

STATE OF MICHIGAN
COURT OF APPEALS

COUNTY OF KALAMAZOO,

Plaintiff-Appellee,

v

JAMES BERRY, JENNIFER BERRY, JILLYNE
BLAKESLEE, RICHARD BLAKESLEE, JAMES
ENGELS, JAYNE ENGELS, CAMILLE FATH,
JAMES HEETER, JUDITH HEETER, CHERYL
JOHNSON, JAMES JOHNSON, NANCY
JOHNSON, JOYCE MCCLISH, LARRY
MCCLISH, and EDMUND TALANDA,

Defendants-Appellants.

UNPUBLISHED
September 11, 2026
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No. 367503
Kalamazoo Circuit Court
LC No. 2022-000530-CB

Before: WALLACE, P.J., and CAMERON and KOROBKIN, JJ.

PER CURIAM.

Defendants appeal by interlocutory leave granted¹ an order granting judgment to plaintiff, Kalamazoo County, on its complaint for condemnation of defendants’ property under the Uniform Condemnation Procedures Act (UCPA), MCL 213.51 *et seq.* We affirm.

I. FACTS AND PROCEEDINGS

The subject property is located at 1739 East U Avenue, Vicksburg, Kalamazoo County, Michigan. The property consists of a cottage on one-third of an acre. Defendants are descendants of the owners who purchased the property before the 1960s. The property is bounded by Prairie View County Park on the east, south, and west borders; and Gourdneck Lake on the north. Development of the park began in the early 1960s, i.e., after defendants’ family purchased the property. In 1963, defendants’ predecessors-in-interest entered into an agreement with plaintiff

¹ *Kalamazoo Co v Berry*, unpublished order of the Court of Appeals, entered March 8, 2024 (Docket No. 367503).

regarding plaintiff's intent to condemn the subject property and incorporate it into the county park. Plaintiff agreed to withdraw the condemnation action and to issue 10 keys to enable the owners to travel to the subject property when the park gate was locked. The agreement allegedly granted plaintiff a right of first refusal to purchase the subject property, but for various reasons not pertinent to the appeal, plaintiff was never able to successfully exercise this right.²

The Kalamazoo County Board of Commissioners (KCBOC) passed a resolution of necessity to condemn the subject property on April 19, 2022. The resolution states, "In order to complete and enhance the Prairie View County Park, it is necessary to acquire the Property Interests described in the attached exhibits." In accordance with MCL 213.55(1) plaintiff's counsel sent a letter of good-faith offer to defendants. Plaintiff offered a purchase price of \$320,000 to be divided among the owners. Plaintiff advised defendants that the acquisition was necessary "to finally complete its Prairie View County Park project first begun in 1962." Defendants did not accept the offer.

Plaintiff filed a complaint for condemnation on October 10, 2022. Plaintiff alleged that it sought to acquire the subject property "for public park purposes within the boundaries of the Prairie View County Park." Defendants moved for summary disposition on grounds of lack of subject-matter jurisdiction.³ Defendants argued that plaintiff failed to strictly comply with the statutory requirements for filing a condemnation action. According to defendants, plaintiff's letter of offer did not meet the statutory requirements for a good-faith written offer, and plaintiff's statement that the acquisition was necessary to "finally complete" a project it started in 1960 was vague and unsupported. Defendants denied that a plan from 1960 could plausibly serve as a basis to acquire the property more than 60 years later. The trial court denied defendants' motion and proceeded to hold an evidentiary hearing on the issue of necessity.

Defendants issued subpoenas to individual members of the KCBOC, with the intent to question them regarding their reasons for acquiring the subject property and their understanding of the existing arrangements between the park and the subject property. Plaintiff moved to quash the subpoenas on the ground that the commissioners' decision-making processes were irrelevant to the issue of necessity. After defendants' witnesses testified, the trial court concluded that the commissioners' testimony would not be probative of any issue. The court therefore granted plaintiff's motion to quash the subpoenas.

Jayne Engels began to testify that one of the commissioners suggested to her that plaintiff might rent out the cottage, but the trial court sustained plaintiff's objection to the testimony on hearsay grounds. Another witness testified that a commissioner informed him that plaintiff had a contractual right to acquire the property under the 1963 agreement.

