

1966

State of Utah, by and Through Its Road
Commission v. Charles W. Taggart, Trustee, a
Partnership, First Security Bank of Utah, a Utah
Corporation, and Zions First National Bank, a Utah
Corporation, Mortgagees : Brief of Appellant
Partnership

Utah Supreme Court

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

UNIVERSITY OF UTAH

JUN 22 1967

STATE OF UTAH, by and through its
ROAD COMMISSION,

Plaintiff and Respondent,
vs.

CHARLES W. TAGGART, Trustee, a
partnership, First Security Bank of Utah,
a Utah Corporation, and Zions First Na-
tional Bank, a Utah Corporation, Mort-
gagees,

Defendant and Appellant

LAW LIBRARY

Case No.

10594

UNIVERSITY OF UTAH

BRIEF OF APPELLANT PARTNERSHIP

JUL 10 1967

Appeal from Judgment of Third District Court
for Salt Lake County

LAW LIBRARY

Hon. Aldon J. Anderson, District Judge

ROBERT S. CAMPBELL, JR.

of

PARSONS, BEHLE, EVANS &
LATIMER

520 Kearns Building
Salt Lake City, Utah

*Attorneys for Defendant
and Appellant*

PHIL L. HANSEN,

Attorney General

JOSEPH NOVAK

Special Assistant

State Capitol Building

Salt Lake City, Utah

*Attorneys for Plaintiff
and Respondent*

FILED

DEC 16 1966

Clerk, Supreme Court, Utah

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Case No.

10594

BRIEF OF APPELLANT PARTNERSHIP

PRELIMINARY STATEMENT

At the outset, counsel for Defendant asks the Court's indulgence for the length of this Brief. It quite exceeds the average in size. But the enormity of this case and the questions raised in this Appeal have dictated the need for added length of the Brief, at least if the issues urged are to be given their rightful attention.

The questions of fact at trial were prodigious both in number and scope. Entailed was the examination and the evaluation, under two different sets of conditions, of a tract of land in a vital urban area that was 10 city blocks long and 15 city blocks wide. It was tantamount to the trial of

two dozen or more land condemnation suits at once, involving every basic land use known excepting agriculture. In pure number of issues and land value conclusions, it is no doubt the largest condemnation suit ever tried in Utah.

STATEMENT OF THE CASE

This is a suit in condemnation brought by the Respondent Road Commission in July, 1965, to expropriate land of the Defendant-partnership for the development of sections of Interstate Highway 215 and 2100 South Expressway between 2100 South and 3100 South in Salt Lake County.

Jurisdictional questions relating to the right of the State to condemn Appellant's land, public use and necessity of the "taking," and the requirement that the project design be consistent with the greatest public good and the least private injury, were not placed in dispute, and the case proceeded to trial by jury on the amount to be paid as Just Compensation for the 78± acres condemned and for the damages accruing to the remaining properties by reason of the partial-expropriation, the highway severance and the construction of the project as contemplated.

DISPOSITION IN LOWER COURT

The issues of Just Compensation were tried to a jury before the District Court of Salt Lake County in January, 1966. On January 22, the trial Court entered judgment, based on special interrogatories returned by the jury, for \$359,877.00. (R. 98-99) Defendant-landowner

filed a timely motion for additur and new trial in the alternative, and for new trial alone (R. 107-109), which motions, upon hearing, were denied by the lower Court. (R. 131) From the judgment of January 22, Defendant appeals on issues of law. (R. 133, 137, 138)

RELIEF SOUGHT ON APPEAL

It is urged by Defendant in this Appeal that the judgment of the lower Court be reversed and that the case be remanded for new trial on the issues of Just Compensation.

MAP OF SUBJECT PROPERTY AND TAKING

Attached as Appendix 6 is a replica of trial Exhibit 1, representative of the prominent characteristics of the property and the freeway "taking". In general, the base plat depicts the property and its surroundings as existent in July, 1965, prior to condemnation. The total property is shown in yellow, the irregular black lines within the total tract being indicative of water and drainage courses serving the land, a power line right-of-way running north, southeast and east, and in the southeast section, an area formerly known as Decker Lake. Major roadways which served the land are colored brown.

The property condemned and the freeway alignment as it cuts through the total tract, are set out on clear plastic which overlays the base map. The non-access right-of-way lines, center line, and mushrooming interchange at the north are shown in the "taking" area.

STATEMENT OF FACTS

The evidence and expert testimony on Just Compensation in the case were focused on two considerations:

1. The highest and best use and fair market value of the total property BEFORE the "taking" by the Government of the $78\pm$ acres, as of the date of service of summons, July 12, 1965;
2. The highest and best use and fair market value of the Defendant's remaining property AFTER the "taking" of the $78\pm$ acres, weighing the nature and affect of the "taking," of the severance created and of the construction and establishment of the highway project.

Consequently, this Statement will be addressed to those factors.

1. *Total Property BEFORE the "Taking"*

The property condemned by the Respondent was in July, 1965, part of a larger unified and integrated tract of $927\pm$ acres located immediately west of Redwood Road (1700 West) and extending west to about 3200 West between 2100 South and 3100 South in Salt Lake County. (Ex. 1, Tr. 255-257) At the date of value, it was owned or being purchased by the Defendant, TAGGART TRUST-EE, a partnership of businessmen and lawyers. (Tr. 55-58) The land lay as undeveloped acreage. Such condition existed not because of a lack in demand for industrial, residential and commercial uses for the property, but because the former owner, prior to 1962, had not attempted any

development, and because the present Defendant-landowner, after 1962, had been stalled in its development plans due to the imminency of the freeway project through the middle of the tract. (Tr. 49-51)

The total ownership commanded an area of 10 city blocks north to south, touching on the north the largest industrial center in Salt Lake City, and on the south, southwest and east, developed residential subdivisions. (Ex. D-1, P-11, Tr. 142, 258, 411-415) With highway frontage of 2400 feet on 2100 South Street, 2750 feet on Redwood Road and better than 2700 feet on 3100 South Street (all said frontage with full and open access) (Tr. 142, 146-147, 256, 426), with water, sewer, gas, and power immediately available on the property (overlay Ex. D-1A, Tr. 255), with zoning which permitted industrial, commercial and residential use (Ex. D-18, Tr. 147, 414), and with a genuine demand and need for immediate development of the subject property (Tr. 48, 147-153, 412-415, 257), it was the informed judgment of the three experts, C. FRANCIS SOLOMON, WERNER KIEPE, and MAXWELL LOLL, called as witnesses by Defendant-landowner that the highest and best use of the whole property, prior to condemnation, was:

the north one-third (233± acres) . . . *industrial* with direct access from 2100 South and Redwood Road;

some 40 acres having 1,600 feet of Redwood Road frontage zoned C-2 . . . a *commercial* center with direct access from Redwood Road;

the balance of $532 \pm$ acres at the center and south . .
residential with access from Redwood Road, 2100
 South and 3100 South. (Tr. 90-92, 152-154, 257-
 259, 266-268, 271-275, 425-427, 429-432)

To compliment these findings, Leon Frehner, noted land planner in Utah, testified for the Defendant as to a feasible plan for the development of the property for the three uses, and there was received in evidence a plan (Ex. D-4) showing a plausible development for the entire property. (Tr. 154, 267-268, 275, 426)

The appraisers, FLETCHER and JOHNS, for the State, were in basic agreement with the landowner's experts as to the highest and best use of the property prior to condemnation. (Tr. 623, 770-771)

The employment of the total property as an integrated unit of land, for the varied uses of industrial, commercial and housing, rested upon several conditions:

Access to Industrial . . . the industrial land in the north one-third was heavily dependent upon its direct access from 2100 South and to a lesser degree, a secondary access from Redwood Road. (Tr. 146-147, 256-257, 418) FRANCIS SOLOMON testified that proper planning of the industrial portion required the main entrance be established on 2100 South with a series of interior roads fanning out inside the property, as illustrated by the Frehner Plan. (Tr. 257, 271) Mr. KIEPE stated that the dual access from 2100 South and

Redwood gave all the industrial land the advantages of "circulation" which it did not have without the 2400 feet of 2100 South access. (Tr. 426-427)

Access to West One-half . . . the development of the west one-half of the land, industrial on the north and residential on the south, was conditioned upon access being maintained from 2100 South and Redwood Road (Ex. D-4), since traffic movement and buying interests going to and from the property would be from the north and east. (Tr. 177, 258, 466) There were no public streets on the west boundary of the land nor did defendant have access to a street system from its west side so that if access from the west sections to 2100 South and Redwood Road were cut-off or obstructed, the remaining access to those sections would be only by way of 3100 South, an inferior county road. (Tr. 178, 179, 467)

Drainage of Decker Lake . . . the pond, covering about 180 acres, had acted as a shallow basin for portions of the subject property and lands west as tail water drained to the Jordan River. (Tr. 73, 74) Although not more than a foot in depth (Tr. 75), its existence presented a definite problem in development of the 500 plus acres on the southeast for residential use. ALTON J. SORENSON of Caldwell, Richards and Sorenson, engineers, testified that since the bottom of the lake was three to five feet above the surface elevation of the

Jordan River, the lake was susceptible to being drained and filled for residential use. (Tr. 78-84) Fill material was available on the property west of the lake and east of the power line right-of-way which could have been graded and compacted in the pond area. (Tr. 89-91) Although the cost of draining and filling the lake was estimated as substantial, it was feasible, from both engineering and economic standpoints, before the "taking," because the total 500 acres developed under one ownership and as a unit, was large enough to absorb the costs as a part of general land preparation expenses. (Tr. 88, 145-146, 279, 424-425)

The stage was thus set on the property at the time the State filed its condemnation complaint.

