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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE DEPARTMENT OF TRANSPORTATION)	Appeal from the Circuit Court
OF THE STATE OF ILLINOIS,)	of Cook County.
)	
Plaintiff-Appellee,)	
)	No. 10 L 50763
v.)	
)	
BANNOCKBURN STONEGATE)	The Honorable
DEVELOPMENT LLC; STONEGATE)	Alexander P. White,
PROPERTIES, NON-RECORD CLAIMANTS)	Judge Presiding.
AND UNKNOWN OWNERS,)	
)	
Defendants)	
)	
(Bannockburn Stonegate Development LLC and)	
Stonegate Properties, Defendants-Appellants).)	

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Neville and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's exclusion of expert testimony on the impact of the eminent domain taking on the defendants' development plans was affirmed, where the defendants sought to introduce such evidence solely to enhance their damages based on the taking's frustration of specific aspects of their plan.

¶ 2 In this eminent domain matter, defendants Bannockburn Stonegate Development LLC and Stonegate Properties (collectively, “defendants”) appeal from the trial court’s final judgment awarding them \$79,000.00 for the portion of their real property taken by plaintiff, the Department of Transportation of the State of Illinois. Defendants argue that the trial court erred in granting the plaintiff’s motion *in limine* to exclude the testimony of defendants’ expert, James Gibbons, on the impact of the taking on defendants’ preliminary development plan for the subject property. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 In May 2010, plaintiff filed a complaint to condemn certain real property owned by the defendants. The defendants’ property was a vacant lot of approximately 36 acres and was located at the corner of Harlem Avenue and Lincoln Highway in Matteson, Illinois (“property”). Plaintiff sought to condemn three portions of the property, totaling 0.365 acres. Two of the strips were along the frontage of Lincoln Highway, and the third was along the frontage of Harlem Avenue.

¶ 5 Prior to plaintiff’s filing of the condemnation proceedings, defendants created a preliminary development plan for the property. That plan contemplated three “anchor tenants” on the interior of the property and six outlots along the frontage of Harlem Avenue and Lincoln Highway. In 2008, the Village of Matteson annexed the property, changed its zoning to permit commercial use, and approved defendants’ preliminary development plan.

¶ 6 Following quick take proceedings,¹ the trial court found \$79,000.00 to be just compensation for the 0.365 acres of the taken property. The trial court also concluded that the

¹ “Quick-take is a proceeding within an eminent domain proceeding, whereby title and possession to property is placed in the State prior to a final determination of just compensation. [Citation.] It is a means to prevent delays to public projects and to protect the rights of a land

taking did not cause any damage to the remaining, untaken portion of the property (the “remainder”).

¶ 7 Prior to trial, both plaintiff and defendant filed motions *in limine* regarding the testimony of defendants’ expert, James Gibbons, on the issue of damages to the remainder. Plaintiff sought to exclude Gibbons’ testimony that the taking would damage the remainder because it would impair defendants’ ability to develop the property as contemplated in the preliminary development plan. According to plaintiff, evidence of damages to the remainder based on unplatted, proposed developments was inadmissible; Gibbons’ opinion on damages to the remainder was based on his blind acceptance of defendants’ representation that the preliminary development plan was the best possible use of the property; and any assessment of damages to the remainder based on the preliminary development plan would be speculative, because it has unknown what, if anything, defendants would have actually built on the property.

¶ 8 Defendants sought in their motion *in limine* to obtain a pretrial ruling that Gibbons’ testimony on damages to the remainder was admissible. Defendants argued that damages to the remainder as a result of not being able to strictly follow the preliminary development plan were not speculative, because all of the appraisers in the case agreed that the plan would have to be modified as a result of the taking, and the preliminary development plan was a carefully considered plan that was approved by the Village of Matteson.

¶ 9 In April 2016, the trial court issued an order granting plaintiff’s motion *in limine* and excluding Gibbons’ testimony regarding damages to the remainder on the basis that the preliminary development plan did not vest defendants with any rights to develop the property. The trial court did not rule on defendants’ motion *in limine* initially, causing the parties to

owner, by allowing the issue of compensation to be litigated at a later date.” *Department of Transportation v. Anderson*, 384 Ill. App. 3d 309, 314 (2008).

specifically request that the trial court do so. In June 2016, the trial court issued an order granting defendants' motion *in limine* and admitting Gibbons' testimony regarding damages to the remainder. In that order, the trial court concluded that the preliminary development plan was not speculative and was a part of the property's profile, thereby enhancing the property's value.

