STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: September 12, 2019]

V. GEORGE MITOLA and	:	
CAROL A. MITOLA	:	
	:	
v.	:	**C.A. No. PC-2015-1646**
	:	
PROVIDENCE PUBLIC	:	
BUILDINGS AUTHORITY	:	

DECISION

TAFT-CARTER, J. Before this Court for decision is V. George Mitola and Carol A. Mitola's (collectively, Petitioners) Petition for Assessment of Damages pursuant to G.L. 1956 § 45-50-13. Petitioners ask that this Court decide the appropriate damages to be assessed against Respondent Providence Public Buildings Authority (PPBA) resulting from the condemnation of Petitioners' development rights with respect to approximately sixty-seven acres of land (the Property). The Property, owned by Petitioners, is designated by the Town of Scituate Tax Assessor as Map 38, Lot 1. Jurisdiction is pursuant to Section 45-50-13[1] and Super. R. Civ. P. 52.

I

Findings of Fact

This matter arises from a dispute over just compensation for an interest in the development rights of land acquired by PPBA from Petitioners on March 9, 2012. The parties agree that the highest and best use of the Property is an eight-lot subdivision. Petitioners maintain that just

[1] The above-referenced statute, entitled "Eminent domain proceedings," provides that municipal building authorities, unless otherwise provided by statute, have the same eminent domain power as that of the State of Rhode Island.

compensation for the development rights of this subdivision amounts to $685,000, while Respondent asserts that just compensation is $492,000.

This Court, sitting without a jury, heard testimony at trial. After assessing the credibility of the witnesses and weighing all of the evidence presented, this Court makes the following findings of fact.

A

The Property

Mr. Mitola and his wife acquired approximately sixty-seven acres of undeveloped land in Scituate, Rhode Island in May 2002 for the sum of $325,000. Trial Tr. (Tr.) 3-4, Apr. 3, 2018. At the time of the purchase, the Petitioners intended to subdivide the Property. *Id.* at 5. They considered retaining four lots for their family and selling the remaining lots. *Id.* at 5-6. The Petitioners eventually built their residence at 21 Country View Lane, Scituate, Rhode Island, and currently live there with their two daughters. *Id*. at 3.

Petitioners undertook various steps in order to subdivide the property, including swapping a portion of land with a neighbor to obtain appropriate frontage. This enabled them to comply with the Town of Scituate zoning regulations. Additionally, Petitioners sought and obtained Planning Commission approval of a subdivision plan. The approved subdivision plan contained eight lots; Lot 1 includes the 4360 sq. ft. single family residence with 35 acres while Lots 2-8 vary in size. *Id.* at 4-6.

John Caito Corporation (Caito) was retained to assist in the various zoning and planning issues. Caito designed the plat, road, and infrastructure for the catch basins and detention pond.

Id. at 7. [2] [3] Gerry Parrillo was also hired to assist in the construction of a road connecting Country View Lane to the residence. *Id*. at 8-10.

During the construction period, Mr. Mitola received a request from Rich Blodgett of the PPBA asking to acquire the development rights of the subject property. *Id*. at 10. Mr. Mitola informed Mr. Blodgett that he did not intend to sell the development rights. *Id*. at 11. As a result, the PPBA, pursuant to Section 45-50-13 (a)(6), commenced eminent domain proceedings. *Id*.

B

Testimony Regarding Valuation

1

E. Jenny K. Flanagan

E. Jenny K. Flanagan, Vice President at Keystone Consulting Group (Keystone), testified regarding the valuation of the Property. Ms. Flanagan is licensed as a General Certified Appraiser in Rhode Island, Massachusetts, and Connecticut and has performed approximately 400 appraisals over the past twenty years. Tr. 65-67, Oct. 1, 2018. She has been employed by Keystone since 1999. *Id.* at 65.

[2] Jeffrey Hanson performed the performed the engineering work for the proposed subdivision, submitted the necessary applications to the Town of Scituate, and obtained the required permits. Tr. at 16-20, Apr. 4, 2018. Mr. Hanson testified about Mr. Mitola's expenses with respect to the completed subdivision project. According to Hanson, the cost of the completed construction totaled $259,822.14. *Id*. at 39-41.