2. *Nature and Design of "Taking"*

The 78 acre acquisition courses the full breadth of the property from north to south cutting through the middle of the industrial and residential land (Ex. 1, Tr. 15, 466-468, 473), with the result that the remaining property is literally broken in two pieces. (Tr. 180, 466-468, 473, 474) The freeway right-of-way lines, throughout, are designated as "non-access." (See Appx. 6) The dual effects of this "non-access" design are not only that the Defendant is prohibited from access to the freeway from its remaining lands at all points along the "taking",¹ but also that there

¹The only access which the Defendant-landowners have or will have to I-215 upon its completion is that which it will share with others in common as members of the general public. (Tr. 13, 14, 16)

is no means or way afforded to the Defendant to cross the freeway from one side of its remaining property to the other. (Tr. 16) The blocking of east-west travel on the property is complete under the freeway design for there is no interchange or grade separation device permitting access from west to east within the property for a distance of 8000 feet. (Tr. 15)

The 2400 feet of frontage of and access to the Defendant's land on 2100 South Street is taken in its entirety. (Tr. 13, 177, Ex. D-1C)

The width of the freeway "taking" averages 260 feet through the south, center and north center of the property (Tr. 8), but increases to a final width of 2400 feet at the north end. (Tr. 9, Ex. D-1)

As finally constructed, the traveled portions of the freeway will be elevated on an 8 foot dirt fill, on an average, (Tr. 18) with the height of the dirt fill gradually increasing on a 2% grade at both the north and south ends of the property to an elevation between 22 and 35 feet in order that the freeway may pass over 2100 South and 3100 South Streets. (Tr. 7, 18, 19)

3. *Remaining Property AFTER the "Taking"*

By reason of the "taking" and the design of the highway project across subject property, the land left to this Defendant after condemnation was subject to a set of new conditions which did not previously exist. In determining the highest and best use and fair market value of the property remaining after the "taking", the expert witnesses

called by the landowner, testified that the buyer and seller in the open market would take stock of the following factors:

- (a) After the "taking", the remnant property consisted of two separated pieces, isolated from each other. (Tr. 184, 186-188, 319, 473-77) Whereas before the expropriation, the buyer in the market had the advantage of developing one unit of ground for its highest use with the costs of such spread over the whole property, the severed tracts after the "taking" were each on its own to develop without the aid of the other or of the whole. (Tr. 186-88, 473-77) From one unified tract of ground, the highway had created two unhomogenous remainders. (Tr. 177-186, 310-20, 465-80)
- (b) Gone were the advantages of the control of access to and through the total property, gone was the flexibility in the manner and variations of development, gone was the beneficial influence which development of the east portion of the ground would have on the west part, and gone was the plottage, the uniform shape, and the access characteristics which the property formerly possessed. (Tr. 176-186, 314-320, 465-479) WERNER KIEPE was of the opinion that the "taking" through the middle of the total property produced a cutting effect that, in a general way, innured to the detriment of practically all the remainder land. (Tr. 467)

- (c) For a span of 10 city blocks, the freeway was to be constructed over Defendant's land without a single crossing point or underpass. (Tr. 15, 16) Prior to condemnation, the crossing from the east to the west parts of the land, or vice-versa, involved the travel of but a few steps. (Ex. D-1) To reach the same place after condemnation from a point on the opposite side of the freeway, travel exceeding 10,000 feet or 16 city blocks was required down the length of the property south to 3100 South Street, along that street underneath the freeway overpass, and back again the length of the land. (Tr. 15-17)
- (d) *Industrial Land Remaining East of Freeway.* All access to this property (72.6 acres) from 2100 South Street was lost as a consequence of the "taking". (Tr. 13, 177, 466, D-1C) Mr. SOLOMON testified that said property was reduced to reliance on Redwood Road for its access, which street had not theretofore generated industrial influence south of 2100 South. (Tr. 312, 344) It had also been deprived of its probable potential development as part of the larger industrial tract according to Solomon. (Ex. D-4, Tr. 344-345) Now situated in a pocket next to the freeway, it would be dependent for development from the east instead of from the industrial area of the north. (Tr. 188, 466, 311-312)

(e) *Industrial Land Remaining West of Freeway.* The loss of access to the industrial land on the east of the freeway was also occasioned to the 122± acres of industrial land on the west. Ingress and egress to that land after condemnation, had to come from a pole line road (a dead-end dirt road, the public nature of which was highly questioned), or from 3100 South Street (some 7 to 8 city blocks away). (Tr. 177-79, 313, 467, 468) SOLOMON concluded that the loss of reasonable access, the increased expenses in utility development and a delay in time in which the property would have otherwise developed, all but “disrupted” the former industrial use concept of this remainder. (Tr. 312-315) Additionally, available materials needed to fill low spots on such property had been “taken” or isolated by the freeway. (Tr. 314) KIEPE described the 52 acres in the pocket between the freeway and the power line on the west as being “shut-off” from access and development until the Defendant bought land to the north to reestablish a connection with frontage on 2100 South. (Tr. 467)

(f) *Commercial Acreage East of Freeway.* A penetrating analysis of the commercial land fronting on Redwood Road was made by WERNER KIEPE. He investigated more comparable commercial sales data than all other expert witnesses for both sides, combined. (Tr. 447-457, 640, 782) The commercial value accorded to this 39.8 acres by KIEPE prior to the “taking” was premised on

the fact that this parcel was “an ideal location for a shopping center”, to serve the interior residential land of Defendant as well as residential areas, generally, to the south and west. (Tr. 429, 471, 472) After the “taking” and construction of the freeway, the accessibility to the commercial area from lands west of the Belt Route, including that remaining to Defendant, is “completely shut off except by a long circuitous road” with the end result that the shopping center would “lose most of its potential buyers” from that area. (Tr. 472, 473)

- (g) *Residential Land East of Freeway.* The circumstances visited on this remainder (constituting some 209 acres) were described by Messrs. SOLOMON and KIEPE. SOLOMON stated that because the Belt Route was not planned for construction until 1968, the development of this land would be delayed, which delay, expressed in loss of return on the investment to the buyer, would have a depreciating affect to a 300 foot strip, or about 45 acres of land paralleling the freeway. (Tr. 316, 317) Furthermore, because of the proximity to noises, vibrations and odors from freeway traffic, it would be necessary to add an additional 50 feet to the depth of residential plottage.²

²The witness, Solomon, stated and the testimony in the case is undisputed that a 50 foot corridor reservation next to a non-access freeway is standard practice by landowners in the development of residential land. (Tr. 318) Such a corridor reservation was only made necessary by the “taking” and construction of the freeway through Defendant’s land. (Tr. 315, L. 28-30)

(Tr. 315-318) Mr. KIEPE was determined to the same judgment, i.e., that the residential land immediately next to the freeway will require additional depth in lot development and is less desirable in the market place by reason of that fact, after condemnation. (Tr. 478, 479) KIEPE also found that home site acreage east of the freeway had also lost materials for grading, filling of Decker Pond, and contouring, which materials were in the "taking" or segregated to the west by the "taking". (Tr. 477)

- (h) *Residential Land West of Freeway.* The factors of proximity to the freeway and the requirements of added depth appurtenant to the residential land east, was as well extant on the west of the "taking". (Ex. D-9 Solomon, D-10 Kiepe, Tr. 317, 476-479) Several other depreciating factors were also present. A strip of land, approximating 26 acres, was caught between the west non-access line and the east edge of the power line right-of-way. (See Appx. 6, Ex. D-1) Prior to condemnation, the 26 acres was part of the integrated west-center section of the total tract. After condemnation, it is left as an isolated tract. Beginning on the north at a perpendicular tangent to Highway Station 458±, this severed strip gradually narrows in width until reaching a point tangent to Station 420-415, it is only a few feet

wide. (Tr. 318-319) SOLOMON and KIEPE described the pinched sections as "almost useless" and damaged to the point that "it practically loses its value". (Tr. 318, 476) As in other areas, neither witness, FLETCHER or JOHNS, for the State found any severance damage whatsoever, to this 26 acre area. (Ex. P-12, P-14) The residential land west of the freeway (about 146 acres) is, because of the "taking", physically and circumstantially divorced from its former environment and access to and from the east. Loll said that because of condemnation, such property had lost its "doorway" to the east for development of utilities and access. (Tr. 184) FRANCIS SOLOMON concluded that the acreage, having lost its east-west access, had sustained a set back in the time of development amounting to 6.67% of the former property value. Mr. Kiepe summed up the matter:

"A. We now have a definite division. Formerly, we had nearly 500 acres which was in one plot, which could be developed and it meant a uniformity of planning of roads and so forth which could be — which would allow for a much better development. Now, this part will have to be developed separately. That is the west part will have to be developed separately from the east part. There can not be any continuity there." (Tr. 474-475)

- (i) *Sewer and Water.* In the development of the separated tracts west and east of the freeway after

condemnation, the costs of installing sewer and water underneath the highway right-of-way is measurably increased as against the expense incident to development of the integrated property before the "taking". (Tr. 94-96)

Each of the witnesses, SOLOMON, KIEPE, and LOLL, called by Defendant, translated the foregoing factors (a) through (i) into that price which the willing buyer would pay the willing seller for the remainder property after condemnation. (Ex. D-6, D-9, D-10) Expressed in *severance damage* and *apart from the value of the "taking"*, they individually concluded that the buyer will pay less to the seller for the remaining property after condemnation than would have been paid for the same property *before* condemnation, as follows:

Solomon	\$251,711.00
Kiepe	\$309,120.00
Loll	\$315,415.00

4. *Land Value Witnesses for the State.* The condemnor's first witness, R. S. FLETCHER, gave testimony that there was absolutely no severance damage to the remaining property as a result of the "taking" and the construction of the non-access freeway through the Defendant's property. (Ex. P-14, Tr. 666) On cross-examination, he admitted:

that he had made no investigation as to the cost or feasibility in draining and filling Decker Pond, although it is a factor as to which the buyer and seller ought to be informed; (Tr. 702-708)

that the costs of draining and filling could have been averaged over the total residential acreage before the "taking" as against the inability to do so because of physical separation after condemnation; (Tr. 710)

that he knew of no other property nor had he appraised any other property in Salt Lake County wherein a non-access freeway had cut through a total property for 10 city blocks with no place to get from one side of the remainder to the other; (Tr. 712)

that if the highway "taking" had permitted full access to the landowner from one side to the other of his remaining property, his appraisal of severance damage would have been the same as it was here. IN OTHER WORDS, HE FOUND NO SEVERANCE DAMAGE TO THE REMNANT PARCELS IN ITS TOTAL LOSS OF EAST-WEST ACCESS FOR A DISTANCE OF 8,000 LINEAR FEET; (Tr. 712-714)

that there was no damage to the remaining industrial land either west or east of the freeway, although it had lost 2400 feet of frontage and access on 2100 South, although it had lost its flexibility for development, although one piece was left as an isolated 4 acre tract, and although better than 140 acres west of the freeway would have to depend upon access, if at all, by a pole line road; (Tr. 721-726)

that there was no severance damage to the industrial land remaining on the west side, even though 46 acres of it would, admittedly, be "possibly" delayed a year in development because of the "taking". (Tr. 727) A delay of one year in loss of interest on the investment to the buyer in the market was calculated by the witness to be \$13,800.00; (Tr. 727)

that the narrow strip of land in the residential section physically severed between the west freeway non-access line and the power line was worth just as much "after" as it was "before", although the piece tapers to a single point on the south tip where for several hundred feet, its width is less than 25 feet; (Tr. 731)

that so far as severance damage is concerned, he did not give any consideration to the time in which the freeway would be built in determining whether the remainder lands had been delayed in development by the manner and time of highway construction. (Tr. 732)

