ADMISSIBILITY OF EVIDENCE OF COMPARABLE SALES TO DETERMINE MARKET VALUE OF URBAN RENEWAL PROPERTY

Today, as never before, government at all levels must continually cope with the unparalleled problems of urban redevelopment. Since the large-scale acquisition of properties within an urban renewal project area has a substantial impact on the local real estate market, one such difficulty is the valuation of property to be acquired by an urban renewal agency. *Community Redevelopment Agency v. Henderson*[1] considered the extent to which prices paid for comparable property can be used as evidence to establish the value of property to be acquired in an urban renewal project area. In *Henderson,* the property that was acquired was located on South Bunker Hill Street, three hundred feet south of Third Street, in the Bunker Hill redevelopment project in Los Angeles. The Los Angeles Civic Center is located directly north of First Street, the northern boundary of the renewal project; the downtown Los Angeles business area is located directly south of Fourth Street, the southern boundary of the project. To the west of the project area runs the Harbor Freeway, serving as a natural barrier for a residential neighborhood located to the west of the Freeway.

The property of the condemnee was zoned residential at the time of trial, but the renewal plan contemplated its redevelopment for commercial purposes, and a commercial rezoning was anticipated.[2] Two experts testifying for the condemnee estimated the value of the property at $225,000.[3] These experts relied upon comparable sales for

1. 251 Cal. App. 2d 336, 59 Cal. Rptr. 311 (1967).

2. The Los Angeles business area directly south of the project was zoned and developed commercially. This area was expanding in several directions, including northward into the project area. The *Henderson* case considers the possibility of a zoning change, but states correctly that the future use of the land is not evidence of market value, and that the condemnee is not entitled to the value thereof. However, the almost certain probability of a zoning change should have some effect on the court's application of its discretionary power to admit or exclude evidence of comparable sales.

3. The experts place the value at $225,000 ($24.80 per square foot) and $227,000 ($25.00 per square foot) respectively. Community Redevelopment Agency v. Henderson, 251 Cal. App. 2d 336, 340, 59 Cal. Rptr. 311, 312 (1967) [hereinafter cited as CRA v. Henderson].

their valuations. All of the comparable sales used by them were in the downtown business area, except for one which was located adjacent to the redevelopment project. These comparables were all zoned heavy commercial. All but one of the sales[4] were excluded by the trial court because the property was not

> . . . sufficiently alike in respect to character, situation, usability, and improvements, to make it clear that the two tracts are comparable in value and that the price realized for the other land may fairly be considered as shedding light on the value of the land in question.[5]

The expert witness for the renewal authority relied upon comparable sales of residential properties, all west of the Harbor Freeway, and fixed a value which was approximately one-third of the value arrived at by condemnee's experts.[6] His value was accepted by the jury, and the Court of Appeals affirmed the verdict of the trial court. In explaining the exclusion of all but one of condemnee's comparables, the Court of Appeals stated that condemnee's other sales were south of the project area and within the central business area. Such sales were excluded because of their commercial zoning, because of the improvements existing upon them, because of their location, and because they were located on through streets. Condemnee's property was located on a street three or four blocks in length. The importance of location to the decision on comparability is critical. While condemnee's comparables were within the business area, condemnee's property after its renewal was to be an integral part of the downtown area, located in the redevelopment project between the Civic Center and the central business district. The Court indicated that the renewal authority's comparables were admissible because they were unimproved properties zoned residential, as was condemnee's land.

I. The California Approach

Over objection by the condemnee,[7] the Court of Appeals held that the admissibility of evidence concerning the sale of similar property as

4. The one sale of condemnee admitted into evidence was the sale of the parking lot adjacent to the renewal project. *Id.* at 340, 59 Cal. Rptr. at 312.

5. County of Los Angeles v. Faus, 48 Cal. 2d 672, 678, 312 P.2d 680, 684 (1957).

6. The expert for the renewal authority valued the property at $72,500 ($8.00 per square foot). CRA v. Henderson, 251 Cal. App. 2d 336, 340, 59 Cal. Rptr. 311, 313 (1967).

