2015 to the date of payment.



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