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AMERICAN CENTRAL CITY, INC., A NEBRASKA CORPORATION, APPELLANT, V. JOINT ANTELOPE VALLEY AUTHORITY (JAVA), A JOINT ADMINISTRATIVE ENTITY, AND CITY OF LINCOLN, NEBRASKA, A MUNICIPAL CORPORATION, APPELLEES.

AMERICAN CENTRAL CITY, INC., A NEBRASKA CORPORATION, APPELLANT, V. JOINT ANTELOPE VALLEY AUTHORITY (JAVA), A JOINT ADMINISTRATIVE ENTITY, APPELLEE.

807 N.W.2d 170

Filed June 17, 2011. Nos. S-10-646, S-10-647.

1. **Summary Judgment: Appeal and Error.** An appellate court will affirm a lower court's granting of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law.
2. **Directed Verdict: Evidence.** A directed verdict is proper at the close of all the evidence only when reasonable minds cannot differ and can draw but one conclusion from the evidence, that is, when an issue should be decided as a matter of law.
3. **Rules of Evidence.** In proceedings where the Nebraska Evidence Rules apply, the admissibility of evidence is controlled by the Nebraska Evidence Rules; judicial discretion is involved only when the rules make discretion a factor in determining admissibility.
4. **Summary Judgment: Appeal and Error.** In reviewing a summary judgment, an appellate court views the evidence in a light most favorable to the party against whom the judgment is granted and gives such party the benefit of all reasonable inferences deducible from the evidence.
5. **Zoning.** The mere issuance of a permit to use land gives no vested rights to the permittee, nor does he or she acquire a property right in the permit.
6. **Contracts: Specific Performance: Fraud.** An oral contract to buy land falls under the statute of frauds. Despite the statute of frauds, an oral contract may be specifically enforced in cases of part performance.
7. **Contracts: Specific Performance: Real Estate: Proof.** A party seeking specific performance of an oral contract for the sale of real estate upon the basis of part performance must prove an oral contract, the terms of which are clear, satisfactory, and unequivocal, and that the acts done in part performance were referable solely to the contract sought to be enforced, and not such as might be referable to some other or different contract, and further that nonperformance by the other party would amount to a fraud upon the party seeking specific performance.
8. **Trial: Expert Witnesses.** It is within the trial court's discretion to determine whether there is sufficient foundation for an expert witness to give his or her opinion about an issue in question.

9. **Trial: Expert Witnesses: Appeal and Error.** A trial court's ruling in receiving or excluding an expert's opinion which is otherwise relevant will be reversed only when there has been an abuse of discretion.
10. **Eminent Domain: Witnesses.** An owner who is shown to be familiar with the value of his or her land shall be qualified to estimate the value of such land for the use to which it is then being put, without additional foundation. Such owner is not qualified by virtue of ownership alone to testify as to its value for other purposes unless such owner possesses, as must any other witness as to value, an acquaintance with the property and is informed as to the state of the market.
11. **Damages: Proof.** A plaintiff's burden to prove the nature and amount of its damages cannot be sustained by evidence which is speculative and conjectural.
12. **Eminent Domain: Real Estate: Valuation.** There are three generally accepted approaches used for the purpose of valuing real property in eminent domain cases: (1) the market data approach, or comparable sales method, which establishes value on the basis of recent comparable sales of similar properties; (2) the income, or capitalization of income, approach, which establishes value on the basis of what the property is producing or is capable of producing in income; and (3) the replacement or reproduction cost method, which establishes value upon what it would cost to acquire the land and erect equivalent structures, reduced by depreciation. Each of these approaches is but a method of analyzing data to arrive at the fair market value of the real property as a whole.
13. **Eminent Domain: Evidence: Damages.** Evidence of the price at which other lands have been sold is admissible in evidence in condemnation proceedings on the question of damages where such evidence is predicated upon sufficient foundation to furnish a criterion for market or going value of the land condemned. Such land must be similar or similarly situated to the land condemned and to have been sold at about the same time as the taking in the condemnation action, especially when the price paid depends upon the market or going value rather than other considerations.
14. **Trial: Evidence: Appeal and Error.** The admission of demonstrative evidence is within the discretion of the trial court, and a judgment will not be reversed on account of the admission or rejection of such evidence unless there has been a clear abuse of discretion.
15. **Constitutional Law: Due Process: Property.** Under Neb. Const. art. I, § 3, the state cannot deprive any person of life, liberty, or property without due process of law. The protections of this procedural due process right attach when there has been a deprivation of a significant property interest.
16. **Constitutional Law: Due Process: Property: Notice.** If a significant property interest is shown, due process requires notice and an opportunity to be heard that is appropriate to the case.
17. **Motions to Dismiss: Directed Verdict.** A motion to dismiss at the close of all the evidence has the same legal effect as a motion for directed verdict.
18. **Motions to Dismiss.** A party against whom a motion to dismiss is directed is entitled to have all relevant evidence accepted or treated as true, every controverted fact as favorably resolved, and every beneficial inference reasonably deducible from the evidence.