Fletcher was evasive and unresponsive on cross-examination and the trial Court found it necessary to admonish him on several occasions:

"You are not an advocate and you are a witness and your responsibility is to answer the question as simply as you can." (Tr. 698)

"Mr. Fletcher, I don't know why you are reluctant to answer questions. You ought to answer the questions as put to you in fairness. You ought

to answer yes or no not to presume to begin a discussion of something else. Do you understand? (Tr. 756)

A.B.C. JOHNS, JR. was the condemnor's last value witness. His opinion of market value, both "before" and "after" condemnation, was substantially less than that of other witnesses, the other government witness, Fletcher, included. (Ex. P-12, P-14, D-6, D-9, D-10) JOHNS' value of the total tract before the "taking" was \$441,029.00 less than FLETCHER, \$560,885.00 less than the market value determined by FRANCIS SOLOMON, and \$1,007,329.00 less than the judgment of WERNER KIEPE. (*Ibid.*) The segments of JOHNS' testimony significant to this Appeal are:

under his opinion, the best of Defendant's land prior to the "take" was that at the extreme north having direct access to 2100 South Street. It had a value of \$4,000 per acre by his testimony. Only $69 \pm$ of 233 industrial acres was given that value; (Tr. 800)

the witness admitted that the remaining property had suffered in the loss of all access of 2100 South Street by the closing of east-west access throughout the remainder land and by its increased dependency for ingress and egress upon Redwood Road on the west and the pole line road on the east, all of which JOHNS acknowledged would be important considerations to the buyer and seller in the market. (Tr. 830-832) But he opined that

there was no diminution in value to any of the remainder lands attributable to those factors with the exception of 25 acres; (Tr. 813-814)

even if the condemnor had constructed underpasses on the property allowing east-west travel under the freeway instead of the total blocking of such travel as actually established, the remaining property *would have the same market value under either design in JOHNS' view of things*; (Tr. 856)

he admitted that Decker Lake area would be much the more difficult to develop after the "taking" because there was less land with which to work and over which to spread the costs, and further admitted that the buyer and seller would count it as a detriment to the "after" value of the remainder, but he didn't "reflect it" in his "after" opinion; (Tr. 838)

JOHNS found no depreciation in the value of the residential grounds remaining, east or west of the freeway, although he too acknowledged that such remainders must develop as separate units, that 26 acres on the west was pressed between the freeway and the power line, and that the west area, generally, was now dependent on a new neighborhood to the south; (Tr. 854-855)

the witness allowed that the lone damage to remainder properties caused by the "taking" was restricted to 25 acres of \$4,000 industrial land. (Tr. 813)
Reason for the depreciation — loss of access to

2100 South. The damage amounted to 40%; (Tr. 813, Ex. P-12)

the other remainder industrial lands immediately abutting on the damaged 25 acres sustained the identical loss of 2100 South Street access, it was conceded by JOHNS, but he conceded no severance damage to any part of the same; (Tr. 851-854)

59% of the witness' severance damage was promptly erased when he disclosed that in his view, the same 25 acres which he had damaged \$1,700 per acre, along with an additional $21\pm$ acres west of the "taking", had been *specialy benefitted* \$575 per acre in the total sum of \$26,582.00. (Tr. 815) The basis claimed for the benefits was the location of the I-215 freeway interchange at 2100 South Street. JOHNS said on direct examination that he considered sales of other lands similarly benefitted (Tr. 816), but he could not on cross-examination relate one such transaction; (Tr. 864, 865)

JOHNS admitted to changing his original appraisal before trial to include the \$26,582.00 special benefits. Before that, his appraisal had not included any special benefits whatsoever. (Tr. 862)

5. *Cross-examination of JOHNS on Condas Property.* On cross-examination, the condemnor's witness, JOHNS, admitted that he had previously appraised in behalf of a landowner, the "Condas property" next door to the subject prop-

erty on the north and east. It had been acquired for highway purposes also. (Tr. 828, 842) The Condas piece had access on 2100 South Street and Redwood Road as did the subject property, and was zoned industrial M-1 as was the industrial land of defendant. (Tr. 828) Counsel for Defendant proceeded to ask JOHNS whether, in fact, he had in the past "*appraised* the Condas piece for the landowner for \$10,000 per acre." (Tr. 843) The objection by State's counsel on the ground of immateriality was sustained and Court advised the jury:

"jury is admonished to disregard the testimony with respect to *the price of the adjoining property* and I might make this explanation, that is, while inquiry with respect on cross-examination of factors considered in nearby areas is a proper exercise of cross, it is the Court's judgment that in this instance that the value of that is out-weighed by the risks that are involved in introducing other issues which we do not have the time to resolve.

We are not about to re-try that case or the factors involved there, so, for that reason I ask you to disregard that testimony and that question completely." (Tr. 843, 844)

The trial judge expressed anxiety about time throughout the JOHNS' cross-examination. (Tr. 842, 844, 853, 861, 864)

6. *Special Benefits to Remainder by JOHNS.* On direct examination, JOHNS said that 46 acres of the industrial remainder were benefitted specially because of the arterial interchange and traffic to be established on the freeway north of the subject land after the "taking". The witness

did not testify that the highest and best use of the benefitted property was enhanced. (Tr. 815, 864) On cross examination, counsel for Defendant asked the witness if it were not true that the traffic which would be placed on and through the interchange area was the same traffic that was already passing the subject property on Redwood Road. (Tr. 864) The State's objection of immateriality was sustained. (Tr. 864)

7. *Qualifications of Expert Witnesses*

Witnesses for Defendant-landowner:

C. FRANCIS SOLOMON has been a broker and appraiser in Salt Lake City for 37 years. A senior member of the American Institute of Real Estate Appraisers (M A I), he was President of the Utah Chapter, is on its National Board of Governors, was Southwest Regional Conference Director and in 1963, was the National President of the Institute. He is a member of and has served as president of Utah Association of Realtors, and the Society of Residential Appraisers, and is a member of the American Right of Way Association. He has sub-divided and developed residential land. He has been a lecturer on real estate at several Universities in the west and an author of portion of a manual on Appraisal Techniques published by Prentice-Hall, Inc. He was designated the first "Realtor of the Year" for Utah in 1961. On constant retainment by the State Road Commission during the past decade, his clientel

lists every substantial public agency, federal, state, county, city, school board, in Utah engaged in land acquisition, as well as Zions, Walker, First Security, Continental Banks, Pioneer Savings, American and Prudential Savings, all types of insurance companies and mortgage institutions, churches, oil companies and private individuals. (Tr. 243-254)

WERNER KIEPE — 28 years a broker and appraiser in Utah. He is the senior member in Utah and past chapter president of the American Institute (M A I), qualifying as a member in 1937. With a degree in Economics and Accounting from the University of Utah, Mr. Kiepe is professor of the real estate course of the University under joint sponsorship with the M A I group. Past president of the Utah Board of Realtors, he prepared for the State Tax Commission the tables for the uniform tax assessment of real property now in use by that Agency and Salt Lake County. Like Mr. SOLOMON, the witness has appraised and testified in behalf of the State Road Commission consistently in years past on highway expropriations, as well as in behalf of every major governmental agency in the Salt Lake County, all major banks, churches, mortgage institutions, oil companies and others. (Tr. 398-409)

Both Messrs. SOLOMON AND KIEPE appraised the lands in the condemnation cases involving "This is the Place Monument". (Tr. 252, 409)

MAXWELL LOLL — A broker and appraiser, Loll has been active in the real estate market since 1946. A member of the American Society of Appraisers (A S A) and American Right of Way Association, he has taken a variety of special appraisal courses. He has been retained by the State Road Commission more than any other single client. Loll had appraised on every section of interstate highway in Salt Lake County for the Road Commission, including land immediately abutting the subject property north and south on I-215, and east on the 2100 South Expressway. Over 60 appraisals had been made for the Road Commission in 1965, alone, on Salt Lake County freeways by Mr. Loll. He had also appraised for other condemnors in Salt Lake County, banks and private landowners. (Tr. 131-138)

Witnesses for Plaintiff-condemnor:

R. S. FLETCHER — A broker since 1958 and a recent member of the American Insitute (M A I), Fletcher has been in the real estate business since 1947. Only recently has he appraised for public agencies involved in land acquisition. He has appraised for banks, insurance companies and private individuals. (Tr. 603-608)

A. B. C. JOHNS, JR. — A private fee appraiser since 1962, Johns was not and had never been a broker. A graduate of University of Houston in 1949, he had been a member of the M I A group for 3

years. He also was a member of the Society of Real Estate Appraisers. He had served as an appraiser for the Federal Bureau of Public Roads to investigate and inspect federal-aid land purchases made by the State Road Commission in 1962. He had appraised for one other federal agency, no other public agencies except the Road Commission, some insurance companies and private owners. (Tr. 760-764, 882, 823)

8. *Acreage Values and Comparable Sales of Witnesses.* The main points of contest on market value *before* the "taking", were in the industrial section of the north ($233\pm$ acres) and the residential area of the center, southeast and west ($466\pm$ acres) of the total tract. (Exs. D-6, D-9, D-10, P-12, P-14; see Appendices 1 thru 5 herein.) In summary, the opinions of the witnesses in those areas were:

Appraiser	Industrial Per Acre	Residential Per Acre
Mr. SOLOMON*	\$5,500-\$4,235	\$3,500-\$2,328
Mr. KIEPE*	\$6,500-\$4,000	\$1,650
Mr. LOLL	\$5,500	\$3,000

Mr. FLETCHER*	\$6,000-\$5,000	\$1,500-\$200
Mr. JOHNS, JR.*	\$4,000-\$2,300	\$177

Sales of comparable properties utilized by the witnesses for Defendant were probative and the more relevant to the subject property:**

*Values on the acreage varied depending upon particular location.

**A complete compilation of sales data will be found on Exhibits D-13, 13A, 13B, 13C and P-11 and in the direct examination of each witness.

