IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE, UPON THE RELATION OF THE SECRETARY OF THE DEPARTMENT OF TRANSPORTATION,	:	
Plaintiff,	:	C.A. No. S13C-01-032 RFS
v.	:	
EMIL LEWIS LESKO, TRUSTEE UNDER REVOCABLE TRUST AGREEMENT OF EMIL LEWIS LESKO, DATED JUNE 4, 2003; AND 7835.1765 SQUARE FEET OF LAND (Permanent Easement); and 485.4545 SQUARE FEET OF LAND (Temporary Construction Easements),	:	
Defendants,	:	

MEMORANDUM OPINION

Upon Plaintiff's Second Motion *in Limine* to Exclude Testimony and Proposed Exhibits of Defendant and Defendant's Proposed Expert Witness

Date Submitted: October 12, 2015
Date Decided: November 18, 2015

James D. Griffin, Esq., Griffin Robertson, P.A., Georgetown, DE, 19947, Attorney for Plaintiff.

Richard L. Abbott, Esq., Hockessin, DE, 19707, Attorney for Defendants.

Stokes, J.

INTRODUCTION

This case presents the interplay between lay and expert testimony in a condemnation action. Plaintiff filed a second Motion *in Limine* to exclude testimony and proposed exhibits of Defendant and Defendant's proposed expert witness, on August 20, 2015. Plaintiff is trying to exclude a July 27, 2015 letter from James R. Huston, Defendant's proposed expert witness, and a document entitled "Owner Opinion of Market Value" dated July 28, 2015. As this decision explains, Plaintiff's motion is granted.

FACTS

The Department of Transportation ("DelDOT" or "Plaintiff" or "State") of the State of Delaware brought an action under the power of eminent domain for the acquisition of property for public use. Accordingly, just compensation is due to the owner of property, Defendant Emil Lewis Lesko ("Defendant" or "Lesko"). DelDOT acquired a portion of a property located adjacent to the public road known as State Route 26 (Atlantic Avenue), Sussex County, Delaware. DelDOT intends to utilize the property to improve traffic congestion, safety concerns, and operational problems on State Route 26.

The State took approximately 0.18 acres of Defendant's land for highway purposes relating to Route 26. The Defendant owned several lots adjacent to Route

26 and Diane Avenue toward Ocean View in the Howard Manor Development. The strip was taken from Lot No. 1, which had approximately 160 feet of frontage on Route 26. The State acquired approximately 160 feet off the front of Route 26 and took an additional 50 feet from the side. Notwithstanding the acquisition, the Lot still could be used as a residence in accordance with applicable zoning and restrictive covenants. Prior to the taking, Lot 1 was vacant and was approximately 0.7 acres in size with 30 Leyland Cypress trees. Following the taking of approximately 0.18 acres, approximately 0.52 acres remained, and the trees were razed.

PROCEDURAL HISTORY

On February 2, 2015 this Court held a hearing on motions *in limine* filed by both parties.[1] Plaintiff filed a motion *in limine* attacking two avenues of compensation sought by Defendant. The first was the different values on commercial or residential purchases. Defendant's real estate expert, Mr. Huston, determined that the highest and best use of Lot 1 would be for commercial purposes. Mr. Huston did not believe landscaping had any contributory value or enhancement to Lot 1 as commercial property. Mr. Huston believed that any commercial buyers would desire as much public exposure as possible and would not want landscaping as a barrier. Plaintiff argued that the premise that Lot 1 could

[1]Transcript of February 2, 2015 proceeding in *State v. Lesko,* C.A. No. S13C-01-032.

be developed commercially is fatally flawed due to the restrictive covenant on the property that only permitted residential use. This Court found that given Defendant's involvement with the ownership interest at Howard Manor, the property development, there was a reasonable probability that appropriate consents could be obtained to permit the commercial use of Lot 1. The Court also found that the worth and credibility of Mr. Huston's opinion can be tested through cross-examination at trial. The Plaintiff's motion to exclude Mr. Huston's appraisal was ultimately denied.

