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LAND ACQUISITION
Memorandum

JUNKYARD LAW HELD TO BE CONSTITUTIONAL AS A VALID EXERCISE OF THE POLICE POWER. Joe Deimeke, d/b/a Thompson Auto Sales v. State Highway Commission, 444 S.W. 2d 480 (Supreme Court of Missouri, Division No. 2, September 8, 1969).

For 11 or 12 years, the plaintiff has operated a garage, wrecker service and junkyard on a tract of land located on Highway 22, a State primary road, about five miles west of Mexico, Missouri. The tract has a frontage on the highway of one hundred yards and is approximately five hundred yards deep.

The Missouri Act that was challenged provides that no person shall establish or operate a junkyard, any portion of which is within one thousand feet of the nearest edge of the right of way of any interstate or primary highway, without first obtaining a license from the State Highway Commission, and confers authority on the Commission to issue licenses. The law limits the granting of licenses to four specified categories; it also provides that junkyards "lawfully in existence on August 4, 1966" but which are within one thousand feet of and are visible from the highway, are to be screened, if feasible, by the State Highway Commission at its expense. This law also permits the Commission to acquire by condemnation or otherwise all interests in land necessary to secure the relocation, removal, or disposal of junkyards when adequate screening of such existing junkyards is not economically feasible or possible. Sections 226.650-226.720, 226.670, 226.680 RSM. 1967 Supp., V.A.M.S.; Section 229.180 RSM. 1959, V.A.M.S.; V.A.M.S. Const. art. 1, sections 10, 26.

The Plaintiff, under protest, applied on August 2, 1966, to the State Highway Commission for a license for his junkyard. A license was denied and this suit followed.

The court noted earlier cases which held that aesthetic considerations alone do not warrant the use of police power but decided that our changing society recognizes that offensive and unsightly conditions do have an adverse effect on people and that beauty and attractive surroundings are important factors in the lives of the public. The general welfare is promoted by action to insure the presence of such attractive surroundings.

This declaratory judgment action asked for determination that junkyard licensing statute was unconstitutional and asked that the State Highway Commission be enjoined from enforcing provisions of the Act. The Circuit

Court found the Act to be constitutional and denied injunctive relief. The operator of the junkyard appealed. The Supreme Court held that insofar as statute provides for screening of nonconforming junkyards adjacent to highways at expense of State Highway Commission and for condemnation of such property if adequate screening is not feasible, the statute is a proper exercise of police power.

THE FUNCTION OF THE TRIAL COURT WAS TO DETERMINE THE DAMAGES TO THE LOTS DESIGNATED IN THE PETITION. Minnesota vs. McAndrews, 286 Minn. 115, 175 NW2d 492 (Minnesota Supreme Court, February 6, 1970).

This was an appeal from a pre-trial order of the District Court designating the lots damaged as a result of a condemnation proceeding instituted by the State for highway purposes.

The landowners claimed that there were additional lots damaged and asked the trial court to submit the issue of damages to those lots not designated in the petition, to the jury. The trial court held that the time for objection to the designation of lots damaged by loss of access was at the time the State filed its petition for condemnation. The Supreme Court affirmed the order of the trial court and held that the only function of the trial court was to determine the damages to the lots designated in the petition. The Supreme Court further held that the landowners may seek a writ of mandamus in order to recover damages to lots not described in the petition, and the landowner had not waived its rights for compensation for such damages.

TRIAL COURT'S ORDER UPHELD AUTHORIZING A CITY TO CONDEMN 10 ACRES OF LAND OUTSIDE THE CITY FOR A STORM SEWER HOLDING POND. City of St. Cloud vs. Paffenfus, 286 Minn. 223, 176 NW2d 85 (Minnesota Supreme Court, February 27, 1970).

Landowner petitioned the Supreme Court of Minnesota to review the propriety of a District Court order authorizing the City of St. Cloud to condemn 10 acres of appellant's land for a storm sewer holding pond. It was the landowner's contention that the City had no authority to condemn land outside the City and could not proceed without a coordinated master plan and approval of the State Water Resources Board. The trial court and the Supreme Court held that under the applicable Minnesota statutes the taking was necessary and for a proper public purpose; and the City was under no obligation to seek the approval of any other governmental agency. In addition, the Court held that failure to join the respondent's wife as a party to the action was not a fatal defect since respondent was to receive 100 percent of the fair market value of the property which would include the wife's inchoate interest.

