UNITED STATES BANKRUPTCY COURT
EASTERN DIVISION OF MICHIGAN

IN RE:
CITY OF DETROIT, MICHIGAN
Debtor.

CHAPTER 9
CASE NO. 13-53846
HON. STEVEN W. RHODES

_____/

JOINT OBJECTION TO CHAPTER 9 PLAN BY CREDITORS T&T MANAGEMENT, INC., HRT ENTERPRISES, AND THE JOHN W. AND VIVIAN M. DENIS TRUST REGARDING TREATMENT OF CLAIMS FOR TAKING OF PRIVATE PROPERTY WITHOUT JUST COMPENSATION

T&T Management, Inc. ("T&T Management"), HRT Enterprises ("HRT"), and the John W. and Vivian M. Denis Trust ("Denis Trust") (together, the "Creditors") by and through their counsel, Demorest Law Firm, PLLC, state as follows for their Joint Objection to Chapter 9 Plan ("Joint Objection") regarding the treatment of claims for taking of their private property without just compensation.

Introduction

The Creditors have all filed Proofs of Claim relating to past or pending inverse condemnation and condemnation claims against the City of Detroit (the "City"). The Creditors all own or leased property in the vicinity of Coleman A. Young International Airport (formerly known as Detroit City Airport and herein referred to as the "Airport"). Their properties are located within areas designated for acquisition by the City due to their proximity to the Airport.[1]

The Creditors object to the Amended Plan for Adjustment of Debts of the City of Detroit ("Amended Chapter 9 Plan") (Docket No. 3380) because their claims for taking

[1] The Amended Disclosure Statement with Respect to Amended Plan for the Adjustment of Debts of the City of Detroit ("Amended Disclosure Statement") (Docket No. 3382, p. 182) calls for the City to reinvest approximately $28.5 million in the Airport. The City plans to continue to operate the Airport, and therefore must continue to acquire designated properties in the Airport vicinity, including Creditors' Properties.

of private property without just compensation are based on the Fifth Amendment of the U.S. Constitution (and Article X, § 2 of the Michigan Constitution).[2] Their claims may not be reduced as part of a bankruptcy case. As set forth in more detail below, the parties are constitutionally-entitled to just compensation for their claims, without reduction or adjustment as a result of the City's Chapter 9 bankruptcy.

The Creditors

HRT

HRT, a Michigan partnership, owns property in the City that is the subject of pending, bankruptcy-stayed litigation (U.S. District Court for the Eastern District of Michigan Case No. 12-13710). The HRT property is located at 11111 French Road, Detroit, MI 48234 (the "HRT Property").

The HRT Property is located near Detroit City Airport, in an area designated for taking by the City of Detroit. Two of HRT's tenants previously obtained judgments against the City for interference with their leasehold interests, resulting in inverse condemnation. However, HRT, the property owner, was not a party to the tenants' lawsuits. HRT first sued the City for inverse condemnation in Wayne County Circuit Court in 2002. In September 2005, a jury found that the City had not inversely condemned HRT's Property under Michigan law, based on the facts then in existence. This ruling was upheld on appeal.

In 2009, based on events since 2005, HRT filed an inverse condemnation claim against the City in U.S. District Court. At that time, Judge Cohn dismissed the case,

[2] The Denis claim involves the taking of the Denis' personal residence. Article X, § 2 of the Michigan Constitution provides for compensation in an amount not less than 125% of that property's fair market value.

ordering HRT to exhaust its state remedies before pursuing federal claims. HRT filed its second state court lawsuit against the City in Wayne County Circuit Court in July 2009. In 2011, the circuit court ruled that HRT's claims were barred by *res judicata* and dismissed the case. This ruling was upheld on appeal by the Michigan Court of Appeals.

In August 2012, HRT filed its second federal lawsuit in U.S. District Court for the Eastern District of Michigan (Case No. 12-13710), including claims for inverse condemnation under the Fifth Amendment and 42 USC § 1983. (**Exhibit 1, without exhibits**).

On March 26, 2013, Judge Cohn denied the City's Motion to Dismiss and/or Summary Judgment (**Exhibit 2**). Judge Cohn found: (1) that HRT's claim is ripe; (2) that neither res judicata nor collateral estoppel apply; and (3) that HRT's claim is not barred by a statute of limitations. The parties were preparing for trial when the City's bankruptcy petition was filed. As a result of the bankruptcy filing, the pending litigation in federal court was automatically stayed. The stay has not yet been lifted.

HRT timely filed a Proof of Claim (Claim No. 1361).

T&T Management

T&T Management, a Florida corporation (successor by merger to Merkur Steel Supply, Inc., a Michigan corporation) (**Exhibit 3**), has a judgment for partial inverse condemnation against the City. The judgment was entered in Wayne County Circuit Court Case No. 99-928001-CC (the "T&T Judgment") (**Exhibit 4**), and affirmed in a unanimous published opinion by the Michigan Court of Appeals, 261 Mich. App. 116

(2004) (**Exhibit 5**). The Michigan Supreme Court denied the City's Application for Leave to Appeal.

Merkur Steel was a tenant of the HRT Property and successfully sued the City for taking of its property rights as a tenant, because the City prevented it from constructing new facilities to expand its business. The T&T Judgment in part requires the City to pay $3,800.00 per month until the City of Detroit acquires ownership of the property located at 11111 French Road, Detroit, MI or until the City takes action to lift the restrictions preventing construction there. Neither has occurred.

The City paid its monthly payments of $3,800.00 until June 2013. The City has not paid the monthly payments for July-December 2013, or for January-March 2014. This totals $34,200.00. Payments will continue to accrue on a monthly basis.

T & T timely filed a Proof of Claim, (Claim No. 1409).

Denis Trust

The Denis Trust also owns property in the City that is the subject of pending, stayed litigation (Wayne County Circuit Court Case No. 13-000976-CC). The Denis Trust property is located at 8523, 8529, and 8535 Montlieu, Detroit, MI 48234 (the "Denis Trust Property"). The Denis Trust Property is also located near City Airport, also in an area designated for taking by the City. John and Vivian Denis resided there for decades until the City took over their property. The Denis Trust filed an inverse condemnation lawsuit against the City, which has been converted to a condemnation case filed by the City. (**Exhibit 6**). The Denis Trust also has a pending counterclaim against the City for inverse condemnation (de facto taking), inverse condemnation (unreasonable delay), and substantive due process. (**Exhibit 6**).

As part of the pending condemnation case, the City was required to pay estimated "just compensation" to the Denis Trust (**Exhibit 7**). The City paid $50,813 in 2013, but the Denis Trust claims that the City's estimated just compensation is too low. As a result of the bankruptcy filing, the pending litigation in state court was automatically stayed.

The Denis Trust timely filed a Proof of Claim (Claim No. 1363).

MEMORANDUM OF LAW

The City has proposed its Amended Chapter 9 Plan to modify its obligations to creditors whose claims are subject to reduction or compromise. The Creditors' claims are not subject to reduction or compromise, but the Amended Chapter 9 Plan does not provide adequate protection to the Creditors. The Creditors' claims are not subject to reduction or compromise because they are based on Constitutional claims for the taking of property without just compensation.

Furthermore, the City of Detroit must pay the T&T Judgment in full regardless of what reduction and compromises it makes in the Amended Chapter 9 Plan, because the T&T Judgment is liquidated, not contingent, and not disputed.

Congress may not pass laws under its Bankruptcy power that would effect a taking of private property without just compensation. *U.S. v. Security Industrial Bank*, 459 U.S. 70 (US 1982), citing *Louisville Joint Stock Land Bank v. Radford,* 295 U.S. 555 (1935). The Supreme Court stated:

> The bankruptcy power is subject to the Fifth Amendment's prohibition against taking private property without compensation. *Louisville Joint Stock Land Bank v. Radford, supra.* Thus, however "rational" the exercise of the bankruptcy power may be, that inquiry is quite separate from the questions

> whether the enactment takes property within the prohibition of the Fifth Amendment.

459 U.S. at 75.

In *Louisville Joint Stock Land Bank,* Justice Brandeis stressed the importance of preserving the Fifth Amendment despite times of hardship:

> The Fifth Amendment commands that, however great the Nation's need, private property shall not be thus taken even for a wholly public use without just compensation.

295 U.S. at 602.

In that case, the Supreme Court held that the Frazier-Lemke Act violated the Takings Clause of the Fifth Amendment. The Frazier-Lemke Act was a bankruptcy act of Congress that restricted banks' ability to repossess farms after they had been foreclosed on. The Supreme Court held the statute was void because it effected a "taking of substantive rights in specific property acquired by the Bank prior to" its enactment. Justice Brandeis noted that:

> [i]f the public interest requires, and permits, the taking of property of individual mortgagees in order to relieve the necessities of individual mortgagors, resort must be had to proceedings by eminent domain; so that, through taxation, the burden of the relief afforded in the public interest may be borne by the public.

295 U.S. at 602.

Although Congress may authorize the City to impair obligation of contracts and other types of claims in Chapter 9 bankruptcy, it may not authorize the taking of private property without just compensation in violation of the Fifth Amendment. Therefore, the T&T Judgment for inverse condemnation must be satisfied in full. Anything short of full

payment for this Judgment would deprive T&T Management, as the successor to Merkur Steel, of just compensation in violation of the Fifth Amendment. Similarly, HRT and Denis Trust may not be deprived of their just compensation for their pending inverse condemnation and condemnation claims. Since the Fifth Amendment applies to both the State and Federal governments, such a reduction in just compensation would be unconstitutional.

WHEREFORE, Creditors T&T Management, HRT Enterprises, and the Denis Trust respectfully request that Chapter 9 Plan be amended to rule that claims based in inverse condemnation and condemnation, which are based on the taking of property without just compensation, are not subject to reduction or compromise as a result of the City of Detroit's bankruptcy.

Respectfully submitted,

/s/ Melissa L. Demorest
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Dated: April 1, 2014

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UNITED STATES BANKRUPTCY COURT
EASTERN DIVISION OF MICHIGAN

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INDEX OF EXHIBITS

Exhibit	**Description**
1.	Complaint and Jury Demand, *HRT Enterprises v. City of Detroit*, E.D. Mich. Docket No. 2:12-cv-13710-AC-RSW, August 21, 2012
2.	Decision and Order Denying Defendant's Motion to Dismiss, or, In the Alternative, For Summary Judgment, *HRT Enterprises v. City of Detroit*, E.D. Mich. Docket No. 2:12-cv-13710-AC-RSW, March 26, 2013
3.	Certificate of Merger for Merkur Steel Supply Inc.
4.	Final Judgment, *Merkur Steel Supply Inc. v. City of Detroit,* March 29, 2002
5.	Opinion, *Merkur Steel Supply Inc. v. City of Detroit*, 261 Mich. App. 116; 680 N.W.2d 485 (2004)
6.	Defendant's Answer to Plaintiff's Condemnation Complaint, Counterclaim, and Jury Demand, *City of Detroit v. John W. and Vivian M. Denis Trust*, Wayne Co. Cir. Ct. Case No. 13-000976-CC, February 21, 2013
7.	Stipulated Order Confirming Title, Setting Possession, Allowing Entry, Directing Payment of Compensation, Setting Pretrial Conference, and Setting Default Proceedings, *City of Detroit v. John W. and Vivian M. Denis Trust*, Wayne Co. Cir. Ct. Case No. 13-000976-CC, April 25, 2013

EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HRT ENTERPRISES, a Michigan partnership,

Plaintiff,

v

Case No. _____

CITY OF DETROIT, a Michigan municipal corporation,

Hon. _____

Defendant.

Demorest Law Firm, PLLC
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COMPLAINT AND JURY DEMAND

Plaintiff, HRT Enterprises, a Michigan partnership, ("HRT"), through its attorneys, Demorest Law Firm, PLLC, states as follows for its Complaint against Defendant, City of Detroit:

STATEMENT OF THE CASE

1. The City of Detroit owns and operates an airport on the east side of Detroit. The City of Detroit must acquire all of the neighboring privately-owned properties located within 750 feet of the centerline of Runway 15/33, in order

to comply with FAA safety regulations, and to comply with the City's obligations under its various grant agreements with the FAA and the State of Michigan. The City must purchase these properties located off the west side of the airport, regardless whether the City ever expands Detroit City Airport to construct a new runway.

2. HRT owns 11 acres of land adjacent to the City's Airport, including an existing factory building and office building.

3. The City designated HRT's property for acquisition years ago, because it is located in the 750-foot safety area, but the City has never purchased the property.

4. HRT filed an inverse condemnation lawsuit against the City in state court in 2002, because HRT believed that the City's actions had at that point interfered with HRT's property rights to the extent that HRT's commercial property was no longer viable.

5. Based on the facts then in existence, the jury determined that the City had not inversely condemned HRT's property as of the trial in September 2005. At that point, the building was mostly vacant. However, one tenant still occupied part of the property, and provided some rental income to HRT.

6. To HRT, the "death" of its Property was inevitable as of the time of the trial in September 2005, but the jury concluded that the Property was still "alive" in 2005.

7. Since the 2005 trial, the City has taken additional actions to restrict the use and value of HRT's property, and to implement its plan to acquire HRT's property and other property in the area. These actions are discussed below.

8. Now, seven years after that trial, the City has still not purchased HRT's property. The property is entirely vacant and the building has been vandalized. The

property is no longer usable, rentable or salesable. If the Property was still "alive" in 2005, it is clearly deceased now.

9. Even if the inverse condemnation of HRT's property had not occurred as of September 2005, the City's actions since then, and its continuing unreasonable delay in acquiring HRT's property, have ripened into inverse condemnation of the property. HRT is entitled to just compensation for its Property under the Fifth Amendment and 42 USC § 1983.

10. In 2009, HRT filed a second lawsuit against the City of Detroit, this time in U.S. District Court. HRT's Complaint alleged that, based on new events since the trial in 2005, inverse condemnation of HRT's property had now occurred.

11. The case was assigned to Hon. Avern Cohn, who ruled that HRT's case must first go to state court, based on the Supreme Court's *Williamson* decision, which requires exhaustion of state court inverse condemnation remedies before filing of a federal court lawsuit under 42 USC § 1983.

12. The City of Detroit argued that HRT's claims were barred by *res judicata*. Judge Cohn rejected the City's *res judicata*, recognizing that the facts regarding HRT's property had changed since 2005. Judge Cohn wrote that, "clearly the operative facts have changed from those presented to the 2005 state jury."

13. Based on Judge Cohn's ruling, HRT promptly filed its second state court lawsuit against the City of Detroit. Ignoring applicable law and the new events that had occurred since the 2005 trial, the Wayne County Circuit Court dismissed HRT's lawsuit based on *res judicata*. This ruling was affirmed by the Michigan Court of Appeals in July 2012.

14. Additional relevant events occurred even during the pendency of HRT's appeal, but the Michigan Court of Appeals refused to allow HRT to supplement the record to reflect these new events.

15. The *res judicata* rulings of the Michigan courts are inconsistent with federal law on inverse condemnation under the Fifth Amendment and 42 USC § 1983. HRT's property has now been taken by the City of Detroit through inverse condemnation.

16. HRT is entitled to pursue this lawsuit seeking just compensation for its Property under the Fifth Amendment and 42 USC § 1983, regardless of the improper decisions of the state courts.

PARTIES

17. Plaintiff HRT Enterprises ("HRT") is a Michigan partnership.

18. Defendant City of Detroit is a municipal corporation organized and existing under the Constitution and laws of the State of Michigan. The City of Detroit has its principal place of business at 2 Woodward Avenue, Detroit, Michigan.