The Plaintiff next opposed Defendant's introduction of the costs representing the replacement of landscaping as presented by an arborist, Russell Carlson ("Carlson"). In his report Carlson estimated that approximately $40,000 would be required to reproduce the foliage taken on the 0.18 acres and to replant it on the remainder. The State argued that the before and after rule is all inclusive and an individual component like landscaping would affect market value based upon a comparative sales basis.[2] Defendant countered by arguing the value of landscaping should be separately considered as there were no comparable sales of

[2]Delaware applies the before and after rule and the American Law Institute explains the rule as such: "The 'before and after rule' compares the fair market value of the entire tract of land before the taking with the fair market value of the remaining land after the taking. The value of the entire tract before the taking minus the remaining value is the just compensation. As a result of this formula, severance damages are automatically included in the calculation of the devaluation of the remainder." *Severance Damages*, SG059 ALI-ABA 175.

properties with landscaping to properties without landscaping. Essentially, Defendant's approach was to value the land without landscaping and then add $40,000 for landscaping based on Carlson's estimation. This Court found an estimate of cost can be considered where appropriate testimony is received on the contributory influences of landscaping to market value. According to the Court, if Carlson's estimate was admitted at all it must be tied to the contributory value of landscaping to market value. Carlson was determined not to be an expert on real estate or market value for real estate, and his testimony would be as a fact witness. The commissioners[3] would need to be instructed that damages could only be awarded for lost landscaping based upon the market effect value of landscaping, and absent that, any award for landscaping could not be made.

Plaintiff also objected to Defendant's opinion of value rendered by Lesko's record owner testimony. The Court reached three pertinent conclusions relating to Defendant's owner opinion. First, the Court concluded Defendant did have familiarity with the sales referenced in the Chico report,[4] and as an owner of Lot 1,

[3]In Delaware our Commissioners are drawn from the jury pool and consequently they do not possess any experience or expertise in real estate or eminent domain matters.

[4]Joseph A. Chico III ("Chico") conducted an appraisal for the State on September 13, 2013. Chico considered five sales that were comparable in his opinion as a real estate expert and concluded that just compensation should be approximately $37,000, based upon the before and after analysis, for Defendant's property. Tr. at 4.

he can testify about his opinion of value based upon the comparable sales reported by Chico that would bear on market value. Defendant would be cross-examined to determine the worth of his testimony because he is not an expert and his testimony would be limited to what would be permissible for an owner and not an expert.

The Court's second conclusion involved Defendant's opinion adding $40,000 to the remainder as severance damages for the loss of landscaping. In the Court's opinion, this was not a market value opinion and was against the measurement of damages rule which should be determined using the before and after method. However, the Court also found an opinion using the $40,000 estimate as a foundation potentially may be made through competent testimony concerning the contributory effect the landscaping would have on the market value as a whole. This is normally done through expert testimony, and the Court noted Defendant had chosen not to have his expert opine in this manner. The Court decided that if a tie-in could be made, regarding the landscaping's effect on the value of the property, then Carlson's estimate could be considered as a circumstance, but it is not, itself, market value and the commissioners would need to be instructed as such.

The final pertinent conclusion related to the figure of $17,000 for proximity damages alleged by Defendant in his owner opinion. The Court found it was not a

market value figure, Defendant's opinion sought to separately itemize the severance of damage, and there is nothing to show the effect on market value by virtue of the diminished space. In the opinion of the Court, the $17,000 figure seemed to be plucked from the air without a basis and even recognizing the wide latitude by which the testimony of record owners are afforded, this $17,000 figure would not be permitted.

Ultimately during the February 2, 2015 bench ruling, this Court denied Defendant's motion *in limine,*[5] and granted in part and denied in part Plaintiff's motion *in limine,* and Defendant's written proposed opinion was stricken and would not be considered.

ANALYSIS

Before the Court is Plaintiff's second Motion *in Limine* to exclude testimony and proposed exhibits of Defendant and Defendant's proposed expert witness. Plaintiff seeks to prevent Defendant from introducing a document entitled "Owner Opinion of Market Value" and a letter from James R. Huston, Defendant's expert witness.

[5]Defendant filed a motion *in limine* on January 5, 2015 in which he attacked the State's appraisal conducted by Chico. Defendant pressed that the appraisal was fatally flawed because it failed to properly apply the legal measure of damages to provide for just compensation of expropriated property. This Court found that Chico could be cross-examined and the worth of the report and his credibility would be determined by the Commissioners. Tr. at 6.

