STATE OF MINNESOTA

IN SUPREME COURT

A19-0473

Court of Appeals

Anderson, J.
Took no part, Moore, J.

County of Hennepin,

Appellant,

vs.

Filed: September 30, 2020
Office of Appellate Courts

Tamara J. Laechelt,

Respondent.

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Keith Ellison, Attorney General, Mathew Ferche, Assistant Attorney General, Saint Paul, Minnesota, for amicus curiae State of Minnesota, Commissioner of Transportation.

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## S Y L L A B U S

In partial taking cases, evidence of construction-related interference that occurs after the date of taking is admissible to determine the extent to which the construction-related interference is a factor in the reduced market value of the remainder property.

Affirmed.

## O P I N I O N

ANDERSON, Justice.

Through eminent domain, appellant Hennepin County acquired temporary and permanent easements from respondent Tamara J. Laechelt. A panel of commissioners was appointed to determine the amount of compensation Laechelt should be awarded for the partial taking of her property. Hennepin County appealed the award of the commissioners to the district court. Before trial, Hennepin County moved the court to exclude evidence of construction-related interference because the interference occurred after the date of the taking. The district court denied the motion. The jury awarded damages to Laechelt, and the court denied Hennepin County's motion for a new trial. The court of appeals affirmed.

In *State by Humphrey v. Strom*, we held that construction-related interference could be considered as a factor in determining the amount of damages resulting from a taking. 493 N.W.2d 554, 560–61 (Minn. 1992). Reaffirming *Strom*, we hold today that evidence of construction-related interference that arises after the date of taking is admissible to establish the value of the remainder property. Accordingly, the district court did not err by denying Hennepin County a new trial. We therefore affirm the court of appeals.

## FACTS

Hennepin County commenced a quick-take eminent domain action pursuant to Minn. Stat. § 117.042 (2018) to acquire temporary and permanent easements from multiple landowners, including Laechelt. The district court granted Hennepin County's petition and ordered title and possession to transfer to Hennepin County on November 13, 2015. The district court appointed three commissioners who held a hearing and awarded Laechelt $35,700 in compensation for the taking. Hennepin County appealed the award to the district court for a trial de novo as provided by Minn. Stat. § 117.145 (2018). Hennepin County moved in limine to preclude any evidence regarding construction-related interference that occurred after November 13, 2015, the date of the taking. The district court denied the motion.

At trial, Laechelt introduced evidence, through her appraiser, of the value of her property that was taken, including the effect of construction-related interference that decreased the market value of the remainder property. The appraiser's testimony was based in part on observations of construction-related interference that had occurred after November 13, 2015. Laechelt also introduced photographs and testified to her experience of the construction-related interferences that had occurred on her property after November 13, 2015. By contrast, Hennepin County's appraiser did not find any diminution in market value due to construction activity.

The jury returned a special verdict awarding $27,915, which included $2,525 for the property actually taken, and $25,390 for severance damages to the remainder property. Hennepin County moved for a new trial, arguing that the construction-related interference

evidence was improperly admitted. The district court denied the motion for a new trial, and the court of appeals affirmed the district court. *Cnty. of Hennepin v. Laechelt*, No. A19-0473, 2019 WL 6112445, at *3 (Minn. App. Nov. 18, 2019). We granted Hennepin County's petition for further review.

## ANALYSIS

The issue presented to us is whether evidence of construction-related interferences that occur after the date of a taking but before an award of just compensation is admissible to determine the amount of compensation owed to a property owner, or whether this evidence is admissible only if available at the time of a taking.

We review a district court's new trial decision under an abuse of discretion standard. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 892 (Minn. 2010). "Under an abuse-of-discretion standard, we may overrule the district court when the court's ruling is based on an erroneous view of the law." *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 24 (Minn. 2011). Hennepin County argues that the admission of the posttaking interference evidence was contrary to our law regarding the admissibility of evidence used to determine just compensation.

Just compensation must be paid when private property is taken for public use. U.S. Const. amend. V; Minn. Const. art. I, § 13. In partial taking cases, when only a portion of the property is acquired by the government, "just compensation includes (1) damages for the value of land actually taken, and (2) the severance damages to the remaining property resulting from the land actually taken." *State by Comm'r of Transp. v. Elbert*, 942 N.W.2d 182, 192 (Minn. 2020). Damages in partial taking cases are calculated using the "before

and after" rule. *Id.* at 188. This rule measures "the difference between the market value of the entire tract immediately before the taking and the market value of what is left after the taking." *State by Lord v. Pahl*, 95 N.W.2d 85, 90 (Minn. 1959). The date used to determine the before and after taking market values—i.e., the valuation date—is the date of the taking for both quick-take and nonquick-take cases. *Anda*, 789 N.W.2d at 873.

