

IN THE COURT OF APPEALS OF IOWA

No. 7-069 / 06-0494

Filed April 25, 2007

SPENCER DIESEL INJECTION & TURBO, INC.,
Plaintiff-Appellant,

vs.

**THE CITY OF SIOUX CITY, IOWA, A Municipal
Corporation, et al.,**
Defendants-Appellees.

Appeal from the Iowa District Court for Woodbury County, Gary E. Wenell,
Judge.

Property owner appeals from a district court ruling in an eminent domain
appeal ascertaining the amount of damages for the condemnation of its fee
interest in real estate. **AFFIRMED.**

Stanley E. Munger and Jay E. Denne of Munger, Reinschmidt & Denne,
L.L.P., Sioux City, for appellant.

Connie E. Anstey, Assistant City Attorney, Sioux City, for appellee.

Heard by Sackett, C.J., and Mahan and Miller, JJ.

MILLER, J.

Property owner Spencer Diesel Injection & Turbo, Inc. (Spencer Diesel) appeals from a district court ruling in an eminent domain appeal ascertaining the amount of damages for condemnation of its fee interest in real estate at \$202,000. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

On March 14, 1996, Spencer Diesel purchased an approximately 22,500 square foot piece of property located at 807 Third Street in Sioux City, Iowa for \$136,000. Don Mittelstadt, president of Spencer Diesel, acquired the property through a defaulted loan. The property was used as a surface parking lot by the former owner. The lot was paved with asphalt, which was in poor condition. Soon after gaining possession, Mittelstadt learned there was an old gas station on the lot that required environmental cleanup. He could not use the property until the environmental cleanup process was finished in 1998. After the cleanup was completed, Mittelstadt discovered Civic Partners, a development company in California, was interested in developing the surrounding area. He held the property in hope of leasing it on a long-term basis to Civic Partners. However, he never entered into a lease agreement with Civic Partners.

The City of Sioux City informed Mittelstadt in March 2002 it was interested in acquiring the property for use as a parking lot in connection with the Downtown Development Project, a thirty-five million dollar well-publicized downtown renewal venture. Deane Davenport performed an appraisal of the property on behalf of the city. Davenport valued the property at \$202,000 as of April 9, 2002 pursuant to a comparable sales or market data approach. He also analyzed the value of

the property according an income capitalization approach, which resulted in a value of \$182,000. Davenport placed the greatest weight on the comparable sales method. Upon receipt of Davenport's appraisal, Mittelstadt offered the city a two year lease at \$3,500 per month with an option to buy at the end of the lease for \$600,000. The City did not accept Mittelstadt's offer and instead initiated condemnation proceedings.

On April 23, 2003, the condemnation commission met to view the condemned property and appraise the damages sustained by reason of the condemnation. After hearing testimony from Davenport and considering his appraisal report, the commission determined Spencer Diesel would sustain damages of \$202,000. Spencer Diesel did not appear at the condemnation hearing.

Spencer Diesel filed an appeal with the district court. The city obtained a second appraisal of the parking lot prior to trial on the appeal. The second appraisal was performed by Michael Plummer. Like Davenport, Plummer also used both a comparable sales and income approach in his analysis of the property. He determined total consideration should be given to the comparable sales approach, which resulted in a value of \$200,000 as of April 23, 2003. Spencer Diesel did not retain an appraiser, nor did the company designate an expert witness to testify at trial regarding the value of the property. Prior to trial, the city filed a motion in limine, seeking in part to prohibit Spencer Diesel from introducing any evidence of the value of the property based upon an income capitalization method. The district court determined that the business value evidence should not be presented. The city redacted all references to the

income capitalization value from the appraisals completed by Davenport and Plummer. Spencer Diesel requested a continuance in order to obtain an appraisal and designate an expert witness to testify as to the value of the property. The district court denied that request. The parties waived a jury, and the matter proceeded to trial before the court.

At trial, Davenport and Plummer's redacted appraisal reports were admitted into evidence. Davenport and Fred Lock, Plummer's supervisor, testified on behalf of the city regarding the findings of the appraisals.¹ Both Davenport and Lock stated they were able to determine the value of the property through the comparable sales method. Davenport testified the fair market value of the property was \$202,000, while Lock testified the value of the property was \$200,000. In an offer of proof, Mittelstadt testified on behalf of Spencer Diesel that he believed the property was worth \$600,000. In another offer of proof, Spencer Diesel's accountant, Bob Houlihan, testified as to his valuation of the property using an income approach. Houlihan's testimony relied on redacted portions of Davenport's appraisal. He substituted different rental and occupancy rates to arrive at values ranging between \$450,000 and \$589,000 for the property.