Sale	Location	Acreage Size	Date of Sale	Price Per Acre
Ind-3	2100 So. 2350 West (across street from subject)	126.5	1964	\$7,750
Ind-1	2100 So. 2100 West (across street from subject)	18	1961	\$8,500
Ind-2	2100 So. 1850 West (across street from subject)	18	1960	\$8,500
Ind-6	2100 So. 2700 West (across street from subject)	2.54	1965	\$5,790
Ind-7	2100 So. 2700 West (immed. west of subject)	36	1965	\$4,000
Res-2	3100 So. 2100 West (immed. west of subject)	12	1965	\$3,500
Res-7	3100 So. Redwood Rd. (immed. east of subject)	16.5	1963	\$2,962
Res-5	250 ft. So. of Subject on 3200 West	13	1965	\$3,460

The sales used by State witnesses were, for the most part, westerly of the subject property, some more than 10 blocks away. (Ex. P-11) In all, witnesses for the Defendant produced 27 separate transactions, and the Plaintiff's witnesses testified to 18. (Ex. D-13 et al., P-11)

9. *Market Value Opinions of Witnesses.* The witness calculations on market value before and after the "taking" are lengthy and need not be fully reproduced here. They are set forth in the Appendices 1-5 of this Brief. In capsule form they were: (Exs. D-6, D-9, D-10, P-12, P-14)

For the Defendant-landowner

C. FRANCIS SOLOMON

Value of total tract BEFORE..\$3,169,651.00

Value of remainder tract

AFTER\$2,609,766.00

Difference or Just Compensation\$560,000.00

WERNER KIEPE

Value of total tract BEFORE..\$3,448,920.00

Value of remainder tract

AFTER\$2,773,750.00

Difference or Just Compensation\$675,170.00

MAXWELL LOLL

Value of total tract BEFORE..\$3,516,590.00

Value of remainder tract

AFTER\$2,844,070.00

Difference or Just Compensation\$672,520.00

For Plaintiff-condemnor

R. S. FLETCHER

Value of total tract BEFORE..\$2,882,620.00

Value of remainder tract

AFTER\$2,550,500.00

Difference or Just Compensation\$332,120.00

A.B.C. JOHNS, JR.

Value of total tract BEFORE..\$2,441,591.00

Value of remainder tract

AFTER\$2,187,914.00

Difference or Just Compensation\$253,677.00

10. *Instructions of Court*

The Court by 3 separate Instructions, 18, 19, 30, charged the jury that the Defendant had the burden of proving the market value of land "taken" and damages by the preponderance of the evidence. In Instruction 18, it directed that:

"If the evidence introduced by both parties as to the land taken and damages, if any, to the remaining lands is *evenly balanced*, then you will reject the contentions advanced by the Defendants." (Emphasis added.)

Nowhere did the Court charge the jury that its verdict could be within the range of the total value testimony, if the preponderance was less than the value conclusions of the landowner but more than the Government's testimony.

11. *Special Interrogatories Returned by the Jury*

The jury returned into open court the following interrogatories submitted under Instruction No. 30:

1. As of July 12, 1965, what is the fair market value of the 926.7 acres — *before* condemnation.

Answer\$2,775,911.00

2. As of July 12, 1965, what is the fair market value of the remaining 848.59 acres — *after* condemnation of the 78.11 acres by the State and the construction of the freeway in the manner proposed. This figure should include such benefits, if any, which you

find the new highway facility may bring.

Answer\$2,416,034.00

3. The difference between 1 and 2 is the just compensation to the landowner.

Answer\$ 359,877.00

4. What is the fair market value of the 78.11 acres condemned by the State as of July 12, 1965.

Answer\$ 308,301.00

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN REFUSING THE DEFENDANT A NEW TRIAL ON THE BASIS OF INADEQUATE DAMAGES.

The jury interrogatories are against the clear and manifest weight of the creditable testimony and are unsupported by the substantial and believable evidence.

After return of the jury interrogatories and entry of judgment, Defendant pursuant to Rule 59(a) (5) U.R.C.P., moved the lower Court for a new trial or in the alternative, an additur to the verdict. One of the bases was that the interrogatories as answered and returned were so grossly inadequate and openly contrary to the preponderance of the believable testimony on market value, both *before* and *after* the "taking", that it shocked the basic senses of justice and fairness of the Court, and required a new trial on

the question of Just Compensation. The trial judge refused to grant the motion. He was wrong in so doing.

In seeking a new trial on the ground of inadequacy of the condemnation award, Defendant's counsel is not unmindful of the prevailing rule that this Court will not review the facts of this case *de novo*, Art. VIII Sec. 9, Utah Constitution, nor will it set aside a jury verdict and judgment because a simple preponderance of the evidence would suggest a different solution. *Horsley v. Robinson, et al.*, 112 Utah 227, 186 P. 2d 592 (1947). The test is whether in the minds of reasonable men, the award is "obviously" below "any reasonable appraisal of the damages suffered". Opinions of Crockett, J. and Henriod, J. in *Stamp v. Union Pacific R. R. Co.*, 5 U. 2d 397, 303 P. 2d 279 (1956). To be upheld in law, the verdict and judgment must:

"fall within that orbit so that it can be said that there is *substantial evidence* from which reasonable minds could believe facts which will support it."
(Emphasis ours) *Lund v. Phillips Petroleum Company*, 10 U. 2d 276, 351 P. 2d 953 (1960).

The principle was applied to actions in eminent domain in *City of Winchester v. Ring*, 312 Ill. 544, 144 N. E. 333 (1924), wherein the Illinois Supreme Court said:

"The rule is that this court will not interfere with the finding of a jury on the question of damages in a case of this character unless that finding is clearly and palpably against the weight of the evidence."

There is good reason for the rule that an appellate court will set aside a jury award with reluctance. *Penman v. Eimco Corp.*, 144 Utah 6, 196 P. 2d 984 (1948); *Stamp v.*

Union Pacific R. R. Co., supra. But when that award falls short, as it does in the case at Bar, of any reasonable assessment of compensation for the "taking" and damages to the remainder, the injustice will be rectified on appeal. *Kentucky Highway Comm. v. Gilbert*, 253 S. W. 2d 264 (Ky. 1952). As declared by this Court in *Bodon v. Suhrmann*, 8 U. 2d 42, 327 P. 2d 826 (1958) :

"when the verdict is outside the limits of any reasonable appraisal of damages as shown by the evidence, it should not be permitted to stand, and if the trial court fails to rectify it, we are obliged to make the correction on appeal."

See also 5 *Nichols on Eminent Domain* 110, Sec. 17.3 (3rd Ed.).

Employing these law principles to the rudiments of the subject case, when consideration is given to the testimony of the believable witnesses on market value, SOLOMON and KIEPE, to the foundation for their appraisals, to their professional background and experience in making value judgments of this magnitude, to their ability to perceive the rationale of those elements commonly noticed in the buying market, and to the overwhelming evidence of remainder damages under their testimony, when weighed against the deficiencies of FLETCHER and JOHNS, their lack of experience, their failure to reflect factors in their evaluations which they acknowledged time after time were of vital import to the remainder properties, their almost consistent attitude of ignoring the most conspicuous elements of severance damages and their lack of candor on the witness stand, all culminate in the plain conclusion

in the minds of reasonable men that the award in this matter, under the interrogatories of the jury, is so pitifully inadequate as to transcend and shock the ordinary senses of justice and common sense. The record of trial herein, puts the rule in *Bodon* into effect.

Such conclusion does not depend upon argument of counsel. The facts and the witnesses provide the answer. While the expropriation of the 78 acres by the State consumed about 8% of the total tract, it was not that fact which wrecked havoc to the remaining lands. Rather, it was the location of the "taking" and the non-access design of the highway project which brought about the ruination of the remnant parcels. The right of the citizen to recover for both elements stems from constitutional and statutory guarantees. Article I. Sec. 22 Utah Constitution; 78-34-10-(2) U.C.A. 1953; *State Road Comm. v. Co-op Security Corp. of LDS Church*, 122 Utah 134, 247 P. 2d 269 (1952); *Tanner v. Provo Bench Canal & Irr. Co.*, 40 Utah 105, 121 Pac. 584 (1911).

The testimony is without dispute that the action of the Federal Bureau of Roads and the Road Commission in this case has no practical parallel in the history of Salt Lake County. For under the Complaint, the "taking" will serve to construct a non-access elevated freeway through the heart of 928 acres of industrial and residential land for a span of 10 city blocks (i.e. from South Temple to Tenth South) without a solitary crossing for the remaining landowner. Had the "taking" occurred on the far west or extreme east of the total property, or had the Plaintiff per-

mitted or established some way for the Defendant-landowner to get on and off the highway facility, or at least to cross it at distant intervals, the consequences would not have been so grievous. But neither happened. Like a hack saw, the "taking" cuts and tears through the center-axis of the land creating perpetual severance as it goes, until reaching the north end, it renders up the very guts of the property by engulfing all 2400 feet of frontage and access on 2100 South.

The aftermath of the "taking" is mostly deductive. The property is forever shorn of its integrity as one unit of land with the auxiliary advantages of flexible development, utility location, interior access control, and the appreciation in parts of the land as a consequence of developing other parts. The effective access to the industrial land and the west residential land is emasculated by loss of all 2100 South *access* in the expropriation. The property is left with side and rear doors only. SOLOMON and KIEPE were specific in their judgment of the damage from the deprivation of access. Two pieces of the remainder land (4 acres formerly industrial on the east of the "take" and 26 acres of residential on the west) are injured to the point that their entire use has been changed. There is no possible way to develop them "after" as "before". The residential land west of the freeway, whereas "before" appurtenant to the whole, is "after" in a cell, a new neighborhood, and obliged to sell as a segregated parcel. And the Decker Pond area, previously susceptible to being drained, filled and developed *only* because it was an integral part of the total residential

area, is divorced forever from over 170 acres to the west, which would have otherwise benefitted by the improvement of the pond and would have withstood some of the development costs. And on further the sterilizing affects of the "taking" were extended, viz., proximity to the freeway, noise, odors, and a 3 to 4 year delay in construction of the roadway.

The balance of the aftermath of the "taking" is axiomatic: the willing buyer, informed as we assume he is on the disadvantages of the remainder lands described-above and as set out unequivocally in the testimony at trial, simply would not begin to pay that price, after condemnation, for the isolated tracts in their then condition as he would have paid for the same ground, before condemnation, when the land was all one unit. Therein lies one of the three keys to the inadequate condemnation award, upon which a new trial is herein urged.

By calculation and deduction from the interrogatories returned, the jury found that the remaining 848 acres had had been damaged \$41,576.00.³ In terms of the jury's own interrogatories, the Defendant's remaining land was damaged but *two percent* of its former value as a result of the "taking" and the construction of the freeway as contemplated.⁴ Such a finding is unworthy of belief, as a matter of fundamental justice and law.

