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COMPENSATION FOR CONDEMNATION: RECENT WYOMING DEVELOPMENT

The law of eminent domain in Wyoming is not found in one group of statutes which present a comprehensive coverage for all condemnation cases. Instead, there are separate and scattered statutes covering condemnation for a specified purpose or group of purposes. Individual statutes or groups of statutes cover eminent domain separately for the railroad corporations,[1] for the Highway Commission,[2] for the establishment of county roads by a county,[3] for certain companies requiring pipelines and other specified rights-of-way,[4] etc. Furthermore, a statute or group of statutes relating to eminent domain may or may not provide a comprehensive coverage. For example, eminent domain may be authorized for a particular purpose without setting out the procedure to be followed for the exercise of the power.[5] Just compensation may be expressly required without a statement of the measure of just compensation.[6] There is some cross-referencing in order to adopt portions of other statutes.[7] Furthermore, there is some overlapping of the statutes. Two separate and isolated statutes may authorize eminent domain for the same purpose.[8] In the above described setting the possibility of confusion with respect to relevance of a specific statute to a given question is readily apparent.

There have been several Wyoming Supreme Court decisions within the past six years which appear to shed some new light and brighter light upon the subject of compensation and/or damages for condemnation. The scope of this review of these cases is summarized as follows: (1) What is the standard for compensation in Wyoming? (2) What is admissible or inadmissible in proving damages under this standard?

THE STANDARD OF COMPENSATION

Obviously, a property owner must be given notice of the exercise of eminent domain in order that he be afforded an opportunity to be heard on the question of damages. This is a common requirement under the Wyoming statutes.[9] A recent case is notable on the question of what constitutes notice. In *State v. Stringer* the requirements of the statute were met with respect to the required publication of notice.[10] However, the owner of an oil and gas lease lived in Denver, and his address was included on his lease which was of record. The Court held that where the owner's identity and whereabout were ascertainable through reasonable deligence and

1. Wyo. Stats. §§ 1-754 through 1-790 (1957).
2. Wyo. Stat. § 24-37 (1957).
3. Wyo. Stats. §§ 24-3, 24-43 through 24-67 (1957).
4. Wyo. Stats. §§ 1-791 through 1-809 (1957).
5. E.g., Wyo. Stat. § 1-743 (1957).
6. E.g., Wyo. Stats. §§ 1-793, 24-43 through 24-67 (1957).
7. E.g., Wyo. Stat. § 24-37 (1957).
8. E.g., Wyo. Stats. §§ 1-743, 24-3 through 24-43 (1957).
9. E.g., Wyo. Stat. § 1-760 (1957).
10. 77 Wyo. 198, 310 P.2d 730 (1957).

where he had no actual notice, minimum requirements of notice demanded notice be mailed to him by registered letter, and that notice by publication is insufficient. The opinion emphasis that the owner is entitled to notice and hearing prior to the fixing of damages.

All statutory authorization for exercises of eminent domain is subject to the broad standard of "just compensation," provided under the Wyoming Constitution.[11] However, just what "just compensation" means has been unclear.

The first formulatory language found in these recent cases appears in *Barber v. State Highway Commission.*[12] Appeal was on the grounds that the judgment and court order consequent to the jury award of damages was contrary to the evidence. The Court in reviewing the evidence regarding the damages to that part of the ranch not taken but injured by the taking said:

> No evidence was presented by defendants relating to either benefits or damages to the unit as distinguished from the land taken, their unchallenged testimony addressing itself only to the lump sum difference in the value of the property before and after the taking of the highway area.[13]

The statement clearly separates the land taken and that not taken, although injured thereby, as two distinct elements of damages. The lesson seems clear that the difference between the value of the whole ranch before and after the taking is not the proper measure of damages for that which is left injured by the taking.

In *Stringer v. Board of County Com'rs of Big Horn County*[14] the leaseholder's oil well was on the right-of-way taken by the Highway Commission. The jury verdict was that the leaseholder get nothing for the oil well. The Highway Commission contended that the measure of damages is the difference in the market value of the entire leasehold before and after the taking.[15] The jury apparently concluded the leasehold value was unimpaired even though the well was rendered unusuable by the taking. The Court pointed out that Wyo. Stat. § 24-37 (1957) allows the highway department to take property under the procedure applicable to the railroads for exercising eminent domain. The pertinent railroad statute expressly requires that the appraisers' report or the jury verdict, whichever is applicable, set out both: (1) the value of the land actually taken; (2) the damages to the land not taken but injuriously affected after deducting the benefits that would accure to this remaining land as a result of the highway.[16] In denying the measure of damages contended for by the Highway Commission, the Court distinguished the