7. *Id.* at 340-41, 59 Cal. Rptr. at 313-14.

a method of determining market value is a matter resting solely within the discretion of the trial court. This rule was first adopted in California in *County of Los Angeles v. Faus.*[8] The criteria listed for similarity in comparable sales in *Faus* are threefold:

1) the comparable sale must be similar in character, situation, usability, and improvements;
2) the comparable sale must have occurred sufficiently close in time and in location to the sale in question; and
3) the comparable sale must be voluntary, between a willing seller and a willing buyer.[9]

In the present case, because of a California statute, size must also be included as a factor affecting comparability.[10] A reading of the California cases on the subject leads to the conclusion that the trial court *could* have excluded the evidence of defendant's comparables without having abused its discretion.[11] The question is whether or not the evidence *should* have been excluded by the trial court. Remember that a jury is not bound by the evidence if it is admitted, and may even choose not to consider it in fixing compensation. *People ex rel. Department of Public Works v. University Hill Foundation,*[12] a case that follows *Faus,* held that evidence of comparables should be admitted if there is some foundation for it. The court then continued: "The weight to be given it was a factual question for the jury to determine."[13] This view concurs with the general view in California that the discretion of the trial court should be liberally exercised in admitting evidence of comparable sales, rather than restrictively as in the *Henderson* case.[14] Another method of dealing with the problem is stated in *People ex rel. Department of Public Works v. Wasserman.*[15] Here the trial court restrictively exercised its discretion to exclude sales considered involuntary. The appellate court stated:

8. 48 Cal. 2d 672, 312 P.2d 680 (1957).
9. *Id.* at 678, 312 P.2d at 684.
10. CAL. EVID. CODE § 816 (Deering 1967).
11. People *ex rel.* State Park Comm'n v. Johnson, 203 Cal. App. 2d 712, 22 Cal. Rptr. 149 (1962); City of San Diego v. Boggeln, 164 Cal. App. 2d 1, 330 P.2d 74 (1958); People *ex rel.* Dep't of Public Works v. Murata, 161 Cal. App. 2d 369, 326 P.2d 947 (1958).
12. 188 Cal. App. 2d 327, 10 Cal. Rptr. 437 (1961).
13. *Id.* at 332, 10 Cal. Rptr. at 440.
14. People *ex rel.* Dep't of Public Works v. Auburn Ski Club, 241 Cal. App. 2d 781, 50 Cal. Rptr. 859 (1966); People *ex rel.* Dep't of Public Works v. Wasserman, 240 Cal. App. 2d 716, 50 Cal. Rptr. 95 (1966); People *ex rel.* Dep't of Public Works v. University Hill Foundation, 188 Cal. App. 2d 327, 10 Cal. Rptr. 437 (1961).
15. 240 Cal. App. 2d 716, 50 Cal. Rptr. 95 (1966).

> . . . that evidence of comparable sales is properly received if the judge, in the exercise of a wide discretion, is satisfied that the price was sufficiently voluntary to be a reasonable index of value.[16]

California cases[17] follow a restrictive policy when there is evidence that the comparable sale was not voluntary, but they have not usually extended this restrictive policy to exclude comparables because of their characteristics. In the present case, the condemnee was forced to use the sales he did use, due to the fact that there had been no voluntary sales within the project area, except to the renewal agency, since 1957.[18] The court relied on the differences in the comparables used by the condemnee without considering the fact that he had to go to sales somewhat dissimilar because of the unavailability of a market within the redevelopment project. The fact remains, however, that the comparables used by the condemnee resulted from voluntary sales, and their voluntary character was not questioned by the court.