³Under Interrogatory 4, value of land "taken" was answered \$318,301.00. The total award under Interrogatory 3 (difference of "before" & "after") was \$359,877.00. Difference between 3 and 4, or \$41,576.00, is severance damage.

⁴\$41,576.00 is approximately 2% of the "before" value of the total tract, less the value attributable to the land actually "taken".

That finding of severance damage was *less* by \$210,-135.00 the judgment of FRANCIS SOLOMON and \$267,-544.00 *less* than the opinion of WERNER KIEPE on damage and injury to the remainder tracts. Such finding is \$23,975.00 above the opinion of the State witness, A.B.C. JOHNS, allowing an off-set for special benefits which he alleged. Without the benefits deducted, the jury finding on severance damage is \$2,607.00 less than JOHNS. (See Point III of this Brief.) Of course, State witness FLETCHER said that the remaining land was equally valuable "after" as it was "before" the "taking", i.e., no severance damage.

The second key in this Point on Appeal centers on Interrogatories 1, 2 and 3 answered by the jury on the market value of the property "before" and "after" the "taking" (R. 53), and the testimony of the leading witnesses on the same factors.

Interrogatory 1 asked as to the market value of the total tract before the "taking". It was returned in the sum of \$2,775,911.00 by the jury. It was on this interrogatory that *all other interrogatories depended*. That answer was not only \$393,740.00 below the informed judgment of C. FRANCIS SOLOMON ("before" value — \$3,169,651.00) and \$673,009.00 lower than that of WERNER KIEPE ("before" value — \$3,448,920.00) on the market value of the total tract prior to condemnation, *BUT IT WAS IN FACT, \$106,709.00 BELOW THAT OPINION OF THE STATE WITNESS, FLETCHER* ("before" value — \$2,882,620.00). There was only one value witness whose opinion prevented the answer to Interrogatory 1 from being completely without the scope of all testimony, much less believable testi-

mony, and that was A.B.C. JOHNS, JR. ("before" value — \$2,441,591.00). And JOHNS is the witness, who on the "before" value of the total tract, was 40% to 80% lower on his industrial values than any of the other 4 experts, and 800% to 1100% lower than any others on the residential section of the remainder, through which the "taking" courses. (See table on page 26 of this Brief; Appx. 1-5.) His opinion on the market value of that residential area was \$177.00 per acre, a conclusion so *incredulous* that it offends and violates all rational thought. Yet without JOHNS, the answer to Interrogatory 1 would be contrary to law. *Weber Basin Conservancy Dist. v. Moore*, 2 U. 2d 254, 272 P. 2d 176 (1954).

The third key that the award was grossly inadequate is Interrogatory 3, defined by the trial Court to be Just Compensation in the case, and answered by the jury in the sum of \$359,877.00. That answer, which is the inadequate award, is precisely

\$200,123.00 less than the judgment of Mr. SOLOMON, the lowest witness for the Defendant,
and
\$315,293.00 lower than the judgment of Mr. KIEPE.

The answer was \$27,757.00 above the high witness for the State, FLETCHER (who did not have any severance damage), and as stated, \$200,123.00 below the lowest witness for the landowner.

But what of the witnesses and the weight to be reasonably accorded their testimony. SOLOMON and KIEPE stand heads and shoulders above all other witnesses in this

suit, particularly A.B.C. JOHNS, JR. Engaged in appraisal practice in Salt Lake County for more than 25 years, Solomon 37 years, they are the two most notable appraisers in the State. Their work over the past decades, the bulk of it for condemning agencies and a substantial part of it for the State Road Commission, itself, has involved the most complicated and significant land condemnation suits in the State. The background, experience, training, seasoning, clientele, work as university lecturers, publication writing, and the professional activities of Mr. SOLOMON and Mr. KIEPE, are completely mismatched when stacked against the paucity of qualifications of Mr. JOHNS, upon whose opinion the award in this case hangs.

A member of the M A I association and in practice as an appraiser for 3 years, JOHNS named the State Road Commission as his primary client (Tr. 760-764). His ineptness and lack of experience were borne out by his lack of judgment on the value of the total tract "before". Again and again on cross examination, his typed answer was that although a certain factor could be detrimental to the remainder lands and would be considered by the informed buyer and seller, he was not going to recognize it in his appraisal. He was a first rate advocate in the suit. To say that the award herein is based on the testimony of A.B.C. JOHNS, JR. is to say nothing, because that opinion is so frail, absurd and wrought with inconsistencies that it is beyond the realm of being worthy of belief. It is insufficient to support the award.

It is these stark facts under the interrogatories of the jury (an unsupported and inadequate value of the whole

tract before the "taking", severance damage of two per cent, and the inferiority of the award) when examined in the light of the overwhelming force of the testimony opposing such results, that brings this case within the framework of *Bodon v. Suhrmann*, supra, and *Lund v. Phillips*, supra. The award herein is so out of harmony with any reasonable assessment of damages and compensation, and so shocking to the ordinary sense of fairness and justice, to impell the inference that the interrogatories were conceived through gross error, misunderstanding, bias and/or prejudice.

A new trial should be ordered to correct the inadequacy and injustice.

POINT II

THE TRIAL COURT ERRED PREJUDICIALLY IN REFUSING TO PERMIT COUNSEL FOR DEFENDANT TO CROSS-EXAMINE THE STATE WITNESS, A.B.C. JOHNS, AS TO HIS PRIOR APPRAISAL OF THE CONDAS PROPERTY NEXT DOOR.

1. *It was error to deny cross-examination on the Condas appraisal.*

It was in the late stages of the trial, on cross-examination of the State witness, A.B.C. JOHNS, JR., that the lower Court committed reversible error. JOHNS had given his opinion on direct examination as to the fair market value of the total property before the "taking". (Tr. 800-804) Part of such opinion included a finding that the in-

dustrial property of Defendant abutting upon and having direct access to 2100 South Street was worth \$4,000.00 per acre. (Ex. P-14, Appx. 5 herein.) Also, he allowed that Defendant's industrial land on Redwood Road would sell for \$5,200.00 per acre as of the date of "taking". (*Ibid.*) The property of one Condas abutted immediately upon the claimed \$4,000.00 an acre industrial land on 21st South. On cross-examination a foundation was laid and JOHNS admitted that the Condas' property abutted on 2100 South, that it was zoned the same as subject property, that it was adjacent to the Defendant's land prior to condemnation, and that he had made a previous appraisal of the Condas industrial land for the landowner. (Tr. 828, 842) It was abundantly clear at this hour of the trial that the Condas property, in terms of location, zoning, size, access and use, was much the more comparable than most of the sales data upon which JOHNS' testimony was reliant. (Ex. P-11, Tr. 775-782.)

The question was put to the witness by Defendant's counsel as to whether on that previous appraisal had he not determined the Condas property to be worth \$10,000.00 per acre?

"MR. CAMPBELL: I have the right, I think, to state my question — *that you appraised that Condas piece for the landowner for \$10,000.00 an acre?*"

An objection was made on grounds of immateriality and sustained by the trial judge. In so doing, the Court inferred that he understood the question to ask for the "price" paid to the abutting property owner by the State in the Condas condemnation proceeding, for it charged the jury

that it was to "disregard" the testimony with respect to the "*price of the abutting property*". (Tr. 843) It also admonished the panel that while this question might be a proper exercise of cross-examination, the Court was of the judgment that the value of the question was "outweighed by the risks . . . involved in introducing other issues" which time would not permit. (Tr. 844)

Two things are pointedly evident in this examination. The first is that the question did not ask for the price which the State Road Commission had paid for the Condas property, it did not ask for the amount of severance damages paid to Condas by the State, and it did not ask the price which Condas had been offered by the State for his land. Each of the foregoing would have been improper and no one was better apprised of the same than Defendant's counsel. *State Road Comm. v. Christensen*, 13 U. 2d 224, 371 P. 2d 552 (1962). But the question did not call for such. Rather, it was directed to the *appraisal* which JOHNS had made of the Condas property. It was asked not to establish market value, but to *impeach* the credibility and consistency of JOHNS' opinion in this case. That fact could not be clearer.

The second thing is that it was error of the trial Court to reject the question, for in so doing, it denied to Defendant's counsel a fundamental purpose of cross-examination — that of exposing the fraud, the liar, the cheat, the inconsistency of a witness and his bias, prejudice and advocacy. This Court put the principle well in *State of Utah v. Peek*, 1 U. 2d 263, 265 P. 2d 630 (1953), when it held:

“There is no other instrument so well adapted to discovery of the truth as cross-examination, and as long as it tends to disclose the truth, *it should never be curtailed or limited*. Any inquiry should be allowed which an individual about to buy would feel it in his interests to make.” (Emphasis added.)

There is no tool in the trial process that can be substituted in place of cross-examination. It is “the detective of the court-room”. *Jensen v. S. H. Kress & Co.*, 87 Utah 434, 49 P. 2d 958 (1935). Text authorities on the cross-examination of an expert witness demonstrate the fallacy of the lower Court’s ruling in this case:

“Of course, a witness who expresses an opinion as an expert may be impeached by proof that he has formerly expressed an opinion which appears to be inconsistent with his testimony.” *Jones on Evidence*, Vol. IV, p. 1768, Sec. 939 (5th Ed.).

Wigmore on Evidence, Vol. III, p. 733, Sec. 1041 (3rd Ed.) states the rule:

“All courts, however, concede that *expert opinions* as well as other opinions ordinarily admissible, if inconsistent with those expressed on the stand, are receivable.”

Nichols on Eminent Domain, Vol. 5, p. 274, Sec. 18.45(2) provides that with respect to the cross-examination of an expert witness in an eminent domain trial:

“The opinion of a witness may be *impeached* by showing that his acts are inconsistent with his words, as for example by showing that he has offered the same or similar property for sale at a price far different from what he now says it is worth, or he may be asked whether he has not made incon-

sistent statements upon the same point upon other occasions. * * *

“He may be questioned as to his appraisals of other property in the area which he has made but only if the foundation has been laid for a comparison of the different tracts appraised.” (Emphasis ours.)

