STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: September 29, 2014)

RICHARD J. CONTI	:	
	:	
VS.	:	**C.A. No. PM 2002-3964**
	:	
RHODE ISLAND ECONOMIC DEVELOPMENT CORPORATION	:	

DECISION

McGUIRL, J. This matter arises out of the condemnation by Rhode Island Economic Development Corporation (RIEDC or Defendant) of real property previously owned by Richard J. Conti (Conti or Plaintiff). After the condemnation of this property, Conti brought the instant action contesting the adequacy of the condemnation award of $141,000. The parties stipulated that the only issue before the Court is the property's fair market value as of the date of the taking, May 1, 2002. In July 2012, the case proceeded to a non-jury trial. Jurisdiction is pursuant to G.L. 1956 § 37-6-18.

I

Facts and Travel

RIEDC is a Rhode Island Agency with the statutory authority to take property by eminent domain under G.L. 1956 § 42-64-9 (the "Condemnation Statute"). On May 1, 2002, acting under this authority, the RIEDC condemned real property owned by Richard J. Conti for the benefit of Fidelity Investments (Fidelity). At the time of condemnation, Conti was the fee simple owner of the underlying property, located at 33 Lydia Ann

Road, Smithfield, Rhode Island and identified as Assessor's Plat 49, Lot 102A (Lot 102A or the "Property").

The Property itself is a 4.71 acre undeveloped lot situated between Washington Highway (Route 116) and Douglas Pike (Route 7). The Property is zoned Planned Corporate Development (PCD), a zoning classification that includes in its permitted uses planned offices, research and development parks, light industrial development, corporate headquarters, and hotel or conference facilities. Although Lot 102A is not directly adjacent to Route 116 or Route 7, Conti had multiple means of accessing the Property. Lot 102A is accessible by Lydia Ann Road, which abuts the north side of the Property, and Conti testified that he would sometimes access Lot 102A by driving on Lydia Ann Road. In addition, the lot is accessible by way of Hanton City Road, which abuts the west side of the Property. Both access roads are unpaved and vary in width from fifteen to twenty feet. In addition, because over time Conti had assembled Lots 102C, 102D, and 102E, which were contiguous with Lot 102A, the Property could also be accessed through those contiguous properties, of which two had frontage along Route 116. Conti testified that he would typically access 102A through his other contiguous properties.

In its petition for condemnation, RIEDC valued Lot 102A at $141,000. It supported that valuation through the affidavit of Mark F. Bates (Bates), a certified general appraiser licensed by the State of Rhode Island. In that affidavit, Bates stated that his opinion of the fair market value was based on "the required investigation, the gathering of necessary data, and the making of certain analyses." He further stated that each appraisal, including that for Lot 102A, was performed in compliance with the Uniform Standards of Professional Appraisal Practice. Nonetheless, no appraisal report

was attached to the condemnation petition. After the condemnation, Conti filed the instant action contesting the adequacy of the condemnation award given to him and alleging that the fair market value of the condemned property was $300,000, entitling him to an additional $159,000 in compensation. At trial, each party offered the testimony of an expert real estate appraiser to support its valuation, and the Plaintiff testified regarding his real estate acquisitions in the area and his ability to access the Lot in issue.

RIEDC offered the testimony of its expert real estate appraiser Bates to support the conclusion that $141,000 was the proper valuation for the condemned property. Bates prepared an appraisal report, dated January 17, 2003, concluding that the highest and best use of Lot 102A was either light industrial use or assemblage with other properties. To analyze the proper valuation of the vacant parcel, Bates applied the sales comparison approach and compared Lot 102A to other vacant lots that had been sold in Smithfield, Rhode Island between April 2000 and September 2001. He concluded that the sales reflected a range of unadjusted prices of $26,667 to $80,412 per acre, and an adjusted range of $24,000 to $45,960 per acre. According to Bates, this reduction in price reflected the fact that the Property was not directly accessible from a developed roadway. Based on this range, Bates concluded that the fair market value per acre of Lot 102A was $30,000 per acre. Bates was not, however, able to produce an adjustment grid or table demonstrating the rationale for his adjustments, nor did he otherwise detail the facts upon which he based his appraisal of the subject property.

