

NON-COMPENSABLE FACTORS IN DETERMINING JUST COMPENSATION

ACEC-KY/FHWA/KYTC PARTNERING
CONFERENCE

GALT HOUSE, LOUISVILLE KENTUCKY

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Hon. Susan Chaplin, presenter

Just Compensation



Both The Kentucky Constitution and State Codified Law require “Just Compensation” to be paid to the owner for property condemned.

Impacts



**Not all Impacts are
compensable**

Damages to the Remainder



To be compensable, the damage must have an impact on the value of the remainder

Impaired Access/Circuitous Access

“... [T]he only access right the land owner has is a right of reasonable access to the highway system.”

Com., Department of Highways v. Carlisle,
363 SW2d 104 (Ky. 1962)

Compensable Losses

When Courts have found instances of compensable losses, those cases have involved:

- An unreasonable Obstruction
- A wrongful or illegal obstruction of a public road
- An unreasonable interference

Lost Business Profits

Lost Profits Are:

- Too Intangible
- Depend too much on the good will and skill of the operator.

Proper consideration is the impact on the market value of the property, not how the impact affects the Owner personally

Com., Dept. of Highways v. R.J. Corman, 116 SW3d 488 (Ky. 2003)

Diversion & Regulation of Traffic

“[D]evaluation of property resulting from the diversion of traffic from an old highway does not constitute a taking which entitles the property owner a compensation.”

Would result in Reverse Condemnation claims even though no property would be taken from the Plaintiff

Flynn v. Com., Dept. of Highways, 428 SW2d 24 (Ky. 1968)

Inconvenience



“The element of the inconvenience to [the P.O.] is clearly not a compensable item as such; only as the division of the land may affect market value of what remains may it be considered compensable.”

Com., Dept. of Highways v. Roberts, 390 SW2d 155 (Ky. 1965)

Ingress and Egress

“[A] property owner on a road proposed to be closed is entitled to damages (for depreciation in the value of his property) **ONLY** when the closing of the road will deprive him of his sole or principle means of ingress and egress.”
(Emphasis added)

Com., Dept. of Highways v. Herndon, 378 SW2d
620 (Ky. 1964)

But ...



INCONSISTENT RULING in Com., Dept. of
Highways v. Hunt, 414 SW 2d 897 (Ky. 1967)

Here the court ruled that the Inconvenience
COULD be considered and the improvements
were designed/located to operate as a
compact unit.

Close Proximity/Interference with Privacy

MUST have a clear impact on property's value,
not just the sensibilities of the property owner.

Com., Dept. Of Highways v. Curtis, 385 SW2d 48
(Ky. 1964)

Right to be Seen



If a visibility factor is to be considered, there must be strong evidence to support a diminished value.

Com., Dept. of Highways v. Strahan, 431 SW2d 871 (Ky. 1968)

Increased Traffic/Undesirable Activities

“The state has the right to use the old road as it sees fit and [the property owner] has no compensable interest.”

Com., Dept. of Highways v. Butler, 438 SW2d 797
(Ky. 1969)

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