



Casino claim could reach \$400,000, city will appeal

By RICHARD HANNERS
Whitefish Pilot

The city of Whitefish could owe a casino owner in town as much as \$400,000 now that a jury has decided in favor of the casino owner.

In three 12-0 rulings July 27, the jury awarded K & R Partnership \$161,000 for land the city took to build 13th St. between U.S. Highway 93 and Baker Ave. and an additional \$15,833 for breach of contract in how it provided the Best Bet Casino paving and drainage for a new parking lot.

Sean Frampton, K & R's attorney, told the Pilot he will submit a motion to Judge Ted Lympus requesting 10 percent interest on the \$161,000 award all the way back to October 1998, as well as attorneys fees and expenses.

Frampton said interest, fees and expenses can be awarded once a jury rules in favor of a plaintiff in such cases. He estimated fees and expenses could reach \$100,000, with the total cost to the city nearing \$400,000.

After meeting in executive session Monday night, the city decided to appeal the case to the Montana Supreme Court, arguing that Lympus erred in not allowing the jury to hear about the \$130,000 in cash and land it had already given K & R, as well as the free paving, waivers for sewer and water connection fees, and setback and sign variances the city had also provided.

Frampton was successful in arguing in a pretrial motion that the cash, land and other benefits were "severance damages" and were not related to the value of the 7,234 square feet of land taken by the city to build 13th St. Lympus agreed, and the jury could only hear arguments about the land taken for the new road.

The city can also argue that a significant portion of any fees and expenses claimed by K & R were associated with K & R's \$660,000 "cost to cure" claim, which was rejected by Lympus and not heard by the jury. K & R claimed that the entire building -- which houses the Best Bet Casino and a tenant, the Dos Amigos restaurant -- had to be reconfigured because it had lost highway frontage and parking was now restricted to the back of the building.

K & R had also claimed the road construction had caused a 50-foot long crack in the cement floor and foundation, but in his pretrial decision, Lympus ruled that the cracked-cement claim was seven years old and beyond the three-year statute of limitations.

The city believed the judge's pretrial rulings were mostly in their favor and were surprised by the verdict.

Frampton, however, was confident in his case as it moved toward trial. He told the Pilot on July 8 that both sides had gotten favorable rulings.

"Nobody knows where the \$130,000 figure came from or how it was calculated," he told the Pilot before trial.

Frampton said the jury rejected opinions by both the city's and K & R's appraisers that tagged the 7,234 square feet of land taken by the city at \$8.27 per square foot. Instead, they accepted the personal testimony of Kent Frampton, Sean Frampton's father and the casino's owner, that the land was worth more like \$20 to \$25 per square foot.

Lympus' decision to allow Kent Frampton to testify like an expert witness -- using hearsay evidence about what the condemned property was worth -- is also grounds for an appeal to the Montana Supreme Court, said city attorney John Phelps.

During the trial, the city's attorney, Helena-based attorney William Driscoll, drafted a motion calling for a mistrial, saying Kent Frampton should not have been allowed to testify as to the value of the condemned property, but Lympus rejected the motion and the jury trial continued.

"The land that was taken was the heart of the property," Sean Frampton told the Pilot. "It was the best part of the property because the state, in widening Highway 93, had taken land right up to the front door, and because it provided 54 feet of highway frontage, it was highly visible from the Safeway parking lot, and it provided the only direct access to the highway."

Some court observers believed the jury was swayed by Frampton's law partner, former Montana Supreme Court justice Frank Morrison, who delivered convincing oratory on behalf of Kent Frampton. Ribs selling for \$2.50 a pound versus tenderloin selling for more than \$10 a pound was a convincing analogy for jury members, observers agreed.

For his part, Sean Frampton said he was more than happy to help out his dad.

"It was an obligatory thing to represent him in court," he told the Pilot. "After all, he put me through law school."