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Real Property—Eminent Domain—Just Compensation

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Eminent Domain — Valuation Of Cemetery Property

The fundamental question in evaluating the value of land condemned by the state in eminent domain proceedings is, "what has the owner lost, not what has the taker gained?"¹⁷

In a decision concerning the evaluation of undeveloped cemetery property the Court of Appeals¹⁸ affirmed the method of evaluation used by the Court of Claims:¹⁹ The number of lots that the property would have eventually been divided into was multiplied by the unchallenged sales price less the sales cost; the present value was then established by dividing this total amount by forty, the economic life of the property, and this amount was discounted at the rate of two per cent per annum.

Under the circumstances of the case, the land acquired by the state was annexed to an old and well-established cemetery in which most of the Roman Catholic population of the area expected to be buried. It is pointed out by the dissent that it is necessary, as a result of this acquisition by the state, for the cemetery to acquire new lands and the price it will pay will be that which a willing buyer would pay a willing seller for unused cemetery land, rather than what the cemetery would cost if purchased lot by lot, a difference in this case, according to the state's computation, of \$26,000. This then does not represent what the owner has lost, under the general rule.

On the other hand, evidence as to mere offers, whether made by the owner or to him, is universally excluded,²⁰ and the relatively unusual nature of the use to which the land is to be put thereby presents some difficulty in finding similar property to form a comparison.²¹ Thus, in the absence of adequate proof by the state of the market value of other property sold as a whole, it would seem that the Court came to the only supportable conclusion.²²

Eminent Domain — Just Compensation

When private property is taken for any public purpose, the compensation must be just and shall be ascertained by a jury, or by the supreme court without a jury, or by not less than three commissioners.²³ Just compensation may be determined by any number of elements, including fair market value as of the date of

17. *Boston Chamber of Commerce v. Boston* 217 U.S. 189, 195 (1910).

18. *St. Agnes Cemetery v. State*, 3 N.Y.2d 37, 163 N.Y.S.2d 655 (1957).

19. 208 Misc. 171, 141 N.Y.S.2d 532 (Ct. Cl. 1955).

20. 4 NICHOLS, *EMINENT DOMAIN* §12.3113(3) (3rd ed. 1950).

21. *Fidelity Union Trust Co. v. Union Cemetery Ass'n*, 104 N.J. Eq. 326, 145 A. 537 (1929); *East Ridgelawn v. Winne*, 11 N.J. 459, 94 A.2d 833 (1952).

22. *Accord, Cementerio Buxeda v. Puerto Rico*, 196 F.2d 177 (1st Cir. 1952).

23. N.Y. CONST. art. I, §7.

appropriation, reproduction cost of improvements less depreciation, sales of similar property, location, income, highest suitable use, consequential damages to property not taken but affected by condemner as used, and personal inspection by the commission.²⁴ No single element is controlling, but the determination of the appraisers must have some sort of supporting evidence in the record.²⁵ But unlike a jury a commission is not limited to any species of evidence and they are privileged to act on their own judgment and information obtained from inspecting the property, as well as on evidence produced before them.²⁶ Under ordinary circumstances as a commission's action will not be set aside by a court unless it is such as to shock one's sense of justice.²⁷

The City of New York in *In re Huie*²⁸ sought to uphold a Special Term decision in their favor which reduced a condemnation award as being excessive.²⁹ The land in question was being acquired for a reservoir for New York City. The city contended the commission's award was not based on legally sufficient evidence. The Court found that the commission arrived at its award by viewing the property and receiving the testimony of a representative of both the city and the claimant. The claimant's testimony included a description of the property, its location, fair market value, and information concerning other sales of comparable property. Since the commission had received acceptable evidence and rendered a decision which in fact was a compromise, the Court felt that the award could not be deemed so shocking to its sense of justice as to warrant setting aside the commission's decision.

The Court's power to review an award of a commission is very limited.³⁰ Even though New York City under its condemnation law specifically provides for judicial review,³¹ this does not, as the dissent seems to suggest, give the Court power to substitute its judgment for that of the commission's. The amount of the award remains for the commission to decide; the courts may only pass on its "justness."³²

24. *In re Board of Water Supply of City of New York*, 277 N.Y. 452, 14 N.E.2d 789 (1938); *In re City of New York*, 198 N.Y. 84, 91 N.E. 278 (1910); *Village of Lawrence v. Greenwood*, 300 N.Y. 231, 90 N.E.2d 53 (1949); *Sparkhill Realty Corp. v. State of New York*, 254 App. Div. 78, 4 N.Y.S.2d 679 (3rd Dep't 1938); *South Buffalo Ry. Co. v. Kirkover*, 176 N.Y. 301, 68 N.E. 366 (1903); *In re Thompson*, 121 N.Y. 277, 24 N.E. 472 (1890).

25. *In re Simmons*, 132 App. Div. 574, 116 N.Y. Supp. 952 (3rd Dep't 1909).

26. *Adirondack Power & Light Corp. v. Evans*, 226 App. Div. 490, 235 N.Y. Supp. 569 (4th Dep't 1929).

27. *In re City of New York, Northern Blvd.*, 258 N.Y. 136, 179 N.E. 321 (1932); *In re City of New York, Old Third Ave.*, 241 App. Div. 13, 270 N.Y. Supp. 761 (1st Dep't 1934).

28. 2 N.Y.2d 168, 157 N.Y.S.2d 957 (1956).

29. 283 App. Div. 678, 127 N.Y.S.2d 214 (1st Dep't 1956).

30. See notes 26 and 27 *supra*.

31. CONDEMNATION LAW OF CITY OF NEW YORK, §7.

32. See note 26 *supra*.