

203-3 ADMISSION OF PLAT NOT ERROR WHERE TESTIMONY CURES PREJUDICIAL DEFECTS. Missouri State Highway Commission v. DeLisle, 425 S.W.2d 938 (Mo. S.Ct. 1968).

The Missouri State Highway Commission appropriated 22.39 acres of claimants land for right-of-way for Interstate Route 55 and supplemental roadways. An additional easement of 25.12 acres for a "borrow pit" was also taken from the 75-acre tract. The condemned land followed an existing road which diagonally traversed the DeLisle property.

At trial, the claimant introduced two plats, one unrecorded, which had been marked in various shades of red and blue to designate the appropriated land. The first plat, prepared by the county surveyor, delineated the right-of-way in bright red and failed to distinguish the existing right-of-way in the old road. The plat also contained the outline of several other parcels not owned by claimant. The second plat contained additions attempting to show how the old frontage on the existing roadway could have been divided into subdivisions for residential use.

The jury returned a verdict of \$110,000 in compensation and the commission appealed certifying as error the admission of the plats. The Supreme Court, first division, affirmed the circuit court as to the admission of both plats.

A plat or map describing the boundaries of a tract of land can often be the most effective means of illustrating the factual contentions of a given case. Unfortunately, the ordinary uses of plats will frequently require that they contain a good deal of information which is extraneous to the issues in a given eminent domain proceeding. In addition, the alteration of recorded plats to show the effects of an appropriation offers an unfortunately fertile area for misleading and exaggerated diagrams. Consequently, the illustrative benefits of a plat can be subverted by alterations intended to illuminate the specific issues at trial.

In dealing with the admission of this type of visual aid, a trial judge must exercise extreme care in seeing that the confusing or extraneous aspects of the plat are fully clarified by counsel before the jury may consider such evidence in its deliberations. Oftentimes, the clarification follows the introduction of the plat making the introduction prejudicial if the clarification is inadequate.

The instant case provides an excellent example of how an essentially prejudicial plat can be sustained in evidence by a later clarification of its misleading aspects. The first plat designated the right-of-way taking by a bright red coloration which failed to delineate between the existing roadway and the proposed enlargement. This had the effect of greatly magnifying the relative area of the condemnation. However, the fact that the old route was not in the taking was "clearly explained" by claimant's counsel and the dimensions of the taking were "precisely described" by witnesses. Under such circumstances, the court concluded that it would "demean unjustifiably the intelligence of the jurors" to assume they could not understand such explanations.

As to the depiction of other properties on the plat, the court noted that it is not necessary for everything on the plat to be relevant to the issues of the case. It is only necessary that those items which are relevant not be

misleading. "Extraneous matter not reasonably calculated to affect the outcome does not render admission of the plat prejudicial error." The court even suggested that the plat might reasonably show the effect of the condemnation project on the other property, although there was no indication that the plat in the instant case contained such data.

The second plat contained indications of the possible use of the condemned property for subdivision purposes. While the court refused to consider the commission's objection that this inserted a false issue of damages by concluding that the objection could not be raised for the first time on appeal, the court did make some passing observations on the evidentiary aspects of the issue. A plat may be used to support testimony relating to highest and best use even though the plat does not directly establish such use. The court observed that this would certainly control the present situation.

In general, the case serves to highlight what is the prevailing judicial attitude on plats and maps - presumptive admissibility with defects cured by testimonial clarification. This is best explained by a consideration of the alternative. If a plat were not admitted, the same data would most probably have to be introduced through the unaided testimony of a surveyor. The degree of confusion which necessarily accompanies any attempt to orally depict physical boundaries is only magnified here. Consequently, the illustrative merit of a plat will carry the day so long as the other debilitating factors do not completely obscure that merit.

203-4 EVIDENCE OF UNCONSUMMATED SETTLEMENT MAY BE ADMITTED WHEN INTRODUCED BY THE CONDEMNEE. Nash v. D.C. Redevelopment Land Agency, 395 F.2d 571 (D.C. Cir. 1968).

The Redevelopment Land Agency condemned a large area in the District of Columbia for use in the construction of public housing. Included within this area was the claimant's parking lot and a junkyard owned by another individual some 100 feet away. At trial, the RLA had quoted a value of two dollars per square foot for the parking lot. The claimant sought to introduce a settlement negotiation based on a five dollar per square foot figure which was then under consideration for the junkyard property. The trial judge admitted the settlement evidence and the jury returned a verdict somewhere between two and five dollars per square foot. The RLA appealed.

The governing procedure for offers of landowners is to present the offer in the form of a stipulation. If the RLA has no objection, the offer is tendered to the Justice Department which has final approval in the matter. If the Government accepts, the stipulation is simply signed by the Justice Department. In the present situation, the stipulation had been signed by the owner of the junkyard but not by the Justice Department. However, the RLA attorney testified at trial that the five dollar figure was considered fair by his agency.

The United States Circuit Court of Appeals for the District of Columbia, in a per curiam opinion, affirmed the admission of the settlement figure. The court concluded that the finality of the settlement was merely a technical formality and all remaining points of contention related to removal of fixtures rather than the land value of the junkyard.