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Jury Awards Damages to Landowner and Business Tenant Because of New Intersection

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In the first case in Georgia involving a new type of intersection, Chamberlain's clients were awarded loss of land value of a prime commercial corner near outlet malls outside of Atlanta. The jury also gave the tenant, a national fast food chain franchisee, a substantial award for loss of business value.

The property at the intersection of Georgia 400 and State Route 53 in Dawsonville, Ga., is a heavily used junction that accommodates a high volume of traffic. The Georgia Department of Transportation (GDOT) had been planning for years to address the number of collisions and heavy traffic counts at the intersection. The solution was to construct a displaced left-turn intersection (DLT), which moved the left turn lanes on Georgia 400 to the left side of the intersection, immediately adjacent to the land in question.

The DLT intersection cut off direct access from Georgia 400 to the driveway next to our clients' restaurant. This driveway provided access to 70% of customer traffic, which ultimately resulted in a loss of business.

The legal matter first surfaced in 2014 when the GDOT filed a condemnation action against the shopping center behind our client's property for easements. We made claims for loss of access in that case, but both the trial court and Georgia Court of Appeals held that the property owner had no right to make claims for damages in a condemnation of interests of an adjoining property.

As a result, we then filed an action for inverse condemnation on behalf of the landowner and its tenant. The landowner sought the decrease in value to its parcel caused by the loss of access, which our appraiser determined to be \$995,000. The loss represented approximately two-thirds of the total value. The business tenant, a Wendy's franchise, sought business damages of \$586,000 less any impact caused by the closing of the Kroger grocery store, the anchor tenant of the shopping center behind our clients.

Challenges and How They Were Addressed

The GDOT contended that the loss in value to the property and the business was caused by the opening of a new "super" Kroger grocery approximately one mile away, changing tastes in food away from burgers and the loss of the anchor tenant in the

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shopping center behind our clients.

To counter the GDOT's arguments, the plaintiff's presentation included the testimony of the national franchisor's Southeastern site selection vice president, who pointed out that she would never approve a site alongside a DLT intersection because of the lack of access. Also, the owner testified that the store's sales were the highest in its history before access was closed. Finally, the GDOT's appraiser was forced to admit that there remained several successful fast food restaurants in the intersection that had right-in/right-out access, including a Burger King that had been demolished and completely rebuilt after the new grocery was built and the access to our clients' parcel closed.

The jury deliberated for two hours and returned a verdict for the full amount of the property loss and approximately 80% of the business loss. Because this was an inverse condemnation, the clients also sought their legal fees, and the jury awarded a stipulated amount for those fees.

Takeaways for Other Property Owners

The GDOT and other local governments are dealing with increased traffic by employing new types of road layouts and intersections. Impacts from those designs can hurt existing commercial property layouts, and as a result, profitability. The GDOT denied that any access was taken that would justify any compensation. When an existing intersection is to be modified, the owner should be cautious in dealing with any government agency.

The client and its tenant were represented by Chamberlain shareholder Nicholas S. Papeacos, an Atlanta-based attorney who represents property owners and business tenants involved in eminent domain matters.