19. **Trial: Evidence: Directed Verdict: Motions to Dismiss: Words and Phrases.** A "prima facie case" means that evidence sufficiently establishes elements of a cause of action and, notwithstanding a motion for a directed verdict in a jury trial or a motion to dismiss in a nonjury trial, allows submission of the case to the fact finder for disposition.

Appeals from the District Court for Lancaster County: ROBERT R. OTTE, Judge. Affirmed.

Barbara J. Morley for appellant.

Rodney Confer, Lincoln City Attorney, and Christoper J. Connolly for appellees.

HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

HEAVICAN, C.J.

I. INTRODUCTION

American Central City, Inc. (ACC), appeals from two separate decisions of the Lancaster County District Court. The cases were consolidated before this court for oral argument and disposition, and both cases involve complaints regarding the condemnation of three properties located in Lincoln, Nebraska. In case No. S-10-646, a civil suit for damages apart from the condemnation award, ACC claims that it had compensable property interests for which it was not paid when the Joint Antelope Valley Authority (JAVA) and the City of Lincoln (the City) took its land through condemnation. In case No. S-10-647, an appeal from the condemnation award, ACC alleges that it did not receive adequate compensation for its land. We affirm the decision of the district court granting JAVA's motion for summary judgment in the civil suit and granting JAVA's motion to dismiss in ACC's appeal from the condemnation award.

II. FACTS

Edward H. Patterson is the owner and sole shareholder of ACC, and for simplicity, we will hereinafter refer to the appellant as "Patterson" rather than "ACC." The current cases involve three properties in Lincoln owned by Patterson: 2041 and 2047 S Street and 2100 Q Street. In addition, Patterson claims that

he held a compensable property interest in properties owned by Edward and Dorothy Schwartzkopf (Schwartzkopf properties), which properties were located in the same neighborhood. The properties on Q and S Streets and the Schwartzkopf properties are all near the city campus of the University of Nebraska-Lincoln (UNL), between 19th and 22d Streets east and west, and between Q and S Streets north and south. Patterson's properties and the Schwartzkopf properties were eventually condemned as part of the Antelope Valley project. The project was designed and implemented to provide Lincoln with flood control, transportation improvement, and community revitalization. The two cases before us originally involved three separate cases filed in the district court, the first of which we discuss only briefly to give the reader a complete procedural history of the proceedings in the district court.

1. Case No. CI04-4604: Injunction

Patterson and other parties filed an action for an injunction in the Lancaster County District Court under case No. CI04-4604 in December 2004. They requested an injunction against JAVA and the City to prevent the condemnation of their properties, but it was denied. In that same case, the parties also claimed that their properties were taken for an improper nonpublic purpose and that there was no proper neighborhood redevelopment plan. This action was earlier consolidated with the two cases currently on appeal, but it has not been appealed and is not now before us.