JURISDICTION

19. HRT's claims against the City of Detroit are based on the Fifth and Fourteenth Amendments of the United States Constitution and 42 U.S.C. §1983.

20. Under the Fifth Amendment, private property may not be taken for public use without just compensation.

21. HRT's Property was taken by the City through inverse condemnation, but HRT has not received just compensation from the City.

22. The Fifth and Fourteenth Amendments also provide that a person may not be deprived of property without due process of law.

23. HRT was deprived of its property by the City of Detroit, a political sub-division of the State of Michigan, without due process of law.

24. HRT was damaged by the denial of its due process rights.

25. The Court has jurisdiction of this matter under 28 U.S.C. §1331.

FACTUAL ALLEGATIONS

HRT'S Property Is No Longer Viable Due to the City's Actions

26. HRT owns 11 acres of land located at 11111 and 11181 French Road, Detroit, Michigan (the "Property").

27. There is a large industrial building on the Property. The building is now vacant, and has been severely vandalized over approximately the past two years.

28. The City of Detroit owns and operates an airport adjacent to the HRT Property, traditionally known as Detroit City Airport, and now known as Coleman A. Young International Airport (the "Airport").

29. HRT's Property is located directly across French Road from the western boundary of the Airport property.

30. Because of the actions of the City of Detroit, HRT's tenants and sub-tenants have all been driven out of business.

31. Because of the actions of the City of Detroit, HRT is no longer able to use, lease or sell the Property.

The City Must Acquire HRT's Property Due to its Proximity to the Airport

32. No buildings are permitted within 750 feet of the centerline of Runway 15/33 without a waiver from the Federal Aviation Administration ("FAA").

33. The front part of the HRT Property along French Road, including much of the existing building, is located within this 750-foot zone.

34. The City of Detroit must acquire HRT's Property (and all the other properties located within 750 feet of the centerline of Runway 15-33) in order to comply with FAA safety regulations.

35. The City of Detroit is also required to purchase HRT's Property (and all the other properties located within 750 feet of the centerline of Runway 15-33) in order to comply with the terms of the City's grant agreements with the FAA and the State of Michigan.

36. The City of Detroit has already acquired most of the properties located within 750 feet of the centerline of Runway 15-33, but has never acquired HRT's Property.

37. Because of its grant agreements with the FAA and the State of Michigan, the City of Detroit may not close the Airport. In July 2005, the FAA's District Office wrote to Delbert Brown, then Manager of the City's Airport, stating:

> In accepting Airport Improvement Program funds, the City of Detroit has agreed to certain specific terms and conditions. Federal statute requires these grant assurances as a condition for receiving such Federal aid and the City has

> obligated itself in binding grant agreements to comply with these assurances. .... **Thus, the City may not close the airport without FAA's consent and a formal release from the terms of the grant agreements. ... The prospects for FAA concurrence in closing Coleman A. Young Airport are highly unlikely** under the justification we believe the City would present.

(**Exhibit 1**, emphasis added).

The Merkur Steel Lawsuit

38. In 1999, Merkur Steel, HRT's tenant, sued the City of Detroit for inverse condemnation of its leasehold rights. *Merkur Steel Supply, Inc. v. City of Detroit* (Wayne County Circuit Court Case No. 99-928001-CC (the "Merkur Steel Lawsuit").

39. A jury trial was held in the Merkur Steel Lawsuit in Wayne County Circuit Court in 2002.

40. The jury unanimously found that the City of Detroit partially inversely condemned Merkur Steel's property rights as a tenant of the Property.

41. The Circuit Court entered a Final Judgment against the City in the Merkur Steel Lawsuit on March 29, 2002. The City of Detroit filed an appeal to the Michigan Court of Appeals. The Court of Appeals affirmed the verdict in favor of Merkur Steel in a unanimous published opinion. The City of Detroit then filed an Application for Leave to Appeal with the Michigan Supreme Court, which was denied.

42. HRT was not a party to the Merkur Steel lawsuit.

43. HRT received no compensation or damages as a result of the Merkur Steel lawsuit.

44. The partners of HRT are not identical to the shareholders of Merkur Steel.

The City Steel Lawsuit

45. In 2002, City Steel, a sub-tenant of Merkur Steel, also sued the City of Detroit for inverse condemnation. *Steel Associates, Inc. v. City of Detroit* (Wayne County Circuit Court Case No. 02-223249-CC), (the "City Steel Lawsuit").

46. City Steel sought compensation for the diminution in value of its property rights as a sub-tenant at the Property.

47. A jury trial was held in the City Steel Lawsuit in Wayne County Circuit Court in November 2003. The jury in the City Steel Lawsuit unanimously found that the City of Detroit inversely condemned City Steel's property rights as a sub-tenant of the Property.

48. The Circuit Court entered a Final Judgment against the City in the City Steel Lawsuit in December 2003. The City of Detroit filed an appeal to the Michigan Court of Appeals. The Court of Appeals affirmed the verdict in favor of City Steel. The City of Detroit then filed an Application for Leave to Appeal with the Michigan Supreme Court, which was denied.

49. HRT was not a party to the City Steel Lawsuit.

50. HRT received no compensation of damages as a result of that lawsuit.

51. The partners of HRT are not identical to the shareholders of City Steel.

HRT's First Lawsuit in Wayne County Circuit Court

52. In 2002, HRT sued the City of Detroit for inverse condemnation. *HRT Enterprises, et al. v. City of Detroit* (Wayne County Circuit Court Case No. 02-240493-CC). The City of Detroit was driving most of HRT's tenants out of business, and HRT

believed that the City's actions had progressed to the point that HRT's property rights as the owner of the property had been taken by the City.

53. A jury trial was held in the HRT Lawsuit in Wayne County Circuit Court in September 2005.

54. The September 2005 trial involved only issues of Michigan law. HRT reserved any claims under the U.S. Constitution.

55. The jury in the HRT Lawsuit found that the City of Detroit had not inversely condemned the Property as of September 2005, based on the facts then in existence.

56. HRT filed an appeal to the Michigan Court of Appeals. The Michigan Court of Appeals affirmed the verdict in favor of the City of Detroit. HRT then filed an Application for Leave to Appeal with the Michigan Supreme Court, which was denied on March 24, 2008.

Events Since September 2005 Jury Verdict

57. About ten years have elapsed since HRT filed its first inverse condemnation lawsuit, and nearly seven years have elapsed since the 2005 trial. The City of Detroit still has not acquired the Property from HRT.

58. The City cannot close the Airport, and is still required to purchase HRT's Property.

59. The existing building on HRT's property is now totally vacant, due to the City of Detroit's interference with the use of the Property by HRT's tenants and sub-tenants.

60. The last remaining operating company in the Property, Merkur Technical Services, Inc., went out of business at the end of 2006, about three years after the trial.

61. HRT then attempted to lease all or part of the Property to other tenants, without success.

62. HRT has also been unable to sell the Property.

The City Still Plans to Acquire HRT's Property

63. The City of Detroit's plan is to acquire the Property, both for the safety of the existing Runway 15-33, and also for the construction of a new replacement runway which would run through HRT's Property.

64. On December 13, 2006, Delbert Brown, then Manager of the Airport, wrote to the FAA's Detroit Airports District Office about a meeting between representatives of the City, the FAA, and the State of Michigan to discuss the future of the Airport. Airport Manager Brown confirmed the City's plan to construct the replacement runway, stating:

> Everyone at the meeting expressed agreement that the proposed relocated runway project appears to be the only sensible long-term solution for the Airport. The City appreciates the support of all towards: 1) meeting minimum FAA airport facility standards, 2) positioning the airport to accommodate future demand, and 3) making the airport economically viable.

(**Exhibit 2**, underlining in original).

65. In his October 17, 2008 letter to the City Council's Public Health and Safety Standing Committee, Airport Manager Delbert Brown reaffirmed the City's plan to acquire the Property. Airport Manager Brown wrote:

> An issue facing the Coleman A. Young Airport Department is to have standard runway safety areas in place. We are adversely affected by this FAA requirement because the Coleman A. Young Airport may end up with an even shorter runway than currently exists. If this happens, we will be unable to meet the aviation needs of our present customers and eliminate the possibility of airline service at our airport. The projects included in the Master Plan/ Gateway Plan will help to alleviate this issue this:
>
> a) A 5,000 to 6,500 foot replacement runway. [This is the proposed runway that would run through the Property.] ...
>
> e) **Airport will continue the land acquisition program to facilitate safety areas, clear zones and ultimately the replacement of the existing runway.**

(Exhibit 3, emphasis added).

66. Over seven years after the 2005 trial, the FAA and the State of Michigan are currently reviewing the City of Detroit's new proposed Airport Layout Plan. Like the City's existing plan, the new proposed Airport Layout Plan still shows the City's plan for taking of HRT's Property.

Public Announcements of the City's Plan to Purchase HRT's Property

67. Public announcement of the City's plan to acquire property is one of the facts that can be used to prove an inverse condemnation claim.

68. Since the 2005 trial, the City has publicly announced and reaffirmed its plan to purchase the Property. In his March 11, 2008 State of the City address, former Mayor Kwame Kilpatrick stated that the City would finally complete the acquisition of land near the Airport. He said:

> We will complete the acquisition of land, started by Coleman Young, along French Road next to City Airport to finish the improvements needed to make it a viable commercial or general aviation airport. When completed, 90 percent of the funds used for this purpose would be reimbursed by the FAA.

69. In March 2010, the City of Detroit's Purchasing Division published a "Request for Proposals for Management and Development Services at the Coleman A. Young Airport." In this Request for Proposal, the City asked private companies that were interested in taking over management of the Airport to respond with their proposals by April 21, 2010. It also told the public that the City intends to acquire the property necessary to building a replacement runway, which would necessarily include the acquisition of HRT's Property.

70. The City is also attempting to reach an agreement with an airline to resume scheduled passenger service at the Airport.

Piecemeal Acquisition of Other Properties in the Acquisition Area

71. The City's piecemeal acquisition of other properties in the area of the project is another one of the facts that can be used to prove an inverse condemnation claim.

72. During the years since the jury verdict in the prior HRT lawsuit, the City has not purchased HRT's Property, but has acquired many other commercial and residential properties in the area through purchase agreements, non-payment of property taxes, or formal condemnation proceedings.

73. During the seven years since the jury verdict in the prior HRT lawsuit, the City has refused to purchase the Property from HRT, while the City has purchased other commercial and residential properties in the 750-foot acquisition area. **Exhibit 4** is a map prepared by the City of Detroit showing all of the City-owned properties located in the expansion area covered by the Airport Layout Plan, as of September 2006. The City-owned properties are highlighted in yellow. The City has acquired additional parcels of property in this area since Exhibit 6 was prepared.

74. Last year, in response to an inverse condemnation lawsuit, the City purchased a commercial property on Van Dyke Avenue, which is located more than 750 feet from the centerline of Runway 15-33, rather than purchase HRT's Property.[1]

75. The properties in the 750-foot zone have become increasingly isolated from each other as other buildings acquired by the City have been demolished. Some blocks have no remaining structures, or only one or two occupied houses.

The City Is Preparing to Acquire HRT's Property

76. In 2009, in preparation for its acquisition of the Property, the City of Detroit constructed a left turn lane into HRT's vacant property. (Photographs attached as **Exhibit 5**). Since there is little traffic on French Road any more, with the City having purchased most of the other properties in the area already, there is no other plausible explanation for the City's construction of the "left turn lane to nowhere."

[1] *WPLC, LLC v City of Detroit*, Wayne County Circuit Court, Case No. 09-020214-CZ).

The City's Unreasonable Delay in Acquiring HRT's Property

77. The City's unreasonbale delay in acquiring property is another one of the facts that can be used to prove an inverse condemnation claim. Unreasonable delay in the purchase of property may itself also constitute a cognizable claim.

78. Seven years have elapsed since the 2005 trial, but the City still has not acquired HRT's Property. Even if there had not been an unreasonable delay in 2005, another seven years certainly constitutes unreasonable delay, particularly when HRT's Property has become completely unusable in that time.

79. The City began purchasing property in the mini-take area many years ago.

80. The City has purchased the vast majority of the property in the mini-take area.

81. By refusing to purchase HRT's Property, the City has aggravated the deterioration of property values, causing blight.

The City's Failure to Maintain its Own Properties in the Area

82. The City is now the major property owner in the area designated for airport acquisition (French Road to Van Dyke, and Lynch Road to McNichols). However, the City is not properly maintaining those properties. To the contrary, the City has once again allowed the adjacent properties that it owns to become dumping grounds. (See photographs attached as **Exhibit 6**).

83. The vandals who damaged HRT's Property often gained access to the Property through a path from the City's adjoining property. (See photographs attached

as **Exhibit 7**). The vandals have even claimed that they are acting on behalf of the City of Detroit in removing materials from the Property.

The City's Efforts to Limit Access to the Property

84. McNichols Road (Six Mile Road) has been closed between French Road (the west side of the Airport) and Connor Road (the east side of the Airport) since 1987. The road was closed to allow larger aircraft to use the Airport for scheduled airliner service.

85. The closure of McNichols Road limits access to the Property.

86. Even though there is not currently any scheduled airliner service at the Airport, the City has opposed all efforts to reopen McNichols Road.

87. In an October 6, 2008 letter to the City Council, Delbert Brown, Director of the Airport Department stated:

> The proposed reopening of McNichols Rd. at the northern boundary of the Airport's main runway (15/33) will begin a domino effect at the airport and the national aviation system and as the Airport Department Director, I can only recommend against taking such action as reopening said road. ...
>
> **In brief, the result of reopening McNichols Rd. will be lost jobs, lost revenue and a reduction in the Coleman A. Young Airport's operating classification. The proposed reopening will result in the reduction in the length of the current runway and limit the size and types of aircraft that can land and takeoff at our facility.** The loss will not only be felt at the Airport but also in the economic impact estimated at $25 Million dollars in southeast Michigan.

(**Exhibit 8**, emphasis added)

88. In January 2008, the City submitted to the FAA a proposal for funding to completely close French Road — the road on which HRT's Property is located— between Lynch Road and McNichols. In this proposal, Delbert Brown, then Director of the Airport, stated:

> French Road corridor includes the removal of all pavement including curb and gutter. Restoration to this area will include the placement of 3" of top soil, seeding and mulching. French Road will be terminated at Lynch Rd and Six Mile Road [McNichols] with fencing and barricades.

(Exhibit 9).

The City has Accepted Additional Federal and State Grants Since the 2005-With Strings Attached

89. Since the 2005 trial, the City has accepted additional state and federal grants for land acquisition near the Airport. The terms and conditions of these grants affect HRT's Property.

90. In February 2007, for example, the City entered into a grant agreement for another airport project. The grant agreement required the City to put up $15,000. The State provided $105,000 and the FAA provided $480,000, to complete the funding of $600,000 for land acquisition. The City agreed to keep the airport in operation for at least another twenty years. The City also agreed to the following condition, among others:

> 6. The SPONSOR [City of Detroit] will, either by the acquisition and retention of easements or other interests in or rights for the use of land or airspace, or by the adoption and enforcement of zoning regulations, prevent the construction, erection, alteration or growth of any structure, tree or other object in the approach areas of the runways of the Airport, which would constitute an obstruction to air navigation according to the criteria or standards prescribed in FAA Advisory Circulars.

(Exhibit 10, Attachment 3).

