

11,780
DEFENDANT'S REQUESTED CHARGE NUMBER 1.

I charge you that the test of "market value" of property condemned is what it would reasonably have sold for in the market at the time and place under like conditions, and is the price the property will bring when offered for sale by a willing seller who is not forced to sell and when sought by willing buyers not required to buy after due consideration of all elements affecting value.

GIVEN: _____

REFUSED: /

 Telfair J. Middleberry
Judge

DEFENDANT'S REQUESTED CHARGE NUMBER 2.

The court charges the jury that in assessing the possible enhancement to the property of the landowners by reason of the contemplated improvements you should not take into consideration as an element of enhancement that which is remote or imaginary or uncertain or speculative, even though mentioned or testified about by witnesses.

GIVEN: _____
REFUSED: _____

J. Edgar J. Mandelkern
Judge

DEFENDANT'S REQUESTED CHARGE NUMBER 3.

I charge you, ladies and gentlemen of the jury, that the rule of compensation in a condemnation case like this, where only a part of a tract of land is taken, is that the owner is entitled to the difference between the value of the entire tract immediately before the taking and the value of the part remaining after the taking, giving effect to any enhancement in value to the part remaining where as here the condemnation is for a public highway.

GIVEN: _____

REFUSED: ✓

Joseph G. Washburn
Judge

DEFENDANT'S REQUESTED CHARGE NUMBER 4.

I charge you, ladies and gentlemen of the jury, that we are here dealing solely with the question of compensation and damages when only a part of a tract is condemned for a right of way for a public highway. The applicable rule in such cases is well established and should govern you in this proceeding. . Your final inquiry as to the compensation to be awarded to the lawful heirs of Hurbert Andress, is the difference between the value of the entire tract immediately before the taking and the value of the entire tract remaining after the taking, giving effect to any enhancement in the value of the property remaining resulting from the construction of the highway.

GIVEN: _____

REFUSED: K

Joseph A. Madeline
Judge

DEFENDANT'S REQUESTED CHARGE NUMBER 5.

I charge you, ladies and gentlemen of the jury, that the burden of proof on the issue of enhancement is on the plaintiff, State of Alabama Highway Department.

GIVEN: _____
REFUSED: 2

Justin J. Maslowski
Judge

DEFENDANT'S REQUESTED CHARGE NUMBER 6.

The Court charges the jury that real estate tends to gravitate towards the highest, best and most profitable use to which it can be put, and its value tends to be set by the most profitable use to which it probably will be put in the reasonably near future.

GIVEN: _____
REFUSED: _____

Jeffrey J. Mansukhani
Judge

DEFENDANT'S REQUESTED CHARGE NUMBER 7.

The Court charges the jury that the reasonable market value of property taken under condemnation should be fixed at the highest and best use for which the property is reasonably adapted. If the highest and best use for which the property here condemned is reasonably adaptable is for a commercial purpose, its value should be fixed for that purpose.

GIVEN: _____
REFUSED: _____

Joseph J. Madole
Judge

DEFENDANT'S REQUESTED CHARGE NUMBER 8.

The Court charges the jury that in weighing the testimony of the witnesses, you may consider what the witness said, his conduct, and his demeanor on the stand.

GIVEN: _____
REFUSED: _____

Jeffrey J. Maslow
Judge

DEFENDANT'S REQUESTED CHARGE NUMBER 9.

The Court charges the jury that the owner of property in this type of case is to be put in as good a condition pecuniarily as he would have occupied, if his property had not been taken.

GIVEN: _____
REFUSED: _____

Jeffrey J. Mansbridge
Judge

You have been instructed as to the definition of fair market value. What comparable land changes hands for on the market at about the time of taking is usually the best evidence of fair market value. In the absence of such evidence a determination of value becomes at best only a guess by informed persons. You are therefore instructed that:

(a) A sale in the open market of the property in question reasonably near in time to the date of taking is the best evidence of its fair market value.

(b) Lacking a free market sale of the property itself reasonably near the date of taking, sales on the open market of similar or comparable property reasonably near in time to the date of taking, are

the best evidence of the fair market value of the property being condemned. Of course, there will be differences in the size, shape, location and the immediate surroundings of two pieces of property, and perhaps differences in other respects, and yet, to the extent that they are similar or comparable, the price for which one sold in the open market is good evidence of the fair market value of the other. "Similar" does not mean "identical" but having a resemblance. Obviously no two properties are alike in every respect, but this does not prevent their being comparable. Sales constitute the market. You must reject them as lacking in comparability before you turn to other means of determining the market value.

GIVEN: ✓
REFUSED: _____

J. Fair G. Washburn
Judge

DEFENDANT'S REQUESTED CHARGE NUMBER 11.

Ladies and gentlemen of the jury, the landowner is entitled to just compensation by reason of its land being taken. In order to arrive at the just compensation in this case, you should, based on all of the evidence, award the landowner the fair market value of the land actually taken, plus the decrease in value, if any, to the remaining lands, giving effect to any enhancement to the remaining lands by reason of the project. These values should be determined from all of the evidence as of the time of the taking which has been stipulated to between the parties and which date is 12-4-73. Then you should compute interest at the rate of six percent (6%) per annum on the sum of said values, from the time of the actual appropriation of the said land by the condemnor until the present time and add such interest to said values in order to arrive at one lump sum as a just compensation.

GIVEN: ✓
REFUSED: _____

Jeffrey J. Washburn
Judge