

IN THE CIRCUIT COURT OF THE 16TH
JUDICIAL CIRCUIT OF THE STATE OF
FLORIDA IN AND FOR MONROE COUNTY

CASE NO: 2002-CA-595-K

GALLEON BAY CORPORATION,
A Florida corporation,

Plaintiff

Vs.

**BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA,**

Defendant

Vs.

THE STATE OF FLORIDA,

Third Party Defendant

ORDER GRANTING NEW TRIAL

THIS CAUSE having come on to be heard on Plaintiff's Motion for Judgment in accordance with Plaintiff's Motion for Directed Verdict or in the alternative, for a New Trial, and the court having heard argument of counsel and being otherwise advised in the premises, it is thereupon,

ORDERED and ADJUDGED that said Motion for New Trial be, and the same is hereby granted as to value of Plaintiff's property. The evidence presented by Defendant's expert MARR as to market value and as to highest and best use was essentially speculative and conjectural without foundation in objective facts which could form a basis for said opinions. MARR's testimony should have been ordered stricken in accordance with the principles set forth in *Florida Department of Transportation v. Armadillo Partners, Inc.*, (Fla. 2003) 849 So.2d 279, and *Holl v. Talcott* (Fla. 1966) 191 So.2d 45.

It is apparent to the court that because the jury arrived at a market value for the property which did not coincide with the values given by either the Plaintiff's experts or the Defendant's experts that MARR's opinion may have

been used in part by the jury in arriving at the value that the jury ultimately determined which was much higher than MARR's valuation but much lower than Plaintiff's expert opinions. Accordingly, a new trial must be ordered in this case as to highest and best use and as to fair market value.

2. Although the jury worked hard in this case and conscientiously did their duty this court, over objection of Plaintiff, permitted the jury to consider unqualified testimony of witness MARR which in retrospect was error necessitating a retrial to determine the fair market value of the subject property.
3. For these reasons, the verdict of the jury therefore is hereby vacated, set aside and declared null and void.

DONE and ORDERED in Chambers at Key West, Monroe County, Florida, this 12th day of September, 2006.


CIRCUIT JUDGE

cc: Robert Freilich, Esq.
Paul R. Golis, Esq.
Jonathan Glogau, Esq.
Derek Howard, Esq.
James S. Mattson, Esq.
Robert Shillinger, Esq.
Andrew M. Tobin, Esq.