

1976 WL 30452 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 4, 1976

***1 Re: Highway Instructions to Fee Appraisers**

Mr. S. O. Holstein
Right of Way Engineer
S. C. State Highway Dept.
P. O. Box 191
Columbia, South Carolina 29202

Dear Mr. Holstein:

You have requested that this Office update and supplement the 'Instructions to Fee Appraisers' of the South Carolina State Highway Department, Right of Way Division, dated September 17, 1962. This letter is written as a preliminary step in editing and changing the booklet. It is hoped that the comments contained in this letter will be disseminated to all fee appraisers, as quickly as possible, and as soon as the 'Instructions to Fee Appraisers' booklet has been revised, this Office will forward it to you for distribution.

The significant changes in the law, as viewed by this Office, will be dealt with in the outline as contained in the 'Instructions to Fee Appraisers.'

1. Time of Taking.

The time of taking is, generally speaking, the date of the Resolution of the Board of Condemnation. What this means is that values are to be determined as the property appears just before the date of taking and then immediately after the date of taking, when the project has been completed. This concept presents no significant change; however, in considering the before value, the appraiser must eliminate from the before value any increases or enhancement in the value of the land caused by the proposed improvement for which the land is being taken. The appraiser is not entitled to indirectly increase the value of the land being taken by comparing it with a sale of other land, the value of which has been enhanced by the public improvement contemplated. [U. S. v. Reynolds](#), 397 U.S. 14 (1970); [Board of County Commissioners v. Vail Associates Limited](#), 468 P.2d 842, Cola. (1970).

This means that the appraisers for the Highway Department must be thoroughly briefed on the date of the 'Garridor Hearing,' the date of the approval of the specific alternate and the date of the 'Design Hearing,' as well as the date of taking. It is extremely important that the appraisers determine what impact and effect the announcement of the proposed project has on the local neighborhood and that this impact not be considered in arriving at a before value.

2. Nature of What is Taken.

No significant changes as of this date.

3. Measure of Damages.

No significant change except as expressed in paragraph 1, above.

4. Fair Market Value.

No significant change except as expressed in paragraph 1, above.

5. General and Special Damages.

No significant changes are contemplated for this section, but the following additions need to be included:

A landowner has no vested interest in the continuation of traffic in front of his property; therefore, a landowner is not entitled to special damages for the diversion of traffic. [LaBriola v. State, 328 N.E.2d 781 \(1975\)](#). Therefore, an appraisal report should not contain any damages to the remainder based in any part on the loss of traffic in front of the property.

***2** A landowner is not entitled to compensation for the loss of access to his property if other reasonable means of access are furnished; the State can curtail or diminish a pre-existing right of access without the payment of compensation, 25 Am. Jur. Highways, Section 154 (1940) Supp. (1975). Therefore, an appraisal report should not contain any damages to a remainder for loss of access when other reasonable means are furnished.

A landowner is not entitled to compensation for loss of frontage resulting from the discontinuance or relocation of a highway on which his property abutted. Even if the relocation of the highway diverts traffic, thus impairing certain lands' commercial value, the benefit of the highway's contiguity having been freely bestowed, it may be freely and even arbitrarily retracted. This is so even though the discontinuance or relocation diverts traffic from the landowners' door, diminishes his trade and thus depreciates the value of his land. [LaBriola v. State, 328 N.E.2d 781 \(1975\)](#). Therefore, an appraisal report should not contain any damages to a remainder based in any part on the relocation of a highway.

Any inconvenience or circuity of travel caused by the project is not compensable as special damages and, therefore, should not be included in an appraisal report.

6. General and Special Benefits.

This section will require extensive revision based on the following principles:

Benefits which may be set off against the value of the property taken or the damage to the remaining property are special benefits, that is, those which are special or local, or which directly affect the fair market value of the remaining property. Benefits include any benefit or increase in the fair market value of the remainder of the landowner's property which is the direct and proximate consequence of the proposed road construction. 3 NICHOLS ON EMINENT DOMAIN Section 8.6203.

The benefits which may be set off include local and neighborhood benefits, or those accruing to a well defined and limited part of a city or town by reason of its proximity to the improvement. [Windsor, et al. v. S.C. State Highway Department, Richland 75 C.P. 40-1119 \(Order filed Nov. 12, 1975\)](#).

The key to consideration of benefits is the statement that benefits include any benefit or any increase in the fair market value of the remainder of the landowner's property which can be attributable to the proposed road construction.

The remainder of the 'Instructions to Fee Appraisers' will require very minor revisions and need not be commented upon here.

It is suggested by this Office that all appraisers with outstanding appraisals be advised, as quickly as possible, as to the contents of this letter. It is also recommended that in all open cases in your Department, wherein an independent appraisal has been made, that this letter be forwarded to the appraiser making such appraisal, and that he be asked to reconsider his appraisal in light of the principles set forth herein.

Very truly yours,

*3 Daniel R. McLeod
Attorney General

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