[3] Steven M. Clarke (Clarke), a licensed Professional Engineer for thirty-six years, testified for the Respondent with respect to the cost of infrastructure for the finalized construction of the Property. Tr. at 153-55, Oct. 1, 2018. Clarke considered the costs of creating the remaining 925 feet of roadway after Lot 1 to service the remaining seven lots and finishing the initial 750 feet of roadway leading in to the Property. *Id.* at 155. His calculations of those costs were within a few thousand dollars of that calculated by Hanson (roughly $302,000 estimated by Clarke compared to $295,000 calculated by Hanson). *Id*. at 170, 180. Clarke's analysis and subsequent report did not address the actual expenses Mr. Mitola incurred, such as the roadwork completed in anticipation of the subdivision. *Id*. at 180-81.

Ms. Flanagan was retained to prepare a real estate appraisal to determine the market value of the fee simple interest in the subject property before and after the condemnation of the development rights. She was also retained to determine the value of improvements as a result of the condemnation. Ms. Flanagan used two methodologies in her valuation: the sales comparison approach and the land development discounted cash flow analysis. *Id*. at 67, 69.

The sales comparison approach required that she obtain data from previous sales in Scituate for both subdivisions and individual lot sales. Flanagan concluded that the retail value of the house lot as of the date of valuation was $165,000. *Id*. at 70. Flanagan next valued the existing dwelling on 2.75 ± acres of land and determined that the value was $547,000. *Id*. at 71. Using the same approach for the 27.2 ± acres of land suitable for development as prospective house lots, Flanagan concluded that each lot had a value of $70,000, for a total of $490,000. *Id*. Flanagan then assessed the 33.1 ± acres of surplus residential land on the Property and—based on comparison to previous sales of undevelopable properties in Scituate—valued the surplus land at $43,000. *Id*. at 72. Given these totals, Flanagan concluded the total indicated value of the Property before condemnation pursuant to the sales comparison approach was $1,075,000. Flanagan Report at 93.

Flanagan then conducted the land development discounted cash flow analysis. Tr. 72, Oct. 1, 2018. Flanagan considered the value of the Petitioners' dwelling and the seven prospective home lots and deducted various development costs and expenses. *Id.* She concluded that the present value was $785,000. *Id.*

Ms. Flanagan then reconciled her data to accurately reflect the value. Ms. Flanagan opined that the sales comparison approach value for the Property of $1,080,000 was the correct approach. Tr. at 73. She reasoned that the sales comparison approach "tends to be more straightforward in the analysis" and that "[i]t's an indicator of what market participants have done in the past." *Id.* at 74.

Flanagan next addressed the value of the property post-condemnation and concluded that residential use would be permitted. *See* Flanagan Report at 91. Additional residential development of the subject property, however, would be prohibited. *Id.* Using the sales comparison approach, Flanagan concluded that the value of the Mitola residence was $547,000 and that the surplus undevelopable land was worth $63,000. *Id*. at 107, 111. Thus, according to Flanagan, as of March 9, 2012, the total post-condemnation value was $610,000. Tr. at 76-77; Flanagan Report at 113. Considering that the pre-condemnation value was one million dollars and the post-condemnation value was $610,000, Ms. Flanagan concluded that the value of the condemned development rights totaled $390,000. Tr. at 77-78; Flanagan Report at 114.

In reaching this conclusion, Flanagan examined the sum expended for improvements. Flanagan Report at 113-114. In doing so, she examined data from Marshall Valuation Service. Specifically, Flanagan looked to data regarding the differences between roadwork for a subdivision and that for a single-family home, and from such data, she concluded that the "net contributory value of the super-adequate site improvements was $187,060." Tr. at 80-82; *see* Flanagan Report at 112-114. Flanagan then examined the additional costs of the approval process for an eight-unit subdivision, and she concluded that Mr. Mitola spent $120,000 over and above that which would have been spent by a homeowner not seeking to construct a subdivision. Tr. at 82; Flanagan Report at 111-113, 147-151. She then subtracted $12,000 to account for the amount Mr. Mitola would have had to spend for approval for access to the public road for his family's use of the Property as a single-family residence. Tr. at 82-83; Flanagan Report at 111-113, 147-151. These additional costs amounted to a total of $108,000 in so-called "soft costs." Tr. at 82-83; Flanagan Report at 111-113, 147-151.