91. In 2008, the City requested the FAA to provide $85 Million in funding to expand the Airport **(Exhibit 11).**

The City Has Provided Limited Services for the HRT Property

92. The vandals who are damaging HRT's Property often gain access to the Property through a path from the City of Detroit's adjoining property, which was a vacant lot purchased by the City from Chrysler Corporation.

93. HRT notified the City of this problem, but the City took no action to stop it.

94. The only way that HRT could obtain any police protection for its Property was to agree to pay a police officer for "protection."

The City Has Interfered with HRT's Efforts to Protect its Property

95. In 2011, HRT hired Gilbert's Trucking to construct an earthen berm on HRT's property, to attempt to block vandals from using vehicles to enter HRT's property from the City's adjoining property.

96. Gilbert's Trucking was working on the HRT property on July 21, 2011. The City of Detroit's Airport Department called the Detroit Police Department, claiming that Gilbert's Trucking was trespassing on property owned by the City of Detroit, even though Gilbert's Trucking was working only on HRT's property.

97. The Detroit Police Department responded to the scene and arrested the employees of Gilbert's Trucking who were working on HRT's property. They were subsequently prosecuted by the City of Detroit.

98. On July 21, 2011, HRT partner Karl Thomas spoke on the telephone with Jason Watt, the City's current Airport Manager. Thomas explained to Watt that his company, HRT, owned the property at 11111 French Road.

99. Airport Director Watt claimed that the City of Detroit had already purchased the 11111 French Road property from HRT for $1.5 million. Karl Thomas informed him that was not true.

100. Airport Director Watt then complained to Karl Thomas about HRT doing work to preserve and protect its own property. He said that HRT was only making it more expensive for the City to later utilize the property.

HRT's Prior Lawsuit in U.S. District Court

101. Because the City of Detroit had still not acquired the Property, and its tenants had been driven out of business by the City of Detroit, HRT filed a lawsuit against the City of Detroit in the U.S. District Court for the Eastern District of Michigan in 2009 (Case No. 2:09-CV-14460).

102. HRT alleged that while a takings claim may not have been ripe in September 2005, a takings claim was now ripe due to new events and the continued passage of time.

103. The City of Detroit sought dismissal of the case, on a variety of grounds, including *res judicata* (claims barred by HRT's prior lawsuit against the City of Detroit) and the Statute of Limitations.

104. Judge Avern Cohn dismissed the U.S. District Court lawsuit, but on different grounds than requested by the City.

105. Judge Cohn agreed with HRT that HRT's claims against the City of Detroit are not barred by *res judicata*, because of the passage of time and new events that have occurred since the 2005 jury verdict in the prior state court lawsuit.

106. Judge Cohn ruled that, "Clearly the operative facts have changed from those presented to the 2005 state jury."

107. Judge Cohn dismissed the U.S. District Court lawsuit. Judge Cohn ruled that because of the U.S. Supreme Court's ruling in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), HRT must pursue its current claims in Wayne County Circuit Court before coming to federal court.

HRT's Second Lawsuit In Wayne County Circuit Court

108. Based on Judge Cohn's *Williamson* ruling, HRT filed its second inverse condemnation lawsuit against the City of Detroit in Wayne County Circuit Court on July 6, 2009. (*HRT Enterprises v. City of Detroit, Wayne County Circuit Court*, Case No. 09-016475-CC).

109. On March 29, 2011, the Wayne County Circuit Court granted summary disposition to the City of Detroit, ruling that HRT's claims were barred by *res judicata*. HRT's Motion for Reconsideration was denied in an order entered on April 21, 2011.

110. HRT timely appealed to the Michigan Court of Appeals.

111. During the pendency of the appeal, HRT filed a motion to supplement the record on appeal, in order to bring to the Court of Appeals' attention events that had occurred after the Circuit Court granted summary disposition in favor of the City of Detroit. The Court of Appeals denied that Motion.

112. On July 26, 2012, the Court of Appeals affirmed the Circuit Court, also ruling that HRT's Complaint was barred by *res judicata*. The Court of Appeals stated that HRT presented "no new operative facts" since the prior trial.

113. The rulings of the Circuit Court and Court of Appeals were contrary to the ruling of Judge Cohn that "the operative facts have changed from those presented to the 2005 state jury."

COUNT I

INVERSE CONDEMNATION – *DE FACTO* TAKING

114. HRT incorporates by reference the allegations of paragraphs 1 through 113 inclusive, as though fully set forth herein.

115. The City of Detroit, under color of law, has interfered with HRT's use of the Property in order to further and promote the City's own plans to acquire the Property.

116. The City of Detroit's interference with the use of the Property has interfered with HRT's property rights to such an extent that the City of Detroit has *de facto* taken the Property.

117. The City's actions have denied HRT all economically viable uses of its land.

118. As a result of the City of Detroit's actions in interfering with the use of the Property, the City has inversely condemned the Property.

119. The City of Detroit may not take HRT's property without just compensation, pursuant to the Fifth Amendment.

120. HRT is entitled to recover compensation from the City of Detroit for the City's taking of the Property, under 42 USC §1983.

WHEREFORE, HRT respectfully requests this Court to:

a. Enter a Judgment determining that the City of Detroit has inversely condemned the Property;

b. Award HRT just compensation for the taking of its property rights by the City of Detroit, in an amount in excess of $75,000; and

c. Award HRT its costs, interest and attorney's fees as allowed by law.

COUNT II

INVERSE CONDEMNATION – CITY OF DETROIT'S UNREASONABLE DELAY IN ACQUIRING PROPERTY

121. HRT incorporates by reference the allegations of paragraphs 1 through 120 inclusive, as though fully set forth herein.

122. The City of Detroit intends to acquire the Property for public use.

123. The City has prohibited, and intends to continue to prohibit, the full use of the Property in order to facilitate the City of Detroit's plans for Detroit City Airport to the point of denying HRT all economically viable use of its property.

124. The City of Detroit has engaged in deliberate actions toward the Mini-Take Area, in general, and the Property in particular, that in fact interfered with HRT's property rights.

125. The City of Detroit's unreasonable delay in proceeding with its plans to acquire the Property has interfered with HRT's property rights to the extent that the City of Detroit has taken the Property without compensation to Plaintiffs.

126. The City's unreasonable delay in purchasing the property for the purpose of bringing down the property's value does not advance a legitimate government interest.

127. The City of Detroit may not take HRT's Property without just compensation, pursuant to the Fifth Amendment.

128. HRT is entitled to recover compensation from the City of Detroit for the City's interference with HRT's property rights, under 42 USC §1983.

WHEREFORE, HRT respectfully requests this Court to:

a. Enter a Judgment determining that the City of Detroit has inversely condemned the Property;

b. Award HRT just compensation for the taking of its property rights by the City of Detroit, in an amount in excess of $75,000; and

c. Award HRT its costs, interest and attorney's fees as allowed by law.

COUNT III

INVERSE CONDEMNATION – REGULATORY TAKING

129. HRT incorporates by reference the allegations of paragraphs 1 through 128 inclusive, as though fully set forth herein.

130. A government agency may be liable for taking private property by overburdening the property with regulations.

131. The City of Detroit has taken the Property through its regulations because those regulations do not further a legitimate government interest. The City of Detroit

has improperly used its regulations to freeze or drive down the value of the Property in anticipation of the City of Detroit's acquisition of the Property.

132. The City of Detroit's regulations deprive Plaintiffs of economically viable use of the Property, considering: (a) the character of the City of Detroit's actions; (b) the economic effect of the City of Detroit's regulation on the Property; and (c) the extent by which the regulation has interfered with distinct economic-backed expectations.

133. The effect of the City's regulations has been to burden Plaintiffs with a disproportionate share of the City of Detroit's costs of owning and operating Detroit City Airport. The City's actions have forced HRT to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.

134. The City of Detroit may not take HRT's Property without just compensation, pursuant to the Fifth Amendment.

135. HRT is entitled to recover compensation from the City of Detroit for the City's interference with HRT's property rights, under 42 USC §1983.

WHEREFORE, HRT respectfully requests this Court to:

a. Enter a Judgment determining that the City of Detroit has inversely condemned the Property;

b. Award HRT just compensation for the taking of its property rights by the City of Detroit, in an amount in excess of $75,000; and

c. Award HRT its costs, interest and attorney's fees as allowed by law.

COUNT IV

SUBSTANTIVE DUE PROCESS

136. HRT incorporates by reference the allegations of paragraphs 1 through 135 inclusive, as though fully set forth herein.

137. The Fifth and Fourteenth Amendments of the U.S. Constitution provide that no person shall be deprived of property without due process of law.

138. The Fifth Amendment prohibits the deliberate and arbitrary use of government power.

139. The City of Detroit's actions toward the Property and the Mini-Take Area were taken pursuant to a policy and practice of the City of Detroit.

140. The actions of the City of Detroit were taken under color of state law.

141. The City of Detroit's actions toward Plaintiffs were arbitrary and unreasonable, and either failed to advance a legitimate government interest or were an unreasonable means of advancing a legitimate government interest.

142. The acts or omissions of the City of Detroit were intentional.

143. The acts of omissions of the City of Detroit were the proximate cause of the deprivation of HRT's substantive due process rights protected by the Michigan Constitution.

144. HRT has been damaged by the City of Detroit's actions.

145. HRT is entitled to recover damages from the City of Detroit pursuant to the Fifth Amendment and 42 USC §1983.

WHEREFORE, HRT respectfully requests this Court to:

a. Enter a Judgment determining that the City of Detroit has deprived HRT of its Property without due process of law;

b. Award HRT damages for the taking of its property by the City of Detroit without due process of law, in an amount in excess of $75,000; and

c. Award HRT its costs, interest and attorney's fees as allowed by law.

JURY DEMAND

Plaintiff, HRT Enterprises, hereby demands a trial by jury as to all issues in this case.

Respectfully submitted,

s/ Mark S. Demorest (P35912)
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Attorneys for Plaintiff
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Dated: August 21, 2012

Thomas, Karl:HRT Enterprises:U.S. Dist. Court - 2nd Case:Pleadings:Complaint and Jury Demand.docx

EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HRT ENTERPRISES,

Plaintiff,

vs. Case No. 12-13710

CITY OF DETROIT, HON. AVERN COHN

Defendants.

_____/

DECISION AND ORDER DENYING DEFENDANT'S MOTION TO DISMISS, OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT (Doc. 9)

I. INTRODUCTION

This is a Fifth Amendment takings case. Plaintiff HRT Enterprises (HRT) owns an 11-acre parcel of land with a commercial building having a footprint of approximately four acres (the property) directly across French Road from the Coleman A. Young International Airport, formerly the Detroit City Airport (Airport), in the City of Detroit. HRT's property is configured, and has been operated, as a steel service center. According to HRT, a "filed and approved" Airport Layout Plan shows that the parcel is at the center of the Airport and is designated for a taking by the City along with other properties in a "Mini-Take Area."

HRT complains that defendant City of Detroit (the City) has engaged in an inverse condemnation by delaying acquisition of the property and taking certain actions in an attempt to drive down the amount of compensation it will have to pay HRT. The actions include passing resolutions that declare the necessity of acquiring the properties by condemnation; isolating the Mini-Take Area by closing McNichols Road between Conner

and French; and systematically publishing plans to acquire the properties leading to "blight by announcement."

The complaint is in four counts:

(I) Inverse Condemnation - De Facto Taking;
(II) Inverse Condemnation - City of Detroit's Unreasonable Delay in Acquiring Property;
(III) Inverse Condemnation - Regulatory Taking; and
(IV) Substantive Due Process.

Now before the Court is the City's motion to dismiss, or, in the alternative, motion for summary judgment (Doc. 9). For the reasons that follow, the motion is DENIED.

II. BACKGROUND[1]

A.

Due to the City's acquisition efforts in the Mini-Take Area, on September 3, 1999, Merkur Steel Supply, Inc. (Merkur Steel), one of HRT's tenants, filed a takings claim against the City in Wayne County Circuit Court (Doc. 11, p. 4). In 2002, a jury entered a verdict in favor of Merkur Steel, finding that the City's acquisition efforts amounted to a de facto taking of Merkur Steel's leasehold interest in the property (Id. at 4-5). Merkur Steel's sub-tenant Steel Associates, Inc. (Steel Associates) filed a separate action in Wayne County Circuit Court against the City claiming a de facto taking of its leasehold interest (Id. at 5). In 2003, a jury verdict was entered in favor of Steel Associates (Id.).

Subsequently Merkur Steel, Steel Associates and HRT collectively filed suit against the City in Wayne County Circuit Court claiming inverse condemnation of the property (Id.

[1] The parties did not submit a joint statement of undisputed material facts. Defendant filed a statement of material facts not in dispute; plaintiff responded; defendant filed a response to plaintiff's counter-statement of facts.

at 6). In addition to the claims raised in this case, HRT stated a procedural due process claim and an equal protection claim under the Michigan Constitution. In 2005, a jury returned a verdict of no cause of action, rejecting HRT's claim of inverse condemnation (Id. at 6-7). In 2007, the Michigan Court of Appeals affirmed the jury verdict, and, in 2008, the Michigan Supreme Court denied leave to appeal (Id. at 6-7).

In 2008, HRT filed a four-count complaint in this Court, similar to the current complaint. See HRT Enters. v. City of Detroit, No. 08-14460 (E.D. Mich. 2008). The Court found that the operative facts had changed from those presented to the 2005 state jury. In 2005, part of the property was still occupied and generating enough revenue from rent to pay taxes and perform repairs to the property. By 2008, according to HRT, the property was vacant and there was no longer enough rental income to pay taxes or maintain the property. However, the Court held that HRT had not sought just compensation through state procedures based on the new facts, and, therefore, the case was not ripe for federal court review under Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 195-97 (1985).

In 2009, HRT filed another complaint in state court claiming inverse condemnation of its property (Doc. 11, p. 8). The trial court dismissed HRT's claims based on res judicata; in 2012, the Michigan Court of Appeals affirmed the trial court's decision. See HRT Enters. v. City of Detroit, No. 09-016475-CC, 2012 WL 3055221 (Mich. Ct. App. 2012). The court of appeals reasoned that HRT did not raise any new facts from the time of the 2005 jury trial. Id. HRT did not seek leave to appeal the Michigan Supreme Court.

B.

On August 21, 2012, HRT filed this action (Doc. 1). HRT says the facts have

changed since 2005 and the City's subsequent actions have amounted to a total taking of the property. HRT says the following events have occurred since 2005:

1. The last remaining tenant on the property went out of business in late 2008 and the property is now vacant;

2. The property has been looted by vandals who used adjacent City owned land to gain access to the property. Further, the City is not maintaining the land it owns in the area, and it is being used as a dumping ground;

3. HRT has been unable to lease or sell the property. The City, however, says that it technically leases the property because it is paying rent to HRT;

4. In December of 2006, Delbert Brown (Brown), manager of the Airport, confirmed the City's plan to construct a replacement runway, which requires meeting FAA airport facility standards;

5. In March of 2008, former City Mayor Kwame Kilpatrick stated that the City would complete the acquisition of land near the Airport along French Road;

6. In October of 2008, Brown, in a letter to the City Council's Public Health and Safety Standing Committee, stated that the Airport "will continue the land acquisition program to facilitate safety areas, clear zones and ultimately the replacement of the existing runway";

7. In March of 2010, the City's Purchasing Division informed the public that it intended to acquire all of the property necessary for building a replacement runway;

8. In October of 2008, Brown recommended to City Council against the reopening of McNichols Road, which was approved to be closed for five years in 1987;

9. The City has continued to purchase both residential and commercial properties

within, and outside of, the Mini-Take Area since 2005;

10. In February of 2007, the City entered into a grant agreement for another airport project and accepted state and federal funds for land acquisition;

11. In January of 2008, the City submitted to the FAA a proposal for funding to completely close French Road, the road on which HRT's property is located, between Lynch and McNichols;

12. In 2008, the City requested $85 million in funding from the FAA to expand the airport;

13. In 2009, the City constructed a left turn lane off of French Road, which leads to HRT's vacant property; and

14. In July of 2011, HRT hired Gilbert's Trucking to construct an earthen berm on the property to prevent trespassing. The City arrested and prosecuted employees of Gilbert's Trucking for trespassing on City owned property. Thus, the City has held itself out to the public as owner of HRT's land.

