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MEMORANDUM

Privileged and Confidential – Attorney-Client Communication and Attorney Work Product

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Richard Makowski
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From: Rachel Huston, Section Chief, Executive Agencies Section
Corinna V. Efke, Unit Coordinator, Transportation Unit

Date: August 7, 2023

Re: ODOT Appropriation Matters – District 5
July, 2023 Monthly Case Status Update

Updates from last month's case status memo are in bold font.

Monthly Case Status Update

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Fairfield County

Route/Section: 37-06.10

PID 110412

Parcel: 1-SH1, SH2, T

Owner: Eichhorn Limited Partnership

FMVE: \$19,440

ODOT's Full Appraisal: \$14,870

Landowner's Valuation: N/A

Landowner's Appraisal: \$131,432,50

Filed: October 6, 2021

ODOT's project involves the improvement of the intersection of State Route 37 and State Route 256. ODOT will acquire two standard highway easements and one temporary easement from this parcel. This matter was filed in court on October 6, 2021. We await the answers of the parties.

Counsel for the landowners filed an answer with the court on November 9, 2021. On November 15, 2021, we received a Request for Proposed Scheduling Order from the court. The parties are to submit an agreed scheduling order for this matter to the court by December 17, 2021.

The parties submitted an agreed scheduling order for this matter to the court on December 17, 2021. The final pretrial is scheduled for September 7, 2022 and the trial is scheduled for September 20, 2022. Additionally, the original judge (Judge Trimmer) recused himself. This matter has been reassigned to Judge Berens, who accepted all of the deadlines agreed to in the original scheduling order. On January 11, 2022, we filed for discovery from Eichhorn. On January 19, 2022, ODOT and the AGO met to discuss obtaining a full appraisal for this parcel in anticipation of further litigation. An appraiser was chosen, and we are in the process of scheduling his scoping meeting.

On February 15, 2022, the parties met for a Discovery Conference as required by the court's scheduling order. The parties discussed scheduling the matter for mediation in April and also discussed potential mediators. Opposing counsel indicated he did not have a counteroffer yet, as he had not received a full appraisal yet. We agreed to a 21-day extension for Eichhorn to respond to our discovery requests. We are on track to file our Discovery Plan with the Court by March 10, 2022.

On March 10, 2022, we filed our Discovery Plan with the Court pursuant to the court's order. We also filed our witness list, due March 24, 2022, pursuant to the court's order. We await receipt of our full appraisal and plan to schedule mediation of this matter once it is received. This matter is scheduled for final pretrial on September 7, 2022 and trial on September 20, 2022. AAG Allen will assume lead counsel responsibilities for this matter going forward.

On April 13, 2022, we received the final appraisals from ODOT's appraisal expert.

On April 27, 2022, we met with ODOT to discuss the appraisal and next steps. On April 27, 2022, AAG Allen turned over our expert report to the land owner in this case.

On May 3, 2022, we sent an email to the district reviewing this parcel's CAUV designation. In response to this email, the district authorized me to offer \$14,870 which is \$4,570 less than our initial FMVE and offer. We responded to the district via email informing them that offering less

money would not advance negotiations. AAG Allen informed them that if they were not willing to negotiate we would need to set up a meeting to discuss our potential exposure in trial. AAG Allen also informed them she would not recommend going to trial at this point until we've made a meaningful attempt to negotiate.

On May 13, 2022, AAG Allen held a meeting with the District to discuss this parcel. At the meeting the district expressed that they would like to offer the lower FMVE because that is the risk a property owner takes when they do not settle before the appropriation is filed. AAG Allen explained that while this is the number we would use if we did make it to trial, offering a lower amount does not offer any practicality to negotiations because we have already offered \$19,440. AAG Allen discussed this issue for approximately an hour with the district. Jared Miller from ODOT suggested using the value of one of the comps to come to a settlement offer; the district declined that suggestion as well. We discussed mediation as a possible alternative. The district did not think mediation was necessary at this time. AAG Allen encouraged the district to consider mediation and discussed with the district the benefits of a good mediator. Ultimately the district agreed to offer \$24,000 to settle this matter. AAG Allen contacted opposing counsel to relay the offer to him. He indicated that his client would probably be offended by the offer because \$24,000 is less than what was offered to his client pre-appropriation, but he would take the offer to his client. We have not received a response from the offer.

On June 3, 2022, we received Defendant's First Combined Discovery Requests. We worked with the district over the following weeks to complete the discovery requests and requests for production. We sent them to opposing counsel on June 30, 2022.