When such costs were added to the $187,060 spent by Mr. Mitola on physical improvements to the Property, the total amount expended as of March 9, 2012, according to Flanagan, amounted to $295,000. Tr. at 83; Flanagan Report at 111-113. Therefore, Flanagan concluded "to a reasonable degree of professional certainty" that the "total effect of the condemnation" was $685,000 ($295,000 plus the aforementioned $390,000 decrease in property value). Tr. at 84-86; Flanagan Report at 114.

2

Peter M. Scotti

Peter M. Scotti (Scotti), a real estate broker and appraiser licensed in Rhode Island, Connecticut, and Massachusetts for the last forty-four years, testified for the PPBA. *Id*. at 192-193, Oct. 1, 2018. Scotti utilized two approaches to valuing a property: the Sales Comparison approach and the Sales Development Approach. *Id*. at 195; *see* Scotti Report at 59. A variant of the Sales Comparison approach is the Sales Development Approach or Subdivision Approach. *See* Scotti Report at 36. This approach estimates the value based on net income derived from the development and sale of properties. *Id*. Mr. Scotti determined that the highest and best use of the property was an eight-lot subdivision, and the most likely buyer would be a developer. Scotti Report at 9, 12-13. Therefore, Scotti conducted his analysis with the assumption that a developer would purchase the Property. Ultimately, Scotti concluded that the Sales Development Approach was the best method to determine market value because it considers both the lot value and analyzes the net sale proceeds. *Id.* at 46, 59.

Scotti performed a valuation of the market value of the house and the lot upon which the house sits within the Property. Tr. at 204. Scotti analyzed this value by performing a standard residential appraisal and considered three residential sales in Scituate which had occurred between December 2010 and March 2012. Tr. at 204; Scotti Report at 44. Scotti considered the comparable sales in terms of the residential square footage and associated acreage, making adjustments for amenities, property size and market appeal. Scotti Report at 44. Based on this analysis, Scotti concluded the Mitola residence and associated lot had a fair market value of $675,000 as of the date of the taking—March 9, 2012. Tr. at 205; Scotti Report at 45.

Next, Scotti analyzed the market value of a single lot in the subdivision, using the sales comparison approach. He identified three sales that had taken place between December 2010 and February 2012 in the town of Scituate. Tr. at 197; Scotti Report at 53. Scotti acknowledged that both Sale 1 and Sale 3 in his table of comparable sales were also sales used in Petitioners' comparable sales analysis. Tr. at 199. After analyzing each sale, Scotti made adjustments based on topographical differences between the comparable properties and the Property itself, as well as adjustments for market conditions at the time of the sales. Tr. at 202-204; Scotti Report at 53. Ultimately, Scotti concluded the average value of a subdivision lot was $145,000. Tr. at 204; Scotti Report at 53.

In order to determine the valuation of the seven vacant single-family lots if sold to a developer, Scotti used the Sales Development Approach. Scotti concluded that the preferred method for valuation of vacant land in this case was not the Sales Comparison Approach. Scotti Report at 46. He reached this conclusion because his "search of the market found insufficient data to appropriately develop" the approach. *Id*. Scotti explained that "[d]ue to variations in frontage and in frontage to depth ratios and in upland/wetland ratios, comparison of large tracts" would be "problematic." *Id.* Therefore, the result would be "misleading value indicators." *Id.* In his testimony, Scotti stated generally the sales comparison approach is not used for a subdivision analysis because "there are too many variables. It doesn't work, it's not reliable, and that's not what a developer would do." Tr. at 210.

Scotti performed the above-referenced analysis to determine the average retail value of the subdivision lots. Scotti Report at 46. Next, Scotti undertook an absorption study to "measure the rate at which the lots can be sold in the marketplace." *Id*. Scotti estimated the "direct costs of development including infrastructure construction costs, existing property upgrading, sales commissions, overhead, real estate taxes, and developer's profit." *Id*. Finally, Scotti developed a discount rate which would reflect the risk associated with the development project. *Id*. Following this analysis, Scotti found the net value of the Property to be $396,000. *Id.* at 57-59. Therefore, according to Scotti's analyses, the total value of the Property before condemnation was $1,071,000. Tr. at 216; Scotti Report at 71.

