

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.

The Appellate Division sustained the lower court's finding of consequential damages on two grounds. First, the court observed that the existence or non-existence of damages of any type is primarily a question of fact and as such is exclusively within the province of the trial judge. Since there was evidence to support his conclusion in the form of greatly diminished frontage and preexisting access to good transportation routes, the Appellate Division refused to retry the factual issues in the case and abided by the trial judge's conclusions.

In addition, the Appellate Division noted that in the ordinary case involving allegations of consequential damages and offsetting benefits, separate and specific findings of enhancement are in order. This enables the reviewing court to determine whether the lower court properly considered the evidence for purposes of set off. Where, however, the lower tribunal makes an affirmative finding that the alleged beneficial activity actually worked injury to claimant's land, there is no necessity for the trial judge to make specific negative findings on the question of enhancement. This is not a case where the consequential damages outweigh the benefits but rather is one where the damages contradict the possibility of benefit. It was the assertion of the claimant that he suffered damages for the very thing which the State had urged was a benefit--altered access due to the highway. A factual finding that claimant was right so completely negated the issue of benefit that specific findings would serve no purpose.