On August 3, 2022, AAG Allen followed up with opposing counsel requesting his expert's availability to schedule depositions. On August 9, 2022, we moved forward with filing a notice of deposition and issuing a subpoena for opposing counsel's appraisal expert. Also, on August 9, 2022, AAG Allen received an email from opposing counsel letting her know he was not available for the deposition scheduled on August 19, 2022. Opposing counsel provided additional dates that he was available but we were unable to find a date we were both available. Opposing counsel also relayed that his appraiser would be unavailable on the trial date and proposed continuing the trial date to the next week. Finally, he requested that we schedule this case for statutory mediation as they requested.

On August 12, 2022, AAG Allen responded to opposing counsel letting him know her availability for depositions and suggested we schedule mediation before conducting depositions. AAG Allen informed him that the time for statutory mediation had passed and if we were to mediate we could split the cost of mediation.

On August 15, 2022, AAG Allen spoke with John Wooldridge from ODOT via telephone to discuss the updates in this case. AAG Allen asked if he was opposed to mediating and to continuing the trial date. Ultimately, he was not opposed to mediating or moving the trial date.

On August 16, 2022, AAG Allen informed opposing counsel that ODOT would not oppose a motion to continue the trial dates and also suggested scheduling mediation for the week of September 5, 2022. Mediation has not been scheduled.

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On August 24, 2022 we received an email from the court indicating that the Judge has granted the motion to continue and proposing trial dates. On August 24, 2022, AAG Allen informed the court that she is currently scheduled for other trials on all proposed dates. The Judge indicated that she would send additional dates.

On September 26, 2022, the court set a scheduling conference for October 6, 2022 at 2:30 pm to set a new trial date.

On October 6, 2022, the court held a scheduling conference. Pretrial is rescheduled for January 12, 2023 at 10:45 by telephone. Trial in this matter was set for February 14, 2023.

On November 21, 2022, opposing counsel reached out to schedule mediation in this matter. We responded with availability. We agreed to schedule mediation on December 16, 2022.

On December 15, 2022, opposing counsel reached out and offered \$1,000 less than their original demand.

On December 16, 2022, all parties attended mediation. After 4 hours of mediation, the landowner only moved \$5,000. After discussing with the district and the mediator we decided mediation was no longer productive and terminated mediation.

On January 11, 2023, we reached out to the district to see if they would like to continue settlement negotiations. The district informed us via email that they would only like to continue settlement negotiations if it serves to reduce the risk of paying attorney fees.

On January 12, 2023, we attended a final pretrial via phone on behalf of ODOT. The court informed us that they would be ready to proceed with trial on the scheduled date.

On January 18, 2023, we spoke to District REA John Wooldridge on the phone and explained the pros and cons of settling the case and the pros and cons of continuing to trial. The district informed us via email that they appreciate the risks of moving forward with trial and have decided not to continue with negotiations at this time.

On January 23, 2023, we held a trial prep session to discuss trial exhibits and other trial issues. Trial in this matter is scheduled for February 14, 2023.

On February 14, 2023, we proceeded to trial before Judge Berens for a two-day trial. At the end of deliberations, the jury returned a verdict of \$ 112,472.50.

On February 23, 2023, opposing counsel filed a motion for Attorney's fees and appraisal expenses. On the same day, we responded to opposing counsel asking for an itemized list of their attorney's fees. We have not yet received a response.

Opposing counsel did not send an itemized list of Attorney's fees. On March 3, 2023, we filed a Motion for Extension for time to respond to opposing counsel's motion for attorney fees.

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On March 30, 2023, we filed a Memorandum in Opposition to Counsel’s Motion for Attorney Fees.

On April 6, 2023, landowner’s counsel filed a reply to our memorandum in opposition to attorney fees.

On April 13, 2023, the court filed a Judgment Entry granting Landowner’s motion for attorney’s fees and statutory costs.

On May 15, 2023, we had a status conference to discuss the Motion for Statutory Costs. We argued that landowner did not present any evidence that he actually incurred the costs that he was requesting or that the costs were reasonable. The court said it would conduct a non-oral hearing to determine the amount of attorney’s fees. On June 1, 2023, counsel filed several affidavits and an itemized statement of attorney’s fees actually incurred.

No update for July 2023.

AAG Justine Allen is assigned this matter with AAG Corinna Efke as co-counsel.