

9.12 CONDEMNATION — METHODS OF COMPUTING FAIR MARKET VALUE (Approved 4/96)

A. Generally

You have already been told that you must determine the fair market value of the property, valued according to its highest and best use. Unfortunately, the court cannot provide you with the dollar amount which you must fill in on your verdict sheet. The parties have each suggested specific methods of placing a dollar value on this property.

[Insert as appropriate: B. Market Approach; C. Income Approach; D. Cost Approach].¹

¹Where appropriate, evidence of comparable sales is the “most satisfactory proof of value.” *State v. Tp. of S. Hackensack*, 65 N.J. 377, 382 (1974).

“We recognize that most often real estate experts use the comparable sales approach. So, too, where the facts warrant it, other approaches are utilized by real estate experts. The State has asked us to decide what appraisal method should be used in this case. It is not our function to designate what method of appraisal should be used — our function is limited to decide in each case whether the method used is reasonable under the existing circumstances.” *State v. Mehlman*, 118 N.J. Super. 587, 591 (App. Div. 1972) (*Citations omitted*).

B. Comparable Sales

When a buyer and a seller negotiate a price for property, they often discuss the prices similar properties have sold for in the recent past.² Similarly, appraisers use sales of similar properties that have taken place at or near the date of value to help arrive at an opinion of value for the subject property. These similar properties have been referred to as "comparables." Frequently, there are disagreements over whether these "comparable" sales involved property that is really equivalent to the property whose price is being negotiated. When each expert witness gave you his or her opinion as to the fair market value of the property in this case, he or she based that opinion largely on the prices actually paid in sales of other properties. You must decide the usefulness of the evidence of each sale in determining the market value of the property taken in this case. *[For example, if an expert based his or her opinion on prices paid for other properties that you do not think are similar to this property, and the expert did not properly account for such differences in his or her analysis, his or*

²*County of Ocean v. Landolfo*, 132 N.J. Super. 523 (App. Div. 1975); *State v. Speare*, 86 N.J. Super. 565 (App. Div. 1965), *certif. den.* 45 N.J. 589 (1965). While the court must initially determine as a matter of law whether proffered sales are comparable enough to be presented to the jury, the trier of fact determines the weight to be accorded sales which qualify as comparable. *Ibid.* at 575. See also *Paterson Redevelopment Agency v. Bienstock*, 123 N.J. Super. 457 (App. Div. 1973); *Moorestown Tp. v. Slack*, 85 N.J. Super. 109, 114-15 (App. Div. 1964), *certif. den.* 43 N.J. 452 (1964); *State v. Azzolina Land Corp.*, 101 N.J. Super. 103 (App. Div. 1968).

her opinion of the fair market value should not be given much weight in your deliberations.]

Here are some of the questions you may consider in deciding if the sale price of other property is helpful.

- 1) Is the other property of similar size?
- 2) Does the other property have a similar location?
- 3) How close to the date of taking was the other sale?
- 4) Were both the buyer and seller negotiating freely?

The experts have mentioned other factors to show the similarity or dissimilarity of other sales.

[Describe these factors here, if applicable.]

It is up to you to sort out the differences with what you think a buyer and seller, freely negotiating at arm's length, would consider in arriving at a sale price for the property taken in this case. Give the evidence on each of those other sales whatever weight you think it deserves in determining the market value of this property.³

³*State v. Probasco*, 114 N.J. Super. 546, 552 (App. Div. 1970), *aff'd* 58 N.J. 372 (1971); *State v. Speare*, 86 N.J. Super. 565, 575 (App. Div. 1965), *certif. den.* 45 N.J. 589 (1965); *N.J. Turnpike Auth. v. Herrontown Woods, Inc.*, 145 N.J. Super. 279, 283 (App.Div. 1976). *See also State v. Vacation Land, Inc.*, 92 N.J. Super. 171, 179 (App. Div. 1961).

C. Capitalization of Income

People often buy property as income-producing investments and the property's income stream is another way of measuring a property's fair market value. Another way to look at it is to see what an investor would pay for a piece of property in order to get income over time. For instance, suppose he or she decides to invest in real estate and knows that he or she could generally expect a seven percent per year return from such an investment. That means that on an investment of one hundred dollars he or she could expect to receive income of seven dollars per year. If he or she invests one hundred thousand dollars, he or she could expect to receive seven thousand dollars income every year. Suppose he or she is considering the purchase of a piece of property that provides seven thousand dollars a year in rental income after all expenses. He or she should be willing to pay one hundred thousand dollars for that property because that is the amount necessary to invest in order to get an annual income of seven thousand dollars.

The expert witnesses have referred to this way of arriving at the property's value as the “capitalization of income” formula because it gives you the amount of money or capital that should be invested to purchase the property in order to receive

the income which the property produces.⁴

As you have heard, experts can differ as to *[indicate here as appropriate: the rate of return; the property's potential or anticipated net income on the date of taking, i.e., the income that could have been expected if the property were available for lease on the date of value⁵]*. Experts can even disagree as to the importance of the capitalization approach in arriving at a fair market value of the property.

[Discuss contentions of parties here]

When you consider evidence concerning the income produced by the property, you should only consider it as it affects the market value of the property. *[Insert name of property owner(s) here]* is not entitled to be paid extra for losing income after the date of taking, because he or she will be fully compensated for his or her lost income by receiving the property's fair market value.

⁴See 4 Nichols, *Eminent Domain*, 12.312(3), p. 152 (rev. 3d ed. 1075); Jahr, *Law of Eminent Domain*, 225-34; *State v. Tp. of S. Hackensack*, 65 N.J. 377, 382, n. 3 (1974); *City of Trenton v. Lenzner*, 16 N.J. 465 (1954). Evidence concerning capitalization of income projected from hypothetical construction should not be permitted to reach the jury. *State v. Mehlman*, 118 N.J. Super. 587 (App. Div. 1972). Capitalization of rental income, however, may be projected from reasonably-to-be-anticipated rents even though the actual rents reserved are lower. *State v. Hudson Circle Service Center, Inc.*, 46 N.J. Super. 125, 131-32 (App. Div. 1957).

⁵Actual income is frequently less important than anticipated future income because actual income will only measure the value of the leased fee, i.e. the landlord's interest. Economic or anticipated income will measure all interests. *State v. Hudson Circle Service Center, Inc.*, 46 N.J. Super. 125 (App. Div. 1957).

D. Reproduction Costs

The market value of the property may be influenced by the value of the structures on it. The value of the structure(s) is a factor that may affect market value. You must determine the value of the land as enhanced by the value of the structures on it.⁶ Suppose that the highest and best use of farm land might be to develop it into residential building lots. In that case, a barn would not enhance the value of the land at all. In fact, it might even reduce the value of the land because of the expense necessary to tear it down so that houses could be constructed.

Suppose, however, that someone interested in buying property wants to use it for a home and the property already has a house on it. It is logical to assume that such a house would enhance the value of the property; certainly, the buyer would want to know how much the house itself is worth; that is, the reproduction cost of the building — how much it would cost to build one like it, less the wear and tear, or depreciation, the building has suffered.⁷

⁶*State v. Burnett*, 24 N.J. 280, 288-93 (1957). The admission of reproduction cost evidence, while within the discretion of the trial court, is relatively disfavored where sales prices of comparable property are available. *Ibid.* at 293. See also *State v. Cooper Alloy*, 136 N.J. Super. at 570; *N.J. Highway Auth. v. Ackerson*, 73 N.J. Super. 183, 185 (App. Div. 1962).

⁷*N.J. Highway Auth. v. Ackerson*, 73 N.J. Super. 183, 185 (App. Div. 1962).