2. Case No. CI05-3468: Condemnation Award Action

After the injunction was denied, JAVA filed a condemnation petition with the Lancaster County Court seeking to acquire Patterson's properties on Q and S Streets. The Lancaster County Board of Appraisers returned to Patterson an award totaling $128,750 for all the properties. Patterson appealed to the district court from that award, claiming inaccurate valuation, failure to negotiate in good faith on the part of JAVA, excessive taking, and taking for an improper purpose. Patterson claimed damages of $350,000. All but two claims in this action were disposed of through an "Order on Partial Summary

Judgment" filed November 30, 2009. A trial was held on the remaining claims. At the close of Patterson's case, JAVA made a motion to dismiss, which the district court subsequently granted. Patterson appealed, and this case is before us now as case No. S-10-647.

3. Case No. CI08-1164: Civil Suit for Damages

In March 2008, Patterson also filed a third action to recover damages arising out of the condemnation proceedings. Patterson made claims against JAVA and the City for "inverse condemnation," violation of substantive due process rights, and recoupment of costs associated with the renovation of Patterson's properties on Q and S Streets. In the same suit, Patterson also claimed a property interest in the Schwartzkopf properties and in a building permit he claims was denied. JAVA filed a motion for summary judgment, which was granted. Patterson appealed, and this case is before us now as case No. S-10-646.

4. Further Proceedings and Appeals

All three cases were consolidated after the civil suit was filed. The district court's "Order on Partial Summary Judgment" was entered on November 30, 2009, disposing of all claims in the injunction action, all claims in the civil suit, and all but two claims in the condemnation award action.

A bench trial was held on the remaining issues in the condemnation award action on March 18 and 19, 2010. After Patterson rested his case, JAVA made a motion to dismiss. The district court later granted that motion and found for JAVA. Patterson appealed. Other facts pertaining to the two cases will be discussed as needed in the analysis section.

III. ASSIGNMENTS OF ERROR

In the civil suit for damages, Patterson assigns, consolidated and restated, that the district court erred in (1) granting JAVA's motion for summary judgment, (2) finding that Patterson did not have a compensable property interest in a building permit, (3) finding that Patterson did not have a property interest in his contract with the Schwartzkopfs, and (4) finding that there was no "inverse condemnation" or condemnation blight.

In the condemnation award action, Patterson assigns that the district court erred in (1) not granting Patterson the right to a full trial, (2) not permitting Patterson to testify to the "Highest and Best Use" of the properties taken, (3) not allowing Patterson to value his land using comparable sales of properties, (4) not allowing Patterson to use the City Web site to show aerial photographs, (5) not allowing Patterson to value the removable structures on the condemned land as an element of fair market value, and (6) not permitting Patterson to proffer evidence of "value-depressing actions" by JAVA and the City to decrease the true market value of his land.

IV. STANDARD OF REVIEW

[1] An appellate court will affirm a lower court's granting of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law.[1]

[2] A directed verdict is proper at the close of all the evidence only when reasonable minds cannot differ and can draw but one conclusion from the evidence, that is, when an issue should be decided as a matter of law.[2]

[3] In proceedings where the Nebraska Evidence Rules apply, the admissibility of evidence is controlled by the Nebraska Evidence Rules; judicial discretion is involved only when the rules make discretion a factor in determining admissibility.[3]

V. ANALYSIS

1. Case No. S-10-646: Civil Suit for Damages

In the appeal from the dismissal of his civil suit, Patterson assigns that he had a property interest in a building permit that the City denied, that he had a property interest in the contract

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[1] *Wilson v. Fieldgrove*, 280 Neb. 548, 787 N.W.2d 707 (2010).

[2] *Sinsel v. Olsen*, 279 Neb. 38, 777 N.W.2d 54 (2009).

