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NOTE

UNITED STATES v. FULLER: A DEPARTURE FROM PROPERTY VALUATION PRINCIPLES IN EMINENT DOMAIN

Flint W. Murfitt*

I. INTRODUCTION

No two land parcels are exactly the same. Nor logically can any two parcels ever be located in the same place. This makes land valuation an arduous task. Consequently, courts struggle with property valuation because land parcels rarely if ever possess identical dimensions, attributes, and characteristics. The unique qualities of land create a dilemma for courts in subscribing to a standardized valuation technique in condemnation proceedings.

When dealing with property valuation in eminent domain cases, we look to the United States Constitution for guidance. The Fifth Amendment states:

nor shall private property be taken for public use, without just compensation.”¹

These words seem clear, uncomplicated and easy to understand. In *United States v Fuller*, the United States Supreme Court drove a wedge into the words “just compensation,” creating a plethora of fragments and splinters.²

Courts consider various criteria to establish fair and equitable or just compensation as required by the Fifth Amendment.³ Property location and its proximity to adjoining land is a primary consideration in determining

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1. U.S. CONST. amend. V
2. *United States v. Fuller*, 409 U.S. 488 (1973).
3. U.S. CONST. amend V

property valuation,⁴ but in *Fuller*, the United States Supreme Court created a paramount exception to the long standing location component of property valuation. *Fuller* arose from a condemnation proceeding following which the Court refused to consider value enhancement to private property as a result of the property's proximity to public grazing land.⁵ The Court essentially disregarded the location element in establishing a value for the private land.

The future effect of this decision restricts land owner's rights since it departs from general valuation principles in eminent domain cases. The exception allows the government greater freedom to deny just compensation in other situations and circumstances. It dilutes the meaning of just compensation in the Fifth Amendment and is an extreme detriment to the private land owner.

This comment seeks to present general principles of property valuation with a focus on the location component of the valuation equation. Accordingly, the location issue will be presented via the opinions of the United States Supreme Court. The *United States v. Fuller* decision is summarized and compared to relevant case law. An analysis of the case will follow with final comments revolving around the ramifications of the decision.

II. GENERAL CONSIDERATIONS IN CONDEMNED PROPERTY VALUATION

The Fifth Amendment of the United States Constitution creates the government's power to condemn private property for public use, as long as it provides just compensation to the owner.⁶ The Court's interpretation of the Fifth Amendment requires that the taker compensate the owner so as not to decrease the owner's pecuniary position.⁷ The owner "is entitled to be put in as good a position pecuniarily as if his property had not been taken."⁸

The government must pay property owners fair market value for the condemned land, after considering numerous valuation principles. Courts measure an owner's value in land "in various ways depending upon the circumstances of each case".⁹ The United States Supreme Court stated that "no general formula should be used" for valuation purposes.¹⁰ Courts consider various criteria when arriving at a fair market value in cases of

4. *McCandless v. United States*, 298 U.S. 342, 345 (1935).

5. *United States v. Fuller*, 409 U.S. 488 (1973).

6. U.S. CONST. amend. V.

7. *Olson v. United States*, 292 U.S. 246, 255 (1933).

8. *Id.*

9. *United States v. Miller*, 317 U.S. 369, 373-74 (1942).

10. *Miller*, 317 U.S. at 374.

eminent domain takings, including the probable price arrived at in a fair negotiation between a willing seller and buyer.¹¹ The time of the taking is also relevant in the valuation process.¹² Additionally, courts also consider the location of the land, its proximity to other property¹³, and the potential for lost profits.¹⁴ Courts also look to see if governmental policy affects the market value of the property. Here, there must be a showing that the policy would be considered by the willing buyer and seller in a property transaction.¹⁵ Finally, Courts consider the land's future use, provided that the use is probable and in the near future.¹⁶

When the Court cannot value property according to these principles, it deems the market value standard inappropriate to the actual value.¹⁷ In difficult situations the Court uses other theories to properly determine value allowing greater latitude in the admissibility of non-traditional evidence.¹⁸

It is important to note the definition that the Internal Revenue Service gives to property valuation in the context of estate and gift taxes. The "fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts . . . taking into account the location of the item wherever appropriate."¹⁹

III. THE TAYLOR GRAZING ACT AND VALUE OF CONDEMNED PRIVATE LAND

Congress approved the Taylor Grazing Act with the purpose of putting public land to its highest use. Under the Act, grazing permits do not "create any right, title, interest, or estate in or to the lands."²⁰ Though the permits create no formal property rights or interests in the land, they remain extremely valuable to ranchers and the livestock industry in general.²¹ The granting of the grazing permits assures that the range lands

11. *Olson*, 292 U.S. at 257.

