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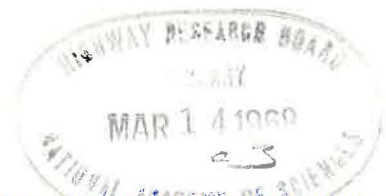
LAND ACQUISITION  
Memorandum 199

199-1 LOUISIANA CIRCUIT COURT RULES THAT COMBINATION RESIDENCE AND BOMB SHELTER QUALIFIES AS A UNIQUE PROPERTY AND WARRANTS USE OF REPRODUCTION COST LESS DEPRECIATION METHOD OF VALUATION. State, Dep't of Highways v. Crossland, 207 S.2d 898 (Ct. App. La. 1968).

In 1947, condemnee Crossland began construction of a bombproof residence designed to withstand both severe weather hazards and nuclear attack. The above ground residence was constructed of 8-inch steel reinforced concrete with asbestos lining. The roof was 4-inch steel reinforced concrete topped by 7 layers of felt, coal tar and finished roofing. This in turn was bordered by a five inch wall which served to create a pool of water on the roof capable of absorbing gamma rays. The underground level was similarly constructed, save for the reservoir roofing. The structure took 12 years to build and was expropriated two years after completion. Both sides stipulated the value of the acreage taken in the expropriation. The strip taken severed the property into two segments, and the major contentions at trial were over the valuation of the structure and the extent of severance damages.

As to the valuation of the structure, both sides introduced real estate experts who admitted that the obviously unique characteristics of the residence prevented any accurate method of valuation involving comparable sales. Instead, the experts chose to employ the square-foot method of evaluating reproduction costs. This method involves estimating the combined materials cost of one square foot of construction and multiplying it by the number of square feet in the structure. In addition to these witnesses, Crossland introduced one witness who qualified as a mechanical engineer of considerable experience in the type of construction involved in the shelter-residence. This witness calculated in detail the reproduction cost by considering cost of parts, construction and overhead. He then depreciated the structure over a 100 year expected life.

After all testimony was received, the trial court entered a valuation of the residence more closely approximating the estimates of the real estate experts than the much higher figure of the mechanical engineer. The circuit court rejected this reliance on the testimony of the real estate experts and entered a judgment based on the findings of the mechanical engineer.



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In discussing the lower court ruling, the circuit court preliminarily noted that the structure clearly qualified as a sufficiently unique item or specialty that ordinary comparable sales valuations would be meaningless. The court observed that in such circumstances replacement cost would be the appropriate measure of value. However, the court also noted that the square foot method of valuation was "an inexact and undesirable procedure. The preferable method involves an estimation of the cost of construction including all necessary overhead." The undesirability of the method chosen by the real estate experts was further magnified by their confessed lack of qualifications to evaluate the type of structure involved. This was so apparent, the one expert at trial admitted that he had completely misconstrued the composition and structural materials of the house from his external observations. Further, many of the features of the house could not be discovered by a visual examination, which was the only source relied upon by the real estate experts.

The mechanical engineer, on the other hand, based his calculations on blueprints and specifications which enabled him to be fully familiar with the unseen aspects of the construction. Consequently, his testimony reflected the true structural composition of the residence. In reviewing this testimony, the court concluded that he was the only witness fully competent to make a cost of reproduction analysis on this type of specialty structure. Further, the court ruled that he was the only witness to employ the appropriate technique of estimating the cost of reproduction. In light of these two factors, the court found that his was the only qualified testimony on the subject of valuation. Since the State had full knowledge of his testimony and did not seek to either cross examine or introduce rebuttal witnesses who would testify on a similar method of valuation, his testimony must be deemed uncontroverted on the question of value. Thus, none of the lower estimates of the real estate experts, based as they were on insufficient information and improper methods, were acceptable as a basis for reducing the estimations of the mechanical engineer.

The only challenges that could be made to the calculations of the one acceptable witness, were those which went to the internal consistency of his conclusions. Thus, the court found that while his calculation of a 100-year life expectancy for the house was realistic, a shorter period should have been given to the internal furnishings and the roofing materials since they were of far more perishable material. Therefore the circuit court entered an award far in excess of the conclusions of the trial court and the real estate experts but somewhat less than that recommended by the mechanical engineer.

The case is an excellent example of the scope of review available to an appellate court in a valuation proceeding. Because of the varying reliability of certain methods of valuation, an appellate court has within its power the option to completely disregard the testimony of an undesirable method and consequently shift the entire weight of the evidence in the court below. In the instant case, the appellate court's preference for one form of valuation eventuated in uncontroverted evidence for the claimant, thereby placing the State in a somewhat hopeless position on appeal. It is suggested that a more equitable appellate approach would be to have the desirability of a particular method go to its evidentiary weight rather than its fundamental competency, with appropriate instructions

where called for. In the present case, trial by judge affords an ideal climate for relative weighing of conflicting methods and it seems somewhat unnecessary to completely dismiss one method. A better solution might be to accord diminished weight to the square-foot method and then examine the record to see if the results are in conflict with the relative weight to be given the two methods of valuation. The most obvious point to recommend this approach is the situation, identical to the instant case, except that there is no second method offered for valuation. Under the ruling in this case it would seem that all valuation evidence would be unacceptable and a remand in order to obtain valuations under a more acceptable method. The difficulties with such an approach are obvious and suggest that the issue can better be resolved by varying the weight to be given to methods of valuation.

199-2 OWNER OF RIPARIAN RIGHTS IS ENTITLED TO USE LAND UNDER WATER FOR A COMMERCE-CONNECTED PURPOSE WHERE IT DOES NOT INTERFERE WITH THE NAVIGABILITY OF THE CHANNEL. Moyer v. State, 289 N.Y.S.2d 114 (Ct. Cl. 1968).

Tuscarora Bay is a navigable tributary adjacent to Lake Ontario. Claimants had purchased property on the bay and had instituted dredging operations to deepen the channel. The fill obtained from this dredging was deposited on underwater land adjacent to and beyond the lot line of the claimants. The land thus reclaimed was used to construct a marina and boathouse for the pleasure craft using the bay. Before instituting this construction, the claimants had inquired of the United States Government whether Federal control was exercised over that portion of Tuscarora Bay. When a negative response was received from the Federal officials, the work proceeded without any express permission being obtained from the State of New York.

After the boathouse and piers had been constructed and the business had been operating for some time, the State served an appropriation map on the claimants taking all of their waterfront property including the reclaimed area containing the boathouse and marina. In the litigation of the appropriation award, neither the State nor the claimant raised any serious arguments as to the claimants' ownership of the reclaimed land. Nonetheless, the court expressed concern that this might later become a critical issue and consequently resolved to dispose of it in the present opinion. To this extent, the opinion has the earmarks of an advisory opinion rather than the ordinary declaratory judgement action.

Where the Federal government disclaims any jurisdiction over bodies of water which are admittedly navigable, control will vest in the appropriate State. Thus, the waters of Tuscarora Bay were under the control and ownership of the State of New York. The Court of Claims found that the claimants had acquired the rights to the under underland in spite of their failure to obtain permission from the State.

The first basis supporting the claimants' title to the reclaimed land is the general rule that an owner of riparian rights may use adjacent underwater land where the use aids navigation and commerce. Such use may be without State grant.