1. "**Owner Opinion of Market Value**"

The first document at issue in this case is the "Owner Opinion of Market Value" ("Defendant's Market Value" or "Owner's Opinion"), which is Lesko's opinion on the value of his property before and after the taking. Defendant's Market Value is structured in sections and deals with the before and after taking value of Defendant's property from his point of view. Defendant's Market Value is Lesko's opportunity to testify as to what he considers just compensation for his property. Lesko's opinion must meet certain threshold requirements to be admissible. Plaintiff has filed a motion *in limine* to exclude Defendant's Market Value on the grounds that it is inadmissible testimonial evidence. The question before the Court is whether Defendant's Market Value meets the requirements and is thus admissible.

Defendant's Market Value is divided into sections. Section I, titled *Description of the Parcel Before the Taking*, discusses the size and location of the parcel of land. In this section, in addition to describing the size and location of the parcel, Defendant states that the landscaping contributed greatly to the property's livability and marketability.

Section II, titled *After Taking Parcel Description*, goes into detail concerning the loss of trees on the property and the effects of the loss of trees, namely an increase

in noise associated with a busy roadway. Defendant claims one local real estate expert predicted that no one was going to want the property for residential purposes following the loss of landscaping.

Section III, titled *Improvements Taken*, provides further detail on what was discussed in Section II, chiefly the description of the types and number of mature trees that were destroyed by DelDOT during the taking. Lesko claims, in this section, the contributory value of these mature trees could be quantified by an appraiser analyzing matched pairs of comparable residential properties. Defendant also provides a caveat for this approach; in the event that the comparison of matched pairs of comparable residential properties is not feasible then replacement cost analysis is appropriate. Lesko mentions his certified appraiser, Mr. Huston, could not find suitable matched pairs and as a result the best available estimate of landscaping is the $40,000 estimate from Carlson.

Under Section IV, titled *Loss in Value to Remainder & After Taking Value*, Lesko states a detrimental condition is caused by DelDOT moving the right-of-way, and he reiterates how the taking inflicts significant damage on the remainder of the property. In Defendant's opinion, a busy roadway reduces the value of an abutting residential property through an increase in road noise, fumes, unwanted lights at night and litter. In his opinion the after taking value of the remainder is $71,500.

Section V, titled *Permanent Easement*, provides a description of the easement that was created by the taking and the value Lesko attributes to this taking. In his opinion, the value of the permanent easement is one-half of the fee simple amount, which equates to $322 (143 square feet $5.50 per square foot/2).

Section VI, titled *Temporary Easement*, discusses the temporary easement created by the taking and the annual value of the temporary easement, according to Lesko, is 5% of the fee simple amount. The amount for one year ($5.50 per square foot x 458 square feet x 5%) is $129.95. In this section Defendant gives his estimated total value of the easements taken by DelDOT as $574.

Finally in Section VII, titled *Owner Opinion of "Just Compensation"*, Lesko goes into detail about just compensation and gives several definitions of just compensation. Defendant ultimately gave his breakdown of what he considers just compensation for the taking; the before taking value of the 0.70 acre landscaped parcel was $168,000 and the after taking value of the smaller un-landscaped remainder parcel is $71,500, with the difference being just compensation of $96,500. With the permanent and temporary easements mentioned in sections V and VI, respectively, he rounds up his estimation of just compensation to $97,000.

In section III, "*Improvements Taken*", Lesko expressly refers to the Carlson Report. Defendant asked Carlson, a forensic arborist, to evaluate the trees in the

condemned area and give an estimation as to their value to the property. Carlson concluded that $40,212 represented a fair value for the destruction and loss of the trees and landscape across the front of Defendant's property. Lesko defers to the $40,212 figure from Carlson as the fair value for the landscaping. Carlson is a forensic arborist and not a real estate expert, and not qualified to speak about market value for just compensation.[6] Defendant cannot incorporate Carlson's valuation in his testimony as a lay witness without supporting expert testimony relating to contributory value. This Court has already stated that Defendant is not a real estate expert, and he cannot supply an expert opinion "through the guise of his testimony as an owner."[7] While the record owner rule is well-established, it cannot be used as an excuse for a record owner to supplement expert testimony in place of their own.

