

442

FILED

APR 14 1977

IN THE COURT OF APPEALS OF IOWA

VIRGINIA MANOR, INC.,)

Appellee,)

v.)

THE CITY OF SIOUX CITY, IOWA,)

Appellant.)

Filed April 14, 1977
CLERK SUPREME COURT86
2-58270

Appeal from the Crawford District Court, Robert K. Brannon,
Judge.

Appeal from trial court rulings, admitting and excluding
certain evidence in eminent domain trial; and from trial court's
determination of attorneys fees. Affirmed.

Paul A. Mahr and Wilford M. Forker of Wilford, Kanter &
Mahr, of Sioux City, for appellee.

Terrence L. Timmins, Assistant City Attorney, for appellant.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and
Carter, JJ.

PER CURIAM

This is an appeal by the condemnor in an eminent domain proceeding. Four issues are raised which we treat in the following order: (1) was evidence improperly admitted showing a potential use of the subject property as a business school and dormitory and establishing the value of said property based upon that potential use; (2) was certain valuation testimony improperly admitted because it was based upon an appraisal too remote in time from the date of taking; (3) was evidence of comparable sales which occurred after the taking improperly excluded; and (4) were the attorneys fees fixed by the court for condemnee's attorneys unreasonable or based upon an improper standard.

I. The condemnor contends that the trial court erred in admitting evidence of potential use of the subject property as a business school and dormitory, including an agreement of lease for this purpose, complete with plans and specifications. It is further asserted that opinion testimony as to value, based upon this proposed use, was also improperly admitted. We hold these contentions to be without merit for two reasons. First, the objections which were made to this evidence in the trial court are not sufficiently specific as to the issues now argued on appeal to alert the trial court to the contentions now advanced. Second, we do not view the area of controversy as involving a recognized area of evidence exclusion. In eminent domain cases where the parties differ as to the highest and best use, each is entitled to present evidence supporting his respective theory and base his claim as to value upon such proposed use. *Vine Street Corp. v. City of Council Bluffs*, 220 N.W.2d 860, 865 (1974); *Dolezal v. City of Cedar Rapids*, 209 N.W.2d 84, 88 (Iowa 1973). The evidence to which objection is here made is both material and relevant for this purpose and therefore admissible. See *Vine*

Street Corp. v. City of Council Bluffs, supra. The sufficiency of the evidence to support an award based upon an alleged potential use of the property is a separate and distinct matter. But that issue has not been presented to us on this appeal.

II. The condemnor's second assignment of error must be rejected on the basis that the trial court was acting well within its discretion in admitting expert opinion testimony based upon an appraisal made approximately 19 months prior to the date of taking. The objections lodged in the trial court were general as to the claim of remoteness and did not assert that there had been any change in the condition of the property during the intervening period which rendered it less valuable than at the time of the appraisal. No action taken by the trial court precluded the condemnor from bringing such change of condition, if any, to the attention of the trier of fact by cross examination and condemnee's expert witness or through its own case in chief. There was no error incident to the receiving of this evidence. See, e.g., Hammer v. Ida County, 231 N.W.2d 896, 903 (1975).

III. Even if the trial court was in error in excluding the condemnor's evidence of comparable sales occurring after the date of taking, see, e.g., Booras v. Iowa State Highway Comm., 207 N.W.2d 566 (Iowa 1973), we can not reverse on this ground. The condemnor made no offer of proof as to the excluded evidence. There is nothing in the record to support the condemnor's claim that it was precluded by the trial court from making an offer of proof. As a result of such omission there is nothing for us to review. Fanning v. Mapco, Inc., 181 N.W.2d 190, 198 (Iowa 1970); Luse v. Waco Community School District, 258 Iowa 1087, 141 N.W.2d 607 (1966).

IV. The trial court, pursuant to section 472.33, The Code,

taxed attorneys fees against the condemnor as a result of the jury award exceeding that of the condemnation commission. The condemnor complains of the amount of said fee on two grounds, first that it was computed on the basis of a percentage of the increase in award, and second that it exceeds the value that condemnee's attorneys placed on their own services at the hearing on fees in trial court. We find neither of these claims to have support in the record. The trial court's written memorandum on the allowance of attorneys fees distinctly disclaims any reliance on a percentage of the increase in the award as a factor in arriving at the fee allowed. Nor did the condemnee's attorneys fix the value of their services *for this case* at \$50 per hour, as suggested by condemnors. They presented expert testimony supporting, as reasonable, a fee much higher than that allowed by the trial court. We conclude from the entire record, including the expert testimony presented, that the amount of attorneys fees taxed as costs in this case does not involve an abuse of the trial court's discretion. See *Hetherington Letter Co. v. City of Cedar Rapids*, 207 N.W.2d 800 (Iowa 1973); *Nelson v. Iowa State Highway Commission*, 253 Iowa 1248, 115 N.W.2d 695 (1962).

We have considered all issues presented and find no basis for reversal.

AFFIRMED.