In order to determine the value of the Property after condemnation, Scotti evaluated the Property as a "single-family house on 35.88 acres after the development rights were gone." Tr. at 216; Scotti Report at 60. After condemnation, the Property would be limited to the current use of the undeveloped lots, woodland, and single-family residence. Scotti Report at 60. As such, Scotti analyzed the sales of three parcels of land which were unable to be developed due to said parcels being landlocked, encumbered by a covenant, and encumbered by a conservation easement. *Id*. Based on this comparison, Scotti concluded a value of $2000 per acre was reasonable for the land on the Property without development rights. *Id*. at 70. As such, Scotti estimated the seven-lot subdivision without development rights is worth a total of $54,000. *Id*. at 70-71.

Ultimately, Scotti considered all of these valuations to calculate the value of the development rights to the Property. Scotti concluded the market value of the single-family residence without development rights on the 35.88 acres associated with Lot 1 on the Property was worth $525,000. *Id.* at 71. Additionally, the remaining seven-lots without development rights were valued at $54,000 based on the sales comparison approach. *Id*. at 70-71. Therefore, the entire Property without development rights, according to Scotti, is valued at $579,000. *Id*. at 71. As Scotti valued the Property with development rights at $1,071,000, according to Scotti's analysis, the development rights are worth a total of $492,000. *Id*.

II

Standard of Review

Rule 52(a) of the Superior Court Rules of Civil Procedure states that "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon." Super. R. Civ. P. 52(a) (Rule 52). Therefore, in a non-jury trial, "[t]he trial justice sits as a trier of fact as well as of law." *Hood v. Hawkins*, 478 A.2d 181, 184 (R.I. 1984). Consequently, "[s]he weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences." *Id.* In a condemnation case, a trial justice's findings of fact will not be disturbed "'unless such findings are clearly erroneous or unless the trial justice misconceived or overlooked material evidence or unless the decision fails to do substantial justice between the parties.'" *Opella v. Opella*, 896 A.2d 714, 718 (R.I. 2006) (*quoting Bogosian v. Bederman*, 823 A.2d 1117, 1120 (R.I. 2003)); *see Serzen v. Director of the Department of Environmental Management*, 692 A.2d 671, 675 (R.I. 1997).

III

Analysis

There is no dispute as to the highest and best use of the Property. The issue here is the Petitioners' contention that the amount of damages awarded by the Respondent is inadequate compensation for the damages that they sustained when the PPBA condemned the Property. Petitioners rely on the testimony of Flanagan to support their argument that at the time of the taking, the subject property was reduced in value from $1,000,000 to $610,000, for a loss in value of $390,000. They also assert that they should be compensated for improvements to the Property made in anticipation of development which, according to Flanagan, total $295,000. Therefore, according to Petitioners, they are entitled to a total of $685,000 as compensation for the taking.

Conversely, Respondent PPBA maintains that its evaluation was correct as of the taking date. Respondent relies on the testimony of Scotti, who used the Sales Development Approach when evaluating the undeveloped land, in support of its position that the condemnation resulted in the subject property being reduced in value from $1,071,000 to $579,000, for a total loss in value of $492,000. PPBA also argues that no additional damages should be awarded based on improvements to the Property made in anticipation of development because in using the Sales Development approach, such improvements are already reflected in the value of the Property prior to condemnation.

Article I, section 16 of the Rhode Island Constitution provides that "property shall not be taken for public uses, without just compensation." The power of eminent domain is within the "powers of the state and of its municipalities[.]" Title 50, Chapter 45 of the Rhode Island General Laws entitled "Municipal Public Buildings Authority" provides that "[t]he authority has the right to acquire any land, or any interest in it, including development rights, by the exercise of the power of eminent domain, whenever it is determined by the authority that the acquisition of the land, or interest, is necessary for the construction or the operation of any project." Sec. 45-50-13.