The case of *Bingaman v. City of Seattle*, 139 Wash. 68, 245 Pac. 411 (1926) is clear authority for the rule applicable to the cross-examination of JOHNS. Therein, the Washington Supreme Court found prejudicial error in the refusal to permit cross-examination in a condemnation suit, on a prior inconsistent opinion given by the expert witness on the value of neighboring land:

“Of the trial errors assigned necessary to be noticed, the first is the contention that the trial court too narrowly restricted the cross-examination of certain of the city’s witnesses. *One of them, testifying to values, had testified in a case between other parties in which he had placed values on neighboring property largely in excess of the values he placed on the appellant’s property.* The appellant on his cross-examination sought to show this fact, but was denied the right so to do by the court. It is our opinion the testimony should have been admitted. There was no great dissimilarity in the situation or in the condition of the properties, nor was the time so remote as to raise a conclusive presumption that there had been any considerable change in values. *The evidence was thus admissible as tending to affect the weight to be given to the witnesses’ testimony.*” (Emphasis added)

It was held in *Contra Costa County v. East Bay Municipal Dist.*, 1 Cal. Rptr. 60 (1960) to be proper cross-exam-

ination of a land expert to permit impeachment on the fact "that in another case the expert had expressed a markedly different opinion as to the value of comparable property." The California Court said:

"The ruling of the Court was correct. It is hornbook law that a witness may be impeached by prior inconsistent statements. When an expert gives testimony as to the value of land, he states, under oath, that his opinion is in fact what he says it is. Any experienced trial lawyer knows how difficult it is to show, either that it is not in fact his opinion or that if it is really his opinion, it is not soundly based. It is no doubt for this reason that wide latitude is permitted in cross-examination.

"If the facts are such that the other property can fairly be said to be comparable, and if the difference in time is not great enough to make the two opinions not really inconsistent, the testimony as to the witness' own evaluation of the other property is *clearly within the bounds of proper impeachment.*" (Emphasis ours)

2. *The error committed on the JOHNS' cross-examination was prejudicial to the Defendant.*

To obtain reversal, it is not enough to show that the lower Court erred at some point in the trial. *State Road Comm. v. Peterson*, 12 U. 2d 317, 366 P. 2d 76 (1961); *Hales v. Peterson*, 11 U. 2d 411, 360 P. 2d 822 (1961). The error must be such that it may have substantially affected the outcome of the case. *State Road Comm. v. Noble*, 6 U. 2d 40, 305 P. 2d 495 (1957). But such being evidenced, a new trial will be ordered. *Board of Education v. Bothwell & Swaner*, 16 U. 2d 341, 400 P. 2d 568 (1965).

On the general subject of prejudice ensuing from the refusal to permit cross-examination, Harlan Fisk Stone, in *Alford v. United States*, 282 U. S. 687, 75 L. Ed. 625 (1930), said:

"Cross-examination of a witness is a matter of right. (Citing authorities.) Its permissible purposes, among others, are that facts may be brought out tending to discredit the witness by showing that his testimony in chief was untrue or biased. (Citing authorities.) * * * *Prejudice ensues from a denial of the opportunity to place the witness in his proper setting* and put the weight of his testimony and his credibility to a test without which the jury cannot fully appraise them. (Citing authorities.)"

In *Basch v. Iowa Power and Light Co.*, 95 N. W. 2d 714 (Iowa 1959), it was held to be prejudicial error to do as the lower Court did in the case at hand, refuse to permit cross-examination of an expert witness in a condemnation trial on a previous opinion he had expressed as to adjacent properties:

"*The sustaining of the objection to the other three questions was reversible error.* By so ruling the court denied defendant the right to show prior inconsistent statements and actions of the witness which would bear directly on the weight and credit to be given to his testimony in chief. This court in *State v. Matheson*, 130 Iowa 440, at page 448, 103 N. W. 137, at page 140, states the rule as follows:

"'But the great weight of authority seems to support the proposition that if there is an inconsistency between the belief of the witness, as indicated by his previous declarations, and

that which would naturally be indicated by his examination in chief, such previous declarations may be shown, although they are not directly contradictory to any specific statement made on his examination in chief.' (Citing cases.)"

The same evidentiary principle was applied in *People v. Murata*, 326 P. 2d 947 (Cal. 1958) under slightly different facts. There, the cross-examiner had asked the witness about an earlier appraisal he had made of the condemned property in 1954 for \$1,500.00 per acre. His opinion at trial in 1956 ranged between \$10,000.00 to \$43,000.00 an acre. The trial Court sustained an objection to the cross-examination, stating:

"You are going to get into *collateral matters* which can be extremely serious here. I am confident you have gone as far as you can."

On appeal, it was determined that the exclusionary ruling constituted reversible error:

"We conclude that this ruling operated unduly to restrict the cross-examination. It is well settled that 'the value of the opinion evidence of a witness may be tested by showing that upon a former occasion he expressed a different opinion, or made statements inconsistent with the opinion expressed.' 26 Cal. Jur. 155, §128."

Counsel for the State argued before the trial Court herein that the refusal to permit cross-examination of JOHNS on the Condas appraisal was within the discretion of the trial judge and was not error, since the question involved the collateral matter of impeachment. *Murata*, supra, *Basch v. Iowa Power and Light Co.*, supra, the *Bing-*

aman case and others cited herein are a ready answer to the contention that the denial of cross-examination was discretionary with the trial Court, and *State v. Peek*, 1 U. 2d 263, 265 P. 2d 630 (1953) and *Alford v. U. S.*, *supra*, closes the argument that impeachment examination is a collateral matter from which prejudice does not ensue.

The prejudice flowing from the trial Court's ruling herein is easily spotted. Appearing as the last value witness in the trial and as the first appraiser who had made a radical departure from all the other witnesses on the value of the north industrial land of Defendant prior to the "taking", (P. 26 this Brief, Appx. 1-5), JOHNS in flippancy and staccato style, gave his opinion on the value of the total tract "before". (Tr. 799, Ex. P-14) The man's finding was \$728,060.00 *below the "before" value of FRANCIS SOLOMON* and \$441,020.00 *lower than the other State witness, R. S. FLETCHER*. The result was astonishing and it changed the entire atmosphere of the trial. His opinion was so far out of line with even the simple average values of the others that either he was right, in which case the other 4 witnesses were totally wrong, or JOHNS was, himself, grossly misinformed, or he was a fraud, or an advocate for his client, or a combination of the three. And so cross-examination commenced with this witness after a week and one-half of trial with the cards all on the table face up and with Defendant's counsel assigned the task of finding out which of these alternatives was correct. *It was the pivotal point of the trial.*

The comparability of the Condas and Taggart properties, lying side by side with similar access and zoning is not

open to reasonable question, particularly in view of some of the other sales to which JOHNS had eluded. If JOHNS had appraised the Condas tract at \$10,000.00 per acre at a previous time for the landowner, and now had appraised the subject property at \$4,000.00 and \$2,000.00 an acre for the State, it would provide the answer to JOHNS' appraisal. It would expose him as a fake, an advocate for his particular client, and as a witness whose opinion was so insubstantial that it would be discarded as unworthy of belief. *What would be his answer to this all important question?*

We don't know. We will never know until a new trial is ordered because the Court stopped the cross-examination at this point. The probability is that the answer would have dealt a devastating blow to the credibility of JOHNS' opinion. And the lower Court made its ruling complete, in addition to sustaining the State's objection, by admonishing the jury to disregard even the question. (Tr. 844)

The prejudice from this error is revealed in the answer to jury Interrogatory 1, which was answered in the sum of \$2,775,911.00. There is only one opinion which would begin to support the lowness of that finding — AND THAT IS THE TESTIMONY OF A.B.C. JOHNS, JR. The jury had to give consideration to the JOHNS' appraisal, for there was no other testimony that would have justified the paucity of this finding. But for JOHNS' opinion, the interrogatories as returned, would be subject to an order of additur or new trial, as a matter of law. *Porcupine Reservoir Co. v. Keller Corp.*, 15 U. 2d 318, 392 P. 2d 620

(1964); *Weber Basin Conservancy Dist. v. Moore*, 2 U. 2d 254, 272 P. 2d 176 (1954). Had JOHNS been required to answer the question on the Condas appraisal, the result in this case would no doubt have been substantially different.

POINT III

THE TRIAL COURT ERRED PREJUDICIALLY IN PERMITTING THE QUESTION OF SPECIAL BENEFITS UNDER THE TESTIMONY OF A.B.C. JOHNS, JR. TO BE CONSIDERED BY THE JURY.

1. *No definition of or foundation for Special Benefits was made by the State in the testimony of Johns.*

It has been some time since this Court last considered a case in eminent domain where the issue of special benefits was squarely raised. The question was touched briefly in *Weber Basin Conservancy Dist. v. Braegger*, 8 U. 2d 346, 334 P. 2d 758 (1959). Before that it was in the case of *Cook v. Salt Lake City, et al.*, 48 Utah 58, 157 Pac. 643 (1916). Nonetheless, it is clear enough in this jurisdiction that in an eminent domain suit to establish Just Compensation, benefits from the highway project which specially improve the value of the Defendant's remainder lands may be considered by the trier of fact. 78-34-10(4) U.C.A. 1953;⁵ *Kimball v. Salt Lake City*, 32 Utah 253, 90 Pac. 395 (1907); *Oregon Shortline v. Fox*, 28 Utah 311, 78 Pac. 800 (1904).

⁵Although the Statute makes reference to "benefits" only, judicial construction, in line with the general rule, requires a showing of special enhancement.

But there are two conditions to this rule of compensation. One is that the benefits must be special to the remainder property, since general benefits are inadmissible and irrelevant. *Salt Lake U. & R. Co. v. Butterfield*, 46 Utah 431, 150 Pac. 931 (1915). The other condition is that a special benefit is material only to the extent that it off-sets severance damage to remaining land. It may not be used to diminish the compensation to which the owner is entitled for the "taking". 78-34-10 (4) U.C.A. 1953. A sound definition of special *vis-a-vis* general benefits is set forth in *Hempstead v. Salt Lake City*, 32 Utah 261, 90 Pac. 397 (1909), as being a special advantage, such as added convenience, accessibility, or new use, accruing as a direct consequence of the public project, contrasted to a general benefit running to the larger community from the public work.

JOHNS failed to define what he meant by a special benefit. He did not set forth one sale of property which had been similarly benefitted from a non-access freeway and he provided not one scintilla of objective data to underlie his claim. All that he said was that the industrial land remaining west of the freeway was specially benefitted because of the "arterial interchange" of I-215 and 2100 South, and that such benefit was \$26,582.00.

The Court erred in permitting, over objection of Defendant's counsel, benefits to be at all considered by the jury. There was not adequate foundation and evidence to support a finding of the same. Although the factors which the willing and informed buyer and seller would recognize should be taken into account, "an opinion based ex-

clusively upon one factor should be rejected." *Nichols on Eminent Domain*, Vol. 5, P. 245, Sec. 18.42(1) (3rd Ed.). To affirm a jury interrogatory under which special benefits are submitted, something more than an unsupported guess of a witness is necessary.