² Plaintiff alleges that the term of the agreement was "roughly the lifespan of the then-Property Owners," and that the last "party of the second part" to the agreement passed away.

³ Defendants erroneously cited MCR 2.116(C)(1) (lack of personal jurisdiction or jurisdiction over property), instead of MCR 2.116(C)(4) (lack of subject-matter jurisdiction).

Plaintiff's parks director, David Rachowicz, testified that plaintiff's only plan for the subject property was to incorporate it into the rest of the park. Rachowicz testified regarding the difficulties with "inholdings" within a public park:

[I]t's just a conflict of use that you have, you know, a public use managed for public recreation and then you have a private property situated within the middle of that. So, the—there's just the, I guess, the normal of what you would expect as neighbor issues but in particular, it's a challenge—the other part is that, you know, you don't want a private property to disproportionately benefit from a publicly owned park and be able to use that greater park to benefit that individual parcel and not have equity that—that the park land is to be used equally by all.

Rachowicz stated that plaintiff bore a significant capital obligation to maintain the park's roads and conditions. Plaintiff was working to revert much of the park to its natural state. He stated, "how we manage that road infrastructure and being required to maintain a drive to access this property is inhibiting the use of the greater park." The process of applying for funding for these projects was complicated by the presence of privately-owned property in the park. Rachowicz admitted that there was not an "actual tangible plan" for the subject property other than to complete the park when the resolution of necessity was approved.

The trial court held that MCL 46.358 and 46.359 specifically permit a county to acquire real estate for the purpose of park creation. The court rejected defendants' argument that plaintiff's determination of necessity was based on fraud. The court held that an individual commissioner's belief that the 1963 agreement was breached was irrelevant to the decision made by the body. The court also disagreed with defendants' argument that plaintiff abused its discretion in reaching its determination of necessity because plaintiff failed to show a proposed plan in place for the subject property. The court found that Prairie View County Park's absorption of the subject property "will make the property whole." That was sufficient to demonstrate necessity. Plaintiff was not required to prove that the property would be used "for green space, a beach, a dock," or any other specific use. The court also found that a private interest that was "found in, and completely surrendered by, a public park[]" made the subject property "unique and non-conforming to the use of the parks by the general public."

The court further found that plaintiff satisfied its burden to prove by a preponderance of the evidence that the subject property would be used for a public purpose. The court concluded that "the taking is appropriate and within the County's eminent domain authority."

II. SUBJECT-MATTER JURISDICTION

Defendants argue that the trial court did not acquire subject-matter jurisdiction over plaintiff's condemnation action because plaintiff did not comply with the jurisdictional requirements of the UCPA. "We review de novo the interpretation and application of the UCPA, as well as the question of whether a trial court has subject-matter jurisdiction." *Indiana Mich Power Co v Community Mills, Inc*, 336 Mich App 50, 53; 969 NW2d 354 (2021) (*IMPC*). "MCR 2.116(C)(4) provides for summary disposition when the court lacks jurisdiction of the subject matter." *Id.* at 54 (quotation marks and brackets omitted). "When viewing a motion under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that the defendant was

entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact.” *Id.* (quotation marks and citation omitted).

As a threshold matter, plaintiff argues that defendants cannot raise this issue on appeal because they failed to file a claim of appeal within three weeks of the June 2, 2023 order denying defendants’ motion for summary disposition. We disagree. Defendants are free to challenge the June 2, 2023 order in its appeal of the final August 4, 2023 judgment. *Dean v Tucker*, 182 Mich App 27, 31; 451 NW2d 571 (1990) (a party may “raise any issue, including issues related to other orders in the case” in an appeal from the final order). Additionally, “[c]hallenges to subject-matter jurisdiction cannot be waived, and a court must entertain such challenges regardless of when they are raised, or even raise such challenges sua sponte.” *O’Connell v Dir of Elections*, 316 Mich App 91, 100; 891 NW2d 240 (2016).