Bates' appraisal report was subject to cross-examinations from Plaintiff. Plaintiff noted, for example, that Bates' appraisal report was based on the assumption that Lot 102A was zoned "Industrial," arguably a more restrictive zoning designation than the

Property's actual zoning designation, PCD. Further, Plaintiff questioned the applicability of a number of the comparable sales Bates used to arrive at the fair market value of Lot 102A. Specifically he noted that three of the properties used in the comparative sales analysis are zoned R-80: that is, they are zoned for low-density, semi-rural, residential use. That zoning designation also limited those properties to 80,000 square feet, meaning that each of those comparable properties consisted of less than two acres. Plaintiff argued that the other properties used for comparison were not appropriately compared to Lot 102A because those properties were zoned industrial and were less than half the size of Lot 102A.

Plaintiff additionally noted that Bates did not know that Conti owned and controlled Lots 102C, 102D, and 102E—lots that are contiguous with 102A. Thus, his valuation of the Property used allegedly comparable properties which were more isolated and did not have direct access to developed roadways. This valuation, however, did not consider that Conti could access Lot 102A from one of the contiguous properties. Indeed, Peter M. Scotti testified that even if the Town did not grant a permit to improve Lydia Ann Road, it was reasonably probable that the Town would permit a road to be built through Conti's contiguous lots. When asked by the Court, RIEDC's expert Bates agreed that the Town would be hard-pressed to deny the construction of such a roadway.

Conti retained his own real estate appraisal expert, Peter M. Scotti (Scotti), to prepare an appraisal. Scotti concluded that the highest and best use of Lot 102A was a research and development building, and he appraised the "as is" market value of the fee simple interest in the Property as $300,000. Scotti concluded that the 4.71 acre property contained 3.71 acres of usable land, which could support a building of approximately

56,000 square feet. Scotti noted, however, that market forces would likely limit a potential building to 40,000 square feet. To determine the value of that buildable property, Scotti, like Bates, used the Sales Comparison Approach and based his valuation of the Property on five comparable sales from Smithfield, Lincoln, and Cumberland, Rhode Island with similar available utilities, access to thoroughfares, and zoning designations. Based on these comparable sales, Scotti concluded that the unadjusted range of values equaled $7.50 to $13.29 per building foot, and that the adjusted range of values equaled $7.88 to $12.63. Ultimately, Scotti concluded that $12 per building foot was a reasonable market estimate, resulting in a property value of $480,000.

Because the Property lacked access to a developed roadway, however, Scotti reduced that estimate by $180,000. The $180,000 reduction represented Scotti's estimation of the cost of improving Lydia Ann Road or of constructing a means of ingress and egress through another one of Conti's contiguous lots. That figure was based on cost estimations available in the Marshall and Swift Cost index, a standard industry resource for real estate appraisers. According to Scotti, the Property's "as is" value equals $300,000, accounting for costs for constructing an access road from Route 116 through Conti's other contiguous properties, approximately $180,000.

Defendant, however, challenges various aspects of Scotti's valuation. Defendant argues that Plaintiff has failed to establish that a special use permit would be granted to improve Lydia Ann Road, and that Scotti's assumption that a special use permit would be granted to improve the access to Lot 102A resulted in an overestimation of the Property's fair market value. Further, RIEDC noted that three of the five comparable properties used by Scotti in his analysis were located not in Smithfield, but in the neighboring towns

of Cumberland and Lincoln. Defendant further noted that for the tax year 2002, the Town of Smithfield assessed the Property at $30,800.

The parties and the Court agreed that Bates and Scotti were both well qualified to testify as expert witnesses. Both experts are licensed in Rhode Island, have long worked as appraisers, were members of the Appraisal Institute, and had completed numerous real estate related courses. Scotti, in addition, had experience appraising and selling properties in Smithfield. He identified a number of properties in the immediate vicinity of Lot 102A that he had appraised and many other properties in the area for which he had served as the broker. Scotti has also appeared before the Smithfield Zoning Board of Review and Planning Board as an expert witness, has appeared before the Smithfield Town Council as an expert witness, and has served as an expert witness in tax appeals in Smithfield.