See (Doc. 11, pp. 18-27).

Since the 2005 jury trial, the City has also received a number of federal grants through the "Michigan Department of Transportation City of Detroit Contract for a Federal/State/Local Airport Project Under the Block Grant Program." The grants were awarded as follows:

1. On December 1, 2005, the City received a grant to "Conduct an Economic Impact Study, as Further Defined in Contract No. FM 82-02-MP."

2. On February 9, 2007, the City received a grant for "Land Reimbursement Costs for Parcels 392, 488, 491, 511, 626, 710, 711, 715, 731, 732, 939, 940, 943, 956, 958, 959,

960, and 961, as Further Defined In Contract No. FM 82-02-LAND."

3. On December 3, 2007, the City received a grant for "Airport Crack Sealing and Paint Marking, as Further Defined in Contract No. FM 82-02-C84."

4. On March 3, 2008, the City received a grant for "Land Acquisition Costs for Parcels 1613, 1618, 1630, 1640, 1539, 1540, 1541, 1542, 1290, 1292, 1293, 1294, 1416, 1417, 1418, 1419, 1425, 1430, 1433, 1434, 1505, 1508, 1513, 1514, 1515, 1516, 1517, 139, 245, 246, 252, 355, 486, 487, 937 and 938 as Further Defined In Contract No. FM 82-02-LAND."

5. On June 10, 2008, the City received a grant for "Reconfiguration of the Taxiway at Runway 25 (End) and Update of the Airport Layout Plan, as Further Defined In Contract Nos. FM 82-02-C85 and FM 82-02-MP."

6. On February 1, 2010, the City received a grant for "Design and construction of a hanger to house a Michigan State Police (MSP) helicopter, as further defined in Contract No. M 82-02-C86."

7. On April 28, 2011, the City received a grant for "Design for the Rehabilitation of Parallel Taxiway A. Design and Construction for the Reconfiguration of the Taxiway Connectors at Runway 25 End. This Work is Further Defined In Contract Nos. FM 82-02-C85 and FM 82-02-C87.

8. On August 12, 2011, the City received a grant to "Rehabilitate Parallel Taxiway A for Runway 15/33."

9. On March 2, 2012 the grant for the rehabilitation of parallel taxiway A for runway 15/33 was amended.

Further, following the 2005 jury trial, the City has systematically continued to

purchase property in the Mini-Take Area. The City submitted to the Court a document that shows that it has purchased fifty-eight parcels from January of 2005 until the present time.

Although HRT has not sought to obtain a permit to rehabilitate or expand its building, at a hearing on January 16, 2013, the City admitted that a portion of the property is not suitable for building because it would be in violation of the "building restriction line," which restricts buildings from being too close to the runway. Further, the City admitted that certain changes would not be permitted because they would interfere with the (1) "runway visibility zone," or (2) "transitional zone." The airport has two runways that are perpendicular to each other. The runway visibility zone is the area where a pilot on one runway needs to be able to see a plane on the other runway. The transitional zone is the area around the runway, which must be clear in case a plane deviates from the flight path or the runway. Further, transforming the building from a steel service center to another use would require compliance with FAA regulations, Michigan's Tall Structure Permit Act and likely face Detroit Building Department opposition.

The City's Airport Layout Plan[2] (the Plan) shows that the building restriction line for existing runways 15-33 and 7-25 runs directly through a portion of the property. See Pl's. Ex. 18. Further, the Plan proposes a new runway which runs through the property. See Pl's. Ex. 19. A new preliminary plan, submitted to the FAA and the State of Michigan in January of 2009, also shows a new runway going through the property. See Pl's. Ex. 20.

More recently, on January 9, 2013, the City released its "Detroit Future City Report"

[2] The current approved Airport Layout Plan is the City's 1996 plan.

(DFC Report) (Doc. 15, p. 1)[3]. The DFC Report contains recommendations for different areas and neighborhoods in the City (Doc. 17, p. 7). In the DFC Report, the property is located in the designated "Mt. Elliott Industrial" neighborhood (Doc. 15, p. 1). The DFC Report states, in pertinent part:

> The vision is to upgrade Mt. Elliott as an intense and attractive industrial area designed to accommodate modern, large-format industrial development; provide ample employment opportunities for Detroiters; and reinforce the region's role as a global hub for manufacturing. Expansion of the Coleman A. Young Airport will serve to support the local auto and metals industries but also provide additional opportunities in aerospace activities that align with many skills already in place to serve auto production. A new ring-road will connect this district directly with Chrysler to the south along with logistics activities, the Port, and the International crossing in Southwest Detroit.

(Doc. 15-2).

III. STANDARD OF REVIEW

A. Fed. R. Civ. P. 12(b)(6)

A Fed. R. Civ. P. 12(b)(6) motion seeks dismissal for a plaintiff's failure to state a claim upon which relief can be granted. In reviewing a motion to dismiss, "the court must construe the complaint in the light most favorable to the plaintiff, accept all the factual allegations as true, and determine whether the plaintiff can prove a set of facts in support of its claims that would entitle it to relief." Bovee v. Coopers & Lybrand C.P.A., 272 F.3d 356, 360 (6th Cir. 2001). The court is not required to accept as true legal conclusions, conclusory statements, or mere recitations of the elements of a cause of action. Ashcroft

[3] The DFC Report was created by a Mayor-appointed Steering Committee and the Detroit Economic Growth Corporation (Doc. 17, p. 7).

v. Iqbal, 556 U.S. 662, 677 (2009). Indeed, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. at 678 (citation omitted).

"To survive a motion to dismiss under Rule 12(b)(6), a 'complaint must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory.'" Advocacy Org. for Patients & Providers v. Auto Club Ins. Ass'n., 176 F.3d 315, 319 (6th Cir. 1999) (quoting Scheid v. Fanny Farmer Candy Shops, Inc., 859 F.2d 434, 436 (6th Cir. 1988)). The plaintiff must "state a claim for relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). "Plausibility requires showing more than the 'sheer possibility' of relief but less than a 'probab[le]' entitlement to relief." Fabian v. Fuller Helmets, Inc., 628 F.3d 278, 280 (6th Cir. 2010) (citing Iqbal, 556 U.S. at 677). The Court must "draw on its judicial experience and common sense" in determining whether a claim is plausible. Iqbal, 556 U.S. at 679.

B. Fed. R. Civ. P. 56

Summary judgment will be granted when the moving party demonstrates that there is "no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). There is no genuine issue of material fact when "the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). The nonmoving party may not rest upon his pleadings; rather, the nonmoving party's response "must set out specific facts showing a genuine issue for trial. Chappell v. City of Cleveland, 585 F.3d 901, 906 (6th Cir. 2009). The Court "must construe the evidence and draw all reasonable inferences in favor of the nonmoving party." Hawkins

v. Anheuser-Busch, Inc., 517 F.3d 321, 332 (6th Cir. 2008). Determining credibility, weighing evidence, and drawing reasonable inferences are left to the trier of fact. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

IV. DISCUSSION

The City says it is entitled to dismissal, or, in the alternative, summary judgment, for four reasons:

> First, HRT has failed to exhaust state court remedies. Despite this Court's admonitions, HRT did not file an Application for Leave to appeal with the Michigan Supreme Court following the Michigan Court of Appeals' July 2012 decision. Second, under Michigan law, res judicata and collateral estoppel law bar this case because prior courts actually decided the inverse condemnation claims and issues as the Michigan Court of Appeals held. Third, under 28 U.S.C. § 1738, the prior Michigan court decisions preclude this current action. As illustrated in San Remo Hotel, L.P. v. City of San Francisco, 545 U.S. 323 (2005) a federal court is precluded from relitigating claims that would be precluded under the relevant state's law. Finally, HRT's claims are barred by the applicable statute of limitations. Indeed, HRT's takings claims accrued in 1991.

(Doc. 9, p. 1-2). The City's arguments fail to persuade. The reasons follow.

A. Ripeness

The City first claims that this case is not ripe for federal court review because HRT did not file an application for leave to appeal with the Michigan Supreme Court following the 2012 decision of the Michigan Court of Appeals described at page 3, supra. HRT did not claim that an application for leave to appeal to the Michigan Supreme Court would be futile. Therefore, the City says that HRT did not exhaust state court remedies. The City is mistaken.

In Williamson County, the Supreme Court held that a takings claim is not ripe until

a two-prong test is satisfied: (1) an administrative body has rendered a final decision, i.e. the "finality" requirement; and (2) the property owner resorted to state remedies for just compensation, i.e. pursued an inverse condemnation action. 473 U.S. 172. The second prong is at issue here.

As it relates to the second prong, the Supreme Court stated, "[I]f a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation." Id. at 195. The Michigan Constitution provides that a property owner can seek compensation by filing an action for inverse condemnation when property is taken for public use. Mich. Const. Art. 10, § 2.

Here, HRT's claim is ripe. HRT pursued an inverse condemnation claim to an unsuccessful conclusion in state court. HRT argued its case in the state trial court and in the Michigan Court of Appeals. It exhausted its appeal by right. The time for applying for review by the Michigan Supreme Court has expired. The City does not provide any authority for its position that HRT's failure to file for review by the Michigan Supreme Court precludes it forever from asserting a takings claim in federal court. To the contrary, Williamson County precluded a plaintiff from bringing a takings claim until it has been denied just compensation. Here, after the court of appeals' decision became final, HRT was denied just compensation through adequate state procedure, and its claim immediately became ripe for review by this Court. See, e.g., Brown v. Metro. Gov't of Nashville, No.11-5339, 2012 WL 2861593, at *3 (6th Cir. Jan. 9, 2012) (reasoning that takings claim was ripe for review after plaintiff had pursued an inverse condemnation action in state court, receiving final decision by state court of appeals, but not appealing that decision to the

state supreme court).

B. Res Judicata/Collateral Estoppel

Next, the City says that HRT has already had its bite at the apple in state court, and the case must be dismissed either on res judicata grounds, or under 28 U.S.C. § 1738. The Court disagrees. The 2008 case was not decided on the merits. The trial court ruled on the 2005 adjudication. Indeed, the trial court explicitly stated that "this case has already been litigated once. The jury entered a no-cause of action in HRT versus City of Detroit, in the 2005 case. This issue has already been decided." The trial court did not consider what occurred since 2005.

Under the full faith and credit statute, 28 U.S.C. § 1738, a federal court must give preclusive effect to prior state court actions according to the preclusion law of the state. San Remo Hotel, L.P. v. City and Cnty. Of San Fran., Cal., 545 U.S. 323, 336 (2005) ("This statute has long been understood to encompass the doctrines of res judicata, or 'claim preclusion,' and collateral estoppel, or 'issue preclusion.' "); DLX, Inc. v. Kentucky, 381 F.3d 511, 520 (6th Cir. 2004) ("[P]reclusive effect must be given to . . . prior state-court action[s] under 28 U.S.C. [§] 1738 according to res judicata law of the state.").

The Michigan Supreme Court has recognized that "[t]he doctrine of res judicata bars a subsequent action when '(1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies." Estes v. Titus, 481 Mich. 573, 585 (2008). Michigan takes a broad approach to the doctrine of res judicata, "holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." Adair v. State, 470

Mich. 105, 121 (2004) (citing Dart v. Dart., 460 Mich. 573, 586 (1999)). Relatedly, the doctrine of collateral estoppel bars subsequent claims where "(1) a question of fact essential to the judgment was actually litigated and determined by a valid and final judgment, (2) the same parties had a full and fair opportunity to litigate the issue, and (3) there was mutuality of estoppel." Id. (citation omitted).

Here, the Michigan state courts held that HRT's claim was barred by res judicata. That was not a decision on the merits entitled to preclusive effect. Further, because of the many events that occurred after the 2005 trial, as detailed above, HRT did not have an opportunity to resolve its claim in the first case. It could not have presented facts not yet in existence at the time of the 2005 case. These additional facts might lead a jury to conclude that today, in 2013, a taking of HRT's property has occurred. The Michigan Court of Appeals, with little explanation, decided that HRT did not present new facts since the 2005 jury verdict. The Michigan Court of Appeals categorized the "new facts" as being of the same nature as the facts presented to the 2005 jury. The evidence belies this assertion, and the Court is not bound by the Michigan Court of Appeals' decision. Res judicata and collateral estoppel do not bar HRT's suit.

C. Statute of Limitations

Next, the City says that the statute of limitations bars HRT's claims. The parties agree that a fifteen-year statute of limitations applies where, as here, HRT holds a present ownership in the property at the time the lawsuit was filed. Mich. Comp. Laws § 600.5801(4). The City says that HRT's claim is barred because it accrued in 1991, when the City first discussed its expansion plans. The City is mistaken.

This case is based on the events that occurred subsequent to the 2005 trial.

Although HRT's underlying claim is based on the City's expansion plans, the statute of limitations began to run when HRT's claim accrued. In 2005, a jury determined that HRT did not have a claim. Based on the City's continuing actions subsequent to the 2005 trial, however, it is possible that a jury will find that a taking has now occurred eight years later. HRT's claim is based on the City's actions since 2005, which are continuing to date. At the earliest, the statute of limitations began to run in 2005. This action is timely.

V. CONCLUSION

For the reasons stated above, the City's motion to dismiss and/or for summary judgment (Doc. 9) is DENIED. The overwhelming additional events that have occurred since 2005, when a state court jury determined that HRT did not have a takings claim, present a question of fact as to whether a taking has now occurred. The City has continued its acquisition efforts in the Mini-Take Area for eight years since the 2005 jury trial. There is an abundance of facts of which a jury may now find amount to a taking of HRT's property.

SO ORDERED.

S/Avern Cohn
UNITED STATES DISTRICT JUDGE

Dated: March 26, 2013

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, March 26, 2013, by electronic and/or ordinary mail.

S/Sakne Chami
Case Manager, (313) 234-5160

EXHIBIT 3

Michigan Department of Labor & Economic Growth

Filing Endorsement

This is to Certify that the CERTIFICATE OF MERGER

for

MERKUR STEEL SUPPLY INC.

ID NUMBER: 391227

received by facsimile transmission on December 28, 2006 is hereby endorsed

Filed on December 28, 2006 by the Administrator.

The document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.

Effective Date: January 1, 2007

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Department, in the City of Lansing, this 28TH day of December, 2006.

, Director

Bureau of Commercial Services

Sent by Facsimile Transmission 08362

BOS/CD-550m (Rev. 12/06)

MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH
BUREAU OF COMMERCIAL SERVICES

Date Received	(FOR BUREAU USE ONLY)
	This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.

