

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 92-4272

(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

127.87 ACRES OF LAND, MORE OR LESS,
SITUATED IN DENTON COUNTY, STATE OF
TEXAS, ET AL.,

Defendants,

J.E. SEAL and HELEN SEAL,

Defendants-Appellants.

Appeal from the United States District Court
For the Eastern District of Texas
CA4 87 18

July 29, 1993

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

We are asked to review the Report and Findings of the Federal Land Condemnation Commission¹) in particular its finding of fair

* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

¹ The district court appointed the Commission pursuant to Fed. R. Civ. P. 71A. See Record on Appeal vol. 1, at 61.

market value of defendants' property²) and determine whether (1) such report complies with the standards announced in *United States v. Merz*, 376 U.S. 192, 84 S. Ct. 639, 11 L. Ed. 2d 629 (1964) and (2) its findings were "clearly erroneous." See Fed. R. Civ. P. 53(e)(2).

Merz requires that a Commission report contain certain information:

Conclusory finding are alone not sufficient. . . . The [C]ommissioners need not make detailed findings such as judges do who try a case without a jury. [But] [C]ommissioners . . . can be instructed to reveal the reasoning they use in deciding on a particular award . . . and so on. We do not say that every contested issue raised on the record before the commission must be resolved by a separate finding of fact. We do not say that there must be an array of findings of subsidiary facts to demonstrate that the ultimate finding of value is soundly and legally based. The path followed by the [C]ommissioners in reaching the amount of the award can, however, be distinctly marked.

Merz, 376 U.S. at 198-99. Thus, we review the evidence and the report to see if "[t]he path followed by the Commission in reaching the amount of the award . . . [is] distinctly marked." *Id.*; see also *Georgia Power Co. v. 138.30 Acres of Land*, 596 F.2d 644, 653 (5th Cir. 1979) (stating that the Commission's findings are insufficient if "[this court is] unable . . . to determine from the record what the [C]ommission's rationale actually was.").

² The subject property was taken as part of the federal project to create Lake Ray Roberts in Denton County, Texas. See Record on Appeal vol. 1, at 3. It consisted of 132.5 acres of sloping pasture land with improvements including a barn and windmill. See Record Excerpts tab 5, at 2-3; see also Plaintiff's Exhibits 2(a-f). The government condemned 127.87 acres, leaving a 4.63 acre tract remaining. See Record Excerpts tab 5, at 2. The Commission found that the highest and best use before the taking was development of a horse farm and, after, development of a homesite. See *id.* at 8. The Commission also found that the property had a value of \$3,500 per acre before the taking and \$4,200 per acre after the taking. See *id.*

The Commission received in evidence eleven separate comparable sales³ and testimony from three experts)) Joe Barns, Steve Gremmels and Jim Daniels. Each indicated that the three sales on or near St. John's Road were not comparable because, as Mr. Barns testified, the St. John's Road area has "million dollar houses . . . [w]hereas the subject doesn't really have any nice places." See Record on Appeal vol. 2, at 167-68; see also *id.* vol. 3 at 248 ("These [Barns's 1 and 3; Gremmels's 4 and 5] were, as you say, in

³ *Sales Indicating Value Before the Taking*

1. Sponsored by Joe Barns and Steven Gremmels; located on St. John's Road; 35 acres sold at \$8,245 per acre.
2. Sponsored by Joe Barns; located on St. John's Road; \$10,000 per acre.
3. Sponsored by Joe Barns and Steve Gremmels; located near St. John's Road area; \$7,500 per acre.
4. Sponsored by Joe Barns and Steve Gremmels; located 3 miles from subject property; 58 acres at \$4,331.50 per acre.
5. Sponsored by Joe Barns; located southwest of subject property; 19 acres at \$7,833.85 per acre.
6. Sponsored by Steve Gremmels and Jim Daniels (Sale 312); located south of subject property; \$3,500 per acre improved, \$3,250 unimproved.
7. Sponsored by Steve Gremmels and Jim Daniels (Sale 200); located due west of subject property; \$3,000 per acre.
8. Sponsored by Steve Gremmels and Jim Daniels (Sale 310); due south of subject property; \$3,500 per acre.
9. Sponsored by Jim Daniels (Sale 199); located northwest of subject property; 292.162 acres at \$3,000 per acre.