[3] *Richardson v. Children's Hosp.*, 280 Neb. 396, 787 N.W.2d 235 (2010).

to buy the Schwartzkopf properties, and that JAVA engaged in "inverse condemnation."

(a) Patterson Did Not Have Property Interest in Building Permit

Patterson first argues that he had a property interest in a building permit he sought to obtain. He claims that he spent considerable time and money designing a building that would sit on the land he owned as well as on the Schwartzkopf properties. Patterson also claims that city officials informed him he could not build underground parking or place underground telecommunications in a flood plain and that hence, it would be futile to apply for a building permit for the Schwartzkopf properties. Patterson argues that because city officials told him it would be futile to apply for a building permit, his substantive due process rights were affected. He also argues that because of the allegedly false statement city officials made regarding building underground parking, he could not fulfill the contract with the Schwartzkopfs, and that he was prevented from going forward with his plans. Patterson also claims that if a building plan is code compliant, the City cannot refuse to issue a permit.

[4] In reviewing a summary judgment, an appellate court views the evidence in a light most favorable to the party against whom the judgment is granted and gives such party the benefit of all reasonable inferences deducible from the evidence.[4] The record establishes that Patterson had a building design that both Patterson and his architect believed met the building codes. Patterson spoke to city officials who informed him that he could not build underground parking or place telecommunications in a flood plain, but according to Patterson, that information was in error. Without a building permit, Patterson could not continue with his plans to acquire the Schwartzkopf properties.

[5] The record is devoid of any evidence that Patterson ever *applied* for a building permit, however. We have stated before that "[t]he mere issuance of a permit gives no vested rights to

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[4] *Lynch v. State Farm Mut. Auto. Ins. Co.*, 275 Neb. 136, 745 N.W.2d 291 (2008).

the permittee nor does he [or she] acquire a property right in the permit."[5] If a person has no property interest in a building permit that has been granted, he or she cannot claim a property interest in a permit that was never granted and for which he or she never applied. Patterson's first assignment of error is without merit.

(b) Patterson Did Not Have Property Interest in Schwartzkopf Properties

Patterson also claims that he had a compensable property interest in the contract he had with the Schwartzkopfs to buy their properties. The record reflects that Patterson entered into a contract to purchase the Schwartzkopf properties in May 1995, contingent upon Patterson's obtaining a building permit. After Patterson failed to obtain a permit, all parties signed a release excusing them from performance on the contract. In 2004, the Schwartzkopf properties were sold to JAVA. Patterson claimed that he had a continuing oral agreement to buy the Schwartzkopf properties after the release was signed in 1995.

The district court found that there was no compensable interest in the contract because it would not be enforceable in a court of law. Neb. Rev. Stat. § 36-103 (Reissue 2008), Nebraska's statute of frauds applicable to the sale of an interest in land, provides:

> No estate or interest in land, other than leases for a term of one year from the making thereof, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered, or declared, unless by operation of law, or by deed of conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same.

[6,7] An oral contract to buy land falls under the statute of frauds. Despite the statute of frauds, however, an oral contract may be specifically enforced in cases of part performance.[6]

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[5] *County of Saunders v. Moore*, 182 Neb. 377, 383, 155 N.W.2d 317, 321 (1967).

[6] *Sayer v. Bowley*, 243 Neb. 801, 503 N.W.2d 166 (1993).

A party seeking specific performance of an oral contract for the sale of real estate upon the basis of part performance must prove an oral contract, the terms of which are clear, satisfactory, and unequivocal, and that the acts done in part performance were referable solely to the contract sought to be enforced, and not such as might be referable to some other or different contract, and further that nonperformance by the other party would amount to a fraud upon the party seeking specific performance.[7]