In Section IV, *Loss in Value of Remainder and After Taking Value*, Defendant seems to pluck a number out of the air and use it to form his opinion without any basis for that opinion. Lesko states that the taking has inflicted serious damage on the remainder of his property, thus rendering it substantially less suitable and marketable for residential use. In Lesko's opinion, the after taking value of the remainder is $71,500. The problem with this opinion is, there is no basis for it and nothing to

[6]Tr. at 13-14.

[7]Tr. at 24.

support his opinion. The Court previously ruled on proximity damages when Lesko gave his opinion that his property suffered $17,000 in proximity damages. The Court held that the $17,000 figure seemed fanciful.[8] Here, Defendant offers no support for his assertion that his property suffered by being 50 feet closer to Route 26, nor does he offer anything to support his estimation of the after taking value of the remainder being $71,500. As noted by the Court on February 2, 2015, a record owner is granted wide latitude when giving record owner testimony, yet there still must be some basis for the opinion, and the owner's opinion cannot be fanciful.[9]

A defendant property owner has the right to testify as a lay witness concerning an estimate of the value of their property under the record owner rule.[10] The defendant owner must meet certain threshold requirements, and may only be utilized to establish market value. Notably, a defendant property owner may not establish a particular subjective value to the owner himself when testifying as a lay witness.[11] This Court,

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[8]Tr. at 26.

[9]*Id.*

[10]*Eastern Shore Natural Gas Co. v. Glasgow Shopping Center Corp.*, 2007 WL 3112476, at *2 (Del. Super. Oct. 3, 2007) ("Since 1960, Delaware has recognized a property owner's right to give an opinion as to the value of real estate. The rule is based on the theory that landowners have special knowledge concerning the value of their own land. During a condemnation proceeding, a landowner may testify as to the value of condemned property.").

[11]*State ex rel. State Highway Dept. v. J.H. Wilkerson & Son, Inc.*, 280 A.2d 700, *702 (Del. 1971).

in *Eastern Shore,* ruled that when an owner's opinion is based on the fair market value of nearby properties, then the owner's familiarity with those properties must be established as a threshold requirement. However, if the owner's "perception of property value are based on scientific or specialized knowledge or skill, then they will rise to the level of an expert witness and will not be permitted to testify without appropriate notice to the parties and the Court."[12]

Delaware Rules of Evidence Rule 701 describes the standard for lay witness testimony as follows:

> [T]he witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue and (c) not based on scientific, technical or other specialized knowledge within the scope of Rule 702.

Based on the above-mentioned standard, the remaining question for this Court is whether Defendant's "*Owner Opinion of Market Value*" meets the threshold requirements.[13]

The record owner rule requires that an owner's testimony must be based on personal knowledge of the property, not statistics or equations normally utilized by

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[12]*Eastern Shore Natural Gas Co. v. Glasgow Shopping Center Corp., supra* at *2.

[13]As this Court stated on February 2, 2015, the record owner rule does not grant the owner of the property carte blanche, and the owner's testimony does not act like a blank check merely because the person testifying is the record owner of the property. Tr. at 22.

a certified appraiser.[14] Here, Defendant's testimony regarding the cost to cure the landscaping is not based on personal knowledge because it requires additional expert testimony concerning the contributory effect of the landscaping to the market value. Defendant is relying on the testimony of his expert Carlson, and subsequently Huston to support the conclusion that the landscaping on his property was worth over $40,000. Because Defendant's testimony relies on expert valuation, he cannot incorporate the expert testimony without violating D.R.E. 701 or the record owner rule. As such Defendant will not be allowed to testify regarding the cost of landscaping without companion expert testimony. If Defendant testifies absent companion testimony, regarding the landscaping, then his testimony is in direct conflict with Delaware Rule of Evidence 701 and the requirements for the record owner rule.

It is not this Court's opinion that Lesko should be deprived of his opportunity to testify and give his record owner opinion; his right to give such an opinion is paramount to insure a fair and balanced ruling. *Nichols On Eminent Domain* summarizes the importance of allowing the owner of taken property the opportunity to give his opinion of the value of the property:[15]

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[14]*Eastern Shore Natural Gas Co. v. Glasgow Shopping Center Corp., supra* at *2.