12. *Iriarte v. United States*, 157 F.2d 105, 110 (1946).

13. *Redevelopment Agency v. Garrett*, 479 So. 2d 985, 987 (La. App. 3d Cir. 1985).

14. *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 344-45 (1893).

15. *United States v. Iriarte*, 157 F.2d 105, 111 (1st Cir. 1946).

16. *McCandless*, 298 U.S. at 345 (citing *Olson v. United States*, 292 U.S. 246, 255 (1933)).

17. *United States v. 190.71 Acres of Land in Lake County, Ill.*, 300 F.2d 52, 56 (1962) (quoting *United States v. General Motors*, 323 U.S. 373, 379 (1945)).

18. *Id.*

19. *Treas. Reg. § 20.2031-1(b)*.

20. 43 U.S.C. § 315b.

21. *United States v. Fuller*, 409 U.S. 488, 495 (1973) (Powell, J., *dissenting*) (citing *Hatahley v. United States*, 351 U.S. 173, 177 (1956)).

are put to the most beneficial use.²²

The Court established that land usage in connection with other lands is appropriately considered in the valuation question if the connection reasonably affects the market value.²³ The Tenth Circuit Court of Appeals specifically addressed the valuation question in a condemnation case involving private ranch land which adjoined public grazing permit land.²⁴ It held that the accessibility and availability of adjacent grazing permit lands was properly allowed in valuing the private ranch.²⁵

IV. THE FULLER DECISION

A. Facts

The United States Government initiated condemnation proceedings to acquire 920 acres of respondents' 1,280 acres of privately owned land in western Arizona. The government wanted to construct a dam and reservoir project at that location.²⁶ The respondents operated a cow-calf ranch on their land and utilized 31,461 acres of adjoining public land for grazing purposes. They obtained exclusive grazing rights to the public land by a permit granted under the Taylor Grazing Act.²⁷ Because of the respondents' location to the grazing lands they remained the only private landowners that qualified for the permits.²⁸ Under the Act, the grazing permit could be revoked at any time.²⁹ The government did not revoke the respondents' grazing permits although it intended to use a small fraction of the public land for the reservoir project.³⁰ At trial the respondents presented property values to the jury which included the element of location of the ranch land. They asserted that the value of their private land was enhanced by its adjoining location to the permit lands, even though the government could revoke the permit.³¹ They conceded that the permits themselves were not compensable, but that on the open market their private land would command a higher price due to the actual or potential use of the permit lands.³²

The district court allowed the respondents' valuation into evidence,³³

22. *Id.*

23. *McCandless*, 298 U.S. at 345 (citing *Olson v. United States*, 292 U.S. 246, 255 (1933)).

24. *United States v. Jaramillo*, 190 F.2d 300, 301 (10th Cir. 1951).

25. *Id.* at 302.

26. *Id.* at 489.

27. *Id.*

28. *United States v. Fuller*, 409 U.S. 488, 495 (1973) (Powell, J., *dissenting*).

29. *Fuller*, 409 U.S. at 489.

30. *Fuller*, 409 U.S. at 495 (Powell, J., *dissenting*).

31. *Fuller*, 409 U.S. at 489.

32. *Id.*

33. *Id.*

and the Court of Appeals for the Ninth Circuit affirmed the lower court decision.³⁴ The Ninth Circuit held that the jury could consider the combined use of the parcels in the condemnation valuation as long as they were cautioned that the permits for the grazing land could be withdrawn without compensation at any time.³⁵

B. *Holding*

The United States Supreme Court reversed the lower courts and stated that “the Fifth Amendment does not require the Government to pay for that element of value based on the use of respondents’ fee lands in combination with the Government’s permit lands.”³⁶ It held that Congress, through the issuance of a permit under the Taylor Grazing Act, did not intend to create compensable property rights in the permit lands themselves.³⁷ Further, it did not believe that Congress authorized “compensation for the value added to fee lands by their potential use in connection with permit lands.”³⁸ Based on that interpretation, the Court denied the compensation requested by the respondents.

