

In reversing, the court did not make any determination as to a proper valuation method except to observe that the replacement cost approach suggested by the State was improper since the items involved were clearly not specialties. This would seem to indicate an approval of the annuity technique advocated by claimant. Even this approach was somewhat curtailed by the Appellate Division. To the extent that the formula involves computation tables which are geared to conservative business ventures, it is inapplicable to the speculative enterprise of claimants and a more realistic tabulation must be used.

The case reiterates the outer limits of a trial judge's discretion in valuation situations. While he may compromise numerous valuations into some average, he may not reject proffered valuations and then substitute his own data to achieve a compromise figure. Here, the trial judge rejected the only evidentiary foundation for a valuation figure but nonetheless proceeded to compute one by inserting a compromise formula. Such an approach necessitated a remand for reconsideration of the available evidence on this subject.

198-4 WHERE APPROPRIATED LAND IS SUBJECT TO MULTIPLE INTERESTS IT IS VALUED AS BELONGING TO ONE PERSON AND THE SEVERAL INTERESTS ARE THEN ENTITLED TO LITIGATE THEIR PROPORTIONATE RIGHTS IN A SEPARATE PROCEEDING. City of St. Louis v. Wabash R.R. Co., 421 S.W.2d 302 (Mo. 1967).

Under Missouri procedures, valuations in condemnation proceedings are made by a Permanent Condemnation Commission composed of real estate experts particularly qualified in determining land valuations. In the instant case the Commission had made a determination concerning certain property held by a trustee in which several property interests were alleged. One such interest objected that the Commission had both undervalued certain of its interests and completely failed to value other interests. The Supreme Court of Missouri affirmed the lower court's acceptance of the valuations of the Commission.

The determinations of the Permanent Condemnation Commission with respect to property valuation are presumptively valid under Missouri law and any challenge to the findings of the Commission places the burden of introducing sufficient competent evidence on the objector. In this case, the objector's attempt to overturn the report of the Commission solely on the grounds that no evidence was introduced in support of the report was rejected by the court. The introduction of evidence in support of the report is an option on the part of the Commission which does not affect the validity of the report itself.

The major question on review concerned the Commission's failure to separately value an alleged easement in one parcel of appropriated land. The claimant sought to have the case remanded for an additional assessment of the easement over that already ascribed to the land. In rejecting this contention, the court elaborately explored the existing procedures for valuation of property having multiple interests and the policy considerations supporting such an approach.

The Commission is an attempt to provide a highly qualified body of experts capable of giving a trial judge an informed evaluation of property without the subjective limitations ordinarily accompanying party experts. The sole concern of the Commission, and its sole area of expertise involved value computations for real property. The members of the Commission are completely unqualified to ascertain the status of competing interests in a single piece of realty. For this reason, the determinations of the Commission always treat the realty as if owned by a single person and the value reported is that determined for the fee interest in the property condemned.

Since the Commission report is a valuation of the whole estate, the value of all lesser interests is necessarily contained therein. As a general rule, the total value of the various interests in a particular piece of property cannot logically exceed the total value ascribed to the property as a whole. The distribution of the award amount among the various persons holding interests in the condemned property is a proper subject for independent determination through separate litigation. The claimants were incorrect to presume that the Commission was qualified to separately value the various estates and easements in the appropriated property since that requires a judicial competence beyond the scope of the Commission. Similarly, the claimants were mistaken in their belief that special interests, such as easements, permitted a value calculation beyond the value of the whole property as determined by the Commission.

The case is a good example of some of the difficulties which surround the use of a permanent group of real estate experts for condemnation valuations. The inability of such a group to value interests which are still in controversy tends to multiply litigation over individual appropriations. Such difficulties can usually be resolved by delaying the use of the Commission until a stage in the litigation when the competing rights of the parties have been sufficiently resolved that the nature and extent of each interest can be clearly described to the Commission in order to permit detailed valuations.

198-5 IT IS AN ISSUE OF FACT WHETHER CONSEQUENTIAL DAMAGES ARE OFFSET BY ANY BENEFIT BESTOWED BY THE APPROPRIATION AND A TRIAL DETERMINATION ON THAT ISSUE WILL NOT BE OVERTURNED WHERE THERE IS EVIDENCE TO SUPPORT IT. Laken Realty Corp. v. State, 289 N.Y.S.2d 570 (Sup. Ct. App. Div. 1968).

The State of New York appropriated 34 acres of land from claimant for its proposed interstate highway through the town of Newburgh. The land had previously had a good commercial location with respect to access to local transportation routes. The State alleged that the construction of the highway constituted a sufficient benefit to the remaining parcels that it off set any consequential damages which might otherwise have occurred. The claimant maintained that the only benefit the highway could bestow was improved access to transportation routes and since this land was already ideally situated in that regard the benefit was minimal and incapable of offsetting the loss of frontage occasioned by the taking.