

Barshop contended that the condemnation of his property, being delayed some four years after the first authorization to purchase, and three years after approval of the master plan, was actually a subsequent appropriation entitling him to benefit from the construction of the airport. He further contended that the activities of the corporation in purchasing land and thereby stimulating real estate values, could not be considered part of the condemnation activity of the city and consequently Barshop could enjoy any enhanced value occasioned by this activity. The court of civil appeals reversed and remanded, sustaining the city as to valuation after October of 1960, but agreeing with Barshop as to the activities of the private corporation.

The essential problem facing the court was the body of law which holds that if a project is subsequently enlarged so as to embrace new property, that property is entitled to any enhanced value already occasioned by the earlier project. Prior Texas law had recognized a substantial delay in some aspect of a project as constituting a subsequent enlargement and this is what Barshop urged on the court in the instant case.

The court responded to these urgings by noting that Barshop's property was within the anticipated project from its inception and most certainly from the time of the October 1960 ordinance which specifically named his property. Given the scope of the intended project, the three-year delay from publication of the master plan was not considered unreasonably long and the court refused to treat it as a termination and subsequent enlargement of the project.

Under the court's reasoning, Barshop's property was within the contemplation of the project from October of 1960. As the court noted; "It is held generally, in cases presenting the appropriate facts, that, where a person's entire property is included in one general proceeding of condemnation for a particular purpose it is not permissible to consider that purpose, or the results thereof, in estimating the owner's compensation." Thus, the trial court erred in permitting the jury to consider Barshop's proximity to the airport project in valuing his property.

However, not all of Barshop's enhanced value derived from the construction of the airport facility. Much of it was a result of the land speculation conducted by the private corporation. This can be seen in the \$20,000 one year appreciation the property experienced prior to any public announcement by the city. Since this speculation was short of official and public action by the city, Barshop was entitled to benefit from it. To this extent, the trial court was correct in permitting jury consideration of enhanced land values.

202-3 THE OWNER OF MINERAL RIGHTS IS NOT ENTITLED TO SEPARATE PROCEEDINGS FOR THE CONDEMNATION OF HIS INTERESTS AND SUCH MUST BE CONDEMNED IN AN ACTION AGAINST THE WHOLE FEE. State, Department of Natural Resources v. Cooper, 162 S.E.2d 281 (W.Va. Cir. Ct. 1968).

In 1931, Mr. Heironimus acquired fee simple interest in 85 acres of land in Tucker County, West Virginia. In 1946, 68 acres of that tract were conveyed to Mr. Cooper, with an oil and gas reservation remaining in Mr. Heironimus. In

1960, 15 acres were conveyed to a Mr. Heitz with a similar reservation of oil and gas rights. The remaining two acres are owned by Mr. Heironimus, but are subject to an easement for State road purposes, the road serving to divide the other parcels. In 1966, the Department of Natural Resources of West Virginia, intending to develop a public park, sought to acquire a fee simple interest in both the 15-and 68-acre parcels. Two proceedings were instituted, one for each parcel, and Mr. Heironimus was named as a codefendant in each action.

The defendant, Heironimus, made a motion to dismiss, alleging that the oil and gas rights should be valued in a separate action, the present arrangement would require Heironimus to defend a multiplicity of suits, and all condemnees will be denied a fair valuation of their interests. The circuit court denied the motion to dismiss.

The court based its reasoning on the theory that numerous separate and district estates, owned by different persons, may exist within the same parcel of land. Since a condemnation proceeding is directed against the land, it is proper to join all the interests necessary to obtain the estate sought. Here the State sought to appropriate the fee interest to each parcel and to do so required assembling all the interests in the parcel in one proceeding. Thus, the oil and gas rights could not be appropriated separately because the State was after the fee interest.

While numerous parties owning estates in one parcel can all be joined in a single proceeding, numerous parcels may only be the subject of one proceeding where they are owned by the same person or persons. Whenever the ownership of any interest in one parcel differs from that in another, separate proceedings are required. This is so because a condemnee is entitled to have his interest valued rather than have his award determined by the value of an interest owned by another. Because the remaining interest in each parcel was held by a different person, Heironimus could not get the proceedings joined since this would compromise the rights of Cooper and Heitz.

Nor was the court persuaded that the present arrangement would prevent an accurate valuation of the Heironimus interests. The method of valuation for land subject to several interests is to value each interest as a segregated part of the realty. This necessarily involves first giving some overall valuation to the whole realty which can then be segregated into component interests. Unless this is first done, the valuation of the oil and gas rights might contemplate a higher valuation of the fee than that used for other interests. Consequently, a single proceeding is essential to an accurate valuation of lesser estates. Any other approach would run the risk of treating such lesser estates as a form of personal property capable of completely independent valuation