Courts in "land-condemnation cases must assure that the landowner receives fair and just compensation." *Capital Properties, Inc. v. State*, 636 A.2d 319, 321 (R.I. 1994) (citing *Warwick Musical Theatre, Inc. v. State*, 525 A.2d 905, 910 (R.I. 1987); *J.W.A. Realty, Inc. v. City of Cranston*, 121 R.I. 374, 380, 399 A.2d 479, 482 (1979)). "'Nevertheless, when there is a dispute over the reasonableness of the offer made by the condemning authority and judicial relief is sought, the litigant should receive just compensation but not a penny more.'" *Id.* (quoting *Nasco, Inc. v. Director of Public Works*, 116 R.I. 712, 721, 360 A.2d 871, 876 (1976)). Additionally, "'[i]t is well settled that the measure of damages to be awarded as just compensation for the condemnation of private property is the fair-market value of the property as of the date of the taking.'" *Mastrobuono v. Providence Redevelopment Agency, City of Providence*, 850 A.2d 944, 947 (R.I. 2004) (quoting *Serzen*, 692 A.2d at 673).

Over the years, a series of general principles have evolved in the determination of just compensation. *See Capital Properties*, 636 A.2d at 321. For example, "constitutionally required 'just compensation' due a property owner whose land has been taken by eminent domain is the fair market value of the property." *J.W.A. Realty, Inc.*, 121 R.I. at 380, 399 A.2d at 482. 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." *Id.* (quoting 4 Nichols, *The Law of Eminent Domain* § 12.02[1] (rev. 3d ed. Sackman 1964)). Fair market value should be calculated on the basis of the most advantageous and valuable use of the property, "sometimes referred to as the highest and best use" of the property. *Ocean Road Partners v. State*, 612 A.2d 1107, 1110 (R.I. 1992) (citing *Sweet v. Murphy*, 473 A.2d 758, 761 (R.I. 1984)).

"In ascertaining the fair-market value of property, one must consider such factors as developmental costs and marketability." *Gorham v. Public Building Authority of Providence*, 612 A.2d 708, 716 (R.I. 1992). Specifically, when determining "the fair-market value of a property," the Court must take into account all factors, including the . . . '"[c]ost of subdivision . . . [and the] [c]ost of holding the property while it is being subdivided and sold[.]"' *Id.* (quoting *United States v. 158.24 Acres of Land, More or Less, Scituate in Ashley, Bradley and Union Counties, State of Arkansas*, 696 F.2d 559, 564 (8th Cir. 1982)). In determining the measure of damages in a takings case, the Court "establish[es] the difference between the value of the land prior to the taking less its value after the taking." *Hetland v. Capaldi*, 103 R.I. 614, 617, 240 A.2d 155, 157 (1968) (citations omitted). In making these valuations, courts often use the sales comparison approach, as "reason suggests that a comparable sale in the open market is strongly persuasive of the proposition that the purchase price freely agreed upon is a fair representation of the value of the similar property taken by eminent domain." *Atlantic Refining Co. v. Director of Public Works*, 102 R.I. 696, 707, 233 A.2d 423, 429 (1967); *see also Thomas B. Gray, Inc. v. Providence Redevelopment Agency*, 114 R.I. 370, 373, 333 A.2d 143, 145 (1975) (It "is settled law in this state" that "prices paid in the open market at or about the time of the taking for substantially similar and comparable properties, *when available and when proper adjustments can be made for minor differences between the properties*, are the best evidence of the fair market value of condemned property") (emphasis added) (further citations omitted).

Departure from the sales comparison method has been recognized as acceptable when the fair market value established through comparable sales did not adequately reflect just compensation because the condemned property was "unique or suited for a special purpose" or because "unusual circumstances exist." *J.W.A. Realty, Inc.*, 121 R.I. at 381, 399 A.2d at 483; *see also Clifford v.*

Algonquin Gas Transmission Co., 604 N.E.2d 697, 700 (Mass. 1992) (affirming use of development approach when highest and best use was indisputably as a residential subdivision) (citing *Commonwealth, Department of Highways v. McCready*, 371 S.W.2d 485, 487 (Ky. 1963) (using development approach for a subdivision and considering the number of lots, comparable sales of other subdivisions, time needed to sell lots, and associated costs including installation of utilities and paving streets)). Additionally, deviation from the sales comparison approach is allowed when "evidence of comparable sales is 'no longer probative.'" *Sweet v. Town of West Warwick*, 844 A.2d 94, 98 (R.I. 2004) (quoting *Corrado v. Providence Redevelopment Agency*, 117 R.I. 647, 657, 370 A.2d 226, 231 (1977)).