11. Wyo. Const. art. I, § 33.
12. 80 Wyo. 340, 342 P.2d 723 (1959).
13. Id. at 729.
14. 78 Wyo. 442, 347 P.2d 197 (1959).
15. Citing, Gillespie v. Board of Comm'rs of Albany County, 47 Wyo. 1, 30 P.2d 797
16. Wyo. Stat. § 1-776 (1957).

authority relied upon as a case in which the amount of damages for the land actually taken had already been settled prior to the trial. By applying the two element measure of damages[17] the Court determined that the defendant was not compensated for the well actually taken.

If we stopped here it could be strongly argued that all that has been shown is a formula for damages to be applied to eminent domain situations by the railroads or the Highway Commission. However, the following language in the *Stringer* case indicates that broader application of the rule is intended:

> It is a fundamental principle of statutory construction that to ascertain the meaning of a given law all statutes relating to the same subject shall be read in connection with it as constituting one law. They must be construed in harmony, else the law of the State would consist of disjointed and unharmonius parts with a conflicting and confusing result.[18]

The Court said further:

> In this situation, we cannot assume that the legislature intended to set up dissimilar criteria for the determination of damages.[19]

The two element measure of damages has been consistently followed in the subsequent cases,[20] and the subsequent application of this measure of damages for condemnation for purposes other than for railroads or highways make it clear that there is one measure of damages for condemnation for all purposes in Wyoming.[21]

PROVING THE DAMAGES

There has been a change with respect to the time from which interest is to be computed and from which damages are to be computed. In *State Highway Comm'n v. Triangle Development Co.*[22] the Highway Commission contended that the trial court was in error in awarding interest from the time of the taking. Specifically their contention was that interest could be allowed only from the date of the appraisers' report since it must be presumed that they allowed for the loss of possession from the time of the taking up to the time of the report. The Commission was relying upon a

17. The statement of the measure of damages by the Supreme Court is set out as follows: ". . . the proper basis for the determination of damages was the difference in the value of the leasehold and wells before and afterward, such value being comprised of two elements: (1) the value of the land or property actually taken; (2) the damages for the portion of the property not taken but injuriously affected, after deducting the value of the real benefits or advantages which may accure to such property." 347 P.2d 197, 201 (1959). Wyo. Stat. § 1-775 (1957) is the statutory statement of the rule: "In estimating the compensation for all property actually taken, the true value thereof, at the time of the appraisement, shall be allowed and awarded; and in estimating the compensation for damages occasioned to other portion of the claimant's property, not acutally taken, the value of the benefits, or advantages, if any, to such other lands may be deducted therefrom."
18. Supra note 14 at 200.
19. Id. (second column).
20. See Colorado Interstate Gas Co. v. Uinta Development Co., 364 P.2d 655 (1961), and State Highway Comm'n v. System Investment Corp., 361 P.2d 528 (1961).
21. See Colorado Interstate Gas Co. v. Uinta Development Co., supra note 20.
22. 369 P.2d 864 (1962).

prior decision which was based upon Wyo. Stat. § 1-775 (1957).[23] The statute reads, ". . . the true value thereof, at the time of the appraisement, shall be allowed and awarded. . . ." The Court pointed out that the subsequent enactment of Wyo. Stat. § 24-37 (1957) permits the Highway Commission to take immediate possession upon commencement of condemnation proceedings. For this reason earlier law is inapplicable in so far as it requires valuation from the time of the appraisement. The result of the holding is that Section 1-775 is inapplicable with respect to the time of valuation whenever, under the procedure of any eminent domain statute, immediate possession is available and taken by the condemnor prior to the report of the court appointed appraisers.

Wyo. Stat. § 1-775 (1957) says that the "true value" is the amount to be awarded. It is well established that this means market value, where it exists.[24] As to the rule in the absence of a market value, the Court states it as follows:

> It is the well established rule that where the property has no market value the value must be ascertained as nearly as possible by considering facts which would have weight between persons bargaining for the property.[25]

It is obvious that any measure of value is necessarily with reference to some use. The most available use is the appropriate use from which the value is determined; but it must not be entirely remote or speculative.[26]

According to recent dictum, Wyoming adheres to the rule that the prices from sales of similar property may be introduced to show the market value of the property.[27] However, this is qualified by the holding of an earlier case, *Colorado Interstate Gas Co. v. Uinta Development Co.*[28] The Court there held that the prices of lands sold under the threat of eminent domain proceedings were not admissible to show the value of similar property. The reason given was that prices resulting under the threat of a law suit furnished no fair basis of market value.

