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LAND ACQUISITION
MEMORANDUM #190

190-1 SEVERANCE DAMAGES -- NOISE, INCONVENIENCE, ETC.

Where only a portion of a tract of land is taken, the condemnee is entitled to compensation for any severance damages caused to the remaining portion of his land as a result of the taking. While compensation is not payable for personal inconvenience, most cases hold that loss of privacy and view, or traffic, noise and vibration are compensable if they have a harmful effect on the value of the remaining property. Some courts, however, will not compensate owners for these injuries on the ground that these factors are common to all landowners in the area.

A Louisiana court of appeal ruled that the condemnee's witnesses had proved that the value of the remaining property would decrease due to the proposed construction of an electric transmission line on the easement area that was acquired. The court stated that severance damages arising from discomfort, disturbance, worry and injury to business were not per se compensable unless it was shown that there had been a diminution in the market value of the property which remained after a taking; nor was it proper to award severance damages because of sentiment or esthetic considerations.^{1/}

The Supreme Court of Missouri held that noise, speed, increased traffic and their resulting inconveniences were not elements of damage because they were shared by all who resided in the neighborhood; however, even though inconvenience in carrying on the condemnees' farming operations was not an element for which they could be compensated, this factor, with other factors (such as dividing the land into eight parcels, where it had been divided into only two parcels prior to the taking) could be considered as they might affect future use and, therefore, market value.^{2/}

The Supreme Court of South Carolina ruled that traffic noise and loss of view and breeze could be considered in determining the decreased value of the remaining property even though these factors might have also affected the property of other owners in the area because the special damages referred to in the

^{1/} Gulf States Util. Co. v. Cormier, 182 So.2d 176, January 1966.

^{2/} State ex rel. State Highway Comm'n v. Galeener, 402 S.W.2d 336, April 1966.

applicable statutes related to injury or damage to the remainder of the property from which a portion was taken. The statutory provisions did not mean that special damages had to be peculiar only to the condemnee. That was the requirement where there was no taking in order to award damages, but any damage resulting from an actual taking could be considered in determining the amount of compensation payable.^{1/}

A Louisiana court of appeal ruled that loss of view was not compensable as a separate item of damage, but was an element of damage which could be considered by appraisers in determining the value of property remaining after an expropriation. It, therefore, affirmed a judgment awarding the owner \$1,025 for the property taken and \$38,000 as damages.^{2/}

This was "prestige property" which had a view of a beautiful lake prior to the taking. After the expressway was constructed, this view was cut off and the owner saw a downramp and a brick wall. An appraiser for the owner stated that some person might buy the property for \$50,000 after the taking (the condemner had appraised it in the area of \$97,000 prior to the condemnation -- higher than that of the condemnee's experts) but that most people would not want it even though they could now get it cheaper because the expressway would create a number of problems in addition to the loss of view -- such as loss of use of a street in front of the house, loss of parking, and loss of the front entrance.

The Washington Supreme Court, in a case involving the loss of view (light and air) occasioned by a proposed public structure which was to be erected, in part upon a parcel of property taken by condemnation from a unit of property, followed the holding of the trial court. The Court said that the measure of severance damages was to be determined by the effect the obstruction of view (light and air), created by the structure, had upon the market value of the remainder of the unit of property. It held that trial court's instruction to the jury which advised them that they could consider the impairment of view of the scenery beyond a specific street (which was to be vacated so that a part of the building could be constructed thereon) across property not controlled by the condemnees might have been confusing; however, since the jury awarded an amount for the loss of view just short of that testified to by the condemnees' witness, the instruction could not be held to be prejudicial.^{3/}

The Kentucky Court of Appeals held that evidence of noise from a new highway could be considered in determining damages. However, evidence of negotiations between the parties with reference to an underpass (desired by the condemnees in order to go from one part of their divided property to the other but refused by the condemner) was not admissible.^{4/}

The United States District Court, W.D. Tennessee, E.D., held that the cemetery, which had an easement taken over a small part of its land for the purpose of constructing a power line (but there were no poles or towers placed

^{1/} South Carolina State Highway Dep't v. Touchberry, 148 S.E.2d 747, May 1966.

^{2/} State v. Singletary, 185 So.2d 642, April 1966.

^{3/} Housing Authority of City of Seattle v. Brown, 413 P.2d 635, April 1966.

^{4/} Commonwealth v. Carson, 398 S.W.2d 706, January 1966.

on the easement area) could not recover damages because of the alleged unsightly appearance of the line on land which did not belong to it, and it found that there was no damage to the remainder of the cemetery tract as a result of the line crossing the corner of the tract. (There were no burial lots in that area.)^{1/}

A Georgia court of appeals held that noise, smoke, dust and the like could not be taken into consideration in determining severance damages to the remainder if they existed only during the period of construction. In order for these factors to be considered they had to be continuous and permanent in which case they might adversely affect the market value of the remaining property.

The appellate court also ruled that evidence as to the location of the new church of the condemnee some three blocks away from the condemned property should not have been admitted for the purpose of showing inconvenience to the condemnee occasioned by the condemnation because the location of the new church was wholly irrelevant to the issues of compensation for the taking and for damages to the remaining property.^{2/}

An Illinois appellate court remanded a case for a new trial because the only witness for the condemnees based his opinion of severance damages on the improper elements of danger and inconvenience in crossing a road.

The condemnees contended that the diversion of traffic from other township roads would cause an increase of traffic on the road on which his property fronted and, therefore, it would be more difficult and riskier to transport machinery and grain across that road. The court noted that a diversion of traffic, resulting in either increased or decreased traffic, was not compensable because the State's police power was involved. Besides, the elements of danger and inconvenience were too remote or speculative.^{3/}

190-2 CONSEQUENTIAL DAMAGES -- NOISE, INCONVENIENCE, ETC.

The Supreme Court of Oregon stated that it had previously held in this case that if there was a substantial interference with the use and enjoyment of the owner's property due to the overflights of airplanes using the Portland International Airport, which resulted in a decrease in the market value of that property, this would amount to a taking for which a remedy in inverse condemnation would lie. The purpose of the second trial was to determine whether the owner's facts measured up to her theory of recovery. Upon denial of any damages, she again appealed to the Supreme Court.

That Court stated that while social utility of the airport was not a matter to be ignored, it was also not a matter in serious controversy. It ruled that the trial court erred in telling the jury, in effect, to consider the airport's utility in deciding whether the owner's property had been depreciated in value

^{1/} United States v. Easement & Right-of-Way over 1.0 Acre of Land, 248 F.Supp. 702, December 1965.

^{2/} State Highway Dept. v. Hollywood Baptist Church, 146 S.E.2d 570, December 1965.

^{3/} Department of Pub. Works & Bldgs. v. Bills, 213 N.E.2d 110, December 1965.