Name: Mark S. Demoreet

Address: 19883 Outer Dr., Suite 100

City: Dearborn, State: MI, Zip Code: 48124

EFFECTIVE DATE:

Expiration date for new assumed names: December 31,

Expiration date for transferred assumed names appear in item 3

Document will be returned to the name and address you enter above if left blank document will be mailed to the registered office.

CERTIFICATE OF MERGER

Cross Entity Merger for use by Profit Corporations, Limited Liability Companies and Limited Partnerships

Pursuant to the provisions of Act 284, Public Acts of 1972 (profit corporations), Act 23, Public Acts of 1993 (limited liability companies) and Act 213, Public Acts of 1982 (limited partnerships), the undersigned entities execute the following Certificate of Merger:

1. The Plan of Merger (Consolidation) is as follows:

a. The name of each constituent entity and its identification number is:

T&T Management, Inc., a Florida corporation	593042618
City Steel Processing, Inc., a Florida corporation	383010635
Merkur Steel Supply, Inc., a Michigan corporation	391-227

b. The name of the surviving (new) entity and its identification number is:

T&T Management, Inc., a Florida corporation	593042618

Corporations and Limited Liability Companies provide the street address of the survivor's principal place of business:

3075 S.E. St. Lucie Blvd., Stuart, FL 34997

2. (Complete only if an effective date is desired other than the date of filing. The date must be no more than 90 days after the receipt of this document in this office.)

The merger (consolidation) shall be effective on the 1st day of January, 2007.

12/28/2006 1:41PM

3. Complete for Profit Corporations only

For each constituent stock corporation, state:

Name of corporation	Designation and number of outstanding shares in each class or series	Indicate class or series of shares entitled to vote	Indicate class or series entitled to vote as a class
See attached			

If the number of shares is subject to change prior to the effective date of the merger or consolidation, the manner in which the change may occur is as follows:

The manner and basis of converting shares are as follows:

The shares of the surviving corporation are not effected. The shares of the merged corporations are cancelled.

The amendments to the Articles, or a restatement of the Articles, of the surviving corporation to be effected by the merger are as follows:

N/A

The Plan of Merger will be furnished by the surviving profit corporation, on request and without cost, to any shareholder of any constituent profit corporation.

The merger is permitted by the state or country under whose law it is incorporated and each foreign corporation has complied with that law in effecting the merger.

(Complete either Section (a) or (b) for each corporation)

a) The Plan of Merger was approved by the majority consent of the incorporators of _____, a Michigan corporation which has not commenced business, has not issued any shares, and has not elected a Board of Directors.

(Signature of Incorporator) (Type or Print Name) (Signature of Incorporator) (Type or Print Name)

(Signature of Incorporator) (Type or Print Name) (Signature of Incorporator) (Type or Print Name)

b) The plan of merger was approved by:

☐ the Board of Directors of _____, the surviving Michigan corporation, without approval of the shareholders in accordance with Section 703a of the Act.

☒ the Board of Directors and the shareholders of the following Michigan corporation(s) in accordance with Section 703a of the Act.

Merkur Steel Supply, Inc.

By X SEE ATTACHED
(Signature of Authorized Officer or Agent)
Karl Thomas, Sole Shareholder
(Type or print name)
Merkur Steel Supply, Inc.
(Name of Corporation)

By _____
(Signature of Authorized Officer or Agent)
(Type or print name)
(Name of Corporation)

12/28/2006 1:41PM

3. Complete for Profit Corporations only

For each constituent stock corporation, state:

Name of corporation	Designation and number of outstanding shares in each class or series	Indicate class or series of shares entitled to vote	Indicate class or series entitled to vote as a class
See attached			

If the number of shares is subject to change prior to the effective date of the merger or consolidation, the manner in which the change may occur is as follows:

The manner and basis of converting shares are as follows:

The shares of the surviving corporation are not affected. The shares of the merged corporations are cancelled.

The amendments to the Articles, or a restatement of the Articles, of the surviving corporation to be effected by the merger are as follows:

N/A

The Plan of Merger will be furnished by the surviving profit corporation, on request and without cost, to any shareholder of any constituent profit corporation.

The merger is permitted by the state or country under whose law it is incorporated and each foreign corporation has complied with that law in effecting the merger.

(Complete either Section (a) or (b) for each corporation)

a) The Plan of Merger was approved by the majority consent of the incorporators of _____, a Michigan corporation which has not commenced business, has not issued any shares, and has not elected a Board of Directors.

(Signature of Incorporator)	(Type or Print Name)	(Signature of Incorporator)	(Type or Print Name)
(Signature of Incorporator)	(Type or Print Name)	(Signature of Incorporator)	(Type or Print Name)

b) The plan of merger was approved by:

☐ the Board of Directors of _____, the surviving Michigan corporation, without approval of the shareholders in accordance with Section 703a of the Act.

☒ the Board of Directors and the shareholders of the following Michigan corporation(s) in accordance with Section 703a of the Act.

Merkur Steel Supply, Inc.

By X _____ (Signature of Authorized Officer or Agent)
Kari Thomas, Sole Shareholder
(Type or print name)
Merkur Steel Supply, Inc.
(Name of Corporation)

By _____ (Signature of Authorized Officer or Agent)
(Type or print name)
(Name of Corporation)

12/28/2006 1:41PM

T&T Management, Inc.	500 issued and outstanding shares
City Steel Processing, Inc.	500 issued and outstanding shares
Merkur Steel Supply, Inc.	1,000 issued and outstanding shares

12/28/2006 1:41PM

EXHIBIT 4

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

MERKUR STEEL SUPPLY, INC.,
a Michigan Corporation,

Plaintiff,

v

CITY OF DETROIT, a Michigan
municipal corporation,

Defendant.

99-928001-CC 9/03/1999
JDG: JEANNE STEMPIEN
MERKUR STEEL SUPPLY INC
VS
DETROIT CITY OF

Law Offices of Mark S. Demorest
MARK S. DEMOREST (P35912)
Attorneys for Plaintiff
19853 W. Outer Drive, Suite 100
Dearborn, Michigan 48124
313/565-1330

JAMES C. COBB, JR. (P23139)
Attorney for Defendant
615 Griswold, Suite 1415
Detroit, Michigan 48226
313/961-3433

FINAL JUDGMENT

At a session of said Court held in the City of Detroit,
County of Wayne, State of Michigan, on: MAR 29 2002

Jeanne Stempien

PRESENT: HON. _____
Circuit Court Judge

Jury trial commenced in this matter on February 25, 2002. The jury, after deliberating, reached its verdict as to liability on March 6, 2002, unanimously finding that the Defendant, City of Detroit, had inversely condemned the Plaintiff's, Merkur Steel Supply, Inc.'s, property rights as tenant as of December 1990.

Following the jury's verdict as to liability, further testimony and evidence were presented to the jury as to the issue of just compensation. On March 7, 2002, the jury, after having further deliberated, unanimously reached its verdict as to damages, finding that the Plaintiff, Merkur Steel Supply, Inc., had sustained damages as a result of the Defendant, City of Detroit's, inverse condemnation of Merkur's property rights as a tenant. The jury further decided that

Merkur is entitled to $6,800,000.00 in just compensation for the period from January 1, 1991 to the date of its verdict, March 7, 2002.

The jury also found that the Plaintiff, Merkur Steel Supply, Inc. will suffer future damages and is entitled to $3,800.00 per month from the City of Detroit in just compensation beginning March 7, 2002, until either (1) Merkur ceases to lease the property, (2) the City of Detroit acquires ownership of the property or (3) the City of Detroit takes the necessary actions to lift the restrictions preventing construction of a building on the vacant five-acre parcel.

This Complaint was filed by the Plaintiff, Merkur Steel Supply, Inc., on September 3, 1999, and the Plaintiff is entitled to interest as provided in MCLA §600.6013(6), compounded annually, from the date of the filing of the Complaint, on the sum of the $6,800,000.00 verdict amount, taxable costs and mediation sanctions awarded by the Court.

The parties having appeared before this Court on Plaintiff's Motion for Judgment Upon Jury Verdict and Plaintiff's Motion for Mediation Sanctions; the Court having heard oral arguments; and the Court being fully advised upon the premises:

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. Entry of Judgment Against City of Detroit for Past Damages. Judgment is hereby entered in favor of Plaintiff, Merkur Steel Supply, Inc. ("Merkur"), and against Defendant, City of Detroit, in the amount of Seven Million Nine Hundred Eighty Eight Thousand Eight Hundred Fifteen and 60/100 ($7,988,815.60) Dollars (the "Judgment Amount"). This amount is based on the $6,800,000.00 verdict, taxable costs in the amount of $1,071.00, and accrued interest through March 29, 2002.

2. Interest. Interest shall continue to accrue on the Judgment Amount as specified in MCLA §600.6013(6), until the Judgment is satisfied.

3. Future Damages. It is further ordered that the Defendant, City of Detroit, shall pay Plaintiff, Merkur Steel Supply, Inc., just compensation, on a monthly basis, rent in the amount of $3,800.00 per month, as future damages, beginning March 7, 2002. Interest will accrue at the rate prescribed in MCLA §600.6013(6), on any monthly payment that is not timely made by the City of Detroit. The monthly rent payments will continue until either (1) Merkur ceases to lease the property, (2) the City of Detroit acquires ownership of the property or (3) the City of Detroit takes the necessary actions to lift the restrictions preventing construction of a building on the vacant five-acre parcel.

4. Mediation (Case Evaluation) Sanctions. Plaintiff is entitled to mediation (case evaluation) sanctions pursuant to MCR 2.403. The amount of the sanctions will be determined by the Court after an evidentiary hearing on April 19, 2002 at 3:00 PM and added to the Judgment Amount (including interest accrued on the amount of mediation [case evaluation] sanctions from September 3, 1999 to March 29, 2002), unless the parties agree on the amount of the sanctions prior to that hearing.

This Judgment resolves the last pending claim in this matter and closes the case.

Jeanne Stempien

Circuit Court Judge

APPROVED AS TO FORM ONLY:

LAW OFFICES OF MARK S. DEMOREST

Mark S. Demorest (P35912)
Attorneys for Plaintiffs

James C. Cobb, Jr. (P23139)
Attorneys for Defendant

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK
BY DEPUTY CLERK

P:\Demorest\Thomas, Karl\City Airport Condemnation\p-judgment.doc

EXHIBIT 5

Caution
As of: Feb 17, 2014

MERKUR STEEL SUPPLY, INC., Plaintiff-Appellee, v CITY OF DETROIT, Defendant-Appellant.

No. 241950

COURT OF APPEALS OF MICHIGAN

261 Mich. App. 116; 680 N.W.2d 485; 2004 Mich. App. LEXIS 672

December 16, 2003, Submitted
March 9, 2004, Decided

SUBSEQUENT HISTORY: Appeal denied by *Merkur Steel Supply v. City of Detroit, 471 Mich. 884, 688 N.W.2d 502, 2004 Mich. LEXIS 2434 (2004)*
Related proceeding at, Remanded by *Hrt Enters. v. City of Detroit, 2005 Mich. App. LEXIS 1202 (Mich. Ct. App., May 12, 2005)*
Related proceeding at Steel Assocs. v. City of Detroit, 2005 Mich. App. LEXIS 2553 (Mich. Ct. App., Oct. 18, 2005)

PRIOR HISTORY: [***1] Wayne Circuit Court. LC No. 99-928001-CC.

DISPOSITION: Affirmed.

COUNSEL: Law Offices of Mark S. Demorest (by Mark S. Demorest) for the plaintiff. Dearborn.

James C. Cobb, Jr., P.C. (by James C. Cobb, Jr.), for the defendant. Detroit.

JUDGES: Before: Murray, P.J., and Gage and Kelly, JJ.

OPINION BY: Christopher M. Murray

OPINION

[**489] [*118] GAGE, J.

Plaintiff Merkur Steel Supply, Inc., leases a parcel of property of approximately eleven acres in the city of Detroit. The property is adjacent to Detroit City Airport. The property contains a 188,000 square foot building and several acres of the property are vacant. For approximately ten years before this lawsuit, plaintiff attempted to expand its operations to no avail. The plans for expansion were repeatedly thwarted by city action.

Plaintiff initiated the present action against defendant city of Detroit for inverse condemnation. A jury [*119] trial resulted in a verdict in favor of plaintiff for approximately $ 7 million. The city now appeals as of right. We affirm.

1. FACTUAL BACKGROUND

To fully understand the nature of the cause of action, we must thoroughly review the relationship between the parties before us and the allegations set forth against the city.

Sometime in 1987, the city started its efforts to expand [***2] Detroit City Airport. In that year, the city signed an agreement with Southwest Airlines for Southwest to provide jet service to the airport. The agreement obligated the city to undertake a capital improvement at the airport. Apparently during this time, the city was not complying with existing Federal Aviation Administration (FAA) regulations, as some of the buildings near the airport, including plaintiff's, were too close to the existing runway. However, it appears the FAA granted temporary waivers to the city for the noncompliance.

Beginning in 1988, the city accepted grant money from the FAA and the state of Michigan to maintain and expand the airport. The grants all contained the condition that the city agree to prohibit the construction of new improvements and remove any existing hazards on the property near the airport. [1]

1 The record indicates that in 1991, the Detroit city council approved acquisition of the land surrounding the airport and the city did in fact condemn some of the properties in the area.

[**490] Around 1989, Karl Thomas and Hein Rusen, owners [***3] of plaintiff company, began contemplating constructing a 40,000 square foot addition to the existing building on their property in order to expand their business. The [*120] addition would be located on five acres that are vacant. In June 1990, plaintiff filed a notice of construction with the FAA. On December 19, 1990, the director of Detroit City Airport wrote a letter to the FAA objecting to plaintiff's building of the proposed structure. But in January 1991, the FAA issued a determination that construction of the proposed addition would not be a hazard to aviation; this determination was set to expire on August 24, 1992. In the meantime, the city filed an airport layout plan in April 1992, which put plaintiff's property directly in the way of the proposed airport expansion. In July 1992, plaintiff applied to the FAA for an extension determination, but in August 1992, the FAA revoked its "no hazard" determination because of the city's airport layout plan. Also during this time plaintiff applied for a building permit from the city, but it was denied.

In 1996, the city filed a revised layout plan showing the new airport runway going right through plaintiff's property. Apparently, because [***4] the city took no further action to condemn plaintiff's property, in September 1997, plaintiff wrote to then City Airport Director Suzette Robinson to inform her that it wished to proceed with its development. After receiving no response, plaintiff sent Robinson a second letter in October 1997, informing her that it would proceed with construction unless the city advised it that no building would be approved. Plaintiff again received no response. Thereafter, in November 1997, plaintiff hired an architectural firm to prepare plans for construction.

On July 2, 1999, the FAA issued a determination that the new building would be a hazard to aviation. On July 26, 1999, the Michigan Aeronautics Bureau issued a tall structure permit to plaintiff but attached certain conditions. The permit recognized that while the forty-foot [*121] building would not interfere with aviation, it could interfere with the city's plans to expand the airport. It issued the permit with the condition that the proponent or any subsequent owners of the proposed building would not receive reimbursement for the building or any businesses associated with the building if the property was acquired for expansion. At this point, [***5] plaintiff alleges it considered its project dead.

Plaintiff filed the present lawsuit for inverse condemnation against the city in September 1999. In part, plaintiff alleged that the city's filing of an airport layout plan constituted a taking of plaintiff's property without just compensation. The city filed a motion for summary disposition, arguing that plaintiff's complaint failed to state a claim on which relief could be granted and that the complaint stated claims against the state and federal governments that were beyond the circuit court's jurisdiction. The trial court denied the motion for summary disposition on September 5, 2001.