II

Standard of Review

Rule 52(a), which governs non-jury trials, provides that "in all actions tried upon the facts without a jury . . . the court shall find the facts specifically and state separately its conclusions of law[.]" Super. R. Civ. P. 52(a). In a bench trial, therefore, "the trial justice sits as a trier of fact as well as of law." Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984). In such a proceeding, "'determining the credibility of [the] witnesses is peculiarly the function of the trial justice.'" McEntee v. Davis, 861 A.2d 459, 464 (R.I. 2004) (quoting Bogosian v. Bederman, 823 A.2d 1117, 1120 (R.I. 2003)). It is, after all, "the judicial officer who [actually observes] the human drama that is part and parcel of every trial and who has had the opportunity to appraise witness demeanor and to take into

account other realities that cannot be grasped from a reading of a cold record." In re Dissolution of Anderson, Zangari & Bossian, 888 A.2d 973, 975 (R.I. 2006). "[A]s a front-row spectator[,] the trial justice has the chance to observe the witnesses as they testify and is therefore in a 'better position to weigh the evidence and to pass upon the credibility of the witnesses[.]'" Perry v. Garey, 799 A.2d 1018, 1022 (R.I. 2002) (quoting Nisenzon v. Sadowski, 689 A.2d 1037, 1042 (R.I. 1997)). When the witnesses are expert witnesses, the trial justice may determine the credibility of each expert's evidence and determine whether to accept or reject the expert's testimony. See Sun-Lite P'ship v. Town of W. Warwick, 838 A.2d 45, 47 (R.I. 2003).

Although the trial justice is required to make specific findings of fact and conclusions of law, "brief findings will suffice as long as they address and resolve the controlling factual and legal issues." White v. LeClerc, 468 A.2d 289, 290 (R.I. 1983); see Super. R. Civ. P. 52(a). The trial justice's findings, however, must be supported by competent evidence. See Nisenzon, 689 A.2d at 1042. As such, a trial justice sitting as a finder of fact need not categorically accept or reject each piece of evidence or resolve every disputed factual contention. Notarantonio v. Notarantonio, 941 A.2d 138, 147 (R.I. 2008). Nonetheless, the trial justice should address the issues raised by the pleadings and testified to during the trial. Nardone v. Ritacco, 936 A.2d 200, 206 (R.I. 2007).

III

Analysis

Plaintiff argues that the best and highest use of the Property taken by RIEDC was for a research and development building and that at the time of the condemnation, the Property's fair market value was $300,000. According to Plaintiff, RIEDC undervalued

Lot 102A by comparing it to properties with more restrictive zoning designations, less acreage, and in less desirable geographic locations. Plaintiff further argues that RIEDC failed to demonstrate a factual basis for its valuation of the Property or its adjustments from the comparable sales. In response, RIEDC argues that Scotti's valuation inappropriately assumed that the Town would grant a special use permit to improve the access road. It further alleges that Plaintiff overvalued the Property by comparing it to properties with frontage along developed roadways. Accordingly, Defendant alleges that Conti has failed to prove by a preponderance of the evidence that he has suffered damages as a result of obtaining less than the fair market value of the underlying Property.

A

Probability of a Special Use Permit

Defendant argues that as a threshold issue, Conti did not establish by a fair preponderance of the evidence that there is a reasonable probability that the zoning board would grant a special use permit and that Conti's highest and best use is therefore impermissible. Specifically, Defendant alleges that a research and development facility would be an illegal land use, inconsistent with Smithfield's land use regulations. Defendant bases this assertion on the fact that Smithfield requires research and development facilities to have access by developed roadways. In contrast, Plaintiff argues that it was reasonably probable that the Town would grant a special use permit to improve Lydia Ann Road. Conti further contends that even if the Town did not grant a special use permit, there were multiple means to access Lot 102A and that improving the access road was not necessary to his claim.