The UCPA imposes requirements that a government agency must satisfy when initiating condemnation proceedings to acquire private property. MCL 213.55(1) requires the agency to submit a good-faith written offer to the owner:

Before initiating negotiations for the purchase of property, the agency shall establish an amount that it believes to be just compensation for the property and promptly shall submit to the owner a good faith written offer to acquire the property for the full amount so established. . . . The amount shall not be less than the agency’s appraisal of just compensation for the property. [MCL 213.55(1).]

If the owner and agency do not reach an agreement for the purchase of the property after the agency makes such a good faith written offer, “the agency may file a complaint for the acquisition of the property in the circuit court in the county in which the property is located.” *Id.* “The complaint shall ask that the court ascertain and determine just compensation to be made for the acquisition of the described property.” *Id.*

MCL 213.55(4) additionally requires that the complaint for condemnation “shall contain or have annexed to it,” among other things: “(a) A plan showing the property to be taken[; and] (b) A statement of purpose for which the property is being acquired, and a request for other relief to which the agency is entitled by law.” “In order to initially invoke the trial court’s jurisdiction, strict compliance with the statutory language of the UCPA requires that the fee owners and any other owners of legal property interests be given a good-faith offer.” *IMPC*, 336 Mich App at 56 (quotation marks, citation, and brackets omitted).

Because a good-faith written offer is a necessary condition precedent to invoking the trial court’s jurisdiction in condemnation proceedings under the UCPA, the failure to tender a statutorily compliant good-faith written offer to all fee owners and any other owners of interests in the properties renders the trial court without subject-matter jurisdiction over the action. [*Id.* at 56-57 (brackets omitted).]

Our Supreme Court recognized the “strict compliance” standard as early as 1867:

The rule is well settled, that in all cases where the property of individuals is sought to be condemned for the public use by adverse proceedings, the laws which regulate

such proceedings must be strictly followed, and especially that every jurisdictional step, and every requirement shaped to guard the rights and interests of parties whose property is meant to be taken, must be observed with much exactness. [*Detroit Sharpshooters' Ass'n v Hwly Comm'rs of Hamtramck*, 34 Mich 36, 37-38 (1876).]

“Michigan’s appellate courts have approvingly reaffirmed this language ever since.” *Bd of Co Rd Comm'rs for Washtenaw Co v Shankle*, 327 Mich App 407, 412; 934 NW2d 279 (2019). “In concluding that the good-faith offer is a jurisdictional requirement, this Court has not hesitated to dismiss condemnation actions for want of subject-matter jurisdiction when there was no good faith written offer.” *Id.* at 415.

Defendants allege that that plaintiff’s good-faith written offer and complaint failed to invoke the trial court’s subject-matter jurisdiction because they were defective. Defendants state that the letter of offer “failed to identify a plan for the subject property” because it made only “vague, unsupported, allegations related to” completion of the Prairie View County Park project that began in 1962. Defendants allege that plaintiff failed to disclose how it would use the subject property, or why it was necessary to “complete” a park that had been in existence for 60 years. Defendants also suggest that plaintiff was required to provide a copy of the 1960 plan.

Defendants rely on *Shankle*, in which the defendants argued, among other things, that the trial court never acquired subject-matter jurisdiction because the plaintiff failed to identify and serve at least four interest holders of record with its good faith written offer, thereby failing to accomplish strict compliance with the UCPA. *Shankle*, 327 Mich App at 410. This Court agreed that this failure to serve these interest holders meant that there had not been strict compliance with UCPA and the trial court’s subject-matter jurisdiction had not been properly invoked. *Id.* at 416-417. This Court rejected the plaintiff’s argument that it was unnecessary to include the four interest holders because they were either unaffected by the condemnation or were partners in the proposed development. *Id.* “Whether and to what extent the interests of those owners may (or may not) be affected is a matter that may properly be considered by the trial court, but only *after* the trial court’s jurisdiction is properly invoked.” *Id.* at 417. Under this standard, the plaintiff “failed to strictly comply with the statutory requirements,” and “the trial court never acquired subject-matter jurisdiction.” *Id.* Therefore, the trial court’s only permissible action was to dismiss the case. *Id.*