¶ 10 Recognizing the inconsistency in the trial court's orders, plaintiff filed a motion to reconsider, which the trial court granted. The trial court resolved the conflict by ordering that Gibbons' testimony of damages to the remainder based on the preliminary development plan be excluded from evidence at trial.

¶ 11 The record indicates that following the trial court's order on plaintiff's motion to reconsider, the parties waived their rights to a jury trial and agreed to proceed to a bench trial. The record does not contain a transcript of proceedings for a bench trial. Instead, an order entered in October 2016 states that the parties had agreed to submit the issue of just compensation to the trial court and had "submitted certain appraisals to the Court for its consideration." In its final judgment, the trial court stated that the parties "submitted certain exhibits and appraisals for the court's consideration." The trial court also stated that defendants submitted Gibbons' November 12, 2012, appraisal as an offer of proof of the testimony defendants would have presented had the trial court not granted plaintiff's motion *in limine*. The record does not reveal, however, what "certain exhibits and appraisals" were actually admitted into evidence and considered by the trial court as part of the trial. The parties' briefs on appeal are likewise unhelpful, as they each only state that the trial court considered the parties' appraisals, failing to recognize that at least five separate appraisals of the property were conducted over the years.

¶ 12 Based on whatever evidence it considered, the trial court concluded in its final judgment that \$79,000.00 represented just compensation for the portion of the property taken and that there were no damages to the remainder resulting from the taking.

¶ 13 Defendants then filed this timely appeal.

¶ 14 ANALYSIS

¶ 15 On appeal, defendants argue that the trial court erred in granting plaintiff's motion *in limine* excluding Gibbons' testimony regarding damages to the remainder. According to defendants, Gibbons should have been permitted to testify as to the damages to the remainder caused by the impact of the taking on defendants' ability to strictly follow the preliminary development plan, because such damages were not speculative and because the valuation of property does not need to be based on vested rights. Because we conclude that such evidence is incompetent and because, even if we did find error, defendants have failed to provide us with a sufficient record to determine whether such error is reversible, we affirm.

¶ 16 As an initial matter, the parties disagree over the standard of review to be applied. Plaintiff argues that an abuse-of-discretion standard is to be applied to a trial court's determination on the admissibility of evidence. *Southwestern Illinois Development Authority v. Al-Muhajirum*, 348 Ill. App. 3d 398, 401 (2004). Defendants, on the other hand, argue that because the trial court did not hear any testimony in determining whether to exclude the Gibbons' testimony, the standard of review should be *de novo*. *Townsend v. Sears, Roebuck & Co.*, 227 Ill. 2d 147, 154 (2007). We conclude that the abuse-of-discretion standard applies here for two reasons. First, defendants have failed to provide us with a sufficient record from which we can ascertain whether the trial court heard any testimony in making the determination whether to exclude Gibbon's testimony, as defendants did not provide us with a transcript of the

hearing or hearings at which the issue was addressed. Second, determinations on the admissibility of evidence do not often involve evidentiary hearings or determinations of credibility, yet the widely accepted default standard of review is abuse of discretion. Moreover, none of the cases cited by defendants in support of their position involved questions regarding the admissibility of evidence. See *id.*; *Price v. Phillip Morris Co.*, 2014 IL App (5th) 130017, ¶ 15; *In re Estate of Funk*, 221 Ill. 2d 30, 35 (2006).

¶ 17 Turning now to the merits of defendants' appeal, defendants argue that the trial court erred in excluding Gibbons testimony, because the taking's impact on their ability to implement the preliminary development plan constitutes damages to the remainder. Defendants focus on whether the alleged damages to the remainder are speculative and whether the valuation of property must be based on vested rights. We, however, may affirm the trial court on any grounds apparent in the record. *Urban Partnership Bank v. Winchester-Wolcott, LLC*, 2014 IL App (1st) 133556, ¶ 8. We note that defendants' contention was properly preserved, as they submitted Gibbons' November 12, 2012, appraisal as their offer of proof. See *People v. Andrews*, 146 Ill. 2d 413, 420-21 (1992) ("It is well recognized that the key to saving for review an error in the exclusion of evidence is an adequate offer of proof in the trial court.").