Any claimed highest and best use must be consistent with existing land-use regulations, and the Court will not compensate an owner for a highest and best use that is unlawful. See Sun-Lite P'ship, 838 A.2d at 48; Ocean Rd. Partners v. State, 670 A.2d 246, 250 (R.I. 1996). Nonetheless, "if a claimant presents sufficient evidence to establish a reasonable probability that a proscribed use will be made allowable in the near future, the trial justice may consider that use in determining fair-market value." Ocean Rd. Partners, 670 A.2d at 250 (citing Palazzi v. State, 113 R.I. 218, 222-23, 319 A.2d 658, 661-62 (1974)). The landowner has the burden of establishing the reasonable probability that there will be a favorable change in zoning classification, or that a special use permit will be granted. See Arlen H. Rathkopf, The Law of Zoning and Planning § 75:8.

The zoning board has the authority to grant a special use permit if it is satisfied by legally competent evidence that the special use permit "will not alter the general character of the surrounding area or impair the intent or purpose of the ordinance." G.L. 1956 § 45-24-41(c)(3). In making that determination, the board will consider a variety of factors, including whether ingress and egress to property is safe and convenient and whether the use is generally compatible with the adjoining properties with respect to traffic, noise, or other effects. Id.

Although courts generally defer to zoning boards in their determinations, courts will not uphold a zoning board when doing so would effectively prevent uses permitted by its zoning classification. See Perron v. Zoning Bd. of Review of Burrillville, 117 R.I. 571, 369 A.2d 638 (1977); see also Lischio v. Zoning Bd. of Review of Town of N. Kingstown, 818 A.2d 685, 694-95 (R.I. 2003) (overturning board in context of dimensional variance application when that dimensional variance was necessary for many

of the uses permitted in a "general business" zoning classification and denying variance would have prevented landowners from enjoying legally permitted beneficial use of their property); Toohey v. Kilday, 415 A.2d 732, 736 (R.I. 1980) (overturning the zoning board's denial of a special exception as an abuse of discretion when proposed use would not have '"a detrimental effect upon public health, safety, welfare and morals."' (quoting Hester v. Timothy, 108 R.I. 376, 385-86, 275 A.2d 637, 642 (1971))). Rather, courts generally conclude that if the proposed use adheres to standards prescribed by the zoning ordinance, the zoning board is bound to issue the special use permit subject to reasonable conditions. See, e.g., Odham v. Petersen, 398 So. 2d 875, 877 (Fla. Dist. Ct. App. 1981), approved in part, disapproved in part on other grounds, 428 So. 2d 241 (Fla. 1983); Swim Club of Rockford, Ltd. v. City of Rockford, 473 N.E.2d 1375, 1379 (Ill. Ct. App. 1985); Zylka v. City of Crystal, 167 N.W.2d 45, 49 (Minn. 1969); Commonwealth of Pa., Bureau of Corr. v. City of Pittsburgh, Pittsburgh City Council, 532 A.2d 12, 15 (Pa. 1987). For example, our Supreme Court overturned a zoning board's denial of a special use permit for the establishment of a family camping area at a particular location. Perron, 117 R.I. at 574, 369 A.2d at 640-41. The court reasoned that the zoning classification, which permitted a camping area subject to board approval, "implicitly demonstrate[ed] a legislative conclusion that the use (1) is harmonious with the other uses permitted in that district, and (2) is not to be excluded unless the standards for a special exception are not satisfied with respect to its establishment at a particular location or site." Id. (citing Hester, 108 R.I. at 385-86, 275 A.2d at 642).

As a threshold matter, this Court notes that despite Defendant's assertion that a research and development facility was an impermissible use, such a use was permitted

under the PCD zoning classification. See Smithfield Zoning Ordinance, Art. 1.3 (L). The highest and best use of a property must be based on a use that is physically possible and legally permissible. See Serzen v. Dir. of the Dep't of Envtl. Mgmt., 692 A.2d 671, 675 (R.I. 1997). As previously noted, a trial justice may consider a property's potential use "provided the landowner establishes that the probability of the potentiality occurring is 'reasonably definite and is neither speculative nor remote.'" Tennessee Gas Pipeline Co. v. 104 Acres of Land More or Less, in Providence Cnty. of R.I., 780 F. Supp. 82, 86 (D.R.I. 1991) (quoting Palazzi v. State, 113 R.I. 218, 224, 319 A.2d 658, 662 (1974); United States v. 8.41 Acres of Land, 680 F.2d 388, 394 n.8 (5th Cir. 1982)). The zoning classification itself, which permits research and development facilities, implicitly demonstrates that such a use is not only harmonious with the other uses in that district, but also should not be excluded from the Property unless the standards for special exceptions are not satisfied at that particular location. See Perron, 117 R.I. at 574, 369 A.2d at 640-41 (citing Hester, 108 R.I. at 385-86, 275 A.2d at 642).

