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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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GARY R. CRIDLEBAUGH, JOANNE N. CRIDLEBAUGH, THOMAS M. COX, LINDA M. COX, EUGENE C. TALBOT, and BONNIE E. TALBOT,

Plaintiffs-Appellees,

vs

CITY OF CENTERVILLE, IOWA,

Defendant-Appellant.

Filed June 4, 1986

6-38
85-952

Appeal from the Iowa District Court for Appanoose County (No. CL872-0682), James P Rielly, Judge.

The defendant-city condemned easements across the plaintiffs' properties for a preexisting sewer line and for sewer repairs. **AFFIRMED.**

Edward W. Remsburg and William J. Noth of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, and James S. Craver, Des Moines, for the defendant-appellant.

Kenneth L. Keith and Lloyd E. Keith of Dull, Keith & Beaver, Ottumwa, for the plaintiffs-appellees.

Heard by Oxberger, C.J., Schlegel, and Sackett, JJ.

OXBERGER, C.J.

Appellant (Centerville) appeals the trial court's refusal to hold that Centerville had an existing easement across appellees' properties, that the trial court applied incorrect measure of damages to appellees' properties, that the trial court awarded excessive damages, and that the trial court erred in awarding attorneys fees to appellees. We affirm.

The record shows that Centerville initiated condemnation proceedings to establish an easement over appellees' properties and that plaintiffs perfected an appeal in district court to determine damages as a result of the taking. The record shows no written easements prior to the condemnation proceeding. As there were no records of an existing easement over appellees' properties prior to condemnation, appellees can be held to constructive notice of the existing sewer line only to the physical extent of the line. When the existing line became faulty and required maintenance, Centerville initiated its 1982-1983 rehabilitation project requiring a fifty-foot temporary construction easement as well as a thirty-foot perpetual easement. We find no error in the trial court's refusal to eliminate the thirty-foot perpetual easement as an issue in the trial.

A land purchaser has a duty to inspect the land to determine whether any rights to that land are claimed by others. National Properties Corporation vs. Polk County, 351 N.W.2d 509, 511 (Iowa 1984). The record fails to show how appellees, by observations could have determined any right in their properties beyond the extent of the underlying sewer line. We find that the manhole covers and aerial line were insufficient to place appellees on notice of a thirty-foot perpetual easement.

The record demonstrates, through testimony of appellees' expert witness and comments of the court, that the trial judge assessed the value of damages by considering the fair market value of the properties prior to and immediately after the taking.

The record shows the condemnation commission set its condemnation and damage awards to the three plaintiffs-appellees as follows:

Thomas and Linda Cox	$ 374.50
Gary and Joanne Cridlebaugh	$1071.00
Eugene and Bonnie Talbot	$3208.00

The trial judge, following a hearing, increased those damages to the following amounts:

Thomas and Linda Cox	$27,297
Gary and Joanne Cridlebaugh	$ 8,820
Eugene and Bonnie Talbot	$23,500

The trial court properly included the effect the use of Centerville's easement, i.e., a sewer line would have on the properties' market value. In Dolezal v. City of Cedar Rapids, 209 N.W.2d 84, 97 (Iowa 1973), the supreme court wrote, "Here again, every element which can fairly enter into the question of value and which an ordinarily prudent man would consider before forming judgment in making a purchase should be considered, not as an independent element of damages, but as a factor in determining the market value of the portion remaining after the taking." More recently the supreme court stated that it is proper to view the completed easement, in determining the fair market value of a property following a partial taking.

> Damages are not limited to the value of the land taken, but include such damages as result proximately from the use for which it is taken, . . . (i)n a general way, it may be said that all matters, either present or future, that necessarily and proximately affect the market value of the tract by the appropriation and proper use of the condemned portion of the purpose for which it is taken, may be considered in assessing damages. . . . (I)t is proper (in condemnation proceedings) to take into consideration the effect which the proper use of the condemned strip will have upon the residue of the tract from which it is taken.

Hammer v. County of Ida, 231 N.W.2d 896, 900 (Iowa 1975). The trial court properly received an expert witness's testimony regarding the effect the easements would have on the fair market value of appellees' properties. We find the proper measure of damages was applied.

Centerville maintains that the damages awarded appellees are "so excessive as to shock the conscience or sense of justice" and should be reversed. The city's expert witness testified that the properties suffered no diminution of value through the taking. The appellees' expert witness and the three appellees also testified as to their assessment of the damages. After hearing and assessing testimony from the two sides, the trial court reached its judgment—a decision properly within its purview.

> A condemnation case is one in which the amount allowed is peculiarly within the province of the trier of fact, and unless the same be shown to be so extravagant or penurious as to be wholly unfair and unreasonable this Court has repeatedly refused to interfere with the award.

Van Horn v. Iowa Public Service Company, 182 N.W.2d 365, 372 (citations omitted).

Centerville vigorously asserts that, as the damages awarded represented twenty-nine percent, forty percent, and eighteen percent of the properties' pretaking value, the damages are excessive. Centerville fails to note that appellees' properties, as a result of the taking and subsequent sewerage overflows, have acquired a reputation for frequent sewer problems. Such a reputation can be a severe impairment of a property owner's ability to sell his property. Expert testimony in the record brings a range of factors in to play in assessing these damages. These factors, taken together, support the trial court's damage award. In the same light we reject Centerville's complaint regarding the construction damage award to appellee Talbot. The award was proper.

We affirm the trial court's award of attorney fees to appellees pursuant to Iowa Code section 472.33 (1985).

AFFIRMED.