

IN THE DISTRICT COURT
FOR THE SECOND JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF CARBON, STATE OF WYOMING

RANDY W. STEVENS,
RANDY W. STEVENS LIVING TRUST,
by and through its Trustee, Randy W. Stevens and
QUALITY LANDSCAPE & NURSERY, INC.,
Plaintiff,
vs.
THE GOVERNING BODY OF THE
TOWN OF SARATOGA, WYOMING,
a Wyoming municipal corporation,
Defendants.

STATE OF WYOMING
COUNTY OF CARBON
FILED
OCT 31 2019
MARA M. SANGER
CLERK OF DISTRICT COURT
DEPUTY
Civil Action No. CV-13-124
(Consolidated with
CV-13-123 and CV-09-284)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

THIS MATTER came before this Court for a bench trial on May 8, 2019; the Plaintiffs, Randy W. Stevens, Randy W. Stevens Living Trust, and Quality Landscape & Nursery, Inc., ("Stevens") having appeared by and through counsel, James R. Salisbury, of the Salisbury Firm, P.C., and Defendant, The Governing Body of the Town of Saratoga, Wyoming ("Town") having appeared by and through counsel, Richard Rideout, of the Law Offices of Richard Rideout, P.C. At the close of the trial, the Court ordered the parties to submit proposed findings of fact and conclusions of law.

In accordance with Wyoming Rules of Civil Procedure 52(a)(1)(B), and having reviewed the parties' post-trial submissions as well as the entire record, the Court now makes the following findings of fact, conclusions of law and order.

COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

## I. FINDINGS OF FACT

The following is based on a review of the record and the testimony and evidence adduced at the bench trial of this matter, held on May 8, 2019.

1. Before the commencement of trial, the parties stipulated to Stevens' Exhibits 1 through 27, and Town's Exhibits A through BQ, which were accepted and are part of the record.<sup>1</sup>

2. This case is the result of the consolidation of three related actions<sup>2</sup> involving a parcel of land (hereinafter "subject property"), consisting of 10 lots, located at 600 River Street, in Saratoga, Wyoming, owned by the Randy W. Stevens Living Trust. Randy Stevens is both the trustee of the Trust and the president and sole shareholder of Quality Landscape Nursery, Inc. Directly to the south of Stevens' land is an alleyway, which is owned by the Town

3. Quality Landscape is engaged in the business of landscape construction. Randy Stevens started Quality Landscape in 1983 and continues through the present day.<sup>3</sup>

4. Stevens purchased the property that is the subject of this lawsuit approximately 12 years ago. He initially purchased lots 1 through 9 in 2007, and later acquired lot 10 in 2008.<sup>4</sup>

5. Stevens originally bought the lots for parking of trucks and trailers for Quality Landscape, and his ultimate intention was to relocate the retail aspect of the nursery to the subject property.<sup>5</sup>

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<sup>1</sup> Bench Trial Transcript of Proceedings at 3:25-4:3, May 8, 2019.

<sup>2</sup> *Town of Saratoga v. Stevens, et al.*, CV-2009-284; *Quality Landscape & Nursery, Inc. v. Town of Saratoga*, CV-2013-123; and *Randy W. Stevens Living Trust v. Town of Saratoga*, CV-2013-124.

<sup>3</sup> See Trial Transcript, 6:23-7:4.

<sup>4</sup> See Trial Transcript, 8:11-25.

<sup>5</sup> See Trial Transcript, 11:21-12:11.

6. At the time of Stevens' acquisition, lots 1-8 of the subject property were zoned as residential,<sup>6</sup> lots 9-10 were zoned as Highway Business,<sup>7</sup> and none of the lots had been developed nor contained any water, sewer, electric,<sup>8</sup> or gas utilities.

7. Stevens subsequently successfully petitioned the Town to rezone all the subject property and adjacent areas to Highway Business ("HB").<sup>9</sup>

8. The south portion of the block, and immediately south of the Town's alleyway, is the Saratoga-Encampment-Rawlins Conservation District ("SERCD") building and parking lot and is a higher elevation than the subject property.<sup>10</sup>

9. The subject property also contains various elevations requiring grading to make it suitable for Stevens's intended purposes.<sup>11</sup> Pursuant to regulations set forth by the Wyoming Department of Environmental Quality ("DEQ") and Land Quality Division ("LDQ"), the subject property is to comply with grading and slope requirements, including the discharge of surface waters to mitigate erosion and sediment accumulation, as well as the requirements for permits associated with mining operations for the removal and/or conversion of soil and surface materials. Stevens presented evidence showing it complied with such permits and requirements.<sup>12</sup>

10. Disagreements arose between Stevens and the Town regarding grading and Stevens' construction of a retaining wall on the property that resulted in an order by this Court to

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<sup>6</sup> See, Trial Transcript, 11:19-20.