A California case decided one year before *Henderson* illustrates an excellent way in which the problem comparables can be resolved in difficult cases. *People ex rel. Department of Public Works v. Auburn Ski Club*[19] involved the condemnation of the ski club's land. Speaking about the property, the court said, "The condemned property was unique in character and none of the sales used by either side as 'comparables' bore a too-close similarity to it."[20] Nevertheless, the court allowed two sales to be admitted into evidence, saying in part,

> [b]ecause of the peculiar circumstances described above—the *sui generis* character of the subject property and impossibility of obtaining other market data—these considered in the light of the quite considerable areas in which the properties compared possess common features with the subject property, we share the trial court's opinion that the sales permitted to be used would have been helpful to the jury in fixing just compensation and were therefore properly admitted.[21]

The *Auburn* case indicates that where actual comparables are not available, and other data is lacking, sales of property comparable in

16. *Id.* at 738-39, 50 Cal. Rptr. at 109-10.
17. People *ex rel.* Dep't of Public Works v. University Hill Foundation, 188 Cal. App. 2d 327, 332, 10 Cal. Rptr. 437, 440 (1961); County of San Mateo v. Bartole, 184 Cal. App. 2d 422, 439, 7 Cal. Rptr. 569, 580 (1960).
18. CRA v. Henderson, 251 Cal. App. 2d 336, 340, 59 Cal. Rptr. 311, 312 (1967).
19. 241 Cal. App. 2d 781, 50 Cal. Rptr. 859 (1966).
20. *Id.* at 784, 50 Cal. Rptr. at 861.
21. *Id.* at 785, 50 Cal. Rptr. at 862.

some but not all respects will be allowed in as evidence, even though their use may be limited.

The *Henderson* case would seem to present a similar problem. The only sale presented by the condemnee and admitted by the court was one which occurred adjacent to the redevelopment project. All of the renewal authority's comparable sales, which formed the basis for the valuation of the property, occurred quite some distance from the redevelopment project, and west of the Harbor Freeway.[22] Their location was such that they were separated by a large barrier, the Freeway, from the area to be affected by the project. It is difficult to see how the trial court, in the exercise of its discretion, could admit the renewal authority's group of sales and exclude the condemnee's when both groups appear to vary from the *Faus* criteria. The point was made that the sales offered by the condemnee differed in the price paid for them from $46 per square foot to $159 per square foot, yet condemnee's experts valued the property in question at only $25 per square foot. That the experts did not put the same value upon condemnee's property as the comparable sales they were offering into evidence to determine the value of that property does not mean the sales were of no use as evidence to determine market value. The *Henderson* court itself talked about the great variation in property value in the area around the project.[23] The property in question is of a unique character when compared with the sales offered as comparables. To allow one group of questionable comparables, not limiting their use as evidence in any way, while excluding another group of questionable comparables would seem to be an unwise exercise of the discretion granted the trial court, if not an abuse. The court would have been wiser to take the position of the *Auburn* or the *University Hill Foundation* court.

II. Critique

Because of the wide discretion granted the trial court in these situations,[24] *Henderson* cannot be said to be a wrong decision. But

22. The *Henderson* case gives the locations of all of the condemnee's comparables. The case also states that condemnor's comparables were west of the Harbor Freeway.

23. CRA v. Henderson, 251 Cal. App. 2d 336, 343, 59 Cal. Rptr. 311, 314 (1967). "As an example, there is a sale on the corner of Seventh and Hope Street that sold for $42 a foot, and there is another sale down at the corner of Ninth and Hope Street that sold for $14 a foot."

24. Annot., 85 A.L.R.2d 110 (1962). California law is in accord with the majority rule followed in other jurisdictions. ALR states that thirty-five jurisdic-

the decision creates several problems that possibly could have been avoided by the court. In the first place, the better policy would be to admit into evidence any sales which are even vaguely comparable when there is a lack of actual comparables. The discretion of the trial court should be exercised in the direction of admitting evidence rather than excluding it. The jury is to weigh the evidence and decide the value of the property; the trial court should allow any evidence that may be helpful to go to the jury. In difficult situations like *Henderson,* a restriction on the admissibility of evidence gives the jury even less information on which to make a valuation.

