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## **Eminent domain - A case with unusual elements of taking**

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Over the course of an appraiser's career one sometimes encounters appraisal problems that challenge one's body of knowledge as well as require some creative (but logical) thinking on the part of the appraiser. Such was the case of Commission of Transportation vs. Connecticut Shellfish Company.

The case was decided upon in January of 2003 (CV000438539) but remains one of the most interesting in recent valuation history because of the elements of taking. The Commissioner of Transportation of the State of Connecticut took by condemnation a number of rights including: access; easements and otherwise burdened two parcels of land known as 20 East Industrial Road and 26 East Industrial Road in Branford, Connecticut. In connection with the takings was the relocation of an exit/entrance ramp to Interstate 95, whereby placing the ramp directly opposite the subject properties. The Commissioner's appraiser assessed damages of \$7,060.00 for the State of Connecticut, which Connecticut Shellfish questioned and decided to retain Attorney Thomas Crosby of Guilford, Connecticut and myself.

### Background for the Case

Connecticut Shellfish owns and operates a commercial fresh seafood plant at 26 East Industrial Road in Branford, Connecticut. The plant employs approximately 35 persons, many of whom handle the shipping, receiving and processing of fresh seafood, all of which is loaded and unloaded on a large loading dock that has direct exposure to East Industrial Road. Also included in the ownership by Connecticut Shellfish is a vacant commercially zoned lot that is adjacent to 26 East Industrial Road.

The takings by the Commissioner as summarized as follows:

#### 20 East Industrial Road - A Vacant Commercial Lot Containing 2.4 Acres

\* 164 feet of a total of 215 feet of access was taken leaving 51 feet remaining for access to the road.

#### 26 East Industrial Road - An Improved Site

\* An easement area of 2,831 s/f was taken to install and maintain traffic control equipment, with the easement requiring vehicular access.

\* The new access/egress ramp was installed within 100 feet of the subject property, which ramp was previously located approximately ½ mile from the subject property.

### The Obvious Taking Elements

The taking of the frontage of the vacant lot would typically result in a small fraction of the site value being reduced. The question in this case was whether the taking severely and adversely affected this vacant lot. Given that 77% of the usable lot frontage was taken, it would seem obvious that the site would suffer a material diminution in value, simply because the site utility was now changing. For example, the diminished frontage eliminated a number of potential users, especially those that

require two curb cuts for say a fast-food restaurant. The court found that "the Commissioner's appraiser fails to realistically recognize the substantial damages that resulted from this taking of seventy-seven percent of the access to the road for 20 East Industrial Road, consisting of 2.4 acres, had a fair market value of \$325,000 before the taking the a fair market value of \$210,000 after the taking, resulting in damages in the amount of \$115,000."

The court also found that the easement consisting of 2,831 s/f on 26 East Industrial Rd. for the installation and maintenance of the traffic signal, for all practical purposes amounts to a total taking because it requires vehicular access, which under Branford Zoning Regulations, areas subject to vehicular easements are not to be included in the calculating the buildable lot area. The court found that "reasonable damages were \$4.30 per s/f which amounted to \$12,000 for this element of taking. Already the damages decided upon by the court greatly exceed that of the commissioner's estimate of \$7,060. Now comes the interesting part of the taking that perhaps not seeming to be terribly adverse conditions, actually amounted to the greater part of the determined compensation to the Connecticut Shellfish Company.

The Not so Obvious

Elements of the Taking

This appraiser had up this point found a number of examples where putting an exit ramp that lines up with the buildings and improvements at the end of that ramp are typically a bad recipe for disaster, if not for a concern for ongoing damage. It was this appraiser's opinion that the subject property could potentially be subjected to a stigma of sorts where a potential buyer might opt out of buying an "at-risk" property, either out of rational or irrational concern. In my testimony I pointed to the buildings that are located at the bottom of the ramp at exit 42 in West Haven. The buildings, ironically housed "Anderson Glass," a local window and glass repair company that were the buildings were hit several times over a number of years. Shortly before the time of trial, that particular exit was closed by the Department of Transportation to truck traffic, hitting home the concern and stigma that would likely arise from the new traffic flow and configuration. The court found that the value of the improved property at 26 East Industrial Rd. before the taking was \$1.1 million, while the value of the property after the taking was \$935,000, resulting in a damages of \$165,000. (effectively 15% of the total value of the property which was estimated by this appraiser). Stigma in this case proved to be a less than obvious element but none the less, a big element in the overall taking.

Air Quality

The calculated damages to the property did not stop at the stigma component. The seasoned attorney on the case, Thomas Crosby questioned whether Connecticut Shellfish Company could continue to operate their facility in the same fashion, by loading and unloading fresh fish product on an exterior loading dock that was exposed to the elements. Crosby retained a toxicologist that specialized in food products, testing the air quality both before and after the installation of the new entrance/exit ramp. The configuration of the ramp included the fact that waiting traffic would essentially que up at the traffic light that was directly opposite the subject property.

The study by the toxicologist concluded that the air quality had greatly diminished with the hydrocarbon levels rising 10,000 percent, taking into account both the before the after scenarios.

Based upon the testimony from the toxicologist, the court found that the "increase of trucks and car vehicles idling and traversing in close proximity of the subject site (which) will generate pollutants

associated with the internal combustion engines, as well as the increase in suspension of dust particles, etc., from the roadway surface by these vehicles. The specific pollutants associated with these two types of vehicles are: 1) Hydrocarbons (HC); or more accurately designated as Volatile Organic Carbons (VOC); 2) Carbon Monoxide (CO); 3) Nitrous Oxides (NOx); and 4) Total Suspended Particulates (TSP)". "The Court finds that the pollutant most detrimental to the quality of Connecticut Shellfish's product, is TSP."

Based upon the cost of a filtration system that was built around the loading dock, an additional \$189,750 was awarded by the court for "ensuring the air quality of Connecticut Shellfish's facilities".

## Conclusion

The moral to this story is that it pays to retain seasoned professionals. In this case an appraiser and an attorney who together, effectively analyzed the issues at hand. The original offer of compensation was that of \$7,070.00. The ultimate award to the property owner was \$481,750.00 plus the cost of the appraiser (for which the court allowed and considered to be reasonable costs).

## Author Bio

Marc Nadeau is a designated appraiser with 30 years experience based in Guilford, Connecticut. His specialties include: appraising historic properties, appraisals for tax planning and litigation. Marc Nadeau recently authored the book for the Appraisal Institute, Identifying and Appraising Historic Properties