<sup>7</sup> See Trial Transcript, 11:14-16.

<sup>8</sup> Stevens testified that he installed electrical service in an underground encasement shortly after purchasing the property pursuant to a permit from the State Electrical, see Trial Transcript at 42:8-43:10, but no permits or evidence as to Stevens' permit or other proof of the preexisting underground electrical conduit was offered.

<sup>9</sup> See Trial Transcript, 17:19-21.

<sup>10</sup> Plaintiff's Trial Exhibits 20 and 21: Various photos depicting the subject and adjacent properties.

<sup>11</sup> See Trial Transcript, 9:9-16, 85:13-21; Plaintiff's Trial Exhibit 2: *Site Development Plan*, 6/16/2010.

<sup>12</sup> Plaintiff's Trial Exhibit 20: Various DEQ and LDQ communications, permit applications, and inspection reports regarding the subject property.

engage in alternative dispute resolution, and the parties entered into a *Consent Decree*<sup>13 14</sup> on June 21, 2010.

11. As part of the *Consent Decree*, the parties agreed that the “Town shall reconstruct the alleyway adjacent to the subject property in accordance with agreed-upon contours or grades, the final agreed-upon construction time table, and in accordance with the Saratoga Municipal Code and Appendix 33 of the 1997 Uniform Building Code and any permissible exceptions therein. The Town shall submit a written request to Carbon Power & Light for the immediate removal of a transformer box from the alleyway by Carbon Power & Light... The Town, at its own expense, shall rebury the power-transmission line underneath the alleyway...”<sup>15</sup>

12. Pursuant to the *Consent Decree*, Stevens submitted a *Site Development Plan* to Town to begin development of the subject property, including proposed plans for grading and drainage systems, which were approved by the Town.<sup>16</sup>

13. Also, per the *Consent Decree*, Town submitted proposed finished contours or grades for the reconstruction of the alleyway adjacent to the subject property,<sup>17</sup> with the original design planned to cut the slope back from the alleyway,<sup>18</sup> and Carbon Power & Light removed the transmission box at Town’s request.<sup>19, 20</sup>

14. After investigation of the slope material and concerns arising regarding erosion, the Town elected to modify the plan. Town determined that a rock-gabion basket installation would

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<sup>13</sup> *Town of Saratoga v. Stevens, et al.*, CV-2009-284

<sup>14</sup> Plaintiff’s Trial Exhibit 1: *Consent Decree*, 6/21/2010.

<sup>15</sup> *Id.*, *Consent Decree* at Section D, ¶ 3. Town Construction of Alleyway

<sup>16</sup> Plaintiff’s Trial Exhibit 2.

<sup>17</sup> See Trial Transcript, 61:15-63:12.

<sup>18</sup> See Trial Transcript, 223:4-6.

<sup>19</sup> See Trial Transcript at 93:19-94:17, 215:12-15.

<sup>20</sup> Stevens had installed the electrical transmission box to service a water pump located between lots 4 and 5 of the subject property. See Trial Transcript, 45:6-21.

prevent erosion and water runoff and drainage from the south half to the north half of the block<sup>21</sup> on to the subject property better than the plan originally submitted. Included in its modification, Town proposed digging a ditch on the south side of the alley to divert any remaining runoff from the subject property.<sup>22</sup>

15. The installation of a rock-gabion basket to support the slope of the alleyway ultimately failed before its completion<sup>23</sup> and was removed, and the planned ditch to divert runoff to the subject property was not installed.<sup>24</sup>

16. To address the ongoing erosion and slope stability concerns in its alleyway reconstruction, Town, without seeking Court approval to modify the plan, retained Reiman Corp. to install sheet pilings vertically along the north side of the alleyway within three feet of the south property line, adjoining lots 9 and 10 of the subject property.<sup>25</sup>

17. During the installation of the sheet pile wall, a hydraulic line ruptured on a piece of Reiman's construction equipment, spilling hydraulic fuel oil onto the subject property. The contaminated soil was neither removed, replaced, nor remediated by Reiman nor Town,<sup>26</sup> and evidence was presented that Reiman utilized Stevens' soil to cover the spill.<sup>27</sup>

18. No evidence or testimony was presented regarding the costs incurred by Stevens to remove, replace, or remediate the contaminated soil.

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<sup>21</sup> See Trial Transcript, 223:12-19.

<sup>22</sup> Plaintiff's Trial Exhibit 27.

<sup>23</sup> See Trial Transcript, 62:21-63:

<sup>24</sup> See Trial Transcript, 60:19-61:10.

<sup>25</sup> See Trial Transcript, 36:19-20.

<sup>26</sup> See Trial Transcript, 113:14-114:14; Plaintiff's Trial Exhibit 14.

<sup>27</sup> Plaintiff's Trial Exhibit 8.