Trial was bifurcated into two phases, liability and damages. At the conclusion of plaintiff's proofs, the city filed a motion for a directed verdict, arguing in part that the filing of an airport layout plan could not constitute a taking per se; that there was no evidence that any regulation imposed by the airport layout plan denied plaintiff all economically viable use of its [**491] land; that the court must apply a balancing test to determine whether a taking occurred; and that it was improper to segment the property and determine whether only the five [***6] acres on which plaintiff planned to build was taken. The trial court denied the motion.

At the conclusion of the liability phase of trial, the jury was asked to decide whether the city inversely

condemned plaintiff's property and, if so, on what date the inverse condemnation occurred. The jury determined [*122] that the city's conduct amounted to a taking and that the taking occurred in December 1990. During the damages phase of trial, the jury was asked to determine: (1) whether plaintiff suffered damages, (2) the amount of just compensation to which plaintiff is entitled to date from January 1, 1991, (3) plaintiff's future damages, and (4) the amount of just compensation each month for which plaintiff is entitled to in the future. Following this phase of trial, the city again sought a directed verdict, arguing that plaintiff failed to establish the value of its property. The trial court denied the motion.

On March 7, 2002, the jury determined that plaintiff had suffered damages in the amount of $ 6.8 million and would continue to suffer damages in the amount of $ 3,800 each month. The city filed a motion for judgment notwithstanding the verdict (JNOV) or, in the alternative, a new trial. The trial [***7] court again denied the motion.

II. STANDARD OF REVIEW

The city raises issues dealing with the trial court's rulings on several motions below as well as various other aspects of the trial. In its brief on appeal, the city erroneously states that the standard of review for this case is the plain error standard set forth in *People v Carines, 460 Mich. 750; 597 N.W.2d 130 (1999)*. Despite the city's erroneous assertion, we will lay out the appropriate standards of review for the issues raised.

Part III(A) of this opinion addresses the city's argument that the trial court erred in denying its motion for summary disposition. While the city brought its motion for summary disposition under *MCR 2.116(C)(8)*, the trial court reviewed the motion under both *MCR 2.116(C)(8)* and (10). A motion brought under *MCR* [*123] *2.116(C)(8)* tests the legal sufficiency of a claim by the pleadings alone. *Beaudrie v Henderson, 465 Mich. 124, 129; 631 N.W.2d 308 (2001)*. All factual allegations in support of the claim are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts, and must be construed in the light most [***8] favorable to the nonmoving party. *Malden v Rozwood, 461 Mich. 109, 119; 597 N.W.2d 817 (1999)*. A motion brought under *MCR 2.116(C)(10)* tests whether there is factual support for a claim. *Spiek v Dep't of Transportation, 456 Mich. 331, 337; 572 N.W.2d 201 (1998)*. When deciding this motion, the court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Ritchie-Gamester v City of Berkley, 461 Mich. 73, 76; 597 N.W.2d 517 (1999)*. On appeal, the trial court's decision is reviewed de novo. *Dressel v Ameribank, 468 Mich. 557, 561; 664 N.W.2d 151 (2003)*.

Parts III(B) and III(F) primarily address the city's motion for directed verdict and JNOV. A directed verdict is appropriate only when no material factual questions exist on which reasonable minds could differ. *Cacevic v Simplimatic Engineering Co (On Remand), 248 Mich. App. 670, 679-680; 645 N.W.2d 287 (2001)*. The trial court's decision on a motion for directed verdict is reviewed de novo. [***9] *Sniecinski v Blue Cross/Blue Shield of* [**492] *Michigan, 469 Mich. 124, 131; 666 N.W.2d 186 (2003)*. Judgment notwithstanding the verdict should be granted only when there was insufficient evidence presented to create an issue for the jury. *Craig v Oakwood Hosp, 249 Mich. App. 534, 547; 643 N.W.2d 580 (2002)* (opinion by Cooper, P.J.). When deciding a motion for JNOV, the trial court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party and determine whether the facts [*124] presented preclude judgment for the nonmoving party as a matter of law. *Id.* A trial court's decision on a motion for JNOV is also reviewed de novo. *Sniecinski, supra.*

Part III(D) of this opinion addresses the city's argument that the trial court erred in allowing evidence of lost profits. This Court reviews a trial court's decision to admit evidence for an abuse of discretion. *Chmielewski v Xermac, Inc, 457 Mich. 593, 613-614; 580 N.W.2d 817 (1998)*. As to the remaining claims, which are addressed throughout this opinion, questions of law are reviewed de novo by this Court, *Armstrong v Ypsilanti Charter Twp, 248 Mich. App. 573, 582-583;* [***10] *640 N.W.2d 321 (2001)*, while factual findings are reviewed for clear error, *Christiansen v Gerrish Twp, 239 Mich. App. 380, 387; 608 N.W.2d 83 (2000)*.

III. ANALYSIS OF THE CITY'S CLAIMS

At the outset, we note that the city appears to minimize and mischaracterize plaintiff's claims in this case. This is not simply a case where a company's attempt to expand its business interferes with the city's management of its airport. Instead, this is essentially a case of blight by planning. In this case, the city of Detroit

wanted to expand Detroit City Airport and it needed to condemn the properties around the airport. However, the city's plans were not concrete and, for over a decade, the city has failed to actually expand the airport. While the city has condemned some of the surrounding area and has viewed it as practically uninhabited or vacant, the city has failed to formally condemn plaintiff's property. However, although the city has never formally condemned plaintiff's property, it has made it virtually impossible for plaintiff to expand its own business. Essentially, the city, in over ten years, [*125] has thrown "roadblock" after barrier to discourage [***11] the expansion of plaintiff's business.

A. THE TRIAL COURT DID NOT ERR IN DENYING THE CITY'S MOTION FOR SUMMARY DISPOSITION

According to the city, it played no role in the FAA's determination of hazard against plaintiff's proposed building or in creating the condition in the state's tall structure permit. Thus, the city argues that the Wayne Circuit Court lacked jurisdiction over plaintiff's claims because the claims are actually claims against the state and federal governments.

Plaintiff in this case alleges a de facto taking. A de facto taking occurs when a governmental agency effectively takes private property without a formal condemnation proceeding. See *Detroit Bd of Ed v Clarke, 89 Mich. App. 504, 508; 280 N.W.2d 574 (1979)*. Inverse condemnation can occur without a physical taking of the property; a diminution in the value of the property or a partial destruction can constitute a "taking." *Id.* Thus, for purposes of a de facto taking, all of the city's actions in the aggregate, as opposed to just one incident, must be analyzed to determine the extent of the taking.

Here, the city minimizes plaintiff's claims. According to the city, the [***12] circuit court lacked jurisdiction to rule that the [**493] FAA determination of hazard constituted a taking because FAA determinations are governed exclusively by federal law. The city relies on the case of *Flowers Mill Associates v United States, 23 Cl Ct 182 (1991)*, for its contention that an FAA determination of hazard does not constitute a taking of property.

In this case, however, plaintiff did not bring suit against the federal government strictly on the basis of the FAA's determination of a hazard. Plaintiff brought suit against the city because of the city's filing of the [*126] airport layout plan with the FAA, *as well as* other acts plaintiff contends were taken in order to obtain the property near the airport. These other acts in part include the acquisition of properties surrounding the area and the promise, in exchange for grant money, to the FAA and the state that the city would not allow any new construction in the area. Plaintiff's primary contention was that the city wanted to acquire plaintiff's property but did not do so legally because of the significant cost, and instead condemned much of the surrounding properties and made it impossible for plaintiff to expand its [***13] business. Because plaintiff did not bring suit against the federal government strictly on the basis of the FAA's determination of a hazard, the city's reliance on *Federal Mills* is misplaced. Further, because of the city's misconceptions, its argument [**494] that the Wayne Circuit Court lacked jurisdiction is also misplaced.

We note that even though the FAA's determination of a hazard does contribute to plaintiff's problems with its attempt to expand its operations, it is only one factor to be considered. As the city itself notes from *Flowers Mills, supra*, the FAA's hazard finding is not legally enforceable. This is why plaintiff's claim of a de facto taking cannot and does not rest merely on the FAA's determination of a hazard. Instead, plaintiff's claims are against the city for the filing of the airport layout plan, and they rest on the city's agreement to condemn the property, its condemning of some of the surrounding area, and its making it impossible for plaintiff to expand its business until the city decides whether to actually expand the airport and formally condemn plaintiff's property.

We come to a similar conclusion with regard to the city's claim that because state law regulates [***14] the issuance [*127] of tall structure permits, the condition contained in the tall structure permit issued to plaintiff cannot be imputed to the city. According to the city, plaintiff is essentially bringing suit against the state for a taking of plaintiff's property and therefore must bring suit against the state in the Court of Claims. The city is correct in its argument that the issuance of tall structure permits is regulated by the *Tall Structure Act, MCL 259.481 et seq.* This act requires a person seeking to build a structure in a runway or landmark area to obtain a permit. However, where the city's argument is misguided is in its claim that the trial court had to determine that the tall structure permit issued to plaintiff constituted a

taking of its property.

Plaintiff does not claim that the condition contained in the tall structure permit constituted a taking of its property. Instead, plaintiff claims that the city's actions, in conjunction with the city's filing of the airport layout plan, constitute a taking of plaintiff's property by the city. Plaintiff alleged that in order to gain grant money, the city agreed that it would condemn [***15] the area near the airport and prohibit any persons from building in the area. It is this act that plaintiff argues contributes to a finding that the city inversely condemned plaintiff's property, not the mere fact that a condition was placed in the tall structure permit. Again, the city's argument that the Wayne Circuit Court lacked jurisdiction is misplaced.

Finally, the city claims that the mere filing of an airport layout plan, by itself, cannot constitute a taking of plaintiff's property. The city is correct in that the mere promulgation and publication of plans does not constitute a taking of property. See *City of Muskegon v DeVries, 59 Mich. App. 415, 419; 229 N.W.2d 479 (1975)*. The threats must be coupled with affirmative action, [*128] such as unreasonable delay or oppressive conduct. *Id.* Our courts have held that a city cannot deliberately act to reduce the value of private property. *Detroit Bd of Ed, supra at 508*, citing *In re Renewal, Elmwood Park Project, 376 Mich. 311, 317; 136 N.W.2d 896 (1965)*. Actions found to be deliberate have included the published threat of condemnation, mailing letters concerning the [***16] project to area residents, refusing to issue building permits for improvements coupled with intense building inspection, reductions in city services to the area, and protracted delay and piecemeal condemnation. *Id. at 509*.

Again, in this case, plaintiff's claim does not rest on the city's publication of its plan. Plaintiff's claim rests on the fact that the city publicized its plans, started condemning the properties around plaintiff's, closed roads in the area, [2] and took action to prevent plaintiff from expanding its business. In essence, plaintiff argues that over a period of ten years, the city took steps to inhibit plaintiff's expansion of its business because the city wanted to expand the airport without having to legally and formally acquire plaintiff's property. Plaintiff argues that the city's failure to formally condemn its property constituted a taking. Plaintiff also argues that the city's failure to respond to plaintiff's inquiries and notice that it wished to proceed with its construction when the city took no action, particularly after 1996, constituted a taking. Under the circumstances, the trial court did not err in denying the city's motion for summary disposition.

2 Evidence indicates that in 1987, the city approved the temporary closing of a road in the area of the airport, and while the closing was supposed to be temporary, the road remained closed indefinitely.

[***17] [*129] B. THE TRIAL COURT DID NOT IMPROPERLY FAIL TO APPLY THE BALANCING TEST TO DETERMINE WHETHER A TAKING HAD OCCURRED

According to the city, plaintiff's claim alleges a regulatory taking and, thus, the court was required to apply the balancing test set forth in *K & K Construction Inc v Dep't of Natural Resources, 456 Mich. 570, 575 N.W.2d 531 (1998)*. In its argument, the city rather conclusorily states that plaintiff's claim is one of a regulatory taking, but under the facts, we cannot so conclude.

Eminent domain is an inherent right of a state to condemn private property for public use. *In re Acquisition of Land-Virginia Park, 121 Mich. App. 153, 158; 328 N.W.2d 602 (1982)*. When exercising its power of eminent domain, the state, or those to whom the power has been lawfully delegated, must pay the owner just compensation. *Id.* Where the property has been damaged rather than completely taken by governmental actions, the owner may be able to recover by way of inverse condemnation. *Id. at 158*. An inverse condemnation suit is one instituted by a private property owner whose property, while not formally taken for public use, has been damaged [***18] by a public improvement undertaking or other public activity. *Id.* [**495] Inverse condemnation is "'a cause of action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency.'" *Id. at 158-159* (citation omitted).

When the government takes property by formal condemnation, it must follow the procedures set out in the *Uniform Condemnation Procedures Act* (UCPA), *MCL 213.51 et seq.*. However, no exact formula exists concerning a de facto taking; instead, the form, intensity, [*130] and the deliberateness of the governmental actions toward the injured party's property must be

examined. *In re Virginia Park, supra at 160*, citing *Heinrich v Detroit, 90 Mich. App. 692, 698; 282 N.W.2d 448 (1979)*. The plaintiff has the burden of proving causation in an inverse condemnation action. *In re Virginia Park, supra at 160-161*, quoting *Heinrich, supra at 700*. A plaintiff may satisfy this burden by proving that the government's actions were a substantial [***19] cause of the decline of its property. *Id.* The plaintiff must also establish that the government abused its legitimate powers in affirmative actions directly aimed at the plaintiff's property. *Id.* Not all government actions may amount to a taking for public use. *Heinrich, supra at 698*. The mere threat of condemnation and its attendant publicity, without more, is insufficient. *Id.* Before a court may conclude that a taking occurred, it must examine the totality of the acts alleged to determine whether the governmental entity abused its exercise of eminent domain to plaintiff's detriment. *Id.*

In contrast, a regulatory taking is one in which the government effectively "takes" a person's property by overburdening it with regulations. *K & K Constr, Inc, supra at 576*. Land use regulations effectuate a taking in two general situations: (1) where the regulation does not substantially advance a legitimate state interest, or (2) where the regulation denies an owner economically viable use of his land. *Id.*, citing [***20] *Keystone Bituminous Coal Ass'n v DeBenedictis, 480 U.S. 470, 485; 107 S. Ct. 1232; 94 L. Ed. 2d 472 (1987)*. The second type of taking is further subdivided into two situations: (a) a "categorical" taking, where the owner is deprived of "all economically beneficial or productive use of land," or (b) a taking recognized on the basis of the application of the traditional "balancing test" established in *Penn Central Transportation Co v New York City, 438 U.S. 104;* [*131] *98 S. Ct. 2646; 57 L. Ed. 2d 631 (1978). K & K Construction, supra at 576-577*. For a categorical taking, a reviewing court need not apply a case-specific analysis; instead, the owner should automatically recover for the taking of its property. *Id. at 577*, citing *Lucas v South Carolina Coastal Council, 505 U.S. 1003, 1015; 112 S. Ct. 2886; 120 L. Ed. 2d 798 (1992)*. The person may recover for a physical invasion of his property by the government, or where a regulation forces an owner to "'sacrifice *all* economically beneficial uses [of his land] in the name of the common good.'" *Id.*, quoting *Lucas, supra at 1019*. In regulatory takings other than categorical takings, the court must apply a "balancing test." With [***21] regard to this balancing test, a reviewing court must engage in an "ad hoc, factual inquiry," centering on three factors: (1) the character of the government's action, (2) the economic effect of the regulation on the property, and (3) the extent by which the regulation has interfered with distinct, investment-backed expectations. [**496] *Id.*, citing *Penn Central, supra at 124*.