The district court determined the fair market value for the property was \$202,000, the same value fixed by the condemnation commission. The court relied on the appraisal reports completed by Davenport and Plummer and the testimony presented by the city in support of those reports. The court noted that

¹ Michael Plummer was unable to testify at trial due to a serious medical condition.

Spencer Diesel failed to present credible evidence it was entitled to more than \$202,000 as fair and just compensation for the taking of the property.

Spencer Diesel appeals the district court ruling. It contends the district court erred in 1) barring all evidence of the income approach to the valuation of Spencer Diesel's property, 2) assessing the fair market value of Spencer Diesel's property at \$202,000, and 3) denying Spencer Diesel's request for a continuance.

II. SCOPE AND STANDARDS OF REVIEW.

The district court is given appellate jurisdiction over awards of the compensation commission. Iowa Code § 6B.18; *Chao v. City of Waterloo*, 346 N.W.2d 822, 824 (Iowa 1984). The case is tried to the district court as an ordinary proceeding. Iowa Code § 6B.21. We review ordinary proceedings for the correction of errors at law. Iowa R. App. P. 6.4; *Sunrise Developing Co. v. Iowa Dep't of Transp.*, 511 N.W.2d 641, 643 (Iowa Ct. App. 1993).² The sole issue for the district court's determination is the amount of damages caused by the taking. Iowa Code § 6B.23; *Iowa State Highway Comm'n v. Read*, 228 N.W.2d 199, 202 (Iowa 1975). The factual findings of the district court are binding on us if supported by substantial evidence. Iowa R. App. P. 6.14(6)(a). The amount of condemnation damages is peculiarly within the province of the trier of fact. *Sunrise Developing Co.*, 511 N.W.2d at 645. Thus, appellate courts have consistently refused to interfere with the amount absent a showing it was wholly unfair or unreasonable. *Id.*

² Spencer Diesel contends we must conduct a de novo review of the district court proceedings because their right to just compensation is constitutionally protected. Although Spencer Diesel's underlying right to just compensation is constitutional in nature, our review of this type of case for errors at law is well established.

The district court's evidentiary rulings are reviewed for an abuse of discretion. *Kurth v. Iowa Dep't of Transp.*, 628 N.W.2d 1, 5 (Iowa 2001). The court's determination of whether to grant a motion to continue is also reviewed for an abuse of discretion. *In re Estate of Lovell*, 344 N.W.2d 576, 578 (Iowa Ct. App. 1983). An abuse of discretion occurs when the trial court exercises its discretion on grounds clearly untenable or to an extent clearly unreasonable. *Kurth*, 628 N.W.2d at 5 (citations omitted).

III. MERITS.

Both the Iowa and United States Constitutions prohibit the taking of private property without just compensation. U.S. Const. amend. V; Iowa Const. art. I, § 18; *Aladdin, Inc. v. Black Hawk County*, 562 N.W.2d 608, 611 (Iowa 1997). "In determining what constitutes 'just compensation,' courts must look to the individual facts of each case." *Sunrise Developing Co.*, 511 N.W.2d at 643 (quoting *CMC Real Estate Corp. v. Iowa Dep't of Transp.*, 475 N.W.2d 166, 170 (Iowa 1991)). The general rule states:

A court may consider all factors indicative of the value of the property, and which would have been present in the minds of a willing buyer and a willing seller, unless the considerations advanced are too speculative or remote, and thus not a necessary, natural, or proximate result of the taking.

Kurth, 628 N.W.2d at 6 (citation omitted). "When the entire property is taken . . . the measure of damage is the reasonable market value at the time of condemnation. . . ." *Id.* (quoting *Aladdin*, 562 N.W.2d at 611-12). In such cases, "the usual guide to the fair market value of the property is comparable sales figures." *Id.* at 7.

Where condemnation of a fee interest is sought, evidence of business profits is generally inadmissible as an independent element of damage or as relevant in determining the value of the land because it is too uncertain and depends upon too many contingencies. *Id.* The only exceptions to the rule prohibiting valuation by the business profits or income capitalization approach are when the property taken is a leasehold or land used for agricultural purposes. *Id.* at 7 (citations omitted). Resort to other methods of valuation may also be had where there are no comparables, no market, and no general buying and selling of the kind of property in question. *Sunrise Developing Co.*, 511 N.W.2d at 643 (citing *Comstock v. Iowa State Highway Comm'n*, 254 Iowa 1301, 1309, 121 N.W.2d 205, 210 (1963)).

