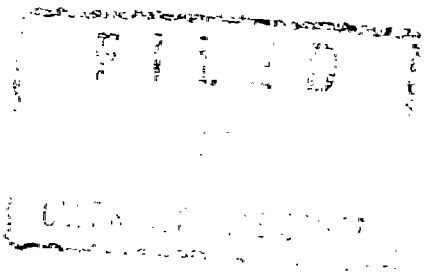
IN THE COURT OF APPEALS OF IOWA



No 5-235 / 94-1275

KONA CORP.,

Appellant,

vs.

POLK COUNTY, IOWA,

Appellee.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge.

Kona Corp. challenges the order upholding the compensation commission's damage award for Polk County's condemnation of its property. **AFFIRMED.**

Garry M. Cox of Seery & Cox, West Des Moines, for appellant.

George W. Appleby of Carney, Williams, Blackburn, Grask & Appleby, Des Moines, for appellee.

Heard by Hayden, P.J., and Sackett and Habhab, JJ. Cady, J., takes no part.

HAYDEN, P.J.

Kona Corporation (Kona) owns property north of Interstate 80 and adjacent to 86th Street in Des Moines. Polk County filed an application for condemnation of 8.08 acres of this land. The County sought to acquire the property in fee simple for the construction of an interchange with Interstate 80 at 86th Street. The County's final offer for the land was $132,000.

The compensation commission awarded damages to Kona of $145,000. Kona appealed to the district court, alleging damages of $207,600. The district court affirmed. Kona appeals. Kona alleges the district court erred in failing to consider the fair market value of the property at issue might be enhanced not because of the project itself, but by the knowledge a well-informed buyer or seller may possess regarding the benefit of the project.

I. Scope of Review.

Our review is for correction of errors at law. Iowa R. App. P. 4; *Power Eng'g & Mfg., Ltd. v. Krug Int'l*, 501 N.W.2d 490, 493 (Iowa 1993).

II. Proper Measure of Compensation.

The proper measure of compensation where there is a taking of a part of a parcel is the difference between the fair and reasonable market value of the parcel immediately before the taking and the fair and reasonable market value of the remainder. *United States v. 47.14 Acres of Land*, 674 F.2d 722, 725 (8th Cir. 1982) (citations omitted);

Twin-State Eng'g & Chem. Co. v. Iowa State Highway Comm'n, 197 N.W.2d 575, 577-78 (Iowa 1972) (citations omitted).

This case is squarely governed by our supreme court's decision in *Jones v. Iowa State Highway Comm'n*, 185 N.W.2d 746 (Iowa 1971). Under *Jones*, "compensation to which plaintiffs are entitled, for a partial taking, is the difference between fair market value of their entire tract of land immediately before and immediately after condemnation without regard to resultant benefit or betterment." *Id.* at 750 (emphasis added) (citations omitted). Appellant attempts to distinguish between the court improperly considering enhanced value and a buyer or owner considering enhanced value. This is a distinction without a difference. Appellant attempts to do indirectly what cannot be done directly, i.e., the court cannot consider resultant benefit or betterment from the project for condemnation. We are bound to follow our supreme court's determination of the law.

We affirm the district court. Costs on appeal are taxed to Kona.

AFFIRMED.