2. *The lower Court erred in refusing to permit cross-examination of JOHNS on the nature of the Special Benefits claimed.*

JOHNS alleged that the benefits to Defendant's remainder lands emanated from the arterial freeway. Ostensibly, this meant that traffic and activity would be brought to the area by the freeway that was not theretofore existent. There is no other explanation. On cross-examination, counsel for Defendant inquired of JOHNS as to whether the traffic that would be placed on the freeway was not, in fact, the same traffic movement and activity existent on Redwood Road, at the date of "taking". The question ran directly to the impeachment and invalidity of the special benefits argument and was not an attempt to show damage by virtue of loss of traffic flow on Redwood Road. The latter is *damnum absque injuria*, *Hislop v. Weber Basin Conservancy Dist.*, 12 U. 2d 64, 362 P. 2d 580 (1961); *State Road Comm. v. Rozelle, et ux.*, 101 Utah 464, 120 P. 2d 276 (1942), and no claim was ever made by Defendant at trial for its recovery.

The Court erred in sustaining the objection of immateriality to the question. All factors which the buyer and seller would reasonably consider in determining special benefits as well as damages, are properly within the per-

view of cross-examination. *State v. Peek*, 1 U. 2d 263, 265 P. 2d 630 (1953); *State Road Comm. v. Woolley*, 15 U. 2d 167, 397 P. 2d 463 (1964).

POINT IV

THE INSTRUCTIONS OF THE LOWER COURT ON BURDEN OF PROOF AND PREPONDERANCE OF EVIDENCE WERE ERRONEOUS TO THE DEFENDANT'S DETRIMENT AND PREJUDICE.

1. *Instructions 18, 19, and 30 unduly and unfairly repeated and emphasized the Defendant-landowner's burden of proof and preponderance on the value of the property, before and after the "taking".*

The Court charged the jury that the landowner carried to the trial the burden of proving, by a fair preponderance of the evidence, the truth of its contentions on land value and damages caused by the "taking". Such principle of evidentiary procedure has been the rule in the conduct of eminent domain litigation in Utah since early days. *Oregon Shortline R. Co. v. Russell, et al.*, 27 Utah 457, 76 Pac. 345 (1904); *Tanner v. Provo Bench Canal & Irrigation Co.*, 40 Utah 105, 121 Pac. 584 (1911); *State Road Comm. v. Peterson*, 12 U. 2d 317, 366 P. 2d 76 (1961). It is a harsh and unfair rule and should be changed, prospectively. For the Government to "take" by right of eminent domain a man's property against his will, and then say to him that he must

prove its value by the preponderance of evidence, imposes an unreasonable and often severe burden upon the citizen.⁶

It was not the adoption of the rule by the trial Court, however, that constituted prejudicial error in this case. Rather, it was the manner in which the rule was used in the charge to the jury that created the prejudice to Defendant. Both Instructions 18 and 19 of the Court focus on the same subject matter—burden of proof and preponderance of the evidence. Each declares the burden is on the landowner to prove land value and damages by the “preponderance of the evidence”. Each defines the quality of evidence necessary to preponderate and each charges the jury to find against the Defendant if the preponderance test is not satisfied. Number 18 states:

“You are instructed that the burden of proving the value of the land being acquired by the State of Utah and the burden of proving damages, if any, to the remaining lands are burdens which the law places upon the defendants. These burdens of proof are successfully carried by defendants only if you find that they have established the truth of their contentions by the preponderance of the evidence. A “preponderance of the evidence” is defined as the amount of evidence which is more convincing as to its truth, or which convinces the mind of the jury that a proposition is more probably true than not true. *If, in your deliberations, you believe that the evidence introduced by both parties as to the land*

⁶In a number of jurisdictions, the burden is placed on the condemnor to prove the value of the “taking”. See discussion in 5 *Nichols on Eminent Domain* 300 #18.5 (3rd Ed.). If the landowner contends that his remaining property is damaged by the “taking”, he should, in all events, have the burden of proof on that issue.

taken and the damages, if any, to the remaining lands is evenly balanced then you will reject the contentions advanced by the defendants." (R. 41) (Emphasis ours)

The pertinent sections of Instruction 19 are:

"Whenever in these instructions I state that the "burden" or "burden of proof" rests or is placed upon a certain party to prove the existence of a certain fact, the meaning of such instruction is this: That unless the party with whom the burden of proof rests proves, by a preponderance of the evidence, the truthfulness of the alleged fact you shall find against such party in your determination of such fact. *Specifically, if the defendant landowners fail to prove by a preponderance of the evidence the truthfulness of the facts which they allege, you shall find against the defendant landowners in your deliberation of such fact.* (Emphasis added)

"The term "preponderance of the evidence" does not mean the greater number of witnesses nor the sheer amount of testimony adduced . . ." (R. 42)

Instruction 30 then again affirms that the Defendant carries the burden of proof by the preponderance, but in addition, charges that the Defendant has an extra burden . . . the amount of compensation:

"INSTRUCTION NO. 30

In making your findings of fact you should bear in mind that the burden of proving the amount of compensation to which defendants are entitled is upon the defendants, and the defendants must prove it by a preponderance of the evidence."

This was the same sheet of paper which contained the special interrogatories and answer blanks for the jury. The

foreman also signed at the bottom of it upon the jury's return.

While repetitive and cumulative instructions to a jury on a particular point do not necessarily constitute reversible error, they are not favored. *Taylor v. Johnson*, 15 U. 2d 342, 393 P. 2d 382 (1964). Where the cumulation is not merely redundant, and where the repetition is directed to material and substantive factors in the suit, the error is prejudicial. *Taylor v. Johnson*, supra. The reason is that it emphasizes and fixes unfairly and unreasonably in the minds of the jury the matter which is repeated. Three times in the space of 30 short instructions the jury in the case at Bar was charged on the necessity of Defendant meeting its burden of proof. It is fair to assume that the jurors could have been, due to the emphasis and repetition, under the impression that the Defendant bore an overwhelming burden and obligation to prove its case in chief, rather than fixing their attention on what the believable evidence showed to be the truth in the cause.

Instruction 30, in itself, is wholly erroneous in its statement that Defendant has the burden of proving "the amount of compensation". While the burden of proof placed on the Defendant extends to the value of the "taking" and to damages to the remaining lands, it does not require proof of special benefits, or the lack thereof. That burden rests with the condemnor. *Tanner v. Provo Bench Canal & Irr. Co.*, 40 Utah 105, 121 Pac. 584 (1911). The charge, however, as given to the jury, obligates the landowner, in "proving the amount of compensation", to also prove the absence of special benefits.

The harmful effect of the three burden of proof instructions, 18, 19 and 30, constitutes prejudicial error.

2. *Instructions 18 and 19 are further erroneous, for they direct a verdict against Defendant-landowner if the latter does not meet its full preponderance.*

Instruction 18 charges the jury:

“If in your deliberations, you believe that the evidence introduced by both parties as to land taken and the damages, if any, to the remaining lands is evenly balanced, *you shall reject the contentions advanced by the Defendants.*” (R. 41)

Instruction 19 is similar in its statement that if the landowner fails to prove its case by a preponderance:

“you shall find against the defendant landowners in your deliberation of such fact.” (R. 42)

The trouble with both Instructions is that it gives the jury no choice in considering the testimony and evidence of the Defendant. Under such Instruction, if the Defendant satisfies its burden of proof, the interrogatories would be answered in accordance with the landowner's evidence. But if the Defendant does not fulfill its total burden, then the Instructions direct the jury to “find against and reject the contentions of the landowners”. The jury must have some opinion evidence upon which to return its verdict and since, with the landowner's evidence gone, there is no evidence left other than that of the State, the Instructions, by implication, direct the jury to accept the State's testimony. For all practical purposes, that is just what the jury did by its answers to interrogatories.

The Court did not instruct as it should have, that if the preponderance of the testimony and evidence was less than the value conclusions of the Defendant but more than the value conclusions of the Plaintiff, the interrogatories could be answered within that range of the testimony where the weight fairly preponderated.

Both Instructions 18 and 19 are framed with the typical contract or negligence suit in mind. They are inapplicable and erroneous in an eminent domain trial on Just Compensation. This Court has before made its record on the point that an instruction which specifically or by inference directs the jury to find certain material facts, is erroneous and prejudicial. *Valiotis v. Utah-Apex Mining Co.*, 55 Utah 151, 184 Pac. 802 (1919). Instructions 18 and 19 fit within the qualifications of that rule.

CONCLUSION

There is simply no way to get around the hard fact that the interrogatories returned by the jury are in violation of the great and clear weight of the testimony on the market value of the property, before and after the "taking". Such answers do not begin to represent any reasonable appraisal of the land value and damages under the test in *Bodon v. Suhrmann*, 8 U. 2d 42, 327 P. 2d 826 (1958), because there is no substantial and believable evidence to support them. The trial Court should have ordered a new trial on the basis of inadequacy of the award, their being no substantial and believable evidence to support it.

The trial Court committed reversible error in refusing to allow, at the key point of the trial, cross-examination by Defendant's counsel of A.B.C. JOHNS, JR., State witness, on his appraisal of the neighboring Condas property; and in permitting the question of special benefits, under the testimony of JOHNS, to go to the jury. It further committed prejudicial error, to the detriment of Defendant, in Instructions 18, 19, and 30, with respect to the nature of Defendant's burden of proof in the case.

Truth and justice did not prevail in the lower Court. A new trial on Just Compensation should be ordered, it is respectfully submitted.

ROBERT S. CAMPBELL, JR.

of

PARSONS, BEHLE, EVANS &
LATIMER

520 Kearns Building
Salt Lake City, Utah

*Attorneys for Defendant
and Appellant*

APPENDIX 1

APPRAISAL OF
C. FRANCIS SOLOMON — M.A.I.