By Patterson's account, he invested considerable time and expense in designing the structure that he wanted to build on the Schwartzkopf properties. He argues that this expense constituted part performance on the contract and that therefore, the oral contract falls within the exception to the statute of frauds.[8] Patterson's written contract to buy the Schwartzkopf properties was contingent upon obtaining the building permit, but that written contract ended when both parties signed the release excusing performance. Patterson's alleged oral contract gave him the right to buy the properties if he could procure a building permit. But, as the party who was to benefit from the contractual right to buy the Schwartzkopf properties, Patterson cannot exercise that right against JAVA or the City.[9] Any contractual right Patterson may have had would be against the Schwartzkopfs. Even assuming that Patterson had a suit in equity for specific enforcement against the Schwartzkopfs, he cannot claim a property interest against JAVA and the City for properties he did not own. Patterson's second assignment of error in this case is without merit.

(c) There Was No Evidence of Inverse Condemnation

Patterson's final assignment of error in this case is that JAVA engaged in inverse condemnation. "Inverse condemnation" is

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[7] *Reifenrath v. Hansen*, 190 Neb. 58, 206 N.W.2d 42 (1973).

[8] See *Campbell v. Kewanee Finance Co.*, 133 Neb. 887, 277 N.W. 593 (1938).

[9] See *Burnison v. Johnston*, 277 Neb. 622, 764 N.W.2d 96 (2009).

shorthand for a governmental taking of a landowner's property without the benefit of condemnation proceedings.[10] Patterson's claim rests partially on the recognition that he had a property interest in the Schwartzkopf properties and in a building permit. As noted above, however, Patterson has failed to state a claim in those respects.

Patterson also claims that JAVA prevented him from putting his S Street properties to their "highest and best use" between the time he purchased them in 1995 and when they were condemned.[11] He claims that that activity also constituted inverse condemnation. Patterson makes the allegation that JAVA, the City, and UNL actively prevented him from developing the three properties on Q and S Streets. Patterson's claim rests on his assertions that JAVA and the City acted in concert to prevent him from obtaining a building permit, thus preventing him from purchasing the Schwartzkopf properties, which in turn prevented him from developing his properties on Q and S Streets.

In support of this argument, Patterson presented the "Radial Reuse Malone Study Area Redevelopment Plan," which he claims demonstrates that UNL had plans to use that area for its own expansion and development. The redevelopment plan is dated 1989, and the plan covers the "sixteen blocks in the western portion of the Malone Neighborhood, bounded by 19th Street on the west, 23rd Street on the east, Vine Street on the north, and Q Street on the south." Patterson claims the map attached to the redevelopment study showed that his land had been "*de facto* deeded over to UNL."[12] The record is devoid of any evidence that UNL exercised control over these properties, however, or that UNL put these properties to use. Patterson has not alleged sufficient facts to establish a genuine issue of material fact as to whether JAVA and the City prevented him from developing the land. Patterson's final assignment of error is without merit.

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[10] *Strom v. City of Oakland*, 255 Neb. 210, 583 N.W.2d 311 (1998).

[11] Brief for appellant in case No. S-10-646 at 19.

[12] *Id.* at 20.

2. Case No. S-10-647: Condemnation Award Action

In his second appeal, Patterson alleges six assignments of error. Generally speaking, Patterson argues that the three lots were inaccurately valued and that he was prevented from offering evidence to demonstrate that fact. Patterson also claims that he was not given a "full trial," but in fact the trial court granted JAVA's motion to dismiss at the close of Patterson's case. JAVA claims that by not assigning as error the district court's decision to grant the motion to dismiss, Patterson has admitted that he did not establish a prima facie case. However, we read Patterson's claim broadly enough to encompass an argument that the district court erred in granting the motion to dismiss.

(a) Trial Court Did Not Err When It Excluded Patterson's Testimony as to Highest and Best Use of His Land

We first address Patterson's claim that the trial court erred by not allowing him to testify as an *expert* as to the highest and best use of his properties. Essentially, Patterson argues that he was an expert by virtue of his experience and education and that he had originally purchased the land with the intention of developing it. Patterson argues that he should have been allowed to give expert testimony that the highest and best use of his properties was for development purposes and that the land should be considered as a whole rather than as individual parcels.