In this case, it appears to the Court that there is a reasonable probability that the zoning board would grant a special use permit to improve Lydia Ann Road. It is significant to the Court that Defendant's expert Bates, in his testimony, agreed that the zoning board would be hard-pressed to deny a special use permit to improve the road. Plaintiff has demonstrated that improving Lydia Ann Road would be compatible with the adjoining properties with respect to traffic, noise, or other effects. See § 45-24-41. In his appraisal report, Scotti analyzed the property uses in neighboring lots. Significantly, he noted that Lot 102A is abutted on the north by Island Woods Commercial Park, a campus-style office, research, and industrial park that is predominantly used by Fidelity

and Dow Chemical Company. See Perron, 117 R.I. at 574, 369 A.2d at 640-41; Hester, 108 R.I. at 385-86, 275 A.2d at 642. Further, Scotti noted that Dow Chemical Company currently operates a 49,620 square foot research and development building at that location. Lot 102A is also located near Bryant College, Comfort Suites Hotel, the North Central Airport, and Thurber Boulevard Business Park, a park developed with office and light industrial buildings. Bates offered a similar assessment of the area in his appraisal report, and stated that the area is primarily developed with suburban office complexes, commercial, and retail uses. See Perron, 117 R.I. at 574, 369 A.2d at 640-41; Hester, 108 R.I. at 385-86, 275 A.2d at 642.

Moreover, in his testimony, Scotti testified that there were numerous examples of Smithfield granting special use permits to develop and improve roadways in the immediate vicinity of the Property at issue. Scotti further stated that only a portion of Lydia Ann Road would require improvement to satisfy the Town's requirements and that the Town had previously authorized the improvement of another section of Lydia Ann Road. Specifically, he stated that Lydia Ann Road was improved from Route 7 to Lot 76, which fronted the Property at issue.

Here, declining to grant a special use permit to improve Lydia Ann Road would effectively prevent the owner of Lot 102A from developing the Property in a manner permitted by its zoning classification. It seems unlikely that the legislature would have zoned the Property in question as PCD if it did not conclude that uses permitted under that classification were appropriate for that site. See Perron, 117 R.I. 571, 369 A.2d 638. Indeed, preventing the owner of Lot 102A from obtaining a special use permit would prevent that landowner from using the Property for many of the uses permitted under a

light industrial or planned corporate development zoning classification. See Lischio, 818 A.2d at 694-95; see also Ocean Rd. Partners, 670 A.2d at 250 (noting that likelihood of whether variance would be granted could be determined based, in part, on the community's general sentiments concerning development). Under similar circumstances, our Supreme Court has reversed the zoning board, concluding that it exceeded the power conferred on it by "in effect administratively veto[ing] a use conditionally authorized by the town council." See Perron, 117 R.I. at 574, 369 A.2d at 640-41.

This Court also notes from review of the map of record and depositions of both Conti and Scotti that at the time of condemnation, Conti could have accessed the lot from one of his contiguous properties. Two of Conti's lots that were contiguous to Lot 102A directly abutted Route 116 and had curb cuts permitting ingress and egress from Route 116 to those lots. Accordingly, this Court concludes that at the time of condemnation, Lot 102A's value was not predicated on the zoning board's grant or refusal to grant a special use permit to develop Lydia Ann Road, because Conti could have developed roadways to access the Property through his other lots.

B

Expert Valuation

Plaintiff argues that at the time of condemnation, Lot 102A's fair market value was $300,000 and that RIEDC undervalued Lot 102A by comparing it to properties with more restrictive zoning designations, less acreage, and in less desirable geographic locations. In contrast, RIEDC contends that its valuation of $141,000 properly reflected the fair market value of the Property and that Scotti overvalued the Property by

comparing it to property with frontage along developed roadways. Defendant also argues that Conti failed to prove his measure of damages by a preponderance of the evidence.