V. ANALYSIS AND REASONING OF THE *FULLER* DECISION

A. *The Location Issue*

The Court characterized the conflict in this case as a disagreement over the enhanced value to private land due to its potential or actual use in combination with grazing land classified under the Taylor Grazing Act.³⁹ This characterization focuses on the combined use of the lands and fails to fully acknowledge the importance of location in the valuation equation. The proximity of the two parcels and consequent value are the real issues of the *Fuller* case.⁴⁰ Previously, the Court stated that in making an estimate of market value, “there should be taken into account all considerations that fairly might be brought forward and reasonably be given substantial weight” in negotiations between a willing and buyer and seller.⁴¹ The Court seems to ignore its own general valuation principles by refusing to consider the property location element in the valuation process. Certainly, a buyer considers the location of real property important if not critical in

34. *United States v. Fuller*, 442 F.2d 504, 508 (9th Cir. 1971).

35. *Id.* at 507.

36. *Fuller*, 409 U.S. at 493.

37. *Id.* at 494.

38. *Id.*

39. *Fuller*, 409 U.S. at 489.

40. *Fuller*, 409 U.S. at 503 (Powell, J., *dissenting*).

41. *Olson*, 292 U.S. at 257 (citing *Brooks Scanlon Corp. v. United States*, 265 U.S. 106, 124 (1934)).

their decision to purchase almost any property.

B. *The Jaramillo and Hatahley Cases*

In bypassing the location issue, the Court ignores *United States v. Jaramillo*, a case exactly on point.⁴² In *Jaramillo*, a private landowner possessed valid grazing permits to adjoining public land and utilized the land to operate a cattle ranch.⁴³ The government took the private land without revoking the grazing permits.⁴⁴ The court stated:

In determining the adaptability of the lands as a ranch, it was therefore proper to take into consideration the availability and accessibility of the permit land as an appurtenant element of value for ranching purposes, provided that consideration is also given to the possibility that the permits could be withdrawn or canceled by the Government at any time without constitutional obligation to pay compensation therefor.⁴⁵

Further, the court instructed the jury that they could not compensate the landowner for the permit land since the government already owned this land.⁴⁶ However, they could consider the fact that the landowner possessed the grazing permits when the government condemned the ranch. The court ultimately held that it was proper to consider the adjoining permit lands in arriving at a just compensation figure.⁴⁷ Despite nearly identical facts, the Court does not discuss *Jaramillo* and merely mentions it as a case that the lower court followed.⁴⁸

The majority avoids the location issue and emphasizes the value added to the private land due to the grazing permits themselves. However, both parties in the case agreed that under the Taylor Grazing Act, the government need not pay compensation for the value of the grazing permits.⁴⁹ The Court fails to distinguish between the value of the revocable permits, which are not compensable, and the location of the land.⁵⁰ Justice Powell, in his dissent, included the jury instruction on valuation to emphasize how carefully the lower court cautioned against consideration of the revocable grazing permits. The jury in the lower court was allowed to consider the natural consequence of the land's location.⁵¹

42. *Jaramillo*, 190 F.2d at 301.

43. *Id.*

44. *Id.*

45. *Id.* at 302.

46. *Id.*

47. *Id.*

48. *Fuller*, 409 U.S. at 490.

49. *Id.* at 489.

50. *Fuller*, 409 U.S. at 503 (Powell, J., *dissenting*).

51. *Id.* at 496-97.

The Court also seems to overlook its position in *Olson* when it said that “[t]he fact that the most profitable use of a parcel can be made only in combination with other lands does not necessarily exclude that use from consideration if the possibility of combination is reasonably sufficient to affect the market value.”⁵²

The *Fuller* opinion again takes a detour by placing great importance on the fact that permit grazing lands are inaccessible to the general public, somehow mysteriously making them ineligible for compensation. The Court touts that land located near other Federal property, such as a United States Post Office, would be compensable because it is accessible to the public.⁵³