[15]Nichols on Eminent Domain®, Ch. 23, §23.03 (Matthew Bender, 3rd ed.).

> The owner of land taken is generally recognized as qualified to express his opinion as to its value merely by virtue of his ownership. The owner is deemed to have sufficient knowledge of the price paid, the rents or other income received, and the possibilities of the land for use, to render an opinion as to the value of the land. The weight given to an owner's testimony is for the consideration of the jury.[16]

It is important for both parties to understand Lesko's right to give his record owner opinion is not being taken from him; however, parts of his opinion will need to be excluded. This Court in *Lloyd* made it clear that defendants would not be allowed to attempt to portray themselves as real estate appraisers in front of the jury.[17] Judge Silverman, in *Lloyd*, cautioned owners that because they are not designated as experts, they may not hold themselves out as experts to the commissioners.[18] In the present matter, Lesko cannot hold himself out to be an expert by relying on materials provided by experts or materials experts normally rely on.

Defendant does not meet the threshold requirements of the record owner rule or DRE 701, in his Owner Opinion of Market Value, Section III "*Improvements Taken*". Therefore Section III, "*Improvements Taken*", should be excluded.

Lesko mentions the $40,000 figure, that he appears determined to obtain, throughout his Owner's Opinion. Lesko was given the opportunity to use an expert

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[16]In Delaware the commissioners determine the weight given to the owner's testimony.

[17]Transcript of April 9, 2015 proceeding in *State v. Lloyd*, C.A. No. N12C-04-100 at 9.

[18]*Id*. at 10.

witness to show the contributory value of the landscaping, but his expert, Mr. Huston, failed to provide such supporting testimony.[19] Mr. Huston had the opportunity to make an upward adjustment to the value of the property and having failed to do so Lesko's expert deferred to Carlson's estimation of the cost to replace the landscaping. Lesko attempted to turn the law on its head by not using an expert to support the theory that landscaping provides additional value to the property, and by testifying as an expert himself. Lesko relies on hearsay in his Owner's Opinion.[20] It is permissible for an expert to rely on hearsay testimony when giving expert testimony, but impermissible for a lay witness to rely upon such testimony.[21] Lesko was granted the opportunity to have his expert make an adjustment to the value of his property to reflect the contributory value of the landscaping, and having failed to do so

[19]As indicated, Mr. Huston authored an expert opinion that stated the best use of the property was for commercial purposes. This value was less than what Mr. Lesko contends is due on a residential basis.

[20]"The Taking does significant damage to the livability, marketability, and value of the remainder of the property. One local real estate expert predicted that no one is going to want the property for residential purposes now." Exhibit A of Plaintiff's Second Motion *in Limine* Pursuant to Rules 16 and 26(b)(4), *Owner Opinion of Market Value*, at *2.

[21]"The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Upon objection, facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect." D.R.E. 703.

Defendant chose to revert to the $40,000 figure to which he feels he is entitled. Lesko will not be allowed to overturn the law and as such his Owner Opinion will be excluded.

Defendant also did not meet the threshold requirements for Section IV, *"Loss in Value to Remainder & After Taking Value"*. The $71,500 figure with which Lesko came up is not a market value figure. Essentially, it reflects the reduction of the remainder value by the amount of money to replace the landscaping and his belief of proximity damages, without an appropriate foundation to show the contributory impact on market value. His claim for $97,000 being the difference between the before and after value is fatally flawed.[22] As noted by this Court previously, the record owner rule does not grant the owner a blank check, there must be some basis and support when forming their opinions. Lesko is attempting to bypass this Court's February 2, 2015 ruling by reverse engineering his calculation of just compensation. Lesko's opinion in Section IV, titled *Loss in Value to Remainder & After Taking Value*, should be stricken because it is a mechanism to circumvent the need for expert testimony and is excluded under Rule 403.[23]

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[22]$500 representing the combined value of the Temporary and Permanent Easements on Defendant's property is not in dispute.