Under the Rhode Island Constitution, a landowner whose property is taken for public use in condemnation proceedings is entitled to just compensation for that property. R.I. Const. art. I, § 16. The measure of damages constituting "just compensation" for taken property is the fair market value of the property at the time of the taking. Ocean Rd. Partners v. State, 612 A.2d 1107, 1110 (R.I. 1992); J.W.A. Realty, Inc. v. City of Cranston, 121 R.I. 374, 380, 399 A.2d 479, 482 (R.I. 1979); O'Donnell v. State, 117 R.I. 660, 665, 370 A.2d 233, 236 (1977). Fair market value is defined as '"the amount of money which a purchaser willing but not obliged to buy the property would pay to an owner willing but not obliged to sell it, taking into consideration all uses for which the land was suited and might in reason be applied."' J.W.A. Realty, 121 R.I. at 380, 399 A.2d at 482 (quoting 4 Nichols, The Law of Eminent Domain § 12.2(1), at 12-71 to 81 (rev. 3d ed. Sackman 1978)). Although an appraiser may consider all reasonable uses to which land may be put, fair market value of a property is calculated on the most advantageous and valuable use, which is sometimes referred to as the best and highest use. Sweet v. Murphy, 473 A.2d 758, 761 (R.I. 1984); Olson v. United States, 292 U.S. 246, 255 (1934). A property's best and highest use must be physically possible, appropriately supported, financially feasible, and result in the highest land value. See Nichols, supra, at § G4.03[6][b].

The preferred method of determining the fair market value of a property is through the comparable sales method. Burke-Tarr Co. v. Ferland Corp., 724 A.2d 1014, 1021 (R.I. 1999); see Capital Props., Inc. v. State, 636 A.2d 319, 321 (R.I. 1994);

Warwick Musical Theatre, Inc. v. State, 525 A.2d 905, 910 (R.I. 1987). Under this method, an appraiser analyzes recent sales in the open market of similar or comparable properties to determine the value of the property at issue. Conti v. R.I. Econ. Dev. Corp., 900 A.2d 1221, 1236 (R.I. 2006); Sun-Lite P'ship, 838 A.2d at 47. "Significant factors that affect comparability include location and character of the property, proximity in time of the comparable sale, and the use to which the property is put." Warwick Musical Theatre, 525 A.2d at 910; Corrado v. Providence Redevelopment Agency, 117 R.I. 647, 654, 370 A.2d 226, 230, cert denied, 434 U.S. 807 (1977). Although comparable sales need not be identical, sales should not be used as comparable properties if the properties are entirely different. See Warwick Musical Theatre, 525 A.2d at 909 (declining to accept the state expert's comparables when those comparables were of unimproved land and the property at issue was commercial).

A property's value should be established by expert witnesses familiar with values in the area that the real estate is situated. Wordell v. Wordell, 470 A.2d 665, 667 (R.I. 1984). "[The] trial justice retains the authority to determine the credibility of each expert's evidence, and to decide whether to accept or reject a proffered valuation." See Sun-Lite P'ship, 838 A.2d at 47.

Thus, a trial justice may reject an appraiser's approach if that justice finds that the appraiser relied on sales that were not probative of the property at issue. See, e.g., In re Ford, 415 B.R. 51, 63 (Bankr. N.D.N.Y. 2009) (concluding that appraiser did not present comparable sales when that appraiser used properties zoned for commercial use, when the property at issue was zoned for residential and agricultural use). Essential to the determination of the probative value of an expert's appraisal is whether that expert details

the basis on which he or she made adjustments to comparable sales. See Mastrobuono v. Providence Redevelopment Agency, City of Providence, 850 A.2d 944, 948 (R.I. 2004); Warren v. Jackson Twp., 1 N.J. Tax 536, 541-42 (1980); In re Condemnation by Commonwealth, Dept. of Transp., 501 A.2d 1172, 1174 (Pa. 1985) ("Adjustments, and the extent of them, play a very important part and are relevant factors in determining fair market value[, and] are to be considered by the jury in determining the credibility of the valuation expert and the weight to be given to his testimony.").

