

IN THE CIRCUIT COURT FOR THE 16th
JUDICIAL CIRCUIT, IN AND FOR
MONROE COUNTY, FLORIDA

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION, on
behalf of the BOARD OF TRUSTEES OF
THE INTERNAL IMPROVEMENT
FUND,

Petitioner,

vs.

EVERETT G. WEST, *et al.*,

Defendants.

CASE NO. CA-P-95-165

Parcel One

**VERIFIED MOTION FOR A NEW TRIAL ON PARCEL 1, AND AN ORDER
PERMITTING THE INTERVIEWING OF JURORS IN SUPPORT THEREOF**

Pursuant to Fla. R. Civ. P. 1.530 (Motions for New Trial) and 1.431(h) (Interview of a Juror), and Rule 4-3.5(d) of the Rules Regulating the Florida Bar (Communication with Jurors), the former owners of Parcel One move for an order permitting the interview of three jurors who sat on the jury in this cause. Following said interviews, Defendants move for an order vacating the verdict rendered as to Parcel One on May 22, 2008, and granting a new trial on the amount of compensation due the former owners of said parcel. In support hereof, Defendants state the following.

1. Defendants have reason to believe the jury misapplied the law it was provided by the Court, by reaching a verdict that was based on the 1982 real estate market rather than the market extant on the date of the *de jure* taking, in 2004.

On May 22, 2008, as undersigned counsel left the courthouse after the jury had been dismissed, they – and Defendants-former owners of Parcel One – were met by three of the jurors in this cause – Margaret McLarty, Donna McCune, and a third juror whose name we did not remember – on the courthouse grounds.¹ The three jurors explained to defendants – and undersigned counsel –

¹ Ms. McLarty spoke with undersigned counsel and the defendants at some length. We believe the second juror was Donna McCune, because she stated she was a Key Largo postal carrier in 1982; that one of her routes included the area of North Key Largo that included Parcels One and Seven; and that she was certain “you couldn’t sell condominiums on that property in 1982.” Of the jurors, only Donna McCune and Valerie Barth were residents of the Keys in 1982 (Ms. McCune is a 30 year resident; Ms. Barth 35 years).

that even though the jurors believed that Parcel One would have been rezoned to RU-3, if requested in 1982, the jury concluded that there would have been no market for condominiums on that property in 1982.² And for that reason, the jury multiplied the number of single-family lots that could have been developed on the property (46), by \$110,000 per lot – thereby reaching their verdict of \$5,060,000.

If the requested interviews with the jurors corroborate what counsel and defendants were told on May 22, 2008, and have summarized above, the \$5,060,000 verdict was the product of the jury's failure to apply the correct law as provided to them by the Court throughout the trial. The Court's April 9, 2007, Condemnation Blight Order states very clearly, at the top of the final page, that the "market" is that which existed in 2004 – not 1982, as set out below.

The Court ORDERS the parties to value the subject properties at the Fair Market Value they would have had on the dates of the *de jure* takings (Parcel 1: March 17, 2004; Parcel 7: April 21, 2004), had the County's and State's legislative enactments and regulations, in effect on February 8, 1982, been in effect on the dates of the *de jure* takings. The parties may not raise by testimony, nor make any statements to the jury, regarding the effect of any County or State enactment or regulation, promulgated, enacted, or amended after February 8, 1982. The jury shall be instructed to determine the Fair Market Value of each parcel as of the *de jure* takings in Spring 2004, according to the highest and best uses they would have had on February 8, 1982. [Footnote omitted.]

A 22-year error, applying 1982 market conditions as the basis for their verdict instead of 2004, warrants a new trial as to the fair market value of Parcel One in 2004.

2. The jury utilized its own knowledge of the "market" – rather than render a verdict based upon the evidence adduced at trial.

Defendants also have cause to believe that Ms. McCune's knowledge of the area of North Key Largo (in 1982), based on her statements to us outside the courthouse on May 22, 2008, and that the jury relied on her personal experience rather than the expert testimony adduced at trial (there were no non-expert witnesses).

² Undersigned counsel are paraphrasing what the jurors said during an approximately 30 minute conversation.

3. There was no evidence adduced at trial that supported the jury's obvious conclusion that a single-family subdivision (RU-1 zoning) was the highest and best use of Parcel One, whether in 1982 or 2004.

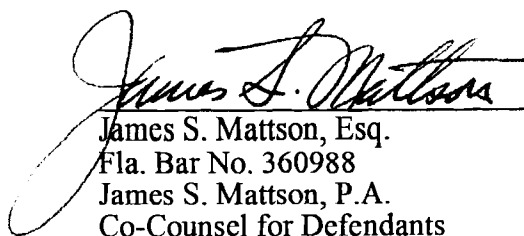
The only evidence comparing the likelihood of attaining either of the two zonings, RU-1 (single-family lots) and RU-3 (multifamily structures) – *that was adduced at trial* – was that of the State's planning witness, who testified that 100% of the RU-1 and RU-3 rezoning requests decided by the Monroe County zoning Board between 1978 and 1982 were granted. The jury's verdict did not include a statement of which zoning the jury applied, but the number of single-family lots the property could have attained (46), multiplied by both appraisers' 2004 fair market value of \$110,000 per dwelling unit, is precisely equal to the jury's verdict of \$5,060,000.

As we indicated in Point 2, above, the jury's choice of the lesser of two valuable uses – when both were equally probable – appears to have been driven by Ms. McCune's personal observations, rather than the evidence adduced at the trial.

Though called for by Rule 1.431(h), Defendants have not yet identified the third juror who they want to interview, and Defendants are uncertain of the three jurors' mailing addresses. Their addresses were not on the Clerk's venire list, but we believe the Clerk can provide us with those addresses for notice purposes.

RELIEF REQUESTED

Defendants pray that the Court hear, and grant, this Motion to Interview Jurors pursuant to Fla. R. Civ. P. 1.431(h) and Rule 4-3.5(d) of the Rules Regulating the Florida Bar, specifying the place, manner, conditions, and scope of the interviews. *See Greens to You Inc. v. Gavelek*, 967 So. 2d 318 (Fla. 3rd DCA 2007) (new trial motion and jury interviews); *Ramirez v State*, 922 So. 2d 386 (Fla. 1st DCA 2006) (jury interview standards); and *Sterling v Feldbaum*, 2008 Fla. App. Lexis 6130, 33 Fla. L. Weekly D 1197 (Fla. 4th DCA 2008) (same) Following the interviews (which could be by deposition or before the Court), Defendants pray for an Order vacating the jury verdict as to Parcel One and ordering a new trial on full compensation for Parcel One, pursuant to Fla. R. Civ. P. 1.530.



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by first class mail, postage prepaid on Joseph Spejenkowski, Esq., Assistant Attorney General, Office of the Attorney General, PL-01 The Capitol, Tallahassee, FL 32399-1050, and to Shirley Williams, Esq, Attorney General's Office, 3507 Frontage Rd STE 200, Tampa, FL 33607, this 2nd day of June 2008.



James S. Mattson, Esq.


VERIFICATION

STATE OF FLORIDA:
COUNTY OF MONROE

Before me, a Notary Public at large in and for the State of Florida, appeared JAMES .S. MATTSON, who is personally known to me, and who did take an oath, and swore that the facts recited above are true and correct, on this 2nd day of June, 2008.


NOTARY PUBLIC

My Commission Expires: 5/22/09

NOTARY PUBLIC-STATE OF FLORIDA
 Pamela Piton
Commission # DD432329
Expires: MAY 22, 2009
Bonded Thru Atlantic Bonding Co., Inc.