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WEEKLY

Jury awards owner \$1.2M over state's condemnation

Lawyer calls it county's largest such verdict



Steven P. Kuenzel

BY JOE YERARDI
Special to Missouri Lawyers Weekly

A Franklin County jury awarded a man \$1.2 million as compensation for land the Missouri Department of Transportation took to expand a state highway.

MoDOT offered James Krafft \$112,500 to condemn 2.61 acres of his land adjacent to Missouri 100 in Franklin County to expand the thoroughfare from two to four lanes. Krafft asked the department to adjust its plans so he could keep a connecting road between two portions of his property. Krafft believed it could function as a second entrance if the land eventually was sold for commercial development, which he believed likely. MoDOT declined, and a three-person commission awarded Krafft \$262,500 in compensation.

Both Krafft and the state filed exceptions in response to the award, arguing the award was insufficient and excessive, respectively, and requested a jury trial to determine appropriate compensation.

At the December trial, Krafft argued the devaluation of his property because of the condemnation was considerably greater than the commissioners' award for two reasons. First, he claimed it was highly likely that his property soon would be considered for development. The land was on a major highway that already had experienced sig-

nificant commercial development, so he argued it had a high intrinsic value.

Second, he claimed the 2.61 acres that MoDOT was condemning was a major boon to the property's value in developers' eyes because that land included an access road that could serve as a second entrance for a shopping center. In condemning that portion of the property, MoDOT was making it considerably less appealing to developers, who increasingly view a second entrance and exit as necessary for high-volume shopping centers, he argued.

He offered the testimony of two expert witnesses to support those claims. A major commercial real estate appraiser in the area testified that shopping center developers had a profound desire for second entrances when considering sites for development. A professional engineer, whose firm had been involved in the development of every major shopping center in the area, testified that Krafft's property was next in line for such development. He told jurors the condemnation would significantly decrease the property's value and spoke about the desirability of a second entrance.

MoDOT argued that Krafft was overstating his property's value, noting that much of it is in a flood plain, which would require a major investment from potential developers. Developers would take

that into account when considering what to offer Krafft, MoDOT argued. The department also claimed the cost of constructing a connecting road was prohibitive because of the nature of the soil. MoDOT presented engineering and real estate appraisal experts to support its claims.

The jury awarded Krafft \$1.2 million for condemnation of his property. He also is due \$200,000 in accrued interest.

One of Krafft's attorneys, Steven Kuenzel of Eckelkamp Kuenzel in Washington, said he believed his experts' professional experience won over the jury.

"I think their experience in doing big-time developments and appraising big-time real estate was incredibly persuasive," Kuenzel said. "They could speak directly to the value to a developer of having that second entrance."

Plaintiff's attorney Philip Morgan, of the Missouri Highways and Transportation Commission, said the jury simply saw more value in the property than his witnesses did.

"The jury obviously believed the property was more valuable to begin with than we thought," Morgan said.

Kuenzel said he believed the award was the largest-ever jury verdict in a Franklin County condemnation case.

"There's just never been one anywhere close to this," he said.



Colleen M. Kuenzel

■ \$1.2 million verdict

EMINENT DOMAIN

- **Breakdown:** \$1.2 million jury verdict; \$200,000 in accrued interest
- **Venue:** Franklin County Circuit Court
- **Case Number/Date:** 08AB-CC00162/Dec. 21, 2011
- **Judge:** David L. Hoven
- **Plaintiff's Experts:** Glenn Borgard, St. Louis (engineering); Thomas Garnett, St. Louis (real estate appraisal)
- **Defendant's Experts:** Raymond H. Frankenberg II, Washington (engineering); Edward W. Dinan, St. Louis (real estate appraisal)
- **Last Pretrial Offer:** \$112,500
- **Caption:** Missouri Highways & Transportation Commission v. James C. Krafft, Trustee
- **Plaintiff's Attorney:** Philip E. Morgan Jr., Missouri Highways and Transportation Commission, Chesterfield
- **Defendant's Attorneys:** Steven P. Kuenzel and Colleen M. Kuenzel, Eckelkamp Kuenzel, Washington