¶ 18 According to Gibbons' appraisal report, the taking would require defendants to move the outlots (which typically accommodate small strip malls, banks, restaurants, etc.) in the preliminary development plan back, further into the property. Because the size of the outlots as shown on the preliminary development plan had already been minimized as much as possible, they could not be made any smaller. Instead, to accommodate the taking, the outlots would have to be moved back, thereby reducing the parking area, which, in turn, would reduce the square footage of the anchor stores allowable under local ordinances. As a result, defendants' return on

their investment would not be as great. In addition, Gibbons stated that defendants would be required to amend the preliminary development plan to account for the taking and resubmit it to the Village of Matteson for approval. Gibbons estimated that the cost of doing this would be somewhere between \$100,000.00 and \$150,000.00.

¶ 19 Defendants argue that, despite plaintiff's contentions to the contrary, evidence of damages to the remainder as a result of the taking's impact on the preliminary development plan was admissible, because Illinois caselaw permits the admission of development plans where they are used to explain the value testimony of a witness and are not just used to enhance the property's value for purposes of the condemnation case. As our supreme court explained:

“[T]he question of whether evidence of this kind [development plans] is proper depends entirely upon the purpose for which it is offered and to which it is limited by the court. If it is offered merely as an illustration of one of the uses to which the property is adapted and it is clearly and expressly limited by the court to such object it will not be prejudicial error to admit it, but, if the object is to enhance the damages by showing such a structure would be a profitable investment, it is clearly incompetent.”

Department of Public Works & Buildings v. Lambert, 411 Ill. 183, 192 (1952); see also *Lake County Forest Preserve District v. Frecska*, 85 Ill. App. 3d 610, 618 (1980). We conclude that evidence of damages to the remainder based on the taking's impact on the preliminary development plan was inadmissible, because defendants' use of the preliminary development plan was only to show that the specific placement of the outlots in the plan would have been more profitable than their placement after the taking. Defendants do not purport to use the preliminary development plan simply as an illustration that the property is adaptable for

commercial retail use. This is especially true where all of plaintiff's experts agreed with Gibbons that the highest and best use of the property was commercial development.

¶ 20 In *Park District of Highland Park v. La Salle National Bank*, 36 Ill. App. 3d 146, 148-49 (1976), the parties agreed that the highest and best use of the property was single family residential and the only issue was the number of lots that could be developed in compliance with existing zoning laws. The plaintiff presented expert testimony that the property could be divided into five lots, while the defendant presented evidence that it could be divided into eight. *Id.* at 149. The evidence presented by the defendant was based on a plat that it had drawn up by an engineer shortly before trial. *Id.* The plat was admitted into evidence at trial, and the plaintiff argued on appeal that the trial court erred in allowing its admission. *Id.* at 150. The appellate court agreed, in part based on the fact that the plaintiff had conceded that the highest and best use of the property was single family residential and "therefore the sole purpose of introducing the plat into evidence was to enhance the damages by showing that eight single family dwellings would be a more profitable investment than five." *Id.* at 151. Accordingly, the court found such evidence to be incompetent. *Id.*

¶ 21 In *Frecka*, the plaintiff challenged the admission of defendant's exhibits demonstrating his plans to develop the property into a commercial recreational site. The appellate court upheld the trial court's admission of the plans based on the facts that the plans were merely offered to illustrate one potential use for which the property was adaptable, the defendant did not attempt to use the frustration of his specific development plan as an element of damages, and the plaintiff disputed the use of the property for commercial recreational purposes. *Frecka*, 85 Ill. App. 3d at 619-20.

¶ 22 Like in *La Salle National Bank* and unlike in *Frecska*, defendants here did not seek to introduce evidence regarding their preliminary development plan just to demonstrate the property's adaptability for commercial retail development. Instead, they sought to introduce such evidence as an element of damages, *i.e.*, that the taking would force them to relocate the outlots from their originally planned locations to further back in the property, thereby reducing the parking and allowable square footage of the anchor stores and, in turn, defendants' return on their investment. Just as the plat in *La Salle National Bank* was inadmissible because it was introduced solely for the purpose of "showing that eight single family dwellings would be a more profitable investment than five," so is evidence related to defendants' preliminary development plan, because defendants seek to use it solely to demonstrate that placing the outlots as planned in the preliminary development plan would be more profitable than moving them back to accommodate the taking. In fact, throughout their briefs on appeal, defendants repeatedly refer to their theory of damages to the remainder as being based on the impact of the taking *on the preliminary development plan*. From this alone, it is clear that defendants' intention for Gibbons' testimony regarding the preliminary development plan is not to demonstrate that the property is suitable for commercial retail development, but to demonstrate how the taking would reduce defendants' profits by frustrating the execution of the preliminary development plan.

