

197-3 EXPROPRIATION FOR ADDITIONAL PIPELINE WILL NOT EXTINGUISH RESIDUAL VALUE AND WILL NOT SUPPORT CLAIMS OF SEVERANCE OR AGRICULTURAL USE DAMAGES. Humble Pipeline Co. v. William T. Burton Industries, Inc., 205 So.2d 724 (La. App. 1968).

Humble Pipeline Company operated an 8-inch pipeline across defendant's land pursuant to a previously acquired right-of-way. To meet anticipated future needs, Humble sought to add an additional 16-inch pipeline 10 feet from the existing line. Surface use of the right-of-way would be restricted to activity which would permit access to the pipes. Defendant was presently using such land in part for raising sugar cane. Defendant claimed compensation for extinction of residual value of land, severance damages to his remaining property, and agricultural damages for crop loss.

The court held against defendant on all three claims. As to the residual value, the court noted that the prior pipeline had not extinguished it and that this taking was similar in kind. Further, there remained certain uses for the surface land, consistent with the highest and best use of the property, which would justify a conclusion that a 10 percent residual value remained. This was so even though the possible uses speculated on by the court were inconsistent with the defendant's present, actual use of the property.

The court also concluded that severance damages were inappropriate to the present expropriation. Whatever damage was done to the remaining property by laying of a pipeline was already accomplished, and compensated, by the first taking for the 8-inch line and could not be demanded again in the instant case. The present taking was not considered so different in either quality or amount as to warrant additional severance damage.

Finally, the court determined that the defendant was not entitled to any reimbursement for the crop loss he would suffer as a result of the expropriation. This ruling was premised on the court's conclusion that the highest and best use of the property was industrial. Having compensated defendant on the basis that his loss involved industrial use property, the court would entertain no consideration of damages inconsistent with the compensated use. It is not clear whether compensation for lost agricultural use plus lost crop would exceed the compensation for lost industrial use, but it is clear that such factors would not alter the court's conclusion.

This last aspect of the decision is somewhat unusual. Compensation based on highest and best use is normally intended to be a reimbursement to the defendant for an expropriation of the land's reasonably potential commercial development as well as for his actual loss. It is an assessment of loss rather than a depiction of present circumstances of use. This will not ordinarily negate any actual losses suffered by defendant, e.g., destruction of improvements on the land, as a result of the circumstances of the taking. Thus, a finding of industrial use will not prevent compensation for the loss of a house constructed on the property -- it merely prevents compensation for lost residential use.

Here the court denied recovery for lost agricultural use since compensation was already made for lost industrial use. However, this should not have necessarily prevented compensation for the lost crop since the actual crop is distinct in worth from the use value of the property.

The result is somewhat inconsistent with general case law and prior Florida law concerning compensation for actual losses. Past decisions recognize the predictive element in determining highest and best use and do not attempt to apply such a determination to an actual loss situation such as destroyed crops.

197-4      OFFSET TO SEVERANCE DAMAGE BY BENEFIT TO PROPERTY ACROSS HIGHWAY WHERE UNITY OF OWNERSHIP AND USE EXIST. Di Virgilio v. State Road Department, 205 So.2d 317 (Fla. 1968).

The condemnee owned land on both sides of an existing highway. Additional land was expropriated from both plots in order to widen the existing highway. The effect of the taking was to drastically reduce the area of one plot while greatly increasing the frontage of the other. The smaller plot, losing approximately 65 percent of its area, was rendered virtually useless. The State sought to offset any severance damage to the smaller plot by asserting the benefit bestowed on the larger piece of property.

Controlling the court's discussion was a Florida statute providing for set-offs to the "remaining adjoining property." The defendant asserted that the statutory language established physical contiguity as the test for set-off and consequently the separation afforded by the pre-existing highway prevented application of the statute.

The court agreed that the statute would not apply if the test were solely physical contiguity but could not agree with such a restrictive interpretation of "remaining adjoining property." The court indicated that physical contiguity was only one of three factual indications of adjoining property, the remaining two being unity of ownership and unity of use.

Noting that defendant owned both pieces of property and had dedicated them to identical and integrated use, the court refused to permit the highway to constitute a sufficient separation to defeat set-off. In support of its conclusion the court observed that defendant's answer had treated the two parcels as one and had made no objection to their condemnation as one parcel.

Finally, the court relied on the fact that an easement, the underlying fee of which remains in the condemnee, will not disturb contiguity for purposes of classification as "adjoining property."

The case is noteworthy in its broad interpretation of the rather confusing standard of "remaining adjoining property." Previous cases have been willing to find contiguity where the condemnation creates a separation between parcels, but results have not always been as uniform where the separation