At trial, RIEDC's expert Bates testified that he had relied on seven comparable sales in arriving at a valuation on Plaintiff's Property as of the date of condemnation. For each sale, Bates provided the sales price as well as the price per acre. The sales prices of those allegedly comparable properties ranged from $55,000 to $156,000, and the price per acre for those comparable sales ranged from $26,667 to $80,412. From this information, Bates concluded that the seven sales indicated a value from $24,000 to $45,960 per acre, with an average of $34,869 per acre. From trial, Bates offered his opinion that the applicable unit value for Lot 102A was $30,000 per acre.

Bates failed, however, to provide an adjustment table demonstrating the reasoning for his reduction in unit value. See, e.g., United Parcel Serv. v. Assessor of Town of Colonie, 42 A.D.3d 835, 838 (N.Y. 2007) (concluding that the expert's "relevant adjustment grids and market analysis permit a meaningful comparison to the subject property"); In re Delgado, No. 11-19249-FJB, 2012 WL 955311, slip op. (Bankr. D. Mass. Mar. 20, 2012) (noting that the expert that "used five comparable sales and provided a grid that detailed the adjustments attributable to a number of specified factors" was more credible that the expert that did not quantify his adjustments).

Similarly, although Bates testified that he reduced the unit price based on Lot 102A's lack of direct frontage along a developed roadway, he did not provide analysis to demonstrate how he assessed the value of Lot 102A using the comparable sales. See Mastrobuono, 850 A.2d at 948; Schmertz v. Dover Twp., 4 N.J. Tax 145, 150 (1982) (concluding that the expert's failure "to support and justify the adjustments, the nature of the differences between the subject and each comparable sale, and the distances of the comparable sales from the subject," made the expert's comparable sales data "meaningless for purposes of establishing the value of the subject property"). Because Bates was not aware that Conti owned lots contiguous to Lot 102A, his valuation also did not account for the possibility that Conti could build a developed roadway through those properties.

Moreover, in his analysis, Bates failed to address any qualities of the comparable sales rendering them inferior to Lot 102A. See Landau v. Assessor of Town of Carmel, 236 A.D.2d 403, 404 (N.Y. 1997). For example, Bates did not address in his appraisal report the fact that three of the seven comparable sales were zoned for low-density residential use. This oversight is especially germane to the accuracy of the appraisal because two of those sales provided the two lowest unit values. Further, two of the other properties used as comparable sales had significant impairments. Sale Four, 19 Appian Way, directly abutted a pond and steeply dropped off toward that body of water. Sale Seven, 27 Appian Way, also had a topographic impairment and was additionally subject to a major utility easement that dominated the property. Bates provided no analysis to demonstrate how these properties commanded an equivalent or greater unit value than the property at issue.

In contrast, Conti's expert Scotti testified that he relied on five comparable sales in determining the fair market value of Lot 102A. Unlike Bates, who measured the value of the land in dollars per acre, Scotti measured the value of Lot 102A in dollars per building foot. See Serzen, 692 A.2d at 674 (recognizing that price per square foot of building area is a more common comparison in appraisal reports than price per square foot of land area). Scotti testified that because dollars per building foot provides a more stable and compact range of values, it is an accepted industry practice to analyze sales using this measure. See id. The price per acre of the comparable properties ranged from $19,850 to $92,017, and the price per building foot for those comparable sales ranged from $7.50 to $13.29. From this, Scotti arrived at an adjusted range of price per building foot of $7.88 to $12.63. He arrived at this range by adjusting the comparable sales based on the superiority or inferiority of the utilities available and location of those properties, and by taking into account the date of sale, the building size, and any sales concessions. Ultimately, Scotti concluded that $12 per building foot was a fair market value for Lot 102A.