In this case, the city's actions cannot be definitively categorized as a regulatory taking. The city did not "take" plaintiff's property by overburdening it with regulations. Instead, the city wanted to expand the airport and inhibited plaintiff's construction because of the contemplated expansion of the airport. Here, the city actually intended to acquire plaintiff's property. Essentially, the city wanted plaintiff's property without having to pay for it through the institution of formal condemnation proceedings. Thus, we decline to categorize the city's actions as a strict regulatory taking. Instead, under the circumstances, plaintiff had to prove a de facto taking through inverse condemnation.

Again, a de facto taking can occur without an actual physical taking of the property. [***22] *Detroit Bd of Ed, supra* [*132] *at 508*. In terms of a de facto taking, the form, intensity, and the deliberateness of the government actions toward the property must be examined. *In re Virginia Park, supra at 160*. All actions by the city, in the aggregate, must be analyzed. *Heinrich, supra at 698*.

Plaintiff presented evidence of a decline of its property through evidence that the city's actions prevented plaintiff from building a new building for its business. Plaintiff also presented evidence that the city had the intent to completely take plaintiff's property but failed to take the appropriate steps in over ten years. The city accepted money from the government with the promise that it would prohibit any new construction and would remove any existing hazards, which included plaintiff's business. In 1991, the Detroit city council approved the condemnation of the area around the airport. Further, there was testimony and exhibits admitted at trial that showed city acknowledgment that the area around the airport was to be condemned. Thus, plaintiff presented evidence that the city abused its legitimate powers in its actions aimed at plaintiff's property. Under the circumstances, the trial [***23] court used the correct test in determining whether plaintiff presented evidence of a taking.

C. THE TRIAL COURT DID NOT IMPROPERLY

ALLOW PLAINTIFF TO SEGMENT ITS PROPERTY IN ORDER TO SHOW A TAKING

Without specifically stating the context in which it makes its argument, the city claims that the trial court allowed plaintiff to segment its property. According to the city, allowing plaintiff to segment its property violates the "nonsegmentation" rule recognized in Michigan.

> "'Any injury to the property of an individual which deprives the owner of the ordinary use of it is equivalent to [*133] a taking, and entitles him to compensation. So a partial destruction or diminution of value of property by an act of government which directly and not merely incidentally affects it, is to that extent an appropriation.'" *Peterman v Dep't of Natural Resources, 446 Mich. 177, 184; 521 N.W.2d 499 (1994)*, quoting *Vanderlip v Grand Rapids, 73 Mich. 522, 535; 41 NW 677 (1889)*, quoting *Broadwill v City of Kansas, 75 Mo 213, 218 (1881)*.]

In the context of a regulatory taking, the Court in *K & K Construction, supra at 578*, explained, "One of the fundamental principles of [***24] taking jurisprudence is the 'nonsegmentation' principle. This principle holds that when evaluating the effect of a regulation on a parcel of property, the effect of the regulation must be viewed with respect to the parcel as a [**497] whole." *Id.* "Courts should not 'divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated.'" *Id.*, quoting *Penn Central, supra at 130*. Instead, the court must examine the effect of the regulation on the entire parcel, rather than just the affected portion of the parcel. *K & K Construction, supra at 578-579*.

In *K & K Constr*, the parties dealt with property that was segmented into five different parcels and the parties were claiming only the taking of some portions of several of the parcels because of certain regulations placed on those parcels. This case is distinguishable. This case involves a leasehold estate. Plaintiff claimed that the city "took" its property by precluding it from building on several vacant acres of the property and further that the city intended to eventually take plaintiff's property in its entirety but was not willing to [***25] do so through the proper avenues because of the expense. Plaintiff claimed a partial de facto taking. See *Peterman, supra*. Under the circumstances, the trial court [*134] did not improperly allow plaintiff to segment its property.

D. THE TRIAL COURT DID NOT IMPROPERLY ALLOW EVIDENCE OF SPECULATIVE LOST PROFITS

The city argues that the trial court improperly allowed plaintiff to introduce evidence of speculative lost profits as a separate and direct element of damages instead of as evidence bearing on the value of the leasehold interest.

Recovery can be had for the taking of a leasehold estate. *In re Widening of Gratiot Ave, 294 Mich. 569; 293 NW 755 (1940)*. The purpose of just compensation is to put the property owner in as good a position as it would have been in had its property not been taken. *Miller Bros v Dep't of Natural Resources, 203 Mich. App. 674, 685; 513 N.W.2d 217 (1994)*, citing *State Highway Comm'r v. Eilender, 362 Mich. 697, 699; 108 N.W.2d 755 (1961)*. The public must not be enriched at the property owner's expense, nor should the property owner be enriched at the public's [***26] expense. *Miller Bros, supra*. To prevent either party from being enriched at the other's expense, the nature of the taking at issue must be considered. *Id. at 685-686*. "In a typical condemnation case, the state takes some affirmative action to permanently deprive a property owner of the use of the property, and, therefore, is required to pay compensation to the owner." *Id. at 686*.

In cases involving a temporary taking, "the best approach is a flexible approach that will compensate for losses actually suffered while avoiding the threat of windfalls to plaintiffs at the expense of substantial government liability." *Miller Bros, supra at 687*, citing *Poirier v Grand Blanc Twp (After Remand), 192 Mich. App. 539, 543; 481 N.W.2d 762 (1992)*. The best approach in that case is to [*135] base the just compensation award on the fair market value of the property. *Id. at 688*. The Court noted in *Miller Bros* that because the state is temporarily depriving plaintiffs of the use of their property, much like a renter, the state should be required to pay "rent" to plaintiffs as compensation for the temporary taking. *Id.*

"The determination of value is not [***27] a matter of formulas or artificial rules, but of sound judgment and discretion based upon a consideration of all the relevant facts in a particular case." *In re Widening of Gratiot Avenue, supra at 574.* In estimating the value of a lease, "it is proper to consider the location [**498] of the premises, their special adaptability to the business there being conducted, the length of time it has been established, its earnings and profits, the unexpired term of the lease, and every other fact that may affect its value. All of these matters go to enhance the value of the lease. They are not substantive damages in condemnation proceedings." *In re Park Site on Private Claim 16, City of Detroit, 247 Mich. 1, 4; 225 NW 498 (1929).*

"Damages will not be allowed in condemnation cases unless they can be proven with reasonable certainty." *County of Muskegon v Bakale, 103 Mich. App. 464, 468; 303 N.W.2d 29 (1981).* "The loss of speculative profits, therefore, has been held not to be allowable as an element of compensation." *Id.* But it is error to not allow a property owner to present evidence of "the most profitable and advantageous [***28] use it could make of the land" even if the use was still in the planning stages and had not been executed. *Village of Ecorse v Toledo, CS&D Ry Co, 213 Mich. 445, 447-448; 182 NW 138 (1921).*

> In denying the city summary disposition, the trial court ruled:
>
> > In the event it should be determined that Plaintiff is entitled to recover just compensation for the de facto [*136] taking of its leasehold estate, evidence of lost profits that would have been generated from Plaintiff's development of the property, but for a de facto taking, is admissible to establish circumstantially the reasonable value of the leasehold estate wrongfully taken by Defendant.

Thus, the trial court allowed evidence of lost profits to establish the diminution in value of plaintiff's leasehold interest. This is acceptable. See, e.g., *Miller Bros, supra.* While the evidence came in the form of direct numbers of lost profits, the evidence established how much value of the leasehold was taken.

Furthermore, the evidence was not unduly speculative. Plaintiff wanted to build a new building in order to expand its business. It must be kept in mind that plaintiff wished to [***29] utilize a portion of its property that was vacant. The jury in this case visited the property site and heard testimony from several witnesses regarding plaintiff's plans to expand. Plaintiff's owners testified regarding the new operations that would be conducted in the new building as an extension of the existing operation. Plaintiff's expert witness testified regarding prices and costs. Plaintiff's president and vice-president of finance testified regarding the profitability of the expansion and the profitability of the existing business and gave specific dollar amounts. Plaintiff's financial statements were also entered into evidence, as were its tax returns. Moreover, the jury was instructed that it should not speculate. The city offered very little to contradict plaintiff's evidence. The city called one witness to testify regarding the damages issue and while he criticized plaintiff's damages projections, on cross-examination, he admitted that if asked to make projections of lost profits of a business that is not in operation, he would do so in a similar manner as plaintiff did. Because we are dealing with a business that has not come to fruition, some degree of guesswork [*137] is necessary [***30] and the amount of damages cannot be established for certain. The evidence was not unduly speculative.

E. THE JURY DID NOT ERR IN DETERMINING THE DATE OF TAKING

The city argues that the verdict establishing December 1990 as the date of taking is not based on evidence in the record and fails as a matter of law.

"The determination of the date of taking and the ascertainment of value is [**499] a question of fact for the jury." *Detroit Bd of Ed, supra at 509* . The jury determined the date of the taking to be December 1990. The evidence established that on December 19, 1990, the city's airport director wrote a letter to the FAA to object to plaintiff's proposal to build. It appears that this was one of the city's first outward acts at attempting to preclude plaintiff from building its new business. And it was after this date that the city filed its airport layout plan. It was also after this date that the city took further acts at attempting to preclude plaintiff from building. [3] Although plaintiff admits that it did not have concrete plans to build and it did not realize many damages in December

1990, there is evidence in the record to support the jury determination [***31] of December 1990 as the date of taking or the date on which the taking began. "It is not within the province of this Court to review questions of fact other than to ascertain the presence of evidence that can support the verdict." *Detroit Bd of Ed, supra at 510*. "A verdict will not be disturbed so [*138] long as it is within the fair range of the testimony." *Id.*, citing *Detroit v Sherman (In re Virginia Park Neighborhood Development Program), 68 Mich. App. 494, 498; 242 N.W.2d 818 (1976)* and *St Clair Shores v Conley, 350 Mich. 458, 463-464; 86 N.W.2d 271 (1957)*. The jury did not err in its determination of the date of the taking.

> 3 Some evidence in the record indicates that the city stopped services such as trash pickup around the area and also began dumping trash on property the city acquired. Further, plaintiff suggested that through condemnation, the city acquired some of the residential properties around the area, but let those properties become run down.

F. THE TRIAL COURT DID NOT ERR IN FAILING TO DIRECT A VERDICT IN THE CITY'S FAVOR

The city finally argues that plaintiff presented no evidence of [***32] the value of the property allegedly taken, and without such evidence, there is no foundation on which a verdict can be based.

Again, "'there is no formula or artificial measure of damages applicable to all condemnation cases. The amount to be recovered by the property owner is generally left to the discretion of the trier of fact after consideration of the evidence presented.'" *Poirier, supra at 543* (citation omitted). A jury has broad discretion in determining the amount of compensation in condemnation cases. "It is not within the province of the court on appeal . . . to review questions of fact further than to see that the verdict is supported by the evidence. An appellate court should not disturb a condemnation award which was within the maximum and minimum appraisals presented by the witnesses." *Sherman, supra at 498* (citations omitted).

At trial, the city argued for a verdict of no cause of action and damages of zero. Plaintiff requested a verdict of nearly $ 17 million for past losses and $ 200,000 a month for future losses. The jury awarded $ 6.8 million for past losses and $ 3,800 a month for future losses.

As the [***33] trial court noted in its denial of the city's second motion for directed verdict, the damages to which the witnesses testified related to the increased sales of plaintiff that would result from being able to [*139] add another business on their land. Witnesses testified regarding plaintiff's productivity over the years, and its past financial statements were admitted into evidence. Thus, there was evidence of how profitable plaintiff's business was before any new expansion, which equated to its market value. Witnesses then testified about what plaintiff's increased income and production would have been with the new [**500] business. This established the diminution in value of plaintiff's property. Under the circumstances, there was sufficient evidence produced with which the jury could determine damages; thus, the trial court did not err in denying directed verdict in the city's favor or in denying the city's motion for JNOV.

IV. CONCLUSION

Contrary to the city's assertion, plaintiff did not institute the present suit against the city simply because the city filed an airport layout plan and the FAA determined plaintiff's proposed construction a hazard to aviation. Instead, plaintiff filed the present inverse [***34] condemnation suit against the city for all of the city's acts that were taken in an attempt to thwart plaintiff's efforts at construction and for the city's attempt to "take" plaintiff's property without formally condemning it. The city approved the condemnation of the area and the area was in a state of decline because of the lack of city services and the fact that the residents anticipated condemnation. While the city intended to condemn the area, it had formally condemned few of the properties and let the majority of the properties decline and await possible future formal condemnation. In sum, this is a case of blight by planning. The city's plans to expand Detroit City Airport, possibly sometime in the future, thwarted plaintiff's attempts to run and expand its business and significantly impaired the value of [*140] plaintiff's property rights. The city made its plans clear but never followed through with its plans and never attempted to legally obtain plaintiff's property. Under the circumstances, we affirm the trial court's rulings in all respects and we affirm the jury's verdict.

Affirmed.

/s/ Christopher M. Murray

/s/ Hilda R. Gage

/s/ Kirsten Frank Kelly

EXHIBIT 6

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CITY OF DETROIT, a Michigan municipal corporation

Plaintiffs,

v

Case No. 13-000976-CC

JOHN W. and VIVIAN M. DENIS TRUST

Hon. Susan Borman 13-000976-CC

Defendant.

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DEFENDANT'S ANSWER TO PLAINTIFF'S CONDEMNATION COMPLAINT, COUNTERCLAIM, AND JURY DEMAND

Defendant, John W. and Vivian M. Denis Trust ("Denis") through its attorneys, Demorest Law Firm, PLLC, states as follows for its Answer to the Condemnation Complaint filed by Plaintiff, City of Detroit ("City").

1. Denis admits the allegations contained in Paragraph 1 of the Condemnation Complaint, upon information and belief.

2. The allegations contained in Paragraph 2 are legal conclusions to which no response is required.

3. Denis admits the allegations contained in Paragraph 3 of the Condemnation Complaint, upon information and belief. However, Denis disagrees with the amount of estimated just compensation stated in Exhibit B.

4. The allegations contained in Paragraph 4 are legal conclusions to which no response is required.

5. Denis admits that a Declaration of Taking is attached to the Amended Condemnation Complaint as Exhibit C. Denis lacks knowledge or information as to whether the Declaration of Taking has been recorded with the Wayne County Register of Deeds. Denis asserts, however, that a *de facto* taking of the property occurred long before the filing of the Condemnation Complaint.

6. Denis admits the allegations contained in Paragraph 6 of the Amended Condemnation Complaint, upon information and belief. Denis disagrees, however, with the amount of estimated just compensation stated in the City's Declaration of Taking.

7. Denis admits that the document attached as Exhibit D shows properties that will be or have been taken by the City of Detroit. However, Exhibit D does not show the full extent of the City's takings in the area.

8. Denis admits that City has made written offers to purchase the property. However, Denis does not admit that the offers made to Denis were reasonable.

9. Denis admits the allegations contained in Paragraph 9 of the Amended Condemnation Complaint, upon information and belief. Denis disagrees, however, with the amount of estimated just compensation stated in the City's Declaration of Taking.

10. Denis lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraph 10 of the Amended Condemnation Complaint.

11. The allegations contained in Paragraph 11 are legal conclusions to which no response is required. Denis does not object to the necessity of taking of the property.