19. Stevens offered evidence and testimony showing erosion and water runoff due to the installation of the sheet piling wall has damaged and encroached onto the subject property due to failure of the Town to mitigate such runoff.<sup>28</sup>

20. While construction of the sheet piling wall was underway, Stevens attempted to resume grading operations on the subject property in compliance with the *Consent Decree*<sup>29</sup> and DEQ and LDQ requirements,<sup>30</sup> which included removing soils in, near or under the alleyway to make a waterway contour up to the sheet pile wall.<sup>31</sup>

21. On July 22, 2011, this Court entered an *Order Granting Permanent Restraining Order* prohibiting Stevens from removing soil on the subject property located near, in, or under the alleyway and the SERCD<sup>32</sup> building<sup>33</sup> due to concerns that Stevens' activities were affecting the integrity of the sheet piling wall.

22. Pursuant to the parties cross-motions for *Motion for Order of Default; For Sanctions and Damages*, on January 27, 2012, this Court entered its *Findings of Fact, Conclusions of Law and Order*<sup>34</sup> and found the Town to be in default of the *Consent Decree* by failing to install the rock-gabion structure, but noted:

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<sup>28</sup> See Trial Testimony, 59:24-61:10.

<sup>29</sup> See, *Consent Decree* at § D, ¶¶ 1 and 5.

<sup>30</sup> Plaintiff's Trial Exhibit 20.

<sup>31</sup> See Trial Transcript, 110:7-14.

<sup>32</sup> Trial testimony and previous pleadings have referred to the building located immediately south of lots 9 and 10 of the subject property both as the "SERCD" and as the Natural Resources Conservation "NRC" building. These buildings are coincidentally neighboring properties, perpetuating the confusion. However, it is the SERCD building that is located in the spot described by testimony and in exhibits. Therefore, within this *Findings of Fact, Conclusions of Law and Order*, this Court will correctly refer to the building adjacent to the subject property as the SERCD building.

<sup>33</sup> *Id.*, *Order Granting Permanent Restraining Order* ¶ A and B; Plaintiff's Trial Exhibit 16.

<sup>34</sup> *Id.*

Even in light of these defaults, the Court finds that the Town's actions in installing sheet piling instead of rock gabion in the Town's alleyway adjoining Lots 8 and 9 of [Stevens'] property were reasonable and that the revised Plan did not cause harm to [Stevens] in any manner. The New Plan provides appropriate grades and contours, albeit not the ones previously approved by this Court.<sup>35</sup>

23. On March 6, 2012, this Court entered its *Order Granting Motion to Alter and Amend*, concluding:

- a. Although the Town's New Plan did not comply, in fact, with section 3314.3 of the 1997 Uniform Building Code, the Town has expressed its acceptance of the Plan and has waived any ability to complain about a UBC Code violation in the future. Further, the Town is legally responsible for any issues that may arise, now or in the future, regarding [Stevens] use of their Property, if affected by a failure to comply with Section 3314.3 of the 1997 Uniform Building Code;
- b. However, the Court will not require the Town to reconstruct the alleyway in a manner that conforms to the 1997 Uniform Building Code.<sup>36</sup>

24. On February 10, 2017, Stevens filed its *Motion for Summary Judgment*, and on February 13, 2017, Town filed a separate *Motion for Summary Judgment*, alleging the following:

- a. In CV-13-123, Plaintiff Quality Landscape and Nursery, Inc. asserted causes of action against Town for (1) trespass, and (2) conversion. In CV-13-124, Plaintiff Randy W. Stevens Living Trust asserted causes of action against the Town for (1) trespass, (2) nuisance, (3) negligence, (4) inverse condemnation, (5) taking, and (6) breach of implied contract.

- b. In their trespass claims (Claim I in both CV-13-123 and CV-13-124), the Plaintiffs alleged the Town, through its employees or agents, entered onto and used areas of Plaintiffs' land without permission. In its conversion claim (Claim II in CV-13-123), Quality

<sup>35</sup> *Id.* January 27, 2012, *Court's Findings of Fact, Conclusions of Law and Order* ¶ 30

<sup>36</sup> *Id.*, March 6, 2012, *Order Granting Motion to Alter and Amend* ¶ 6(a) and (b)

Landscape contended the Town removed 624.5 yards of topsoil from Plaintiffs' land and contaminated another 750 yards of Plaintiffs' topsoil without compensating Plaintiffs' for the loss.

c. In claiming nuisance (Claim II in CV-13-124), the Trust asserted the Wyoming State Mine Inspector previously determined that a "dangerous mining situation" existed on the Town's property adjacent to Plaintiffs' land, but the Town failed to take any remedial action.