Evidence of any matter that would "influence a prospective purchaser and seller in fixing the price" may be included when assessing severance damages. *City of St. Paul v. Rein Recreation, Inc.*, 298 N.W.2d 46, 50 (Minn. 1980) (quoting 5 P. Nichols, *The Law of Eminent Domain* § 18.11 (3d ed. rev. 1979)). But damages "must arise from changes in the land actually taken, and not merely from the impact of the construction project as a whole." *Cnty. of Anoka v. Blaine Bldg. Corp.*, 566 N.W.2d 331, 334 (Minn. 1997). When determining the fair market value of property in a condemnation proceeding, we consider any competent evidence that legitimately bears on the market value. *Strom*, 493 N.W.2d at 559. Evidence must be competent, relevant, and material. *Elbert*, 942 N.W.2d at 192. We have said that "because a constitutional provision for just compensation was inserted for protection of the citizen, it ought to have a liberal interpretation, so as to effect its general purpose." *Anda*, 789 N.W.2d at 876 (quoting *Adams v. Chicago, Burlington & N. R.R.*, 39 N.W. 629, 631 (Minn. 1888)) (internal quotation marks omitted).

One factor that may be considered in applying the "before and after" rule is construction-related interference. *Strom*, 493 N.W.2d at 560. In *Strom*, we noted that our past precedent held that "damages sustained 'by reason of inconvenience affecting the use and enjoyment of the remainder may be considered by the jury not as an independent item

of loss but as an element which affects the market value of the remaining area.' " *Id.* (quoting *State by Lord v. Hayden Miller Co.*, 116 N.W.2d 535, 538 (Minn. 1962)); *see also Underwood v. Town Bd. of Empire*, 14 N.W.2d 459, 462 (Minn. 1944) ("It is well settled that, where part of the owner's land is taken, resulting inconvenience affecting the use and the enjoyment of the remainder is proper for consideration as affecting the market value of the land after the taking."); *State by Youngquist v. Wheeler*, 230 N.W. 91, 93 (Minn. 1930) (stating that inconvenience from a taking "is a proper element of damages in arriving at the depreciation in the market value"). For example, we said that temporary construction-related interference such as "vibration, noise, and dust" is a factor that can be considered as affecting the market value of the property. *Strom*, 493 N.W.2d at 560.

Although the general rule is that a property owner "is not entitled to compensation for any element resulting subsequently to or because of the taking," that rule is not violated when the later-acquired evidence is used not to claim a new basis of compensation but to show the impact on the value of the remainder property at the time of the taking. *Anda*, 789 N.W.2d at 884 (quoting *Minneapolis–St. Paul Sanitary Dist. v. Fitzpatrick*, 277 N.W. 394, 399 (Minn. 1937)) (internal quotation marks omitted). This after-acquired evidence simply provides the benefit of hindsight. Thus, in *Anda* we distinguished between a condition on a property that is *discovered* after a taking and a change in condition that *occurs* after a taking. *Id.*

Hennepin County advances several arguments urging us to conclude that posttaking evidence is inadmissible. The core of its argument is that the "decisional law" was changed in *Anda*, moving the date of valuation for quick-take cases from the date of the

commissioners' award and thereby calling into question the reasoning of *Strom*. But we have never held, in either quick-take or traditional eminent domain proceedings, that the date of valuation is based on anything other than the date of the taking. As discussed in *Anda*, the compensation for partial taking claims is determined as of the time of the taking. *Id.* at 873. *Anda* thus corrected an erroneous court of appeals view of the law, namely, that the valuation date in quick-take cases was the date of the commissioners' award. *Id.* at 872 & n.6. We have never applied this interpretation. Instead, we have consistently held to the principle that the "operative concept for the date of valuation of condemned property is that time when by the terms of the statute the owner is divested of his title and it vests in the condemning party." *Id.* at 873 (citation omitted) (internal quotation marks omitted). Indeed, we specifically recognized that principle in *Strom*, stating with regard to valuation that "the measure of damages is the difference between the fair market value of the entire piece of property immediately before *the taking* and the fair market value of the remainder of the property after *the taking*." *Strom*, 493 N.W.2d at 558 (emphases added), Hennepin County's contention that *Anda* undermined the reasoning of *Strom* is mistaken.[1]

[1] Hennepin County asks us to overturn *Strom*. Under the principles of stare decisis, we are "extremely reluctant" to overturn our precedent and "require a compelling reason to do so." *Warren v. Dinter*, 926 N.W.2d 370, 377 n.7 (Minn. 2019) (citations omitted) (internal quotation marks omitted). We see no compelling reason in this case to overturn *Strom*. As described in the main text, Hennepin County's main argument for overturning *Strom*—that its basis was supposedly affected by our decision in *Anda*—is incorrect.

