

community watch

MONITORING LEGAL ISSUES THAT AFFECT MICHIGAN MUNICIPALITIES

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The Michigan Supreme Court Further Clarifies Municipal Condemnation Authority in *Novi v. Adell*

By Steven P. Joppich

The Michigan and U.S. Supreme Courts have issued several eminent domain rulings over the past year, culminating in the most-recent ruling of the Michigan Supreme Court in *City of Novi v. Robert Adell Children's Funded Trust, et al.*¹

In *Adell*, the City sought to condemn certain property to construct a public road that the City determined was necessary to address traffic problems in the area. The defendant contended that the proposed road right-of-way across its land would be primarily used as access to a large private industrial business on an adjoining private property owner's land. It was also noted that the adjoining property owner was to contribute money to the road project and the road was to be named after it. On these alleged facts, the defendant argued that its property was being condemned primarily for the private use and benefit of the adjoining property owner, as opposed to a public use.

The Supreme Court found that the Michigan Constitution's "public use" requirement was satisfied in this case because the proposed road right-of-way would be owned, operated and maintained by the public, and would be available for public use, regardless of whether it may primarily benefit only a single adjoining private property owner who helped pay for it. The Court also upheld the City's determination of public necessity for the road on the defendant's property, finding that there was no fraud or abuse of discretion in the City's decision, and that the City was not required to prove that its plan was the best or only alternative, only that it was a reasonable alternative.

For municipalities in Michigan, *Adell* is important because it identifies an area of fairly solid ground on which to stand in the pursuit of legitimate public improvements that require condemnation of private property. After last year's Michigan Supreme Court decision in *County of Wayne v Hathcock*,² --

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On July 20, 2005, the Michigan Supreme Court issued another key eminent domain decision in the case of *City of Novi v. Robert Adell Children's Funded Trust, et al.*

Based on *Adell*, municipalities in Michigan can be fairly confident that their exercise of eminent domain to acquire property for public roads, sewers and other infrastructure will be upheld as a "public use" under the Michigan Constitution, as long as the condemned land will remain publicly owned, publicly maintained, and open to public use. This remains true even if, as often occurs, one or more adjoining private property owners primarily benefit from the public improvement project and contribute to the cost of the project. Furthermore, even if there are other alternatives for the route or improvement, municipalities only need to be sure that the alternative decided upon is not fraudulent and is supported by some reasonable basis, i.e., it cannot be an arbitrary decision.

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which overruled the Court's 1981 decision in *Poletown Neighborhood Council v Detroit* -- there remained a question of whether property owners would now be able to challenge the exercise of eminent domain in every instance where some identifiable element of private economic benefit resulted from the condemnation. If left unanswered, a likely impact would have been a significant increase in the number of condemnation matters proceeding to court to assert these types of challenges (when they might have otherwise accepted good faith offers or focused on the just compensation element of a condemnation case). In turn, this would have resulted in a significant increase in the public costs of an already expensive condemnation process and added time delays for many public infrastructure projects. These combined impacts may have rendered many necessary public projects not feasible.

The *Adell* decision, however, helps to resolve this issue by drawing something of a line between cases where the ownership of the condemned property will be transferred to the use and benefit of private entities, and cases where the property is to remain publicly owned, publicly maintained, and open to public use. Under *Adell*, even if it can be established that there is some resulting private economic benefit to others, that alone will not be sufficient to challenge the public use or public necessity requirements.

¹ Secrest Wardle represented the City of Novi in the appeal of this case.

² At first blush, the Michigan Supreme Court's decision in *Hathcock* appears to be inconsistent with the United States Supreme Court's highly publicized decision in *Kelo v City of New London* issued earlier this year. However, the Supreme Court in *Kelo* emphasized that its decision extended only to whether the proposed condemnation was for a "public use" within the meaning of the Fifth Amendment to the *Federal Constitution*, and the Court, citing *Hathcock*, specifically stated that nothing in its opinion precludes individual states from placing further restrictions on their exercise of the takings power. Accordingly, most attorneys agree that *Hathcock* will still apply to these types of cases in Michigan.

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