[8,9] It is within the trial court's discretion to determine whether there is sufficient foundation for an expert witness to give his or her opinion about an issue in question.[13] A trial court's ruling in receiving or excluding an expert's opinion which is otherwise relevant will be reversed only when there has been an abuse of discretion.[14]

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[13] *Liberty Dev. Corp. v. Metropolitan Util. Dist.*, 276 Neb. 23, 751 N.W.2d 608 (2008).

[14] *Id.*

[10] An owner who is shown to be familiar with the value of his or her land shall be qualified to estimate the value of such land for the use to which it is then being put, without additional foundation.[15] Such owner is not qualified by virtue of ownership alone to testify as to its value for other purposes unless such owner possesses, as must any other witness as to value, an acquaintance with the property and is informed as to the state of the market.[16]

The record demonstrates that the trial court allowed Patterson to testify extensively as to his intentions for the properties, and there is no question that Patterson had hoped to assemble land for development purposes. The trial court also allowed Patterson to testify extensively as to the remodeling and restoration he had done. But the trial court determined that Patterson was testifying as an owner, not as an expert.

Although Patterson did have some experience in buying and developing land, he did not establish sufficient foundation to testify as an expert. Patterson stated that he had a master's degree in finance and that he had served with various neighborhood improvement organizations. Patterson further testified that he had spent a lot of time reading case law, but that he was not a licensed real estate broker or appraiser.

The trial court did not abuse its discretion by allowing Patterson to testify as an owner but not as an expert. Patterson did not offer any evidence other than his own plans for the properties to support his contention that the properties should be considered as a whole rather than as individual parcels. Patterson's first assignment of error is without merit.

(b) Trial Court Did Not Err by Not Allowing Patterson to Value His Land Using Comparable Sales of Properties

Patterson also argues that the trial court erred when it refused to allow him to present testimony as to comparable

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[15] See *Langfeld v. Department of Roads*, 213 Neb. 15, 328 N.W.2d 452 (1982).

[16] See *id.*

sales in the area. During the trial, Patterson introduced an exhibit entitled "Liberty Village Land Assembly" in order to testify that the highest and best use would be comparable to an earlier neighborhood redevelopment project. JAVA objected on the basis of foundation. Patterson testified that he was familiar with Liberty Village because he lived across the street from it and that he had estimated the demolition and construction costs for Liberty Village. Other than his estimates and speculation as to the worth of Liberty Village, Patterson could offer no other evidence of comparable sales.

[11,12] It is fundamental that a plaintiff's burden to prove the nature and amount of its damages cannot be sustained by evidence which is speculative and conjectural.[17] There are three generally accepted approaches used for the purpose of valuing real property in eminent domain cases: (1) the market data approach, or comparable sales method, which establishes value on the basis of recent comparable sales of similar properties; (2) the income, or capitalization of income, approach, which establishes value on the basis of what the property is producing or is capable of producing in income; and (3) the replacement or reproduction cost method, which establishes value upon what it would cost to acquire the land and erect equivalent structures, reduced by depreciation. Each of these approaches is but a method of analyzing data to arrive at the fair market value of the real property as a whole.[18]

[13] When using the comparable sales method, it is well settled that evidence of the price at which other lands have been sold is admissible in evidence in condemnation proceedings on the question of damages where such evidence is predicated upon sufficient foundation to furnish a criterion for market or going value of the land condemned. However, it is equally clear that such land must be similar or similarly situated to the land condemned and to have been sold at about the same time as the taking in the condemnation action, especially when the

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[17] *Liberty Dev. Corp., supra* note 13.