Additionally, the Court failed to speak to its own statement in *Hatahley v. United States*: “grazing permits are of considerable value to ranchers and service a corresponding public interest in assuring the most beneficial use of range lands.”⁵⁴ Instead, the Court relies on a line of cases that are not controlling. In one case, the government requisitioned a tug boat during war times, and would not compensate the owner for the tug’s increased value as a result of the government created demand.⁵⁵

The other cases involved the government’s navigational servitudes on waterways.⁵⁶ The Court makes a tremendous leap from the water cases, which contain unique and special governmental privileges and controls, to permit grazing lands. The Court stretches these principles too far when seeking to apply them to permit grazing lands.⁵⁷ The condemnation proceedings in the water cases are significantly different than the instant case because they involve governmental changes to the public riverbeds.⁵⁸ In *Fuller*, the government intended to take private land for governmental use, making no significant changes whatsoever to the grazing land.⁵⁹ Consequently, the Court’s reading of these cases to include the *Fuller* situation is simply too broad.

VI. FUTURE CONSIDERATIONS AND RAMIFICATIONS

The future ramifications of the Court’s holding presents a sharp sword

52. *Olson*, 292 U.S. at 256.

53. *Fuller*, 409 U.S. at 492-93.

54. *Fuller*, 409 U.S. at 495 (Powell, J., *dissenting*, citing *Hatahley v. United States*, 351 U.S. 173, 177 (1956)).

55. *United States v. Cors*, 337 U.S. 325 (1949).

56. *United States v. Rands*, 389 U.S. 121 (1967); *United States v. Twin City Power Co.*, 350 U.S. 222 (1956).

57. *Fuller*, 409 U.S. at 499 (Powell, J., *dissenting*).

58. *Id.* at 500-01.

59. A small fraction of the grazing lands would also be flooded to complete the reservoir project. *Id.* at 495.

aimed directly at those who possess private land adjoining public grazing land. Cattle ranchers, loan institutions and many others rely on the enhanced value that grazing permits add to adjoining private land. Such persons carry on business based on the stability of this principle. Certainly those in the livestock industry are severely disadvantaged as a result of the Court's holding, but what about future extensions of the exception?⁶⁰ Since the government escaped paying just compensation in *Fuller*, what limits apply?

The potential impact of this case brings all types of eminent domain valuations into jeopardy. Does this mean that whenever public land adjoins private land, the government will have no responsibility to pay for value attributed to a favorable location? This proposition conflicts with the Fifth Amendment just compensation notions and all recognized principles of land valuation in eminent domain proceedings.

Ironically, despite the *Fuller* holding, the Court manages to maintain that the location of property does affect its value. For instance, when reviewing the constitutionality of city zoning ordinances the Court acknowledges that the location of some businesses such as adult movie theaters can adversely affect property values.⁶¹ When faced with a near identical situation, the Court makes the similar proclamation stating that zoning ordinances are designed in part to "maintain property values".⁶²

VII. CONCLUSION

The *Fuller* holding contradicts long standing notions of equity and fairness. In adopting the valuation exception, the Court denies owners of adjacent land equal treatment with respect to compensation for property taken via eminent domain proceedings. In effect, it holds that the value of private land adjoining public grazing land cannot be enhanced by its location.⁶³ Consequently, the Court treats location value, under these circumstances, as non-existent.

The Court's pronouncement in *Fuller*, extracting the primary element of location from the valuation equation, is woefully artificial. The purchasers of land, houses, and other property commonly buy real estate based strictly on location. The Court disregards this primary consideration in land ownership and departs from established valuation standards.⁶⁴ As a result, there may be no limit to the liberty taken by the Court with regard to

60. The government valued the Fuller's land at \$136,500, while the figure the Fuller's expert witness estimated for the land was over a million dollars. *Id.* at 504.

61. *Young v. American Mini Theaters, Inc.*, 427 U.S. 50, 55 (1976).

62. *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41, 48 (1986).

63. *United States v. Fuller*, 409 U.S. 488 (1973).

64. 2 J. Lewis, *Law of Eminent Domain*, 1262, third edition.

Fifth Amendment just compensation in the future.

The purchasers of land adjoining public land who enjoy and pay for grazing permits suffer greatly because of such disparate treatment. The livestock industry and other related businesses can no longer rely on this unstable valuation factor. At a future date, the unfortunate cattle rancher may accurately be referred to as the one who “bought the farm” but won’t be paid for it, at least not by the United States Government.