Here, the Property is neither unique nor suited for a special purpose. However, unusual circumstances exist. *See J.W.A. Realty, Inc.*, 121 R.I. at 383, 399 A.2d at 484 (affirming departure from comparable sales approach when trial justice considered expenses and enhancements associated with a proposed housing development prior to condemnation). When Mr. Mitola purchased the Property, it consisted of approximately 67 acres of undeveloped land. Tr. at 3-4, Apr. 3, 2018. As of the taking date, the Property consisted of an eight-lot subdivision. Lot 1 consisted of the Petitioners' residence plus access acreage, with seven undeveloped lots. *Id*. at 5-6. The Property had received the appropriate approval for an eight-lot subdivision. *Id*. The parties do not dispute the highest and best use of the Property was as an eight-lot subdivision.

Flanagan, using the sales comparison approach, concluded that the residence and the lot on which it was constructed were worth $547,000; the other seven lots were worth $70,000 each; and the surplus land was worth $43,000. *Id*. at 71-72. From the values, Flanagan concluded that the total value of the Property at the time of the taking was $1,000,000. *Id*. at 73-75. Flanagan noted on her report, however, that the sales development approach applies when the highest and best use of the property is for the development of a subdivision. Flanagan Report at 63. Flanagan ultimately relied on the sales comparison approach and concluded that this subdivision was superior to most of the comparable subdivision property by offering larger lots in a more private setting. *Id*. at 71.

While Scotti also utilized the sales comparison approach to evaluate the residence and associated lot—concluding it had a value of $675,000 prior to condemnation—Scotti strongly disagreed with the use of the sales comparison approach to evaluate the lots on which Mr. Mitola had intended to construct a subdivision. Tr. at 192-206, Oct. 1, 2018. In fact, Scotti testified that, throughout his forty-three years of experience, he had never seen that method used to evaluate a subdivision. Instead, Scotti used the sales development approach, which takes into account everything a developer would consider when purchasing land for development—such as the cost of roadwork and other costs associated with construction of a subdivision. *Id*. at 206-207. According to Scotti, this method is used for developments because of considerable variables between developments including "road length," "access," "location," and "frontage to depth." *Id*. at 207-208. Using this method, Scotti ultimately concluded that the value of the seven undeveloped lots prior to condemnation was $396,000. *Id*. at 213.

Scotti then used the sales comparison approach to assess the value of the vacant lots post-condemnation. Scotti determined that, based on comparable sales, the fair market value of the vacant lots without development rights was $2000 per acre, for a total of $54,000 for the twenty-seven acres on the Property. *Id*. at 215. Scotti also determined the post-condemnation value of the residence and attached lot to be $525,000. Scotti Report at 71. Adding the fair market value of the vacant lots to the value of the residence and attached lot resulted in a total post-condemnation value of the Property as a whole of $579,000. Tr. at 216. Ultimately, Scotti concluded the development rights were worth a total of $492,000. *Id.* Scotti arrived at this conclusion by determining the difference between the pre-condemnation value of the Property and the post-condemnation value of the Property ($1,071,000 minus $579,000). *Id*.

The Court finds the testimony of Scotti to be more credible and persuasive. He was articulate in his explanation to the Court that although the sales comparison method is usually the best way to appraise a property, it is not the best method for purposes of subdivision and development because of the differences that exist among various subdivisions. *Id*. at 206; *see Gorham*, 612 A.2d at 716 ("[P]rices paid in the open market at or about the time of the taking for substantially similar and comparable properties, *when available and when proper adjustments can be made for minor differences between the properties*, are the most persuasive evidence of the fair market value of the property") (emphasis added); *see also J.W.A. Realty, Inc.*, 121 R.I. at 381, 399 A.2d at 483 (affirming departure from sales comparison method due to unusual circumstances). Additionally, Scotti stated that due to the wide varieties amongst different developments, the sales comparison approach alone would not adequately account for those differences. *See Gorham*, 612 A.2d at 716; *see also Whittemore v. Thompson*, 139 A.3d 530, 546 (R.I. 2016) (quoting *Sweet*, 844 A.2d at 99) (affirming trial justice's decision to reduce an assessment value since the "comparable sales were unreliable, and, therefore, 'no longer probative'"). Scotti further testified that he had never seen the sales comparison method used for purposes of appraising a subdivision. Tr. at 207.