In the *Triangle Development* case the question arose as to whether an unaccepted written offer for the particular land under condemnation was admissible to show value. The argument was made that if offers for similar property was admissible, the unaccepted written offer for the property in question should be also. California authority was cited. The Court in effect said that, although the sale price of similar property is admissible, offers to purchese similar property were not. In holding the unaccepted written offer to purchase the land in question inadmissible, the Court stated that offers to purchase similar property were inadmissible

23. Wyoming Ry. Co. v. Leiter, 25 Wyo. 286, 169 Pac. 1 (1917).
24. See, e.g., State Highway Comm'n v. Triangle Development Co., supra note 22, and Stringer v. Board of County Comm'rs of Big Horn County, supra note 14.
25. Stringer v. Board of County Comm'rs of Big Horn County, supra note 14, at 201.
26. See State Highway Comm'n v. Triangle Development Co., supra note 22.
27. Id.
28. 364 P.2d 655 (1961).

for the same reasons. The Court then listed several reasons of which the following is felt be a fair summary: (1) There is no opportunity to cross-examine; (2) Such offers are too uncertain and speculative, in that the offeror might have wanted the property for reasons independent of the actual value; (3) Such evidence is hearsay, thereby putting before the jury an opinion of an absent person. This holding presents difficulty. All the reasons for inadmissibility mentioned would seem to be curable by the direct testimony of the offerer, where there would be an opportunity to cross-examine. The opinion does not indicate whether there was direct testimony. The decision talks generally of these types of offers without distinguishing between the situation where the written offer was introduced with or without the benefit of the direct testimony of the offeror. If the only reasons for excluding such offers are as outlined above, they refer only to the form of evidence, and there appears to be no reason that such offers should not be admissible where there is an opportunity to cross-examine the offeror.

Also in the *Triangle* case the Court in effect held that testimony as to the per-lot value of a partially developed sub-division was inadmissible to show the value of the whole tract. The whole tract here was that part of the undeveloped part of the sub-division which was taken for a highway right-of-way. There was testimony by the Highway Commission's witnesses in terms of the per-lot value. Another witness, who had also testified as to the per-lot value in terms of what she would be willing to give herself, testified on cross-examination that she in fact wanted four lots. The Court reasoned along two lines in support of its holding. The first was based upon the speculativeness of the value awarded. The Court stated that, although such testimony is not inadmissible as a matter of law, it (the court) was afraid that the jury had assigned speculative values to the tract in question. In support of this it was said that the aggregate of the per-lot value was not the value of the whole because it did not include such speculative expenses as those necessary for laying out streets, selling the lots, advertising, and paying taxes. However, there seems to be no reason that a reasonable estimate of these expenses could not be made, based upon a computation of present prices and an estimate of how long it would take to sell the lots from the history of prior sales.

The second line of reasoning was in regard to the use of the land for building purposes. The Court seemed more concerned with the question of whether the use upon which the award was based was too remote and speculative. The appropriate use is the most available one, but it must not be too remote and speculative. The facts on which the Court seemed to place particular significance were as follows: (1) The corporate landowner appeared to be dissolved at the time of the trial; (2) No lots of the subdivision had been sold since 1954; (3) 14 homes had been built in Newcastle in 1959; (4) 9 homes had been built up to the time of trial in 1960. The Court noted that it would take some time to sell the lots at

that rate. The Court was not convinced that home building was the most available use and the question of what is entirely remote and speculative *no evidence appeared in the opinion as to any more* available use, nor did the Court feel it necessary to discuss the question of whether there was a more available use.

The decision seems borderline. The question of what is a most available use and the question of what is entirely remote and speculative as a use are questions that were left unclear.

SUMMARY

Although various Wyoming statutes authorize eminent domain for various purposes, the measure of damages is as stated in Wyo. Stat. § 1-775 (1957) and consists of two elements of damages; i.e., the value of that taken and that not taken but injuriously affected. Value is the market value where it exists. Otherwise it is established by consideration of those facts to which two persons bargaining voluntarily would give weight. The value to be determined is to be based upon the most available use, but which cannot be entirely remote or speculative.

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