**27.06 SEVERANCE DAMAGES**

In this case, the property owner is seeking severance damages. Severance damages occur when the government takes part of a parcel and there is a decrease in the fair market value of the part remaining.

In order to determine whether the owner is entitled to severance damages in this case, [you must first determine whether the property taken should be treated as a separate parcel or as part of a larger parcel. To make this determination, you should consider all the evidence about the property taken and the property remaining, including

(1) whether they were under common ownership;

(2) whether they are physically connected; and

(3) whether they were used or it is reasonably probable that they would be used for the same purpose.

If you find that the government has taken a separate parcel, then the property owner is not entitled to severance damages.

If you find that the government has taken part of a larger parcel,] you must [then] decide whether the fair market value of the part remaining has decreased either (a) as a result of the loss of the part that was taken, or (b) as a result of the proposed project.

If you decide that the fair market value has not decreased, then the property owner is not entitled to severance damages.

If you decide that the fair market value has decreased, you must decide the amount of the decrease.

Use Note

This instruction should be given whenever the property owner claims damages to a remainder and the government disputes both that the property taken is part of a larger parcel and that the owner is entitled to severance damages.

If the parties agree that the property taken is part of a larger parcel but disagree as to whether the property owner is entitled to severance damages, then this instruction should be given without the bracketed language.

Article 27.06B should be given with this instruction if the government seeks to offset the property owner's severance damages by the amount of special benefits the property owner allegedly received as a result of the taking.

It may be necessary to add an instruction defining "common ownership" in situations where the properties are owned in different legal capacities, such as by a partnership, corporation, or trust.

Comment

Severance damages are those damages which accrue to the remainder due to the severance itself or due to construction of the project in the manner proposed by the condemnor. See AS 09.55.310(a)(2).

Severance damages do not include damages caused by negligent construction of the project because the relevant date for awarding damages is the date of taking. City of Anchorage v. Scavenius, 539 P.2d 1169, 1177-79 (Alaska 1975). Under those circumstances, the condemnee may have a subsequent separate action in tort or in inverse condemnation. Id.

The "three unities" theory has traditionally been used to determine whether property is part of a single larger parcel. According to this doctrine, three factors are employed to ascertain whether various units of property constitute a single larger parcel. The factors are: physical contiguity between the several parcels, unity of ownership, and unity of use.

For a discussion of the three unities theory, see Babinec v. State, 512 P.2d 563, 567 (Alaska 1973). See also City of San Diego v. Neumann, 863 P.2d 725, 729 (Cal. 1993); State v. Rittenhouse, 634 A.2d 338 (Del. 1993).