Sales Indicating the Value of the Remainder

1. Sponsored by Jim Daniels for after value of remainder (Sale 316); located north of subject property; small acreage sale of 10.0799 acres at \$5,000 per acre.
2. Sponsored by Jim Daniels for after value of remainder (Sale 317); small acreage sale of 12.191 acres at \$3,281 per acre.

See Brief for United States at 11-12; see also Record Excerpts tab 5, at 7 ("The comparable sales presented to the Commission proved a sale consideration that ranged from \$10,000 per acre to \$3,000 per acre.").

close proximity to expensively developed horse farms which I feel influenced their value"); *id.* at 288 ("[Sales] do exist [in the St. John's Road area] and in my opinion are totally not comparable to the subject property."). The Commission agreed.⁴ Without specifically indicating,⁵ the Commission found that the sales presented by Jim Daniels to be more comparable and realistic than the sales presented by the landowner and his experts.⁶ See *United States v. 24.48 Acres of Land*, 812 F.2d 216, 218 (5th Cir. 1987). Because the Commission marked the path sufficiently to enable us to reach the amount of the award, we find these findings sufficient to comply with the *Merz* standard. See *id.* ("Although the Commission did not elaborate the particular reasons for rejecting the [landowner's and his experts'] evidence of comparable sales, we find it obvious that they placed great weight on the

⁴ "The Commission believed that less weight should be given the comparables along St. John Road because of the affluence and development in that vicinity." Record Excerpts tab 5, at 7.

⁵ "From the evidence presented we believed that the value of the subject property immediately before the date of taking was more than the plaintiff had contended and less than the contention of the defendant. We believed the value of the remainder of the subject property immediately after the date of taking was more than it had been immediately before the date of taking. We took into consideration the fact that the plaintiff fences the remainder off from the lake and maintains a public launch area in its close vicinity which detracts from its value; but in our opinion it has many qualities which make it very desirable as a homesite." *Id.*

⁶ Examination of the sales listed in note 3, *supra*, clearly reveals the path taken by the Commission. As the Commission pointed out, Sales Nos. 1, 2, and 3 were given less weight because these comparables were along St. John Road. See *supra* note 4. Sales Nos. 4 and 5 were considered high, see Record on Appeal vol. 2, at 177-83, whereas Sales Nos. 7 and 9 were low. See *id.*, vol. 3, at 272-75, 279-80; see also *supra* note 5. The Commission's determination of fair market value))\$3,500 per acre before the taking and \$4,200 after))clearly indicates the Commission's reliance on Mr. Daniels' opinions and the six comparables. See *supra* note 3 (noting that three of the four comparables offered by Jim Daniels as illustrative of before taking value were also offered by Steve Gremmels).

[Government's] expert testimony We hold that such reliance is neither clearly erroneous nor conclusory.").

Furthermore, the Commission's findings are not clearly erroneous. See Fed. R. Civ. P. § 53(e)(2); see also *United States v. 2,175.86 Acres of Land*, 696 F.2d 351, 357 (5th Cir. 1983) ("[T]he clearly erroneous standard of review applies to the [C]ommission's findings"), *aff'd. on other grounds*, 467 U.S. 1, 104 S. Ct. 2187, 81 L. Ed. 2d 1 (1984). The evidence reveals a range per acre value before taking of between \$3,100 and \$6,000 and an after value of \$4,200 to \$7,000. The per acre price of the comparable sales ranged from \$3,000 to \$10,000 before value and from \$3,281 to \$5,000 for after value. The Commission's findings fell squarely within the range of the evidence presented. See *United States v. 6,162.78 Acres of Land*, 680 F.2d 396, 398 (5th Cir. 1982) ("The weighing of the evidence in a condemnation proceeding is within the sole purview of the fact-finder, and it is not for this court to reweigh the evidence. Rather, we must determine whether the verdict was within the range of the evidence." (citation omitted)).⁷

Accordingly, we AFFIRM the district court's judgment overruling defendants' objections and adopting the report of the Commission.

⁷ The Commission implicitly rejected the \$8,500 per acre sale contained in Daniels's preliminary report which defendants argue undermines the validity of the Commission award. However, the record reveals that none of the experts relied on this sale as comparable and there was testimony that "it's not reflective of land values in that area." Record on Appeal vol. 3, at 308.