Furthermore, Scotti offered comparable sales that more closely approximated the qualities of Lot 102A. The comparable properties were zoned for light industrial, planned office facilities, and warehouse buildings. Although not all of the comparable sales are located in Smithfield, Rhode Island, they have similar access to major thoroughfares and are in communities with similar economic conditions. See City of Chicago v. Harbecke, 409 Ill. 425, 431, 100 N.E.2d 616, 619 (1951). This Court notes that although proximity between the alleged comparable sale and the property at issue is a factor in determining whether the sale is, in fact, comparable, mere proximity does not

indicate comparability in the value of land. See, e.g., Smith v. Sanitary Dist. of Chi., 260 Ill. 453, 103 N.E. 254 (1913) (concluding that sales two miles from the land at issue was comparable, where there was "a general similarity in kind, situation and condition"); Benham v. Dunbar, 103 Mass. 365, 369 (1869) (concluding that various properties, some of which were four or six miles away, were admissible as comparable sales because despite their distance from the land at issue they were of a similar character); see also Knollman v. United States, 214 F.2d 106, 109 (6th Cir. 1954) ("The character of such land situated several miles from land condemned may well be more comparable than that within a few hundred feet."). Scotti also provided adjustment tables that not only demonstrated whether he made an upward or downward adjustment in valuation based on that comparable property, but also the extent of that adjustment.

Although Defendant argues that Scotti underestimates the costs associated with building a developed roadway to Lot 102A, its argument is unavailing. This Court notes that Scotti's allocation for the cost of improving access to Lot 102A—$180,000—was subtracted from an unadjusted property value to arrive at the adjusted property valuation. Scotti's appraisal report includes a detailed analysis of how he arrived at these costs, and he based these estimated road costs on the Marshal and Swift Reference text for real estate appraisers. Scotti credibly testified that this text is frequently used by appraisers to determine road costs. The Defendant produced no contradictory testimony regarding the costs of improving access to Lot 102A, and Bates admitted that, although he would not have used Marshal and Swift in this case, had relied on it himself in the past.

Defendant also seeks to undermine Scotti's valuation by noting that for the tax year 2002, the Town of Smithfield assessed the property at $30,800. This Court

concludes that the tax assessment of the Property is not relevant to this Court's determination of the fair market value of the Property on the date it was taken. A tax assessor's valuation of land is generally inadmissible on the question of market value in condemnation cases. See, e.g., State v. Griffith, 292 Ala. 123, 124-25, 290 So. 2d 162, 163 (1974); Comm'r of Transp. v. Bakery Place Ltd. P'ship, 849 A.2d 896 (Conn. Ct. App. 2004); Blume v. Richmond Cnty., 378 S.E.2d 694 (Ga. Ct. App. 1989); Zografos v. Mayor and City Council of Baltimore, 884 A.2d 770 (Md. Ct. App. 2005); 29A C.J.S. Eminent Domain § 361. In fact, our Supreme Court has specifically noted: "An assessment of taxes is not, of itself, evidence of market value." Spink v. New York, N.H. & H.R. Co., 26 R.I. 115, 58 A. 499, 500 (1904). Accordingly, this Court finds that the tax assessment is not evidence of fair market value.

This Court, after review of the trial evidence and taking into consideration the fact that Lot 102A was contiguous with other properties owned by Conti and the Town would have likely permitted Conti to improve access to the Property, concludes that the comparable sales provided by Scotti and the methods employed by him result in the most persuasive and credible determination of the fair market value of the Plaintiff's land at the time of condemnation. Accordingly, this Court concludes that Conti has established by a fair preponderance of the evidence that the property value of the condemned property was $300,000, a total of $159,000 over the $141,000 originally paid for the Property.

IV

Conclusion

This Court concludes that Conti has proven by a fair preponderance of the evidence that the highest and best use of Plaintiff's property at the time of its taking was a research and development facility. This Court further concludes that its fair market value at the time of the taking was $300,000. Consequently, the total just compensation to be awarded to Conti is $300,000 less the compensation already received by him in the amount of $141,000, thereby totaling $159,000, with interest, from the date of the taking. Counsel shall submit the appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Richard J. Conti v. Rhode Island Economic Development Corporation
CASE NO:	PM 2002-3964
COURT:	Providence County Superior Court
DATE DECISION FILED:	September 29, 2014
JUSTICE/MAGISTRATE:	McGuirl, J.
ATTORNEYS:	
For Plaintiff:	William A. Poore, Esq.; Christopher J. O'Connor, Esq.
For Defendant:	Paul M. Sanford, Esq.; Benjamin C. Caldwell, Esq.