TEMPORARY REROUTING OF TRAFFIC FLOW HELD NOT TO BE UNREASONABLY CIRCUITOUS. Gibson vs. Commissioner of Highways, 178 NW2d 727 (Minnesota Supreme Court, July 3, 1970).

Landowner appealed from the judgment of the District Court denying his application for a writ of mandamus to compel the Highway Department to reopen a condemnation proceeding. Landowner had an on-sale liquor license and liquor business near the highway construction in Minneapolis. During the highway construction, the Highway Department temporarily closed the streets in the area, resulting in an alteration of the flow of traffic, and public access to the appellant's property became circuitous. The trial court concluded as a matter of law that appellant failed to make a prima facie case of a "taking" in the case. There was no actual physical taking of appellant's property. The Supreme Court affirmed, stating:

"The test which applies in cases of this kind is whether the alteration of traffic flow due to the closing of certain roadways leading to a property owner's property causes access to such property to become unreasonably circuitous. A property owner has no vested interest in the continued flow of the main stream of through traffic. Rather, the only features of highway construction which may form the basis for the payment of compensation for damages to access are those features dealing with access from an abutting owner's property to the main traveled lanes."

The Minnesota Supreme Court held that there was no evidence that the appellant's access was altered, acquired, diminished or interfered with and there was no "taking" within the meaning of the Statute.

LEGAL APPLICATION OF APPRAISAL TECHNIQUE IN THE VALUATION OF FIXTURE REALTY

Excerpted from a presentation made before Seminar of Maryland Chapter, American Institute of Real Estate Appraisers--October 20, 1970--by Joseph D. Buscher, Special Assistant Attorney General for State Roads Commission of Maryland.

If I were asked to lay down some legal principles for an appraiser of machinery and equipment attached to an operating plant or factory, I would advise the appraiser that the law in Maryland is still substantially as set forth in the case of Baltimore v. Himmel, 135 Md. 66, a 1919 case, which was recently reaffirmed in Ridings v. State Roads Commission, 249 Md. 395-1968. I would point out, however, that in the Ridings' case one of the questions involved the evaluation of certain kitchen and bar equipment and the court did not specifically rule whether or not they were fixtures. There were certain stipulations by counsel in that case which must be considered. The rule in the Himmel case is, in effect, that the owners are entitled to just compensation for the property taken and that just compensation is the present fair market value of the land as enhanced by the

the buildings and fixtures upon it. I would further advise the appraiser that in a case where the highest, best and most profitable use as an integrated industrial plant is established, consideration must be given to the mental processes taking place in the mind of a hypothetical, knowledgeable and uncoerced buyer. The market would be limited, perhaps, to individuals or corporate entities involved in--and knowledgeable with regard to--this type of enterprise. In considering the purchase of a going manufacturing plant, investigation should be made concerning demand for the product, location with reference to the market, type and availability of labor--along with the productive characteristics of the machinery contained therein--as compared with the price and productivity of new equipment producing the same or a better product.

To assemble all this information in one coordinated report is usually an expensive and time-consuming endeavor. A joint conclusion must finally be reached--which does not involve the summation of value in place for individual items of machinery added to the value of the buildings and land, but rather the value of the land as enhanced, if at all, by the buildings and the productive characteristics of the machinery and equipment located therein. I would advise the appraiser that this may be a difficult task. It would probably require the cooperation and expertise of several disciplines such as industrial engineering consultants and professional real estate appraisers. It may be expensive. But if a reasonable and common sense answer is found it will be worth it. I would further advise the appraiser that it would appear there is a tendency to leave the traditional formula of willing buyer--willing seller in favor of the test: "What has the owner lost?" This trend takes us into an area where the conventional legal relationship tests, such as removability, which delineates personal and real property in vendor/vendee, mortgagor/mortgagee, lessor/lessee relationships are not applicable. This seems to make good sense, if for no other reason than the obvious differences in the relationship and character of a proceeding involving a condemning authority and a condemnee. The appraiser should not lose sight of the fact that the owner of the property being condemned is not a willing seller and the appraiser should always be mindful of the courts' admonition in the Michigan rule as stated in the Drake case which is "the determination of value in condemnation proceedings is not a matter of formula or artificial rules but of sound judgment and discretion based upon a consideration of all relevant facts in a particular case". I would, in conclusion, advise the appraiser that if he, in cooperation with experts in other disciplines, does not find a reasonable and common sense answer, the courts will surely find some answer. It is submitted that this is borne out by a study of the court decisions mentioned in the full text of this paper. And it is, with all due respect, suggested that the answers found by the courts may very well not be the best answers.