Second, the view taken by the *Henderson* court would restrict the comparable sales method of valuation to properties alike in every way. This view is unrealistic when applied to property located within an urban renewal project, because it does not take into account the relationship between the project and the overall community plan. The evidence in *Henderson* suggests that the urban renewal project area would have developed commercially even if the renewal project had not been undertaken, and the location of condemnee's property was enough to indicate a probable shift in the zoning from residential to commercial. The renewal project only expedited and organized this change. While the future use of condemnee's property is not evidence of its value, because the condemnee is not entitled to be awarded the value of his property to the condemnor, in circumstances such as *Henderson* the proposed future renewal use arguably has a bearing on what comparables should be admitted as evidence of value.

These problems are complicated by some basic difficulties in the determination of market values within an urban renewal area. In the *Henderson* project, the redevelopment agency entered into the buying process early, probably to avoid paying inflated prices for property which might have increased in value as a result of urban renewal project activity. Early acquisition of property within a project area is typical, and is explicitly authorized by federal statute.[25] Yet the fact

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tions follow the majority rule and allow evidence of comparable sales in determining the market value of property. ALR also states that twenty-three of these jurisdictions follow the rule in condemnation proceedings. Oregon and Hawaii also follow the rule in condemnation proceedings. Of the jurisdictions which allow evidence of comparable sales to determine market value, the majority allow the trial court to use its discretion in deciding whether or not the evidence should be admitted.

25. 42 U.S.C. § 1452(a) (1964). "In any case where, in connection with its undertaking and carrying out of an urban renewal project, a local public agency is authorized (under the circumstances in which the temporary loan herein

that the redevelopment agency in *Henderson* entered into the buying process early merely helped destroy the market for land within the project area and thus complicated the problem of finding comparable sales. The *Henderson* opinion states that there had been no sales within the project area since 1957, except to the agency. If comparable sales are restricted to sales within the project area, only those sales in which the redevelopment agency was a buyer would be available. These sales would all be forced sales which are not properly admissible as comparables. Private sales occurring before 1957 inside the project area could be used, but these sales would not meet the "closeness in time" requirement of comparability.

On the other hand, if the project has been planned to encompass a viable area, then no section of the city may contain property which is comparable in kind to property included within the project. While the problem may not be so difficult when the property to be condemned is unarguably residential, the issues are much more difficult if it is alleged that the property is commercial property with special characteristics. Even if commercial property comparable in character to property within the project area can be found, the existence of the project may, in turn, have artificially affected the real estate market in other sections of the city. This result is especially likely if the renewal project is extensive in area and critically located. Deflationary and inflationary effects on property values will be especially noticeable in areas adjacent to the project, which are the most likely location for comparables.

III. Conclusion

Whether extending the use of comparable sales aids in solving these problems of valuing property within an urban renewal area or simply makes the problems more complex is hard to tell. But the problems cannot be ignored, and the *Henderson* court, by refusing to consider the effect of the project on the property in question, and on the project area, and by making a rather arbitrary exclusion of comparables, side-stepped the issues. The argument for not using comparables at all in condemnation proceedings can be advanced on the

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provided is requested) to acquire real property in the urban renewal areas, the Administrator, in addition to all authority under this subchapter and notwithstanding any other provisions of this subchapter, regardless of the stage of development of the urban renewal plan and whether before or after the approval thereof, may make a temporary loan or loans to any such local public agency to finance the acquisition of such real property. . . ."

ground that comparables can not reflect market value because real estate is unique. However, the California law is that they are to be used, and they were used in *Henderson.* When comparables are used they should be put to their best use, something not done in *Henderson.* By its exclusion of all condemnee's comparables except one, the court has relied solely on this one sale plus the several sales submitted by the renewal authority. When market value is so hard to determine, the court would have made a better decision by not so restricting the evidence.

Peter W. Brown