

STATE OF MICHIGAN
COURT OF APPEALS

JEFFREY S. BARKER,

Plaintiff-Appellee/Cross-Appellant,

V

CITY OF FLINT,

Defendant-Appellant/Cross-
Appellee.

UNPUBLISHED

October 19, 2001

No. 209124

Genesee Circuit Court

LC No. 90-109977-CC

Before: White, P.J., and Cavanagh and Talbot, JJ.

WHITE, P.J. (*concurring in part and dissenting in part*).

I respectfully dissent from the majority's determination that defendant is entitled to summary disposition of plaintiff's inverse condemnation claim. In 1978, when plaintiff purchased the building and property at 1710 Nebraska, it had been condemned. Plaintiff spent several years renovating the building, into three rental units. For more than twenty-five years before plaintiff purchased the property, there had been parking on the parkway in front of 1710 Nebraska. This parking continued after plaintiff renovated the building. The history of the use of the parkway for parking purposes created a question of fact regarding whether there was a taking.

Unlike the neighboring properties, the 1710 Nebraska property has no driveway or garage. There was evidence of significant diminution of value in plaintiff's property as a result of parkway access to his building being eliminated. Under these circumstances, I conclude that there was a genuine issue of fact whether plaintiff suffered a unique or special injury different in kind from the harm suffered by all persons similarly situated. *Spiek v Dep't of Transportation*, 456 Mich 331, 348; 572 NW2d 201 (1998); *Thom v State Highway Comm'r*, 376 Mich 608; 138 NW2d 322 (1965) (Souris, J.).

I would affirm the circuit court's denial of defendant's motion for summary disposition. In all other respects, I concur.

/s/ Helene N. White