

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CIVIL DIVISION**

**MANATEE COUNTY, a political
subdivision of the State of Florida,**

Petitioner,

v.

**OLD CITY HALL ASSOCIATES, LLLP,
a Florida Limited Liability Limited
Partnership, et al.,**

Defendants.

**CASE NO.: 2009-CA-7307
DIVISION: D
Eminent Domain Proceeding
Parcel E-100**

**MANATEE COUNTY'S MOTION IN LIMINE TO EXCLUDE SALES BY
OWNER'S APPRAISER FOR LACK OF COMPARABILITY**

Petitioner, Manatee County, a political subdivision of the State of Florida (hereinafter the "County"), by and through its undersigned attorneys, moves this Honorable Court pursuant to §73.061(1), Florida Statutes, and §§ 90.402 and 90.702 of the Florida Evidence Code to exclude any testimony or argument before the jury or venire, either direct or indirect, concerning six of the eight sales identified below relied upon by the appraiser for the Defendant Old City Hall Associates, LLLP, because the sales are not comparable to the subject property and, therefore, would not constitute competent and relevant testimony which would assist the jury in its value determination. In support of this motion, the County would state the following:

BACKGROUND

1. The above eminent domain case is currently set for a jury trial on December 6, 2010, to determine the fair market value of the subject property, Parcel E-100.

2. The subject property consists of a 3.70-acre vacant tract located at 500 15th Street West in Bradenton, Florida, which was previously used as the City Hall for the City of Bradenton.

3. The subject property is located adjacent to Ware's Creek, a non-navigable drainage canal connecting to the Manatee River, on the west and Manatee Avenue to the north. See photos of subject property attached hereto as Composite Exhibit "A."

4. Prior to the County's acquisition, the property owner sought and received certain development approvals from the City of Bradenton, which included 80,000 square feet of commercial/retail space and 106 residential condominiums. See Evaluation and Report and Conceptual Rezoning Approval from the City of Bradenton attached hereto as Exhibit "B."

5. The subject property was acquired by the County to use as a dewatering storage site for its Ware's Creek project, which was previously determined by the Court to serve a public purpose.

6. The County acquired the subject property through its powers of eminent domain pursuant to a Stipulated Order of Taking and subsequent deposit of Four Million Seventy Thousand Dollars (\$4,070,000) into the Registry of the Court on September 9, 2009.

7. The property owner employed Clearwater real estate appraiser Richard Harris to complete a retrospective appraisal report of the subject property as of the date of deposit.

8. Although the subject property contains some minor improvements, Mr. Harris opined that the property should be valued as vacant, since the minor improvements do not contribute any value over and above the value of the land. See page 47 of Mr. Harris's appraisal report attached hereto as Exhibit "C."

9. The County deposited its good faith estimate of value into the Registry of the Court on September 9, 2009, which is the date of value in this case. See Notice of Deposit attached hereto as Exhibit "D."

**SIX OUT OF EIGHT OF MR. HARRIS'S SALES
ARE NOT COMPARABLE BECAUSE THEY ARE
LOCATED OUTSIDE OF MANATEE COUNTY**

10. Mr. Harris opined that the fair market value as of September 9, 2009 (the date of deposit), was \$9,675,000 based upon considering his eight comparable sales. See pages 40-44 and 47-48 of Mr. Harris's appraisal report illustrating his final conclusion of value and sales grid for his eight comparable sales attached hereto as Composite Exhibit "E."

11. Although the subject property is a vacant tract located in the City of Bradenton, Manatee County, Florida, six out of Mr. Harris's eight sales are located outside of Manatee County. See Composite Exhibit "E" and photographs of the six sales as Composite Exhibit "F."

12. Four of Mr. Harris's sales are located in Pinellas County and two are located in downtown Tampa in Hillsborough County. See Composite Exhibits "E" and "F."

13. While the valuation of special purpose properties, such as land containing transmission lines and land located at turnpike exits, often necessitates selecting sales geographically removed from the subject property, there is no necessity here for using sales outside of Manatee County in this case to appraise a vacant commercial property located in Manatee County.

14. In the case of *Rochelle v. State Road Department*, 196 So.2d 477 (Fla. 2d DCA 1967), the Second District held that the trial judge should not have excluded sales from different counties to appraise land at turnpike exists because at their very nature turnpikes meant that comparable properties would be geographically removed farther than usual.

15. The *Rochelle* case, however, was construed in *Williams v. Jacksonville Electric Authority*, 250 So.2d 652 (Fla. 1st DCA 1971), to apply to only unique situations. See *Florida Eminent Domain Practice and Procedure* §9-78.