The *Shankle* Court further found additional deficiencies in the good-faith offer served on two of the defendants, who received only a document entitled “Compensation Estimate Market Study,” which failed to contain all of the language necessary to constitute a good-faith written offer under the UCPA. *Id.* at 417-418. The document did not contain the required statement concerning the agency’s reservation or waiver of the right to compensation related to release of hazardous substances at the property. *Id.* at 418. Additionally, “nothing in the one-page document suggested that it was a written offer to purchase property for a specific sum and not simply an in-house appraisal or estimate.” *Id.* The Court concluded that the plaintiff’s “failure to tender a statutorily compliant good-faith written offer to all fee owners and any other owners of interests in the properties rendered the trial court without subject-matter jurisdiction over the action.” *Id.*

In the instant case, defendants’ only allegation of defect in the good-faith offer was the omission of information regarding plaintiff’s plan for the subject property. MCL 213.55(1) does not state that good-faith written offers must contain the plan; rather, MCL 213.55(4) states that,

“[i]n addition to other allegations required or permitted by law, the *complaint* shall contain or have annexed to it all of the following: (a) A plan showing the property to be taken.” (Emphasis added). Defendants do not cite any authority requiring inclusion of the plan in the good-faith written offer. “A court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself.” *Dye v Esurance Prop & Cas Ins Co*, 504 Mich 167, 180; 934 NW2d 674 (2019) (quotation marks, citation, and brackets omitted). Plainly, the text of MCL 213.55(1) does not require the good-faith offer to contain a plan.

That said, defendants argue that the complaint is defective under MCL 213.55(4), which not only requires the complaint to contain or have annexed a plan showing the property to be taken, but also requires “[a] statement of purpose for which the property is being acquired, and a request for other relief to which the agency is entitled by law.” MCL 213.55(4)(b). The complaint states:

7. The County is seeking to acquire the Property Interests in the Subject Property and use the Subject Property for public park purposes within the boundaries of the Prairie View County Park. The Subject Property is landlocked being surrounded on three sides by Kalamazoo County-owned park land, and cannot be accessed without traversing over public lands owned by the County. (See Declaration of Taking attached as **Exhibit 1**.)

8. The Property Interests are necessary for the purpose of completing the acquisition of a public park project begun in 1960.

Plaintiff attached the Declaration of Taking, which states that the subject property is a “landlocked parcel . . . located adjacent to and within the boundaries of the Prairie View County Park” and that plaintiff needs the property “for use as a County park” for “the use and benefit of the citizens of the county.” A legal description of the subject property is included with the Declaration of Taking. Plaintiff also attached the resolution of necessity, which states that the subject property “is necessary to enhance the public interest as County Park lands[.]” Additionally, Exhibit 3 to the complaint is a survey map showing the subject property and the surrounding park area.

Defendants acknowledge that the UCPA does not define the term “plan,” but they quote a dictionary definition, “[t]he representation of anything on a flat surface; sketch; scheme; project; method; process.” *Webster’s Dictionary & Roget’s Thesaurus, Abridged Edition* (2006). Defendants argue that under this definition, “the County was required to include the representation of a scheme or project for the property with its complaint.” First, as plaintiff argues, the rest of the subject phrase is necessary to provide context for what the statute requires. Again, that phrase says, “[a] plan showing the property to be taken.” Plainly, the phrase refers to something that *shows* or, in other words, *depicts* the property that the government proposes to take. Based on their argument, plaintiffs essentially ask this court to rewrite that phrase to say “a plan for the use of the property to be taken.” Again, this Court will not read additional terms into an unambiguous statute. *Dye*, 504 Mich at 180. There is no real dispute that the complaint or its attachments show and depict the property to be taken. Second, even if we accepted plaintiffs’ argument regarding the meaning of the word “plan” in MCL 213.55(4)(a), we note that, in the dictionary definition proffered by plaintiffs, the items “representation . . . on a flat surface,” “sketch,” “scheme,” “project,” “method,” and “process” are separated by semicolons, indicating that each item serves as an independent definition or example of a “plan.” It is generally understood that a semicolon

“is a punctuation point used to make the division of a sentence somewhat more independent than that marked by a comma[.]” *Park Bldg Co v George P Yost Fur Co*, 208 Mich 349, 359; 175 NW 431 (1919); see also *People v Lydic*, 335 Mich App 486, 494 n 5; 967 NW2d 847 (2021). The intent to use property for a park, along with a map illustrating the location of the subject property in relation to the park, can be fairly described as a “scheme” or “project.” Thus, plaintiff satisfied this jurisdictional requirement of MCL 213.55(4).

III. PUBLIC USE

Defendants argue that plaintiff failed to demonstrate that it would use the subject property for a public use. Plaintiff argues that this issue is not preserved, because defendants did not raise it in the trial court. *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, 347 Mich App 280, 289; 14 NW3d 472 (2023). However, we disagree with plaintiff’s assertion and find that defendants did in fact raise this issue multiple times in the trial court.⁴

In condemnation proceedings, the trial court’s factual findings are reviewed for clear error, while its legal conclusions are reviewed de novo. *Novi v Robert Adell Children’s Funded Trust*, 473 Mich 242, 248-249; 701 NW2d 144 (2005). Findings of fact are clearly erroneous when this Court “is left with a definite and firm conviction that a mistake has been made.” *In re Estate of Huntington*, 339 Mich App 8, 17; 981 NW2d 72 (2021) (quotation marks and citation omitted).

“Private property shall not be taken for public use without just compensation therefore being first made or secured in a manner prescribed by law.” Const 1963, art 10, § 2. “‘Public use’ does not include the taking of private property for transfer to a private entity for the purpose of economic development or enhancement of tax revenues.” *Id.* “In a condemnation action, the burden of proof is on the condemning authority to demonstrate, by the preponderance of the evidence, that the taking of a private property is for a public use, unless the condemnation action involves a taking for the eradication of blight” *Id.* Plaintiff offered proof that the subject property would be incorporated into the county park. This evidence satisfied plaintiff’s burden of proof, because a county park is clearly a public use. Defendants argue, however, that the trial court could not rule out the possibility of nonpublic use.

“Any public corporation or state agency is authorized to take private property necessary for a public improvement or for the purposes of its incorporation or for public use and to institute and prosecute proceedings for that purpose.” MCL 213.23(1). “A taking of private property for public use, as allowed under this section, does not include a taking for a public use that is a pretext to confer a private benefit on a known or unknown private entity.” MCL 213.23(6). “Under MCL 213.23, a condemnation must be ‘necessary’ for one of three ends: ‘a public improvement or for the purposes [to be advanced by the public corporation or state agency’s] incorporation or for public purposes within the scope of [the corporation’s or agency’s] powers’” *Wayne Co v*

⁴ Further, in any event, this Court may nonetheless review an unpreserved issue “if the failure to consider the issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented.” *Tolas Oil*, 347 Mich App at 289-290.

Hathcock, 471 Mich 445, 456-457; 684 NW2d 765 (2004) (alterations in original). *Hathcock* defined “public purpose”

as that which has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the municipal corporation, the sovereign powers of which are used to promote such public purpose. [*Id.* at 462 (quotation marks and citation omitted).]

A public park is clearly a public-purpose use of real property. MCL 123.61 permits local governments to purchase or acquire by condemnation real estate for the purpose of a public park. MCL 123.64 authorizes counties to levy an ad valorem property tax for the purposes of buying and maintaining property for use as a public park.

Rachowicz’s testimony that the subject property will be incorporated into the surrounding county park was sufficient evidence of plaintiff’s plan for public use. Defendants argue that a commissioner indicated that plaintiff might use the cottage as rental property. This statement refers to Engel’s testimony at the evidentiary hearing regarding a discussion she had with a commissioner, who “came up with those ideas off the top of her head that maybe we’ll rent this cottage.” However, the trial court sustained plaintiff’s hearsay objection to this testimony. Defendants argue that if they had been able to develop this testimony, they may have been able to rebut plaintiff’s evidence regarding public use of the subject property. This argument is based entirely on speculation and therefore lacks merit.⁵ We address below the issue whether the trial court erred in quashing the subpoenas.