¶ 23 That evidence regarding the preliminary development plan was not intended to simply demonstrate the property's adaptability for commercial use is further illustrated by the fact that all of plaintiff's experts agreed that the highest and best use was commercial development. The documents submitted in support of plaintiff's motion *in limine* included not only Gibbons' appraisals, but also appraisals from two experts retained by plaintiff: Roger Tibble and Francis Lorenz. Both Tibble and Lorenz, like Gibbons, concluded that the highest and best use of the

property was commercial. Given that all of the parties' experts agreed that the property was adaptable and, in fact, best suited, for commercial development, the only other reason for admitting Gibbons' testimony regarding the preliminary development plan would be to enhance the defendants' damages. Such use is not permitted. See *La Salle National Bank*, 36 Ill. App. 3d at 151 (concluding that the trial court erred in admitting a plat where the parties agreed on the adaptability of the property for single family residential development and the plat was introduced only to demonstrate that a specific plan was more profitable to the defendant than another); *Frecska*, 85 Ill. App. 3d at 619-20 (upholding the admission of development plans where the parties did not agree on the adaptability of the property for a specific purpose and where the plans were used only to demonstrate the property's adaptability, not to claim damages for the frustration of that specific plan); see also *Lambert*, 411 Ill. at 192 (stating that development plans are incompetent evidence where the intent is to "enhance the damages by showing such a structure would be a profitable investment").

¶ 24 Even if we were to agree with defendants that there was error in the trial court's exclusion of Gibbons' testimony regarding the preliminary development plan, we would be required to affirm the trial court's decision, because defendants have failed to present us with a sufficient record demonstrating that such an error was prejudicial. When seeking reversal of the trial court's order, defendants bear the burden of establishing that they were prejudiced by the trial court's error. *Leary v. Eng*, 214 Ill. App. 3d 279, 284 (1991). A trial court's erroneous evidentiary determination is not reversible unless the error was substantially prejudicial and affected the outcome of the trial. Whether this was the case requires us to examine the record for substantial prejudice. *Id.* It is incumbent upon the appellant to present a sufficiently complete record on appeal to support their claim of error, as "[a]ny doubts which may arise from the

incompleteness of the record will be resolved against the appellant.” *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 25 Here, because it is impossible to tell from the record on appeal what documents were admitted into evidence and considered by the trial court in reaching its final judgment following the bench trial, we have no way of determining whether or how the exclusion of Gibbons’ testimony prejudiced defendants or affected the outcome of the trial. Although plaintiff submitted five appraisal reports (two from Tibble, two from Gibbons, and one from Lorenz) in support of its motion *in limine*, other than the Gibbons’ reports, which were excluded, we do not know whether those same reports were admitted into evidence at trial or whether the parties submitted other, additional reports and evidence. Accordingly, we must assume that it did not prejudice the defendants or affect the outcome of the trial. See *Leary*, 214 Ill. App. 3d at 285 (concluding that any error in the exclusion of expert testimony must have been harmless in light of the insufficient trial record). Moreover, case law suggests that where the parties to an eminent domain case agree to the suitability of the property for a particular purpose, the exclusion of development plans illustrating that purpose is harmless. See *Lake County Forest Preserve District v. Vernon Hills Development Corp.*, 85 Ill. App. 3d 241, 246-47 (1980).

¶ 26 In sum, we conclude that Gibbons’ testimony regarding the effect of the taking on defendants’ ability to specifically carry out the preliminary development plan was properly excluded and because, even if the trial court did err, such error was harmless. Because of these conclusions, we need not address defendants’ contentions that the evidence was not speculative and that the valuation of the property did not need to be based on vested rights.

¶ 27

CONCLUSION

¶ 28 For the foregoing reasons, the judgment of the Circuit Court of Cook County is affirmed.

1-16-3391

¶ 29 Affirmed.