(926.7 Acres) Value of Entire Property BEFORE Condemnation				
Zone	Acreage	Value per Acre	Value	
M-1	28.5	\$5,500.00	\$156,750.00	
	25.-2100 So.	5,500.00	137,500.00	Total
M-2	180.-balance	4,235.00	764,920.00	
	10.-East	10,000.00	100,000.00	Value
C-2	29.8-bal.	6,000.00	178,800.00	
R-5	119.8	3,500.00	419,300.00	Before
A-2	60.1	4,500.00	270,450.00	
A-1	7.0	2,328.00	16,296.00	\$3,169,651.00
	35.-3100 So.	3,500.00	122,500.00	
Unzoned	430.9-bal.	2,328.00	1,003,135.00	
TOTALS	926.7		\$3,169,651.00	

(848.59 Acres) Value of Remaining Property AFTER Condemnation				
Zone	Acreage	Value per Acre	Value	
M-1	28.5	\$5,000.00	\$142,500.00	
	80.0	2,541.00		Remaining
M-2	76.0	4,235.00	531,561.00	
C-2	39.8	No damage	278,800.00	Value
R-5	119.8	3,500.00	419,300.00	
A-2	60.1	4,050.00	243,405.00	After
A-1	7.0	2,328.00	16,296.00	
	119.-W. of P.L.	2,170.00	258,587.00	\$2,609,766.00
	21.4-E " W.F/W	1,400.00	29,960.00	
	45.9-E. F/W	2,049.00	94,049.00	
	204.5 "	2,328.00	476,308.00	
Unzoned*	34.0-3100 So.	3,500.00	119,000.00	
TOTALS	848.59		\$2,609,766.00	

DIFFERENCE IN BEFORE AND AFTER (Rounded) ...\$560,000.00

Value of land Condemned: Industrial-49.11 Acres\$239,605.00

Residential-29.00 Acres 68,684.00

Severance Damage 251,711.00

TOTAL OPINION\$560,000.00

*P.L. = Pole Line; F/W = Free Way. E. "W.F/W = East of Pole Line & West of Free Way.

**APPRAISAL OF
WERNER KIEPE — M.A.I.**

(926.7 Acres) Value of Entire Property BEFORE Condemnation				
Zone	Acreage	Value per Acre	Value	
	103' x 330'	\$ 100.00	\$ 10,300.00	
		F/F		
M-1	27.72	4,000.00	110,880.00	Total
	70.0 W. of P/L	5,500.00	385,000.00	
M-2	135.6 E. of P/L	6,500.00	881,400.00	Value
	1600' x 330'	120.00	192,000.00	
		F/F		Before
C-2	27.68	5,000.00	138,400.00	
	1400' x 330'	75.00	105,000.00	\$3,448,920.00
		F/F		
R-5	109.19	4,500.00	491,355.00	
A-1	7.0	750.00	5,250.00	
A-2	60.1	6,000.00	360,600.00	
Unzoned	465.9	1,650.00	768,735.00	
TOTALS	926.7		\$3,448,920.00	
(848.59 Acres) Value of Remaining Property AFTER Condemnation				
Zone	Acreage	Value per Acre	Value	
M-1	28.5	Same as Before	\$121,180.00	
	34.12 E. of F/W	\$5,000.00	170,600.00	Remaining
	52.58 W. of F/W			
	& E. of P.L.	4,500.00	236,610.00	
M-2	70.0 W. of P.L.	5,500.00	385,000.00	Value
	1600' x 330'	100.00	160,000.00	
		F/F		After
C-2	27.68 (rear)	4,500.00	124,560.00	
R-5	119.8	Same as Before	596,355.00	\$2,773,750.00
A-1	7.0	Same as Before	5,250.00	
A-2	60.1	Same as Before	360,600.00	
	119.0 W. of P.L.	1,500.00	178,500.00	
	26.9 E. of P.L.			
	& W. of F/W	500.00	13,450.00	
Unzoned	290.79 E. of F/W	1,450.00	421,645.00	
TOTALS	848.59		\$2,773,750.00	
DIFFERENCE IN BEFORE AND AFTER				\$675,170.00
Value of land Condemned: Industrial-48.9 Acres				\$317,850.00
Residential-29.00 Acres				48,197.00
Severance Damage				309,120.00
TOTAL OPINION				\$675,170.00

APPENDIX 3

APPRAISAL OF
MAXWELL S. LOLL — A.S.A.

(926.7 Acres) Value of Entire Property BEFORE Condemnation				
Zone	Acreage	Value per Acre	Value	
M-1	28.5	\$5,500.00	\$156,750.00	
M-2	205.6	5,500.00	1,130,800.00	Total
C-2	39.8	6,800.00	270,640.00	Value
A-2-1	67.1	3,000.00	201,300.00	Before
R-5	119.8	3,000.00	359,400.00	\$3,516,590.00
Unzoned	465.9	3,000.00	1,397,700.00	
TOTALS	926.7		\$3,516,590.00	

(848.59 Acres) Value of Remaining Property AFTER Condemnation				
Zone	Acreage	Value per Acre	Value	
M-1	28.5	\$5,500.00	\$156,750.00	
	33.09	5,500.00	181,995.00	Remaining
M-2	46.70	4,350.00	203,145.00	
	76.70	4,200.00	322,140.00	Value
C-2	39.8	6,800.00	270,640.00	
R-5	119.8	3,000.00	359,400.00	After
A-2-1	67.1	3,000.00	201,300.00	
	E. of F/W** 301.9	3,000.00	905,700.00	\$2,844,070.00
	P.L.* & F/W 27.	1,000.00	27,000.00	
Unzoned W. of P.L. 108.		2,000.00	216,000.00	
TOTALS	848.59		\$2,844,070.00	

**Freeway

*Pole Line

DIFFERENCE IN BEFORE AND AFTER	\$672,520.00
Value of land Condemned: Industrial-49.11 Acres	\$270,105.00
Residential-29.00 Acres	87,000.00
Severance Damage	315,415.00
TOTAL OPINION	\$672,520.00

R. S. FLETCHER — APPRAISER

VALUE BEFORE TAKING

Land Type	Acreage	Value per Acre	Total Value	
21st South:				
Front 1320'	69.06	\$6,000.00	\$414,360.00	
Rear 1320'	136.54	5,000.00	682,700.00	
Redwood:				
Front 1320'	9.56	6,000.00	57,360.00	
Rear 1320'	18.94	5,000.00	94,700.00	
Redwood C-2	39.80	10,000.00	398,000.00	
Redwood A-2	60.10	4,500.00	270,450.00	
Redwood A-1	7.00	3,000.00	21,000.00	
Redwood R-5	119.80	4,000.00	479,200.00	
Unzoned:				
Lake	180.00	200.00	36,000.00	
Balance	285.90	1,500.00	428,850.00	
TOTALS	926.70		\$2,882,620.00	\$2,882,620.00

VALUE AFTER TAKING

Land Type	Acreage	Value per Acre	Total Value	
21st South:				
Front 1320'	25.99	\$6,000.00	\$155,940.00	
Rear 1320'	130.50	5,000.00	652,500.00	
Redwood:				
Front 1320'	9.56	6,000.00	57,360.00	
Rear 1320'	18.94	5,000.00	94,700.00	
Redwood C-2	39.80	10,000.00	398,000.00	
Redwood A-2	60.10	4,500.00	270,450.00	
Redwood A-1	7.00	3,000.00	21,000.00	
Redwood R-5	119.80	4,000.00	479,200.00	
Unzoned:				
Lake	180.00	200.00	36,000.00	
Balance	256.90	1,500.00	385,350.00	
TOTALS	848.59			\$2,550,500.00
DIFFERENCE				\$ 332,120.00

VALUE OF LAND TAKEN

Land Type	Acreage	Value per Acre	Total Value	
21st South:				
Front 1320'	43.07	\$6,000.00	\$258,420.00	
Rear 1320'	6.04	5,000.00	30,200.00	
Unzoned:				
(Balance)	29.00	1,500.00	43,500.00	
TOTALS	78.11			\$ 332,120.00

DAMAGES TO REMAINDER

NONE

VALUE BEFORE TAKING

Land Type	Acreage	Value per Acre	Total Value
M-1			
21st So. Fr.	69.06	\$4,000.00	\$276,240.00
21st So. Rear	136.54	2,300.00	314,042.00
(Fr.	9.56	5,200.00	49,712.00
Redwood (R.	18.94	3,000.00	56,820.00
Unzoned			
W/o Lake	275.90	1,725.00	475,927.00
Unzoned			
Lake	190.00	177.00	33,630.00
C-2	39.80	10,580.00	421,084.00
A-2	60.10	4,356.00	261,795.00
A-1	7.0	4,356.00	30,492.00
R-5	119.80	4,356.00	521,849.00
TOTALS	<u>926.7</u>		

\$2,441,591.00VALUE AFTER TAKING

Land Type	Acreage	Value per Acre	Total Value
21st So. Fr.	25.99	\$2,300.00	\$ 59,777.00
21st So. Rear	130.71	2,300.00	300,633.00
(Fr.	9.56	5,200.00	49,712.00
Redwood (R.	18.94	3,000.00	56,820.00
Unzoned			
W/o Lake	246.69	1,725.00	425,540.00
Unzoned			
Lake	190.00	177.00	33,630.00
C-2	39.80	10,580.00	421,084.00
Other (A-2,			
A-1, R-5)	186.90	4,356.00	814,136.00
TOTALS	<u>848.59</u>		

\$2,161,332.00DIFFERENCE\$ 280,259.00VALUE OF LAND TAKEN

Land Type	Acreage	Value per Acre	Total Value
21st So. Fr.			
M-1, M-2	43.07	\$4,000.00	\$172,280.00
21st So. Rear			
M-2	5.83	2,300.00	13,409.00
Unzoned	29.21	1,725.00	50,387.00
TOTALS	<u>78.11</u>		

\$ 236,076.00DAMAGES TO REMAINDER

Land Type	Acreage	Value per Acre	Total Value
21st So. Fr.			
M-1, M-2	25.99	\$1,700.00	\$ 44,183.00
TOTALS	<u>25.99</u>		

\$ 44,183.00SPECIAL BENEFITS TO REMAINDER

Land Type	Acreage	Value per Acre	Total Value
21st So.			
M-1, M-2	46.23	\$ 575.00	\$ 26,582.00
TOTALS	<u>46.23</u>		

—\$ 26,582.00

Net Damages to Remainder \$ 17,601.00
 Value of land taken 236,076.00

TOTAL\$253,677.00

REPRODUCTION OF PLAINTIFF'S EXHIBIT D-1
CIVIL CASE NUMBER 158100

MAP SHOWING PROPERTY OF
TAGGERT - LANDOWNER BEFORE
AND AFTER CONDEMNATION BY
UTAH STATE ROAD COMMISSION

- 1 - TOTAL TRACT BEFORE TAKING 926.7 AC.
- 2 - ACREAGE TAKEN BY UTAH
STATE ROAD COMMISSION 78.11± AC.
- 3 - REMAINING TRACT AFTER
CONDEMNATION 848.59 AC.

INTERSTATE HIGHWAY PROJECT 1-215-9 (6) 297
SCALE: 1" = 1500'