Here, the evidence alone of comparable sales is not probative. *See Sweet*, 844 A.2d at 98. This Court finds Scotti's use of the development approach to be more probative than the sales comparison approach, considering the unusual circumstances and factors in determining the value of a partially developed, eight-lot subdivision. *See J.W.A. Realty, Inc.*, 121 R.I. at 383, 399 A.2d at 484. Scotti described the development approach as a "hybrid" of the sales comparison approach and the income approach. Tr. at 195. According to Scotti, the development approach "takes into account the sales comparison approach inasmuch as you use that to determine individual lot values. It takes into account the income approach . . . [by] doing an income analysis of gross sales less expenses and doing a present value on a discounted cash flow analysis." *Id*. For the individual, undeveloped lots, Scotti performed a sales comparison analysis with three other comparable properties. Scotti made adjustments to each based on the differences between the comparable properties and the individual lots on the Property here. Scotti also performed a sales comparison analysis for Lot, 1 including the house and other developments on that lot.

In other jurisdictions, "the Development Approach is a widely accepted valuation method" when "applied to a development plan which was reasonably certain to be built as it complied with all applicable zoning regulations[.]" *Lehigh-Northampton Airport Authority v. Fuller*, 862 A.2d 159, 162 (Pa. Commw. Ct. 2004); *Ramsey County v. Miller*, 316 N.W.2d 917, 918 (Minn. 1982) ("The development cost approach is a permissible method of appraising developmental property for purposes of a condemnation proceeding"); *see also United States v. An Easement and Right-of-way Over 6.09 Acres of Land, More or Less, in Madison County, Alabama*, 140 F. Supp. 3d 1218, 1255 (N.D. Ala. 2015) (discussing the "lot method," also known as the "development approach," as being proper when "the subdivision of the unimproved land was reasonably certain in the near future at the time of the taking").

With respect to the residence and the attached lot, the Court also finds the testimony of Flanagan regarding the use of the sales comparison approach to be most credible. Using such approach, Scotti assessed the residence and attached lot, prior to condemnation, at a value that was $128,000 *higher* than that of Flanagan's assessment. At the same time, however, the Court does not find Flanagan to be credible with respect to the use of the sales comparison approach alone for the seven-lot subdivision. This finding is due to the fact that in the valuation of a subdivision, a

Court must consider "all factors which would be considered by a prospective purchaser[.]" *Gorham*, 612 A.2d at 716. Additionally, when unique or unusual circumstances exist, the Court may consider other factors which would impact the valuation of a property. *See J.W.A. Realty, Inc.*, 121 R.I. at 383, 399 A.2d at 484. For these reasons, the Court finds the testimony of Scotti—that such approach is not suitable for valuing subdivisions because of the differences that exist among subdivisions—persuasive. *See id.; see also Gorham*, 612 A.2d at 716. Therefore, the Court accepts Scotti's ultimate conclusion and determines that Petitioners should be awarded $492,000, an amount which represents the valuation of the subject property prior to condemnation minus the value thereafter, for the March 9, 2012 condemnation of the subject property.

IV

Conclusion

The Court has carefully reviewed the record before it. After such review, the Court finds that based on the evidence before it—in particular the testimony of Peter Scotti regarding his use of the developer's approach for valuation of the Petitioners' undeveloped land—the Respondent's valuation of the subject property is credible and more persuasive than that of the Petitioners'. Therefore, the Court finds that pursuant to § 45-50-13, Petitioners are entitled to an award of $492,000, which represents the fair market value of the subject property as valued by Respondent prior to the partial taking date ($1,071,000) minus such valuation immediately thereafter ($579,000), plus any appropriate interest. Counsel shall prepare appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Cover Sheet

TITLE OF CASE:	V. George Mitola and Carol A. Mitola v. Providence Public Buildings Authority
CASE NO:	PC-2015-1646
COURT:	Providence County Superior Court
DATE DECISION FILED:	September 12, 2019
JUSTICE/MAGISTRATE:	Taft-Carter, J.
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