A. Business Value Testimony.

Spencer Diesel's first assignment of error is that the district court erred in excluding evidence of the value of the property based upon an income capitalization approach. It argues: (1) there were no comparable sales, (2) an exception to the general rule prohibiting evidence of the business value of the property applies, and (3) the city was judicially estopped from arguing against the income approach. We will address each argument in turn.

Spencer Diesel asserts there are no comparable sales because the property was singularly situated in the heart of the city's Downtown Development Project. We disagree. The appraisers were able to determine fair and reasonable market value based upon the comparable sales or market data approach. In fact, both Davenport and Plummer placed the greatest weight on the comparable sales method in valuing the property.

The comparable sales identified by the appraisers included other properties being used as parking lots in the same area as the subject property. According to Spencer Diesel, the comparable sales identified by the appraisers were not similar to its property given the city's development project and the property's location in relation to that project. The district court correctly noted that "comparable" in the context of property valuation does not mean identical. See, e.g., *Sears, Roebuck & Co. v. Sieren*, 460 N.W.2d 887, 890 (Iowa Ct. App. 1990) (finding large anchor store space and small retail shop spaces to be comparable properties).³ Moreover, "the value to be ascertained does not include, and the owner is not entitled to compensation for, any element resulting subsequently to or because of the taking." *Olson v. United States*, 292 U.S. 246, 255, 54 S. Ct. 704, 708-09, 78 L. Ed. 1236, 1244 (1934).

Spencer Diesel next argues we should adopt the approach utilized by the courts in *Standard Oil Co. v. Commonwealth of Kentucky*, 414 S.W.2d 570 (Kent. Ct. App. 1966) and *Private Property for Municipal Court Facility v. Kordes*, 431 S.W.2d 124 (Mo. 1968) and create a new exception to the comparable sales rule for parking lots. We reject this argument and find those cases do not apply to the situation presented herein. The property owners in both cases were able to produce evidence of clear and permanent profits from a business operation on the property. *Standard Oil*, 414 S.W.2d at 571; *Kordes*, 431 S.W.2d at 126. There was no such evidence presented in this case because Spencer Diesel did not operate a business on the property. The figures used by Spencer Diesel's accountant in valuing the property according to the income approach were

³ Although *Sears* involved a tax assessment dispute, we believe its reasoning regarding the valuation of property is equally applicable in a condemnation action.

uncertain and speculative due to the lack of any income history. See *Comstock*, 254 Iowa at 1308, 121 N.W.2d at 209 (determining that “[a]nticipated profit has too many variables . . . to be the sole basis for fixing value.”). Furthermore, in *Standard Oil*, the court allowed use of a recognized gasoline industry formula in valuing the property. *Standard Oil*, 414 S.W.2d at 572. There is no accepted parking lot industry formula upon which Spencer Diesel could rely. Finally, *Kordes* does not treat a surface parking lot as a species of unique property nor does it sanction evidence of business profits as a per se rule of proof of value when such land is taken. *Land Clearance for Redevelopment Auth. of Kansas City v. Coen*, 773 S.W.2d 465, 468 (Mo. App. 1989).

Spencer Diesel argues in the alternative that evidence of business profits should have been admitted pursuant to the recognized leasehold exception. We determine this exception does not apply because there was no evidence of a valid lease. The only evidence Spencer Diesel presented regarding a supposed lease was Mittelstadt’s testimony that he had an oral contract with Civic Partners to enter into a lease agreement for the parking lot. However, the city established through its cross-examination of Mittelstadt and Spencer Diesel’s accountant, Houlihan, that no such lease agreement was ever entered into.

Spencer Diesel’s final argument regarding its first assignment of error is that the city was judicially estopped from arguing against the income capitalization approach because the city relied on such an approach in the condemnation proceeding. The doctrine of judicial estoppel “prohibits a party who has successfully and unequivocally asserted a position in one proceeding from asserting an inconsistent position in a subsequent proceeding.” *Winnebago*

Industries, Inc. v. Haverly, 727 N.W.2d 567, 573 (Iowa 2006) (citations omitted). The doctrine is applicable in administrative, as well as judicial, cases. *Id.* A “fundamental feature” of the doctrine is “proof that the inconsistent position has been successfully asserted in the prior tribunal Without such proof, ‘application of the rule is unwarranted because no risk of inconsistent, misleading results exists.’” *Id.* (quoting *Wilson v. Liberty Mut. Group*, 666 N.W.2d 163, 166 (Iowa 2003) (other citations omitted). Spencer Diesel did not appear at the condemnation hearing. More importantly, the damages awarded by the commission were equal to Davenport’s valuation of the property using the comparable sales approach. Therefore, judicial estoppel does not apply because Spencer Diesel failed to present proof that the city successfully relied on the income approach in the condemnation proceedings.