16. In *Williams*, the appellate court held that transmission lines built on easements were not so unique as to permit testimony concerning damages to the remainder of land from similar easements located between 100 and 200 miles away.

17. Mr. Harris's reliance on sales outside of Manatee County to compare to a vacant commercial tract located in Manatee County defies common sense and reason and would require the adoption of an entirely new and totally unauthenticated formula in the field of appraising.

MR. HARRIS'S SALES FROM 2005 ARE NOT COMPARABLE

18. In eminent domain cases involving "quick take" proceedings, like the case here, real estate appraisers render their opinions based upon a retrospective opinion of value. That way, condemning authorities like the County can acquire the property they need for public projects without waiting for a jury to determine the fair market value of the property taken.

19. Since it is undisputed that the County made its deposit regarding the subject property on September 9, 2009, the date of valuation in this case is September 9, 2009. See Fla. Stat. § 73.071(2), "The amount of such compensation shall be determined as of the date of trial, or the date upon which title passes, whichever shall occur first."

20. The appraisal assignment here is to locate sales as close to that date of valuation as possible.

21. Five of the eight sales selected by Mr. Harris, however, occurred in 2005. See Composite Exhibit "E."

22. Sales taking place several years before the taking are usually not admissible. See 4 Nichols § 12.311(1)(3ed), "If, however, the sale took place several years before the taking, evidence of the price paid is usually not admissible."

23. Mr. Harris selected sales from 2005, which was the height of the real estate market, despite the fact that there are other comparable sales in Manatee County which could have been used.

24. The more stable the market, the more remote in time a sale could be and still have some comparability. In a rapidly changing market, however, the line of admissibility should be drawn much closer to the date of valuation. See *Florida Eminent Domain Practice and Procedure* §9-77.

25. Mr. Harris's sales grid includes a range from \$42.08 per square foot to \$192.34 per square foot. He opines the value of the subject property is \$60 per square foot. See Composite Exhibit "E."

26. Although Mr. Harris concluded that the subject property was worth \$60 per square foot on September 9, 2009, he relied upon a sale of a property that is located in St. Petersburg, Florida, that sold for more than three times that of his value for the subject property. See Composite Exhibit "E" and photos of Sale #6 (L-14424-0655) as Composite Exhibit "G."

27. It can hardly be said that a sale that so far geographically removed and which is valued at more than three times that of the subject property would qualify as a comparable sale for the subject property. See Composite Exhibit "E" and photos of Sale #6 as Composite Exhibit "G."

28. One of Mr. Harris's two Hillsborough County sales sold for slightly less than three times that of his value of the subject property (\$170.07 per square foot) and should also be

stricken based upon the foregoing reasons. See Composite Exhibit “E” and photos of Hillsborough County Sale #2 (L-16944-0543) as Composite Exhibit “H.”

29. The subject property is located in the Coastal High Hazard Area, which acts as a limitation on the size of buildings that can be built. However, none of the sales selected by Mr. Harris have this same limitation. See Exhibit “I” Coastal High Hazard Map.

30. While the Florida Supreme Court in the eminent domain case of *Florida Department of Transportation v. Armadillo Partners, Inc.*, 849 So.2d 279 (Fla. 2003), found that the failure of an appraiser to consider one of many factors goes to weight of the expert’s opinion and not the expert’s admissibility, the exclusion of Mr. Harris’s six sales is still consistent with the opinions in *Armadillo* and *Rochelle* because the selection of the sales utilized by Mr. Harris defy common sense and are based upon a misconception of Florida law. An expert’s reliance upon a misconception of law is subject to be stricken. See *State Department of Transportation v. Manoli*, 645 So.2d 1093 (Fla. 4th DCA 1994) (striking testimony of business damage expert in eminent domain case for misconception of Florida law); *Stubbs v. State, Department of Transportation*, 332 So.2d 155 (Fla. 1st DCA 1976) (striking testimony of real estate appraiser in eminent domain case for misconception of law).

WHEREFORE, Manatee County, respectfully requests this Honorable Court enter an order excluding the introduction of any testimony or arguments, either directly or indirectly, during the course of the trial, including voir dire, concerning the six out-of-county sales relied upon by the property owner’s appraiser, Richard Harris, in his date of deposit appraisal of Parcel E-100 since such evidence or argument is inadmissible as a matter of law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petitioner's Motion in Limine has been served by First Class U.S. Mail to: Mitchell O. Palmer, Esq., Williams, Parker, Harrison, Dietz & Getzen, P.A., 200 S. Orange Avenue, Sarasota, FL 34236, on this 11th day of August, 2010.

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