STATE OF MICHIGAN

COURT OF APPEALS

DEPARTMENT OF TRANSPORTATION,

Plaintiff-Appellant,

v

ARCHIE A. VANELSLANDER and MARY ANN VANELSLANDER,

Defendants-Appellees,

and

SCOTT-SHUPTRINE FURRNITURE, INC.,

Defendant.

UNPUBLISHED
August 8, 1997

No. 183321
Macomb Circuit Court
LC No. 93-000733-CC

Before: McDonald, P.J., and Griffin and Bandstra, JJ.

PER CURIAM.

In this condemnation case, plaintiff appeals by leave granted from an order denying reconsideration of the trial court's order excluding the introduction of an appraisal. We affirm.

On appeal, plaintiff argues that the trial court abused its discretion in excluding an appraisal based on the possibility that a zoning variance will be granted.[1] We disagree. In condemnation actions, factfinders may not consider valuation evidence based on prospective zoning changes that are too speculative or remote for a private purchaser to give them substantial consideration in negotiating a price for the property. *State Highway Comm v Haehnle*, 69 Mich App 336; 244 NW2d 470 (1976); SJI2d 90.10. Therefore, the trial court must exclude property appraisals based on future zoning determinations unless the proponent establishes that, at the time of condemnation, there was a "reasonable possibility" that the sought-after zoning decision would have been granted within a

reasonable time. See *State Highway Comm'r v Eilender,* 362 Mich 697, 699; 108 NW2d 755 (1961); *Hartland Twp v Kucykowicz,* 189 Mich App 591, 596; 474 NW2d 306 (1991); *State Highway Comm v Minckler,* 62 Mich App 273; 233 NW2d 527 (1975); see MCLA 213.70; MSA 8.265(20); *State Highway Comm v Mobarak,* 49 Mich App 115, 119; 211 NW2d 539 (1973); SJI2d 90.10. We review the trial court's ruling on this preliminary evidentiary issue for an abuse of discretion. *Detroit v Gorno Steel & Processing Co,* 157 Mich App 294, 311; 403 NW2d 538 (1987); *State Highway Comm v Gaffield,* 108 Mich App 88, 94-95; 310 NW2d 281 (1981); *State Highway Comm v McGuire,* 29 Mich App 32, 34-35; 185 NW2d 187 (1970).

In the present case, plaintiff's expert based his appraisal on the assumption that the City of Sterling Heights would grant a zoning variance for the setback nonconformity created by the taking. Plaintiff's appraiser predicted a variance would be granted, but failed to provide any evidence to support this assumption. Therefore, assuming arguendo that appraisals valuing condemned property can be based on the potential to obtain a discretionary and potentially temporary variance, we hold that the trial court did not abuse its discretion in excluding this unsupported, speculative evidence from the factfinder. See *Hartland, supra* at 597-598; *Minckler, supra* at 277-278.

Additionally, we find no abuse of discretion in the trial court's refusal to reconsider its first two rulings on this issue. First, plaintiff may not make repeated postruling attempts to bolster its position with additional evidence where, as here, it provides no satisfactory explanation why the evidence was originally unavailable. See *In re Pope Estate,* 205 Mich App 174, 178-179; 517 NW2d 281 (1994); *Cogan v Cogan* 119 Mich App 476, 478; 326 NW2d 414 (1982); see, generally, *Sargent v Eckhouse,* 171 Mich App 703, 706; 430 NW2d 763 (1988); *Charbeneau v Wayne Co General Hospital,* 158 Mich App 730, 733; 405 NW2d 151 (1987). This is especially true where, as here, the tardy evidence comes in the form of unsworn letters, not affidavits or sworn deposition testimony. Cf. *SSC Associates Limited Partnership v General Retirement System of Detroit,* 192 Mich App 360, 367; 480 NW2d 275 (1991);

Second, the unsworn letter listing other variances granted in Sterling Heights does not establish a reasonable possibility that a variance would have been granted for defendants' property within a reasonable time of the condemnation. Indeed, the letter fails to establish the dates the listed variances were granted. Therefore, the trial court had no way of determining whether the listed variances were granted at a time that would lead a reasonable purchaser to consider them in determining whether a variance would likely be granted within a reasonable time of the condemnation. Moreover, the letter describes variances occurring on Van Dyke Road and Ford Country Lane without establishing that variances on such roads increase the likelihood of a variance being granted for defendant's Hall Road property. Third, the speculative letter predicting the actions of a municipal agency is inadmissible to establish that Sterling Heights would grant defendant a variance. See, generally, *Oak Brook Park District v Oak Brook Development Co,* 524 NE2d 213, 220 (Ill, 1988); *Maloney v New York,* 368 NYS2d 338, 340 (1975); *Dept of Public Works v Rogers,* 78 Ill App2d 141 (1967).

Finally, plaintiff's claim that defendants should be ordered to apply for a zoning variance is moot in light of the fact that the nonconforming portion of the building has been demolished.

Affirmed.

/s/ Gary R. McDonald
/s/ Richard Allen Griffin

[1] Defendants contend that this appeal should be dismissed as moot because defendants have either altered or destroyed the building that presented the zoning nonconformity. We disagree. What occurred after condemnation does not displace the issue at hand, which is what a willing buyer would have paid for the property just prior to condemnation.