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COMMITTEE ACTIVITY

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LAND ACQUISITION
MEMORANDUM 203

203-1 INSTRUCTION ALLOWING JURY IN CONDEMNATION PROCEEDING TO CONSIDER
EXPERIENCE, ABILITY, KNOWLEDGE, AND TRAINING OF APPRAISER TESTIFYING
WAS NOT PREJUDICIAL TO CONDEMNEE. State Highway Commission v.
Donovan, 448 P.2d 671 (Sup. Ct. of Mont., December 19, 1968).

This condemnation proceeding was instituted by the Montana State Highway
Commission to condemn certain property along west Euclid Avenue and Highway 12
located in Helena.

The defendants, Arthur W. Donovan and Genevieve I. Donovan, husband and
wife, owned 300 feet of property bordering on Euclid Avenue, and operated a
trailer sales business on this property. In order to widen the road to four
lanes, construct median barriers and curbs with ingress and egress routes along
the roadway, the State condemned a ten-foot strip of this property. Defendants
contended that because of the taking they can no longer operate their trailer
business and had made plans to move to a new location. Defendants claimed that
the curbing makes it impossible for them to move larger trailer houses on or off
their property or to jockey them into trailer hookups, which are available to
buyers for their convenience.

Appraisers for both the State and the defendants offered testimony as to
the value of the land and fixtures both before and after the acquisition of the
strip of land by the State. Defendants' appraisers fixed the value of the taking
in the bracket of \$43,700 to \$100,250. The State's appraiser stated that the
total depreciation of the market value which resulted because of the taking was
\$11,250. The jury awarded the defendants Donovan this figure of \$11,250. From
this jury determination the defendants Donovan appealed. As a result of this
appeal the Supreme Court of Montana affirmed the \$11,250 judgment of the First
District Court, Lewis and Clark County.

The following issues were presented for review on this appeal:

1. Did the trial court err in allowing testimony as to the contents
of financial statements of appellants to be introduced into
evidence?

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2. Whether or not evidence as to the effect on the remaining land of a special improvement district should have been included.
3. The refusal of the trial court to give appellant's instruction No. 13, an instruction dealing with the weight to be given to the appraisers' testimony.

Regarding the financial statements, appellants allege that since the figures taken from the statements were not used in deriving at any appraisal figure, and were introduced without putting the accountant on the stand, they had no probative value and were in themselves prejudicial. Appellants and respondent agree that the appraisers of both parties did not use these financial statements in calculating their appraisal figures.

The next issue presented to the Supreme Court, whether the trial court erred in excluding evidence as to the effect of special improvement district assessments upon the value of the land not taken, appellants contend that this special tax would reduce the market value of their property and these figures should have been submitted to the jury for consideration in determining the depreciation caused by the taking and the Supreme Court held that the district court was correct in sustaining the respondent's objection.

Finally, it is appellants' contention that it was reversible error for the district court to give the court's instruction No. 11 while refusing to give appellants' proposed instruction No. 13. Both instructions deal with the weight to be given to the appraisers' testimony. The trial court's instruction No. 11 was to the effect that a witness who has special training, education or experience in a particular science, profession or calling, is an expert and, in addition to giving testimony as to facts, may be allowed to express an expert opinion. In determining the believability and the weight to be given to such opinion evidence, the trial court allowed the jury to consider, among other things: (1) The education, training, experience, knowledge and ability of the expert; (2) The reasons given for his opinion; (3) The sources of his information; and (4) Factors already given to the jury for evaluating the testimony of a witness.

Appellants' proposed instruction No. 13 was to have directed that the jury is instructed that a witness is qualified to testify on property values by proof of his familiarity with the property in question and with the uses to which it may be put. It should appear that the witness has some peculiar means of forming an intelligent and correct judgment as to the value of the property in question beyond what is presumed to be possessed by men generally. And such witnesses need not know of any sales and he need not be a technical expert, nor be a person engaged in buying or selling real property.

Appellants maintain that they were prejudiced because, with instruction No. 11 as given, the jury was more apt to believe the respondent's appraiser, who had outstanding credentials and was more of an expert than appellants' appraisers. Appellants state that the instruction given made it almost mandatory for the jury to believe the witness with the better qualifications and neglect the valid testimony of their value witnesses who were, in their opinion, not necessarily experts. The Supreme Court, however, found no merit in this argument.

The Supreme Court noted with approval what was said in *State v. Peterson*, 134 Mont. 52, 328 P.2d 617. In that case the Court held that appraisal testimony could be given by people who were not necessarily experts but they must have some basis for forming an intelligent opinion as to the value of the condemned land. As stated above, all witnesses previously had experience in selling and buying property in the immediate area and had been engaged in this practice for several years. With these qualifications, the Supreme Court found that trial court's instruction No. 11 truly gave the jury the correct guidelines to follow in weighing the testimony and affirmed the district court's judgment.

203-2 EVIDENCE OF OTHER SALES HELD ADMISSIBLE, EVEN THOUGH NOT COMPARABLE, WHERE NOT OFFERED AS SUBSTANTIVE PROOF OF VALUE. City of Tucson v. LaForge, 446 P.2d 692 (Ariz. Ct. App. 1968).

The city of Tucson, as part of a program to upgrade streets, condemned 150 feet of frontage on the LaForge property to a depth of 30 feet. The property originally had a depth of 140.5 feet, contained a 5,000 square foot warehouse, and had been used as a warehouse distribution facility specially suited to servicing large trucks. The street improvement included curbing, but provided curb cuts in three places along the appropriated frontage.

Prior to the condemnation, for a period of seven years, the property was continuously rented without any effort by the landowner. Upon learning of the condemnation, the present tenant failed to renew and after considerable effort, the property was finally rented at a 43 percent reduction in rent.

At trial, the property owner's appraiser testified as to the sale of other properties some of which were of like zoning but several blocks distant. At least one of the sales occurred eight years prior, and most discussed were six to eight years old.

In pursuing this appeal, the city objected to admission of the testimony relating to the other sales urging that they were either noncomparable or too remote in time. Further, the city challenged the appraisal methods of the owner and his experts, especially as to capitalizing the rentals. Finally, the city asserted that the conduct of certain portions of cross examination provided grounds for reversal. The Arizona Court of Appeals found no error in the conduct of the trial and affirmed the trial judge's denial of a motion for new trial.

Evidence of a sale of property in the general vicinity of the condemned parcel may be introduced for one of two reasons. The sale may be intended as substantive proof on the value of the appropriated property by direct analogy. Under such circumstances, the alleged comparable property must be shown to be physically similar as to location and possible use under governing zoning regulations. As a further precondition to admission, the sale of the comparable property must be voluntary, proximate in time, and consummated under market conditions similar to those existing at the time of the appropriation. Where all of these requirements are met, the comparable sale will be admitted for purposes of providing a direct inference as to the value of the condemned land.