[18] *Id.*

price paid depends upon the market or going value rather than other considerations.[19]

We dealt with this issue in *Patterson v. City of Lincoln*,[20] which involved the condemnation of other properties owned by Patterson. We addressed Patterson's argument that an alternate means of valuation should be used. In that case, we said:

> We have stated that in eminent domain proceedings, where the sales prices of other tracts are offered as evidence of market value of the tract taken, a wide discretion must be granted the trial judge in determining the admissibility of the evidence of the other sales. The evidence should not be admitted where there is a marked difference in the situations of the properties. [Citations omitted.] Whether the properties the subject of other sales are sufficiently similar to the property condemned to have some bearing on the value under consideration, and to be of any aid to the jury, must necessarily rest largely in the discretion of the trial court, which will not be interfered with unless abused. The exact limits, either of similarity or difference, or of nearness or remoteness in point of time, depend upon the location and character of the properties and the circumstances of the case.[21]

Patterson did not offer any evidence of comparable land sales, other than his speculations as to the Liberty Village redevelopment project. And, as the district court noted, Liberty Village was a multifamily, multibuilding complex, while Patterson's properties were individual parcels suited for single-family use.

The district court also noted that Patterson testified extensively as to what he had spent in restoration and remodeling. The district court noted that an estimation of expenses for renovations is not one of the accepted methods of valuation in condemnation proceedings. Moreover, other than Patterson's testimony wherein he *speculated* as to how much he had spent

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[19] See *Langfeld, supra* note 15.

[20] *Patterson v. City of Lincoln*, 250 Neb. 382, 550 N.W.2d 650 (1996).

[21] *Id.* at 387-88, 550 N.W.2d at 654.

in restoration, he presented no evidence as to how much had actually been spent. This assignment of error is also without merit.

(c) Trial Court Did Not Err When It Refused to Admit Aerial Photographs

[14] Patterson next claims that the district court erred when it refused to admit aerial photographs from the "interactive GIS property database website maintained by the [C]ity."[22] During the trial, Patterson attempted to use a "GIS map" to demonstrate the location of the S Street properties, apparently to demonstrate the relative location of Liberty Village and the superior location of Patterson's properties. The admission of demonstrative evidence is within the discretion of the trial court, and a judgment will not be reversed on account of the admission or rejection of such evidence unless there has been a clear abuse of discretion.[23]

The trial court refused to admit the "GIS map" because it could not be printed from the Internet and copies could not be created and preserved for the purposes of appeal. Patterson did not present copies of the images at trial, nor did he lay foundation for when the photographs were taken. JAVA points out that the "GIS map" does not meet the requirements for a self-authenticating document under Neb. Rev. Stat. § 27-902 (Reissue 2008). The trial court did not abuse its discretion by refusing to admit the maps. This assignment of error is also without merit.

(d) Trial Court Did Not Err When It Refused to Allow Patterson to Value Removable Structures on Condemned Land as Element of Fair Market Value

Patterson's fourth assignment of error alleges that the trial court erred in excluding his testimony as an expert of the value of the structures that he claimed were removable. As discussed above, Patterson was allowed to testify as an owner, but not as an expert, and Patterson introduced no evidence of

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[22] Brief for appellant in case No. S-10-647 at 30.

[23] *Benzel v. Keller Indus.*, 253 Neb. 20, 567 N.W.2d 552 (1997).

the costs of restoration and remodeling, other than his estimate as to the money spent on materials. The district court noted that Patterson

> offer[ed] no other method by which the court could derive at the value of the real estate (whether as raw ground or as improved property). Certainly the lots at 2041 'S' Street and 2047 'S' Street had value and certainly there had been significant improvement to those properties but the court has no evidence that would lead it to any sort of formulation allowed under the law. [Patterson] offered no expert opinion as to value.

Patterson did not present evidence as to what the value of those structures would be, had he removed them. And, other than estimates as to the cost of the materials used in renovation, Patterson offered no evidence as to what intrinsic value the structures might have. This assignment of error is also without merit.