12. The allegations contained in Paragraph 12 are legal conclusions to which no response is required.

13. Denis admits the allegations contained in Paragraph 13 of the Amended Condemnation Complaint.

14. The allegations contained in Paragraph 14 are legal conclusions to which no response is required.

WHEREFORE, Denis requests the Court to set a date certain for a trial for the purpose of ascertaining and determining (a) the date of taking and (b) the just compensation to be paid by the City for the taking of the property. Denis also requests the Court to award interest, costs and attorney's fees. Denis also requests the Court to provide Denis with such other and further relief to which Denis is entitled under law of which the Court deems necessary. Denis also requests that this Court deny the City's requests for relief to the extent that they are not consistent with Denis' request for relief.

COUNTERCLAIM

Counter-Plaintiff, John W. and Vivian M. Denis Trust ("Denis"), through its attorneys, Demorest Law Firm, PLLC, states as follows for its Counterclaim against Counter-Defendant, City of Detroit ("City"):

PARTIES

1. Plaintiff, Denis, owns the properties located at 8523, 8529, and 8535 Montlieu, Detroit, Michigan 48234 (collectively the "Denis Property").

2. Defendant, City of Detroit, is a Michigan municipal corporation with its principal place of business at the Coleman A. Young Municipal Center, Two Woodward Avenue, Detroit, Michigan.

JURISDICTION

3. The Court has jurisdiction of this matter because the amount in controversy exceeds Twenty Five Thousand ($25,000) Dollars, exclusive of interest, costs and attorneys' fees.

FACTUAL ALLEGATIONS

4. The Denis Property is located in an area designated for taking by the City of Detroit, to comply with Federal Aviation Administration regulations for the current operations at Detroit City Airport, to expand Detroit City Airport, or both.

5. By at least 1991, The Denis Property was specifically designated for taking by the City of Detroit because the Denis Property is located within 750 feet of the centerline of Runway 15/33 at Detroit City Airport.

6. On October 9, 1991, Henry Hagood, then Director of the City of Detroit's Community & Economic Development Department, wrote a letter to the Detroit City Council designating the Denis Property as "property to be acquired" by the City of Detroit.

7. Hagood told the City Council that the City would proceed with the acquisition as "the City's highest priority." Hagood wrote:

> The City of Detroit wants the families and businesses that are impacted by these waivers to know that it will work diligently with

> them as it attempts to remove these waivers; and that removing these waivers have the City's highest priority. They will not have to remain any longer than necessary in this highly-restricted area, a "no-man's land" with only a faint hope of recapturing the equity that they have in their businesses or homes, - sometime in the distant future.

(Exhibit 1).

8. Rather than acquiring its property in a timely fashion as promised, the City of Detroit has methodically taken away Denis' rights to own and use the Denis Property.

9. The combined result of the City's actions described in this Condemnation Complaint has been to deprive Denis of the full use of its Property without just compensation from the City of Detroit.

10. The City of Detroit has placed its own interests ahead of Denis' property rights. The City of Detroit intends to acquire the Denis Property, and the City has taken steps designed to freeze or drive down the value of the Denis Property in preparation for that acquisition.

11. The City of Detroit has also interfered with Denis' property rights in order to comply with the terms and conditions of various grant agreements that the City of Detroit has signed with the federal and state governments. In exchange for millions of dollars in grant money from the federal and state governments, the City of Detroit has bargained away Denis property rights without any compensation (or even notice) to Denis.

12. The City of Detroit is required under the terms of its various grant agreements with the Federal Aviation Administration ("FAA") and the State of Michigan to remove all buildings along French Road on the west side of existing Runway 15/33 that are located within the Building Restriction Line, including the Existing Building on

the Denis Property. (This area is referred to by the City of Detroit, and will be referred to in this Amended Condemnation Complaint, as the "Mini-Take Area.")

13. The City of Detroit is obligated by the grant agreements to acquire all buildings within the Mini-Take Area, whether or not the City of Detroit ever expands Detroit City Airport.

14. The City of Detroit has also filed plans with the FAA and the State of Michigan to expand Detroit City Airport, which plans have been approved by the FAA and the State of Michigan (the "Airport Layout Plan"). The proposed expansion of Detroit City Airport, as described in all approved versions of the City of Detroit's Airport Layout Plan since at least April 1992, necessarily involves the acquisition of the Denis Property by the City of Detroit.

15. To promote its plan to acquire the Denis Property and other land in the Mini-Take Area, the City of Detroit has taken various actions directed at the Mini-Take Area in general, and the Denis Property in particular. These actions by the City of Detroit have had the purpose and effect of driving down property values in the area, and interfering with the continued occupancy of Property in the Mini-Take Area, so that residents and businesses are forced out of the area.

16. These actions by the City of Detroit include, but are not limited to, the following:

a. Passing resolutions declaring the public necessity for acquisition of properties in the project area by condemnation;

b. The closing of McNichols Road between Conner and French Roads, making the Mini-Take Area more isolated from the rest of the City. This was supposed to be a temporary closing for five years, but the road has now been closed for over 15 years;

c. Making the first priority saving money, rather than maximizing safety, when deciding on the order of acquisition of properties in the Mini-Take Area. This has left Denis needlessly exposed to aircraft noise and dangers in the neighborhood for many years longer than he should have been exposed;

d. Using predatory pricing practices to drive down the cost of acquisitions;

e. The systematic publication of the City's plans to acquire the Denis Property in the Mini-Take Area, leading to "blight by announcement."

f. Mailing letters and brochures concerning the project to residents in the project area, leading to "blight by announcement."

g. Withholding of police protection and other City services to properties in the Mini-Take Area;

h. Dumping of trash by the City of Detroit on vacant City-owned properties in the Mini-Take Area;

i. The exclusion of the Mini-Take Area from any Renaissance or Empowerment Zone, depriving properties in the area from the tax incentives and other benefits available to a property owner or occupant in one of these zones;

j. Formally protesting the erection or expansion of any building located in the Mini-Take Area; and

k. Withholding or denying building permits for properties located in the Mini-Take Area.

COUNT I

INVERSE CONDEMNATION—DE FACTO TAKING

17. Denis incorporates by reference the allegations of paragraphs 1 through 16 inclusive, as though fully set forth herein.

18. The City of Detroit has interfered with Denis' use of the Property in order to further and promote the City's own plans to acquire the Denis Property.

19. The City of Detroit's actions have interfered with Denis' property rights to such an extent that the City of Detroit has effectively taken the Denis Property.

20. As a result of the City of Detroit's actions interfering with the use of the Denis property, the City inversely condemned the Denis property.

21. The City of Detroit may not take the Denis Property without just compensation.

22. Denis is entitled to recover just compensation from the City of Detroit for the City's *de facto* taking of the Denis Property.

WHEREFORE, Denis respectfully requests this Court to:

a. Enter a Judgment determining that the City of Detroit has inversely condemned the Denis Property, as of the date of taking to be determined by the jury in this case;

b. Award Denis just compensation for the taking of its property rights by the City of Detroit, including relocation expenses; and

c. Award Denis its costs, interest and attorney's fees to Denis as allowed by law.

COUNT II

INVERSE CONDEMNATION—CITY OF DETROIT'S UNREASONABLE DELAY IN ACQUIRING PROPERTY

23. Denis incorporates by reference the allegations of paragraphs 1 through 22 inclusive, as though fully set forth herein.

24. The City of Detroit intends to acquire the Denis Property for public use.

25. The City has prohibited, and intends to continue to prohibit, the full use of the Denis Property in order to facilitate the City of Detroit's plans for Detroit City Airport.

26. The City of Detroit has engaged in deliberate actions toward the Mini-Take Area, in general, and the Denis Property in particular, that in fact interfered with Denis' property rights.

27. The City of Detroit's unreasonable delay in proceeding with its plans to acquire the Denis Property has interfered with Denis' property rights to the extent that the City of Detroit has taken the Denis Property without compensation to Denis.

28. The City of Detroit may not take the Denis Property without just compensation.

29. Denis is entitled to recover compensation from the City of Detroit for the City's interference with Denis' property rights.

WHEREFORE, Denis respectfully requests this Court to:

a. Enter a Judgment determining that the City of Detroit has inversely condemned Denis property, as of the date of taking to be determined by the jury in this case;

b. Award Denis just compensation for the taking of its property rights by the City of Detroit, including relocation expenses; and

c. Award Denis its costs, interest and attorneys fees to Denis as allowed by law.

COUNT III

SUBSTANTIVE DUE PROCESS UNDER THE UNITED STATES CONSTITUTION

30. Denis incorporates by reference the allegations of paragraphs 1 through 29 inclusive, as though fully set forth herein.

31. The Fifth and Fourteenth Amendments of the U.S. Constitution provide that no person shall be deprived of property without due process of law.

32. The Fifth Amendment prohibits the deliberate and arbitrary use of government power.

33. The City of Detroit's actions toward Denis were arbitrary and unreasonable, and either failed to advance a legitimate government interest or were an unreasonable means of advancing a legitimate government interest.

34. The acts or omissions of the City of Detroit were intentional.

35. The acts or omissions of the City of Detroit were the proximate cause of the deprivation of Denis' substantive due process rights protected by the U.S. Constitution.

36. Denis has been damaged by the City of Detroit's actions.

37. These damages include damage to its property rights, as well as emotional distress and personal injuries as a result of the City of Detroit's actions and delay in taking the Denis Property.

38. Denis is entitled to recover damages from the City of Detroit pursuant to the Fifth Amendment and 42 USC §1983.

WHEREFORE, Denis respectfully requests this Court to enter Judgment in its favor in an amount in excess of $25,000 against Plaintiff/Counter-Defendant, City of Detroit, and to award costs, interest and attorney's fees to Denis as allowed by law.

JURY DEMAND

Denis hereby demands a trial by jury as to all issues in this case.

Respectfully Submitted,

DEMOREST LAW FIRM, PLLC

/s/ Mark S. Demorest
Mark S. Demorest (P35912)
Michael K. Hayes (P75419)
Attorneys for Plaintiff
322 W. Lincoln
Royal Oak, MI 48067
248-723-5500

Dated: February 21, 2013

CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2013, I electronically filed the foregoing paper with the Clerk of the Court using the electronic system that will send notification of such filing to the following: Avery Williams.

/s/ Mark S. Demorest (P35912)
Demorest Law Firm, PLLC
Attorneys for Plaintiff
322 West Lincoln Ave.
Royal Oak, MI 48067
248-723-5500

Denis, John & Vivian:2013 Case:Pleadings:Answer to Complaint and Counterclaims.docx

EXHIBIT 7

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CITY OF DETROIT, a Michigan municipal corporation,

Plaintiff/Counter-Defendant,

Case No. 13-000976-CC
Hon. Susan D. Borman

v.

JOHN W. and VIVIAN M. DENIS TRUST,

Defendants/Counter-Plaintiffs.

Parcels 511 F, 512 F, and 513 F

13-000976-CC
FILED IN MY OFFICE
WAYNE COUNTY CLERK
4/25/2013 4:22:11 PM
CATHY M. GARRETT

WILLIAMS ACOSTA, PLLC
AVERY K. WILLIAMS (P34731)
Attorneys for Plaintiff/Counter-Defendant
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Detroit, MI 48226
(313) 963-3873

DEMOREST LAW FIRM, PLLC
MARK S. DEMOREST (P35912)
Attorneys for Defendants/Counter-Plaintiffs
322 W. Lincoln Ave., Ste. 300
Royal Oak, MI 48067
(248) 723-5500

STIPULATED ORDER CONFIRMING TITLE, SETTING POSSESSION, ALLOWING ENTRY, DIRECTING PAYMENT OF COMPENSATION, SETTING PRETRIAL CONFERENCE, AND SETTING DEFAULT PROCEEDINGS

At a session of said Court held in the Coleman A. Young Municipal Building, City of Detroit, Wayne County, Michigan
On: 4/25/2013

PRESENT: HONORABLE Susan D. Borman
CIRCUIT COURT JUDGE

WHEREAS, title to the property described in Exhibit 1 annexed hereto and incorporated herein, hereinafter referred to as the Subject Property, has vested in the Plaintiff/Counter-Defendant City of Detroit ("City" or "Plaintiff/Counter-Defendant") by operation of law and by virtue of (a) filing herein a Declaration of Taking on or about October 2013, (b) depositing the amount of estimated just compensation set forth in the Complaint with Lamont Title Corporation, and (c) recording a notice of filing of the Complaint for condemnation which contains the legal description of the Subject property with the Register of Deeds of Wayne County;

WHEREAS, this matter having come before this Court pursuant to Motion of Defendants/Counter-Plaintiffs' John and Vivian Denis Trust, ("Defendants/Counter-Plaintiffs) and by authority of 1980 PA 87, as amended; the parties having stipulated through their respective attorneys to entry fo the Order; and the Court being otherwise advised in the premises;

IT IS HEREBY ORDERED, that title to the Subject Property be and the same is hereby confirmed and vested in the City by operation of law pursuant to 1980 PA 87, as amended and specifically MCL 213.59. This Order may be recorded with the Wayne County Register of Deeds in lieu of a deed of conveyance;

IT IS FURTHER ORDERED, that Defendants/Counter-Plaintiffs herein, as identified in said Exhibit I shall surrender actual physical possession of the Subject Property to the City immediately upon entry of this Order. The Court shall retain jurisdiction for the purpose of enforcement of surrender of possession by appropriate order or other process;

IT IS FURTHER ORDERED, that the City shall pay to said Defendants/Counter-Plaintiffs the estimated just compensation as set forth in the attached Exhibit I, which has been deposited with Lamont Title Corporation to the parties in interest set forth therein,. Payment of the estimated just compensation shall be made within 14 days from the date this order is entered and posted in the e-filing system and

IT IS FURTHER ORDERED, that acceptance of said payment shall be without prejudice to the right of Defendants/Counter-Plaintiffs who have a continuing interest in the Subject Property to contest the amount of just compensation in a manner consistent with 1980 PA 87, as amended and to pursue their counterclaim. The City shall deduct from said payment any taxes, assessments or tax liens that are due and/or delinquent, subject only to the appropriate proration based upon the date of entry of this Order.

/s/ Susan D. Borman

CIRCUIT COURT JUDGE

Approved as to form and substance for entry:

/s/ Avery K. Williams
AVERY K. WILLIAMS (P34731)

/s/ Mark S. Demorest
MARK S. DEMOREST (P35912)

EXHIBIT A

DESCRIPTION OF PROPERTY

Parcel #	Street Address	Ward	Item
511 F	8523 Montlieu	17	003187
512 F	8529 Montlieu	17	003188
513 F	8535 Montlieu	17	003189

Legal Description

Lots 31, 30, and 29, Van Dyke Heights Subdivision of part of Fractional Section 15, Town 1 South, Range 12 East, City of Detroit, Wayne County, Michigan, as recorded in Liber 40, Page 95 of Plats, Wayne County Records.

commonly known as: 8523, 8529, and 8535 Montlieu, Detroit, MI 48234

including, but not limited to, all rights and appurtenances pertaining to the real property, including all right, title and interest in and to adjacent easements, streets, roads, alleys, and rights of way, together with all air, subsurface water and mineral rights.

STATEMENT OF ESTIMATED JUST COMPENSATION

Property Owner(s)	Property (Undivided Interest)	Parcel Nos.
John W. and Vivian M. Denis Trust	$50,813.00	511 F, 512 F, 513 F
Tax Compensation	$ 2,095.00	