The other arguments Hennepin County presents to overturn *Strom* are also unpersuasive. For example, Hennepin County argues that factoring in construction-related interferences increases the costs of taking. That argument was presented, and rejected, in *Strom*. *See* 493 N.W.2d at 560. Hennepin County also argues that some statutes enacted after we decided *Strom*—for example, Minn. Stat. § 117.031(a) (2018) (requiring an award of attorney fees to the owner if the last written offer by the condemning authority to the

Hennepin County argues that we have not allowed evidence that occurs after a date of taking to bear on the amount of just compensation, but a review of our cases demonstrates otherwise. In *Strom*, we considered actual construction-related interferences that a prospective buyer would consider, such as "vibration, noise, and dust." 493 N.W.2d at 560. In arriving at this decision, we rejected the argument that such evidence was not admissible, reasoning that if such evidence were categorically excluded, the factfinder would be valuing a "nonexistent hypothetical piece of property." *Id.* at 559. For a separate, but related, issue in the same case, we held that evidence of a loss of visibility may be considered when determining the fair market value of the remaining property. *Id.* at 561–62. We allowed evidence of the raising of a road by 21 feet, not as a separate item of damage, but as a factor impacting market value at the time of the taking. *Id.* at 561. Thus, in *Strom*, posttaking evidence of actual damages that could affect the market value at the time of the taking was admissible.

In *Anda*, it was not known that the property had been contaminated at the time of the taking of the property. 789 N.W.2d at 883. The condemning authority discovered the contamination a month after it had taken the property. *Id.* We rejected the argument that the land should be valued as if the contamination was never discovered. *Id.* We held that, "when the government condemns property that is contaminated at the time of the taking, the property should be valued as of the date of the taking, but should be valued 'as

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owner before filing a condemnation petition is not within 20 percent of the final condemnation award)—are difficult to apply given the nature of construction-related interference evidence. That argument is best addressed to the Legislature.

remediated' rather than as contaminated or as clean." *Id.* at 885. We held that the *stigma* of remediated land may affect its market value at the time of taking and thus it should be valued as remediated, even though the remediation did not occur until after the date of the taking. *Id.*

An authoritative treatise on eminent domain also discusses the issue of hindsight evidence as it relates to remainder properties and construction-related interference.

> Because it is proper for the trier of fact to consider all elements that are a natural and proximate result of the taking and which could legitimately affect the price that a prospective purchaser would pay for the land, facts evidencing the impact on the remainder during the course of construction, although temporal in nature, may be the basis for an overall diminution in value of the remainder and, therefore, a basis for compensation. The different elements of damage to remaining land recoverable are as numerous as the possible forms of injury. The mere fact that the injuries will be temporary and incident only to the period of construction is no ground for disallowing recovery, since a purchaser might well pay less if he or she knew such injuries were to be inflicted.
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> This factual issue and its effect on market value have been summarized by one court as follows:
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> > Each of the elements of damage to the remaining land which the court considered in the present case may be reasonably said to have affected its market value just after the taking. If, on the date of the taking, a prospective purchaser had known that for several years the property would be covered with debris, that he would suffer discomfort, and that traffic in front of his home would increase, it is reasonable to believe that the price he would pay for the property would be affected. In determining the extent of future damage, the court . . . was not required to speculate as to the uses to be made of the land or the injuries resulting therefrom. *The court had the benefit of hindsight (after the construction) and it properly considered the state of facts which existed during the project and at its completion.*

4A *Nichols on Eminent Domain* § 14A.03 (2020) (emphasis added) (footnotes omitted) (quoting *Bowen v. Ives*, 368 A.2d 82, 87 (Conn. 1976)).

Our decisions support the conclusion that, when determining the market value of a taken property, factors such as remediated contamination stigma, construction noise, vibration, dust, and loss of visibility can be established based on actual evidence of these factors even though they occur after the date of taking. This approach is consistent with our holding that "*any* competent evidence may be considered if it legitimately bears upon the market value." *Strom*, 493 N.W.2d at 559 (emphasis added); *see also Anda*, 789 N.W.2d at 876 (stating that we should liberally construe just compensation for the protection of citizens). After-acquired knowledge of the degree of construction-related interference is relevant to the factfinder because it may shed light on what a willing buyer and seller might reasonably expect as of the valuation date. Thus, we hold today that evidence of actual construction-related interference that occurs after the date of taking is admissible as a factor in establishing the market value of the remainder property.[2]

The district court therefore did not err by admitting Laechelt's evidence of construction-related interference, and did not abuse its discretion in denying Hennepin County's motion for new trial.[3]

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[2] Laechelt argues that construction-related interferences are both a constitutional and statutory requirement, citing to Minn. Stat. § 117.025, subd. 2 (2018) (defining "taking" to include "every interference, under the power of eminent domain, with the possession, enjoyment, or value of private property"), as a statutory basis for admitting the evidence. In reaching this decision, we need not decide whether admission of evidence of construction-related interference is required by either the United States Constitution or the Minnesota Constitution, or instead is based only on our statutory law, because that issue is not before us and is not necessary to the resolution of this dispute.

[3] There is an outstanding motion by Laechelt for an award of attorney fees. A party may move for an award of attorney fees within 14 days after the filing of an opinion. *See*

## CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

MOORE, J., not having been a member of this court at the time of submission, took no part in the consideration or decision of this case.

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Minn. R. Civ. App. P. 139.05. Thus, we will address the pending motion after the time for filing postopinion requests or motions has expired.