(e) Trial Court Did Not Err When It Refused to Allow Patterson to Proffer Evidence of Value-Depressing Actions by JAVA and the City to Decrease True Market Value of His Land

Patterson next argues that JAVA and the City engaged in value-depressing actions that resulted in decreased value for his properties. He argues that those value-depressing actions should be considered as an element of damages as well as a factor in determining the date of the taking. Patterson argues that there was a significant amount of delay between the announcement of the Antelope Valley project and the condemnation of his land and that this delay resulted in his being unable to put his land to its highest and best use.

Other than his general allegations of a conspiracy on the part of JAVA, the City, and UNL, Patterson produced no evidence of value-depressing actions. He called no witnesses from JAVA or the City to testify as to when the final plan for the Antelope Valley project was put into place, and Patterson himself testified that he was aware that the plans had changed many times. Patterson made no offer of proof as to what exactly those "value-depressing actions" might be. Even accepting the truth

of all relevant evidence and construing the evidence in a light most favorable to Patterson, he still failed to establish a prima facie case that his properties were undervalued or that JAVA engaged in value-depressing actions. Patterson's final assignment of error is therefore without merit.

(f) Patterson Was Not Deprived of His Due Process Right to Full Trial

Patterson finally argues that by sustaining JAVA's motion to dismiss, the district court denied him "the opportunity to hear and cross examine JAVA's appraiser or offer rebuttal testimony."[24] Patterson claims that this is a denial of his due process right to a full trial. Patterson seems to be arguing that once he had presented his case, JAVA was required to go forward and present its case; but he presented no legal authority for this claim.

[15,16] Under Neb. Const. art. I, § 3, the state cannot deprive any person of life, liberty, or property without due process of law. The protections of this procedural due process right attach when there has been a deprivation of a significant property interest.[25] If a significant property interest is shown, due process requires notice and an opportunity to be heard that is appropriate to the case.[26] Patterson received notice and an opportunity to be heard, but he failed to present sufficient evidence to overcome JAVA's motion to dismiss.

[17-19] A motion to dismiss at the close of all the evidence has the same legal effect as a motion for directed verdict.[27] A party against whom a motion to dismiss is directed is entitled to have all relevant evidence accepted or treated as true, every controverted fact as favorably resolved, and every beneficial inference reasonably deducible from the evidence.[28] A "prima

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[24] Brief for appellant in case No. S-10-647 at 18-19.

[25] *Prime Realty Dev. v. City of Omaha*, 258 Neb. 72, 602 N.W.2d 13 (1999).

[26] *Id.*

[27] See *Brown v. Slack*, 159 Neb. 142, 65 N.W.2d 382 (1954).

[28] See *Dale v. Thomas Funeral Home*, 237 Neb. 528, 466 N.W.2d 805 (1991).

facie case" means that evidence sufficiently establishes elements of a cause of action and, notwithstanding a motion for a directed verdict in a jury trial or a motion to dismiss in a nonjury trial, allows submission of the case to the fact finder for disposition.[29]

As discussed above, Patterson's evidence consisted mostly of speculation and accusations that JAVA and the City had conspired against him. The only evidence adduced at trial was Patterson's testimony that he had been remodeling the properties. Patterson did not offer any other evidence that he had developed the land, nor did he present testimony from another appraiser. Therefore, he could not establish a prima facie case that his land had been undervalued in the condemnation award. Since Patterson did not present sufficient evidence to establish a prima facie case, JAVA had no obligation to go forward and present evidence. The district court did not err in granting JAVA's motion to dismiss.

VI. CONCLUSION

In his appeal of the civil suit for damages, Patterson did not present sufficient evidence to present a genuine issue of material fact. In the appeal from the condemnation award, Patterson did not offer sufficient evidence to establish a prima facie case. The district court did not err in granting a summary judgment in the civil suit or the motion to dismiss in the condemnation award action. We therefore affirm the decision of the district court.

AFFIRMED.

WRIGHT, J., not participating.

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[29] *Id.*