IN THE SUPREME COURT OF IOWA

Supreme Court Case No. 19-1582
Linn County No. LACV087659
Linn County No. CVCV087911

IN THE MATTER OF THE CONDEMNATION OF CERTAIN RIGHTS IN LAND FOR THE EXTENSION OF ARMAR DRIVE PROJECT BY THE CITY OF MARION, IOWA.

PHYLLIS M. RAUSCH, Trustee of the WILLIAM J. RAUSCH FAMILY TRUST,

Plaintiff-Appellant,

vs.

CITY OF MARION, IOWA,

Defendant-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR LINN COUNTY
HONORABLE CHIEF JUDGE PATRICK R. GRADY

FINAL REPLY BRIEF OF APPELLANT

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Plaintiff/Appellant, Phyllis M. Rausch, Trustee of the William J. Rausch Family Trust, files this Reply Brief.

I. The Trial Court Erred in Requiring James Rausch, who Testified as an Owner, to have Personal Knowledge of Comparable Sales.

The City of Marion acknowledges in its brief that James Rausch was a competent witness to testify as to value of the property before and after the taking. An owner of property may express opinion as to values of property. Kimmel v. Iowa Realty Co., 339 N.W.2d 374, 386-81 (Iowa 1983); Fleener v. Board of Supervisors, 246 N.W.2d 335, 337 (Iowa 1976); 27 Am. Jur. 2d Eminent Domain §523 nn 16-18 (2014); Housing Authority of City of Calhoun v. Spink, 91 Ga. App. 72, 78, 85 S.E. 2d 80, 85 (1954) (owner was properly allowed to testify as to value of condemned property and testify as to price paid by others for property in vicinity)."Primary test for admissibility of comparable sales is whether the sale tends to prove the value of the subject property." 32A C.J.S. Evidence §1041 (2008). Numerous factors are considered in evaluating comparability. Id.

Iowa is committed to a liberal rule on the admission of opinion evidence. McHose v. Physician & Clinic Services, Inc., 548 N.W.2d 158, 161 (Iowa 1996) (opinion on value of medical building by physician who had knowledge from experience in construction of another medical building); Iowa Development Co. v. Iowa State Highway Commission, 255 Iowa 293, 297-98,

122 N.W.2d 323, 327 (1963); Millard v. Northwestern Mfg. Co., 200 Iowa 1063, 1066-67, 205 N.W. 979, 981 (1925). "A witness may support his valuation by relating matters which affected his judgment. The admissibility of collateral facts in support of estimates of value is a matter which must be largely left to the discretion of the presiding judge." Martinson v. Iowa State Highway Commission, 257 Iowa 687, 690, 134 N.W.2d 340, 342 (1965).

The owner of property is treated differently from lay witnesses regarding a requirement of personal knowledge. 31A Am. Jr. 2d, Expert and Opinion Evidence §241 (2012). A witness qualified as "expert" on land value may fortify testimony with comparable sales. Id. §247. An owner of real property is presumed to have special knowledge of value and is therefore competent to testify. Id. §248. An owner's opinion of value goes to weight of testimony not its admissibility. Id. §249. Opinion based on specialized knowledge within the scope of Iowa. R. Evid. 5.702 should be removed from lay opinion rule and evaluated under expert opinion rules. 7 Ia. Prac., Evidence §5.701:1 nn 30-36.

Logic and fairness support the approach taken by courts applying rules of evidence similar to Iowa's. In a series of federal court cases applying the federal rules of evidence, the owner is treated as an expert entitled to the privileges of an expert. That includes the privilege of relying on knowledge the witness has been made aware of or on personal knowledge. See U.S. v. Laughlin, 804 F.2d 1336, 1341 (5th Cir. 1986) (owner's testimony in eminent

domain is within expert opinion exception to hearsay); LaCombe v. A-T-O, Inc., 679 F.2d 431, 434-36 n.4 (5th Cir. 1982) (prejudicial to exclude owner's evidence of value of his property in eminent domain; the Court decided the case under Rule 702 although the parties argued it under Rule 701); U.S. v. 10,031.98 Acres of Land, 850 F.2d 634, 636-642 (10th Cir. 1988). In these cases it is understood that the testimony of the owner is admissible and the weight to be given the testimony is for the jury.

The federal court cases are predicated in part on the Advisory Committee Notes accompanying Federal Rule of Evidence 702: The rule [702] is broadly phrased.