[23]"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative

2. **James R. Huston's Letter**

The second document at issue in this case is a letter to Defendant's Counsel from Mr. Huston dated July 27, 2015. Mr. Huston is Defendant's appraiser and expert witness. In the letter, Mr. Huston describes his findings and opinions regarding the property appraisal and the loss of trees for Defendant's property. According to Huston's letter he was unable to conduct a comparable lot sales search in his effort to develop a matched pair's indication of contributory value. Having failed to find the contributory value of the landscaping, Huston defers to the Carlson estimate of the replacement cost of landscaping stating that Carlson's estimate is a substitute. On February 2, 2015, the Court held that in order for the Carlson Report to be admitted, the contributory effect the landscaping would have on the market value of the property must be established.[24] The question for this

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evidence." D.R.E. 403.

[24]This Court held on February 2, 2015 that the report from Defendant's expert, Mr. Carlson, relating to the cost of replacing Defendant's landscaping could be admissible provided certain criteria were met. The Court stated the following, the report "if it is to be admitted at all, must be tied to the contributory value of landscaping to market value. If the connection is made, a jury must be instructed, as cautioned in *Wilkerson*, that the estimate is not market value. And a separate award isolated just to landscaping be inappropriate." Tr. at 18. The Court elaborated further, "[a]n opinion using the estimate as a foundation potentially might be made through competent testimony concerning the contributory effect the landscaping would have on the market value as a whole. This appears to be done from the cases through expert testimony. If a tie-in can be made, then the cost estimate from Carlson could be considered as a circumstance, but again, it is not, itself, market value and the jury would have to be appropriately instructed." Tr. at 18.

Court is whether the letter from Mr. Huston is sufficient testimony to meet this burden.

Mr. Huston could not find comparable sites to analyze the contributory value of the landscaping and therefore could not make a finding regarding the contributory effect of the landscaping. Mr. Huston expressly relied on Carlson's method for calculating the cost of landscaping on Defendant's property. He states, "[t]he cost to cure should be the replacement cost for the trees and landscaping as estimated by [Carlson] or other qualified company that can produce the same results."[25] Defendant seeks to use Mr. Huston's letter to demonstrate that the contributory value of the landscaping cannot be calculated and therefore, Carlson's valuation is the proper valuation.

Defendant's argument that Mr. Huston's letter should be considered a bridge for the Carlson Report to be admitted is without merit. According to Defendant, Mr. Huston's letter provides appropriate testimony regarding the contributory influences of landscaping to the market value. However, the only opinion given by Mr. Huston was that he could not find any comparable lots and, in his opinion, Carlson's Report should be used. Defendant is trying to circumvent the Court's ruling on February 2,

[25]Addendum B to Exhibit A of Plaintiff's Second Motion *in Limine* Pursuant to Rules 16 and 26(b)(4), *Letter from Mr. James R. Huston, Certified Appraiser, To Mr. Richard L. Abbott, Esquire, dated July 27, 2015*, at *1 (Aug. 20, 2015).

2015, by arguing he could not find an opinion relating to contributory effect on market value and therefore the original expert's opinion, Carlson's valuation, should be used. The Court clearly stated, "Carlson's estimate, *if it is to be admitted at all*, must be tied to the contributory value of landscaping to market value."[26] Therefore, because Carlson's opinion was not tied to the contributory value of landscaping, as evidenced by Mr. Huston's failure to provide such additional testimony, the Court finds that it cannot be used at trial. In addition, Mr. Houston's opinion, which relies on Mr. Carlson's report, is therefore also not admissible at trial.

In summary, Huston's letter does not provide the bridge to allow Carlson's Report into evidence. The letter from Huston is being used by Defendant to demonstrate the lack of comparable properties, and reinforce Defendant's belief that Carlson's valuation is accurate. There is no evidence of any contributory effect the landscaping would have on the property, and as such, there is no evidence to support Defendant's belief that the landscaping provides a benefit to the market value of the property. Therefore, Huston's letter shall be excluded.

[26]Tr. at 17-18 (emphasis added).

CONCLUSION

Plaintiff's Motion *in Limine* regarding the document entitled "Owner Opinion of Market Value" is **GRANTED**, specifically Sections III, *Improvements Taken*, and Section IV, *Loss in Value to Remainder & After Taking Value.*

Plaintiff's Motion *in Limine* concerning Huston's July 27, 2015 letter is **GRANTED**.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes