

Use of Economic Evidence in Condemnation Cases

ROBERT F. CARLSON, *Attorney, Division of Contracts and Rights of Way, California Department of Public Works*

• The use of economic data opens up several new possibilities in the proof of value in condemnation cases. In California we have found two types of studies pertinent to our right-of-way acquisition activities: (a) studies of the rate of absorption of property within a developing area, and (b) studies of the sales of remainders after land for right-of-way purposes has been severed.

Our interest in the rates of absorption of property is linked to experience with freeway construction. Whenever we start to acquire right-of-way for a freeway, invariably everyone thinks his property is ideally suited for subdivisions, bowling alleys, motels, service stations, and the like. They approach negotiations accordingly, and, more often than we like, we find our differences must be taken to the courts for settlement.

Of course, not every piece of property through which we lay out a freeway is suitable for these types of premium uses. And, not even all the suitable land will eventually be put to these uses. The question is, how can this be proved to a jury?

In an effort to deal more successfully with this problem of proof we have developed what we call "rate of absorption studies" consisting of information relating to the actual growth and pattern of land use that has developed in some of our freeway communities. The use of this type of evidence in court has been approved by the California Appellate Court in *People v. Murray*, 172 Cal. App.2d 219, 342 P.2d 485 (1959).

The other type of economic study we have used deals with the experience that has been recorded when severed remainders have been resold

on the market following construction of a highway improvement. Earlier in this workshop Mr. Levin mentioned a plan to create a "bank" of data regarding remainders to be drawn from cases reported from all over the country. We have created such a bank in California and now have on file data relating to approximately 1,000 parcels of land.

These data are potentially very useful, but to date we have had some difficulty educating our ninety attorneys who do right-of-way work for the Division of Highways as to how this material can be used in trial work. We have made it a point to have a set of these remainder sales studies in each one of our offices, and have the attorneys review this material periodically.

I suspect that most participants at this workshop have had problems getting outside appraisers to testify to benefits. Generally these appraisers will admit that there are benefits, and that they are desirable for the property, but rarely do they feel that they are able to place a dollar value on this item. Appraisers hate to guess, and naturally they want some concrete facts that will help them arrive at a justifiable "after value" figure for the remainder. We feel that the use of severance damage studies may be helpful in overcoming this obstacle to appraisals. We have printed up our studies and mailed them out to our appraisers. When preparing for a condemnation trial we go over the appraisal testimony that will be given, and see where the data we have available may help the appraisers arrive at some definite figure for the benefits that the land will receive.

The use of this type of datum in a condemnation trial is to a great extent dependent on each State's law of evidence. Rules of relevancy and rules relating to hearsay are, however, fairly generally settled. Most States, I think, are like California, and would not allow these economic data to come into the case as direct evidence of value. They would, however, treat it as admissible to support a witness' testimony as to his opinion of the value of land. In California we have the rule that our appraisal witnesses may testify regarding these severance damage studies and use them as reasons for their opinion of the "after value" of property.

In California we have published several compilations of data on remainder sales. When we use them we try to select data pertaining to land in the same county as that in which the land being condemned is located. This is important to the weight given to this evidence. Because of this factor, remainder studies may be best when they are conducted with a local scope, and, perhaps, organized county by county.

Returning to the problems of admissibility, I might mention a recent article on the use of economic evidence written by Sidney Goldstein.¹ It is an excellent article summarizing

the law relating to admissibility of economic evidence in right-of-way acquisition cases, and discussing at length the problems of relevancy and hearsay that must be considered here. Harrison Lewis, Assistant Attorney General for the State of North Carolina, has also written an excellent paper on the practical uses of economic evidence in right-of-way litigation.² In California we use the State highway division's magazine, published every two months, to publicize the studies we make. This not only has an educational value, but it performs a public relations function for us.

What has been done and what has been written to date clearly indicates that there are certain situations in which trial counsel may use economic data with advantage. They never will, of course, take the place of a good appraiser testifying on the witness stand; but they may help the appraiser witness give good testimony when he takes the stand. Therefore, if we are to find out the full potential of these various types of studies we should settle the rules of evidence relating to what is admissible and what is not. In some cases this may be a situation that should be clarified by legislation.

¹ Goldstein, S., "Economic Evidence in Right-of-Way Litigation." 50 Geo. L. J. 205 (1961), based on a paper of the same title in HRB Bull. 343 (1962).

² Lewis, H., "Practical Uses of Economic Studies in a Condemnation Trial." Paper presented at American Right-of-Way Association, 8th Annual National Seminar (May 21, 1962).