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.

The second reason for introducing evidence of other sales is to provide a foundation for an expert witness' opinion as to the value of the condemned property. In this latter situation, it is the expert's opinion, and not the sales, which provide the direct inference of value. Therefore, the rules governing the similarity of such sales are far less stringent than the situation of direct proof.

It was for the second reason that the sales were introduced in the instant case, and the court was consequently far more lenient in assessing their admissibility. The court cited the trial judge's broad discretion in this area of comparable sales and then observed that, "if the sales were not comparable, which could be brought out on cross-examination and called to the jury's attention in final argument, such factor merely bears upon the weight to be accorded the expert's opinion."

In dealing with the city's challenge to certain aspects of the cross-examination at trial, the court demonstrated yet another instance where similar sales may be introduced without meeting the requirements of "comparable sales." When, on cross-examination, the qualifications of an expert are sought to be impeached, his knowledge and familiarity with land values and real estate transactions may be tested by reference to other sales and appraisals which would not qualify as comparable sales. In the instant case, the city's expert was questioned as to two other property appraisals he had made in connection with this same improvement project. Citing the general rule on broad admissibility for impeachment, the court upheld admission of the testimony.

The final major objection of the city concerned the method of valuation employed by the land owner. Since the rental was reduced in midyear and the owner sought to demonstrate a before and after method of income by comparing the rentals, the city urged that the "after" rental should be the average for the year rather than just the last six months. In effect, the city wished to average the 350 and 200 dollar rentals into a single figure of $275 per month for the year and have this figure serve as the "after" unit of income. Normally, where rental property is valued on an income basis by capitalizing the before and after rents, the unit of value is the unit of rent. If the property is rented on a per-year basis, then that figure controls. Where the rent is monthly, that figure will constitute the unit measurement to be capitalized and the eventual figure will be the monthly rent multiplied by the expected length of return, in months. This would be so, even though the term of the lease is stated in years since the concern is income not occupancy.

Conforming with this view of capitalizing rental income, the court rejected this argument of the city's as well as an analogous one which sought to average the whole and half rental of the building, which had occurred prior to the taking, into a yearly figure. The court noted that it would create the same result as any other attempt at averaging unequal parts: "Averaging a rental paid for one half a building together with the rental paid for the entire building would not produce an average monthly rental for the entire building."