> The fields of knowledge which may be drawn upon are not limited merely to "scientific" and "technical" but extend to all "specialized" knowledge. Similarly, the expert is viewed, not in a narrow sense, but as a person qualified by "knowledge, skill, experience, training or education." Thus within the scope of the rule are not only experts in the strictest sense of the word, e.g., physicians, physicists, and architects, but also the large group sometimes called "skilled" witnesses, such as bankers, or landowners testifying to land values." (emphasis added)

In the modern era, an owner of land has many paths to knowing the market value of the owner's property. Armed with a modest amount of skill and knowledge, an owner can readily find and analyze sales of real property

without engaging others. If the owner chooses another path, real estate professionals can be engaged to determine the market value. Lastly, an appraiser can be paid to render an opinion of value.

From the standpoint of the jury, contrast James Rausch's naked opinion of value allowed in this case to the opinion of the paid appraiser. It is fundamentally unfair to exclude comparable sales that form the basis of the opinion of an owner. To permit a witness to express an opinion of value without allowing testimony as to basis for opinion denies the trier of fact a basis for weighing and evaluating the evidence. 31A Am. Jur. 2d, Expert and Opinion Evidence §226 (2012).

Appraisal reports document the appraiser's understanding of the property that is being valued. The appraiser is not concerned with the owner's self-interest nor can the appraiser equal the owner's knowledge of the property. U.S. v. 10,031.98 Acres of Land, supra at 640-41. In seeking to value the subject commercial property located on a four-lane divided highway near the commercial center of Cedar Rapids/Marion, an appraiser may, as did Marion's appraiser, identify properties located on arterial streets zoned for multi-residential or industrial uses as comparable. Moreover, an appraiser might look to a suburban community with minimal commercial development for a property chosen because it had trees that might have to be cleared.

In contrast, an owner's self-interest dictates that where the property is zoned for intense commercial uses, comparable property be identified with particular attention to traffic counts on a four-lane divided highway in and among concentrated commercial uses such as another retail mall area. Finding completed sales of property that are vacant or primed for redevelopment, an owner is well equipped to make a rational decision on the value of the subject property.

Exclusion of comparable sale evidence resulted in a verdict that denied Appellant just compensation. Exclusion of the comparable sale information was predicated on an erroneous application of the rules of evidence.

II. The Comparable Sales Information Possessed by James Rausch Satisfied the Requirements to be Submitted to the Jury.

The owner of condemned land can search for sales of bare land in several ways and once a sale of possible comparable property is identified the owner can learn the sale price of the sold land and the area of the land from government records. James Rausch possessed such information regarding comparable properties. Recorded deeds contain the transfer tax paid which leads to the purchase price (within $500). Another recorded document such as a subdivision plat will have the area of the property. Government records of the city or county assessor with jurisdiction will set forth the area of the parcel or lot. James Rausch possessed such information regarding comparable

properties. The characteristics of the property (e.g., contours and service by utilities) and its surroundings can be often be observed by the witness from the public way and noted for purposes of describing the property as comparable. James Rausch possessed such information regarding comparable properties. The name of the seller or buyer gleaned from the deed may reveal the likelihood the sale was arms-length. Contrast the name of a well-known home improvement store with the name of a department store. The latter may be in bankruptcy. Construction and signage on the property may reveal the purpose for which the property was acquired. James Rausch possessed such information regarding comparable properties. The neighborhood where the property is located can be observed by the witness for purposes of the requisite personal knowledge. Demolition of existing improvements followed by construction of new improvements can be observed. Where improved property is sold and the improvements demolished, the sale price becomes the land cost. James Rausch possessed such information regarding comparable properties. The information was personally known to James Rausch.

CONCLUSION

The trial court ruling on the Motion in Limine unfairly and unjustly denied Appellant the opportunity to obtain just compensation. The judgment should be vacated and the matter returned for a new trial where Appellant is allowed to fairly and justly seek compensation based on the relevant facts that a

willing seller would impart to a willing buyer, to-wit, the sale price of other properties shown to be comparable.

/s/ Dean A Spina June 15, 2020
Dean A. Spina Date

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS AND TYPE-STYLE REQUIREMENTS

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/s/ Dean A Spina — June 29, 2020
Dean A. Spina — Date

CERTIFICATE OF SERVICE

I certify that on June 29, 2020, I served the foregoing Final Reply Brief of Appellant upon the Clerk of the Supreme Court of Iowa by electronically filing the document through the EDMS, which will notify all parties of the electronic
filing.

/s/ Dean A. Spina
Dean A. Spina

COST CERTIFICATE

I, the undersigned, hereby certify that the true cost of producing the necessary copies of the foregoing Final Reply Brief of Appellant is $N/A and that the amount has been paid in full by Appellant.

/s/ Dean A. Spina
Dean A. Spina