In conclusion, we find the district court did not abuse its discretion in excluding evidence of the valuation of the property using an income approach. Two appraisers testified there were comparable sales available. None of the exceptions to the general rule prohibiting valuation by the business profits or income capitalization approach applied. The city was not judicially estopped from seeking to exclude evidence of the income capitalization method. Having determined the district court did not abuse its discretion in excluding evidence of the business value of the property, we now must decide whether there is substantial evidence supporting the award of \$202,000 as compensation for the taking of the property.

B. Fair Market Value of the Condemned Property.

Spencer Diesel claims the district court erred in finding that the value of the property was \$202,000. The district court's determination that there were comparable sales available is supported by substantial evidence. The city presented two expert opinions and appraisal reports as to the fair market value of the property at the time of the condemnation. Davenport's appraisal of the property using the comparable sales method valued the property at \$202,000 as of April 9, 2002. Plummer appraised the property at \$200,000 as of April 23, 2003 pursuant to the comparable sales method.

Spencer Diesel did not retain an appraiser, nor did the company designate an expert witness to testify at trial regarding the value of the property. Mittelstadt testified that he believed the property was worth \$600,000. However, this estimate is not supported by any other evidence admitted at trial. Spencer Diesel contends the property should have been valued at a minimum of \$13.42 per square foot, which was the sale price of property located at 1214 Fourth Street and identified by both of the city's appraisers as a comparable sale. The district court rejected this argument because Spencer Diesel failed to offer any credible evidence suggesting that more weight should be given to the sale at 1214 Fourth Street than the other comparable sales relied on by the city's experts.

The heart of most property valuation cases is the evidence of experts regarding their professional judgments as to the fair market value of the subject property. *Sears, Roebuck & Co. v. Siereni* 484 N.W.2d 616, 617 (Iowa Ct. App. 1992); *see also Kurth*, 628 N.W.2d at 4; *Sunrise Developing*, 511 N.W.2d at 643. The district court's conclusion regarding the fair market value of the property is

supported by substantial evidence presented by the city. We accordingly conclude Spencer Diesel has failed to show the ascertainment of damages in this case was wholly unfair and unreasonable. *Sunrise Developing Co.*, 511 N.W.2d at 645.

C. Motion to Continue.

Spencer Diesel argues the district court erred in denying its request for a continuance. A continuance “may be allowed for any cause not growing out of the fault or negligence of the movant, which satisfies the court that substantial justice will be more nearly obtained.” Iowa R. Civ. P. 1.911(1). Trial courts have broad discretion in determining whether to grant motions for continuances. *Hawkeye Bank & Trust Co. v. Michel*, 373 N.W.2d 127, 129 (Iowa 1985). As stated previously, we review a court’s decision to grant or deny a continuance for abuse of discretion. *Lovell*, 344 N.W.2d at 578. To prove the court abused its discretion in denying the motion to continue, Spencer Diesel must show the court exercised its discretion for clearly unreasonable or untenable reasons. *In re Estate of Olson*, 479 N.W.2d 610, 613 (Iowa Ct. App. 1991).

Following the district court’s ruling on the city’s motion in limine, Spencer Diesel requested a six-month continuance so it could obtain an appraisal and expert witness. Spencer Diesel’s motion to continue was made less than one week before trial. The trial had been scheduled for approximately six months. Spencer Diesel’s counsel was involved with the case for more than a year prior to trial. The case had been pending for about two and a half years at the time the request to continue was made. Under the circumstances, we cannot find the

district court abused its discretion in denying Spencer Diesel's request for a continuance.

IV. CONCLUSION.

We conclude the district court did not abuse its discretion in prohibiting evidence of the income capitalization approach or business profits when determining the value of the condemned property. We further conclude the district court's ruling ascertaining the damages for condemnation of Spencer Diesel's property at \$202,000, the same amount assessed by the condemnation commission, is supported by substantial evidence. Finally, we conclude the district court did not abuse its discretion in denying the motion to continue.

AFFIRMED.