IV. NECESSITY

Defendants challenge the trial court’s conclusion that plaintiff demonstrated the necessity of acquiring the subject property. In appeals of the trial court’s ruling on a property owner’s challenge to the defendant’s determination of necessity in condemnation proceedings, the trial court’s factual findings are reviewed for clear error, while its legal conclusions are reviewed de novo. *Novi*, 473 Mich at 248-249.

“MCL 213.56 allows the owner of the property to be taken to challenge the necessity of acquisition of all or part of the property for the purposes stated in the complaint by filing a motion asking that the necessity be reviewed.” *Consumers Energy Co v Storm*, 509 Mich 195, 198; 983 NW2d 397 (2022) (quotation marks and citation omitted). “With respect to an acquisition by a public agency, the determination of public necessity by that agency is binding on the court in the absence of a showing of fraud, error of law, or abuse of discretion.” MCL 213.56(2). “[T]he party opposing condemnation bears the burden of proving fraud, error of law, or abuse of discretion by the condemning authority.” *Hathcock*, 471 Mich at 466. Under MCL 213.56, “the determination of necessity is left not to the courts but to the public agency” *Novi*, 473 Mich at 253. “There can be no judicial review of the decision to make an improvement.” *Troy v Barnard*, 183 Mich

⁵ To be clear, this opinion does not address the issue of whether the definition of public purpose would include plaintiff renting the cottage. That issue is not before this Court because no admissible evidence was introduced indicating that the county intends to do so.

App 565, 569; 455 NW2d 378 (1990), abrogated in part on other grounds *Novi*, 473 Mich at 249 n 4. “However, the court may review the necessity of acquiring some or all of the property involved by considering whether the land in question is reasonably suitable and necessary for the contemplated project and whether the condemning agency needs to take this particular property.” *Barnard*, 183 Mich App at 569. The government’s “resolution of necessity is prima facie evidence of necessity and fulfills its initial burden of proof.” *Id.* “An abuse of discretion occurs when an unprejudiced person considering the facts upon which the decision was made would say that there was no justification or excuse for the decision.” *Novi*, 473 Mich at 254.

Defendants argue that the trial court abused its discretion by failing to make a “baseline judicial determination” that the taking was for a valid public use. They also characterize this omission as the trial court having “abdicated any judicial review.” Defendants’ claim that plaintiff failed to demonstrate an intent for public use is predicated upon their claim that plaintiff has never provided a plan for the subject property. However, the trial court found that plaintiff would commit the subject property to public use by incorporating it into the county park. As discussed under Section III, defendants’ argument that plaintiff failed to demonstrate a public use for the property is supported by evidence is without merit.

Defendants also argue that the court abused its discretion in finding that plaintiff needed the property to complete a plan begun in the early 1960s. They rely on *Bd of Ed of Grand Rapids v Baczewski*, 340 Mich 265, 267-268; 65 NW2d 810 (1954), in which the plaintiff school board sought to acquire the defendant’s property for the purpose of building a high school. The plaintiff had no immediate plan to build the high school but anticipated beginning the development “at some indefinite time in the future” when the existing school became inadequate. *Id.* The Supreme Court concluded that the then-existing constitutional requirement of necessity, Const 1908, art 13, § 2, “does not mean an indefinite, remote or speculative future necessity, but means a necessity now existing or to exist in the near future.” *Id.* at 269. Analogizing to *Baczewski*, defendants argue that plaintiff’s “original vision from 1960 cannot plausibly form the basis to acquire property over 60 years later.” This argument is unconvincing because plaintiff intends to presently incorporate the subject property into the park. Plaintiff presented evidence that the location of a private residence surrounded by park property has interfered with management of the park. Rachowicz testified that the park needed capital improvement projects to repair aging infrastructure and to fulfill plans to restore parkland to its natural state. The process of applying for funding for these projects was complicated by the presence of privately-owned property in the park.⁶

Again, the determination of necessity is not left to the courts, it is left to the public agency. *Novi*, 473 Mich at 253. Defendants have failed to demonstrate that the determination made by defendant was based on fraud or error of law under MCL 213.56(2), as discussed above. With regard to the abuse of discretion standard under MCL 213.56(2), we find that defendant has not

⁶ Defendants emphasize that plaintiff wrongly described the subject property as “landlocked.” However, Rachowicz testified that defendants have to traverse park land to get to the cottage. Joyce McClish admitted that defendants needed gate keys issued by plaintiff to drive to the cottage when the park gate was locked.

demonstrated that “an unprejudiced person considering the facts upon which the decision was made would say that there was no justification or excuse for the decision.” *Novi*, 473 Mich at 254. The above-referenced evidence showed that the location of the property, which included a private residence, interfered with management of the park, and that the process of applying for funding for park improvement was complicated by the presence of the privately-owned property. Thus, this evidence established that plaintiff had a present necessity to acquire the subject property.⁷

V. SUBPOENAS

Defendants argue that the trial court’s order quashing the subpoenas to commissioners prevented them from disproving plaintiff’s claimed necessity of the taking. Defendants frame this issue as one concerning discovery, but it primarily relates to the evidentiary question of whether the commissioners’ testimony would have been relevant. A trial court’s evidentiary decisions, including its grant or denial of discovery, are reviewed for abuse of discretion. *Mitchell v Kalamazoo Anesthesiology, PC*, 321 Mich App 144, 153; 908 NW2d 319 (2017); *Micheli v Mich Auto Ins Placement Facility*, 340 Mich App 360, 367; 986 NW2d 451 (2022). “A trial judge abuses his or her discretion when the judge selects an outcome that is outside the range of principled outcomes.” *Mitchell*, 321 Mich App at 153-154. The trial court’s interpretation and application of the rules of evidence to the facts are reviewed de novo. *Id.* at 154.

“All laws and court rules applicable to civil actions shall apply to condemnation proceedings except as otherwise provided in [the UCPA].” MCL 213.52(1). Although defendants discuss this issue in terms of discovery, the question of whether defendants should have been permitted to call commissioners to testify is a question of the admissibility of such evidence. The trial court quashed the subpoenas on the ground that defendants had not demonstrated that the commissioners’ testimony could be relevant. Relevant evidence is generally admissible, and irrelevant evidence is inadmissible. MRE 402. At the time of the hearing,⁸ MRE 401 provided that relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”

Once again, the trial court’s review of the condemning agency’s decision is limited to whether the resolution of necessity is based on fraud, error of law, or abuse of discretion. MCL 213.56(2); see also *Barnard*, 183 Mich App at 569. The court looks only at the resulting outcome, without reviewing the decision-making process. *Novi*, 473 Mich at 254. “A county board speaks

⁷ Rachowicz also stated that the presence of private property in the park created unfairness because defendants benefited from the expenditure of public resources to maintain the park, but members of the public were excluded from defendants’ property. We find that argument to be without merit because such testimony did not provide evidence of necessity. That said, we note that defendants’ family owned the property before a park was ever created. There has been no evidence introduced in this matter indicating that their predecessors-in-interest ever wanted a park to be built around their property. In fact, just the opposite is true—there has been extensive litigation pertaining to the property and the park.

⁸ The Michigan Rules of Evidence were amended effective January 1, 2024.

only through its official minutes and resolutions and their import may not be altered or supplemented by parol evidence regarding the intention of the individual members.” *46th Circuit Trial Court v Crawford Co*, 266 Mich App 150, 161; 702 NW2d 588 (2005), rev’d on other grounds 476 Mich 131 (2006). Individual commissioners’ motives in adopting the resolution or their understanding of why county leaders wanted the acquisition cannot logically serve as proof that the agency’s decision was based on fraud, error of law, or abuse of discretion, absent some other evidence of same. Because there was no such evidence admitted in this matter, we cannot hold that the trial court erred by quashing the subpoenas and preventing defendants from presenting the commissioners’ testimony.

Affirmed.

/s/ Randy J. Wallace
/s/ Thomas C. Cameron
/s/ Daniel S. Korobkin