d. In Claim III in CV-13-124, the Trust alleged the Town was negligent because: (a) its construction work in the alleyway adjacent to Plaintiffs' land increased the storm water runoff onto Plaintiffs' land, (b) it caused oil to spill onto Plaintiffs' land, (c) it removed the electrical line serving Plaintiffs' property, and (d) it damaged the electrical panel on Plaintiffs' land.

e. In the inverse condemnation claim (Claim IV in CV-13-124), the Trust contended the Town's construction of the sheet pile retaining wall near the land was inadequately designed and caused Plaintiffs to lose the use of approximately 3,150 square feet of land.

f. In the taking allegation (Claim V in CV-13-124), the Trust asserted portions of Plaintiffs' land were taken or damaged by the Town, constructively or otherwise, without just compensation in violation of the Wyoming Constitution.

g. Finally, in the breach of implied contract claim (Claim VI in CV-13-124), the Trust alleged Plaintiffs were induced to enter into the 2010 Consent Decree by the Town's promises to vacate the alleyway, install utility services within the vacated alleyway, and give ownership of the north one-half of the alleyway to Plaintiffs and that Town had not followed through on its oral representations.



h. Plaintiffs sought summary judgment on all claims in CV-13-124, while the Town sought summary judgment on all claims in both CV-13-123 and CV-13-124.

25. On March 22, 2017, in large part, the claims of the parties were resolved by this Court in the *Order on Cross Motions for Summary Judgment*.<sup>37</sup> The claims that not resolved were Stevens' claims for inverse condemnation and unconstitutional taking, remaining for trial.

26. According to the *Consent Decree*, Town was to rebury the power-transmission line located underneath the alleyway.<sup>38</sup> The *Consent Decree* does not specify who benefited from the reburying of the power-transmission line. Stevens and Town provided contradicting testimony. Stevens testified that it had previously installed an underground electrical conduit and that its power line was to be reburied along with the SERCD line.<sup>39</sup> Charles Bartlett testified that the power-transmission line referred to in the *Consent Decree* was to the SERCD.<sup>40, 41</sup>

27. No evidence or testimony was presented that the electrical transmission line to the subject property required it to be buried within the alleyway. The testimony presented was that electrical service to the subject property is achieved by replacing the electrical feed from the electrical utility pole to the transmission panel on the subject property.<sup>42</sup> There was no specific testimony regarding whether the feed was subterranean, running through or across the alleyway, or was fed aerially from the top of the pole to the transmission panel.

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<sup>37</sup> *Order on Cross-Motions for Summary Judgment*, March 22, 2017.

<sup>38</sup> See, Plaintiff's Trial Exhibit 1.

<sup>39</sup> See footnote 8.

<sup>40</sup> See Trial Transcript, 215:16-19

<sup>41</sup> Plaintiff's Exhibit 7, Letter from Charles Bartlett to Randy Stevens, dated March 28, 2011 at ¶ 1 notes that Town was unaware that Stevens had previously installed electrical service.

<sup>42</sup> See Trial Transcript, 46:4-6.

28. Town does not have any authority to approve or install electric utilities to the subject property.<sup>43</sup>

29. Installation of the sheet piling wall precludes the direct installation of any buried utilities in the alleyway to lots 9 and 10 of the subject property.

30. The *Consent Decree* does not discuss the installation of water or sewer utilities to the subject property.

31. The parties and their representatives made various attempts to discuss mutually agreeable options and alternatives regarding the placement of utilities in areas within and outside of the alleyway,<sup>44</sup> but have been unable to come to any agreements, and discussions have ceased.

32. No testimony or evidence was admitted limiting installation of utilities only in the alleyway.

33. Town does not have any authority to approve or install water or sewer utilities to the subject property.<sup>45</sup>

34. The *Order Granting Permanent Restraining Order* restrains Stevens from using the subject property within proscribed distances from the alleyway, which encompasses the slopes and grades of the alleyway that encroach on to the subject property.

35. Under the *Consent Decree*, Town, at its sole cost and expense, is to maintain and stabilize the slopes and grades of the alleyway so that the majority of stormwater discharge will

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<sup>43</sup> See Trial Transcript, 94:25-95-16; Plaintiff's Exhibit 6 at ¶ 2; Plaintiff's Exhibit 7 at ¶ 6, Plaintiff's Exhibit 9; Plaintiff's Exhibit 10 at ¶ 2.

<sup>44</sup> See Trial Transcript, 29:14-30:2, 38:2-39:9, 46:20-47:8, 141:17-142:12, 145:14-18, 174:10-175:17, 200:24-203:15, 205:2-16.

<sup>45</sup> See Trial Transcript, 203:10-14; Plaintiff's Exhibit 6 at ¶ 2; Plaintiff's Exhibit 7 at ¶ 6, Plaintiff's Exhibit 9; Plaintiff's Exhibit 10 at ¶ 2.

flow from the alleyway onto River Street and minimize any erosion of the slope of the subject property.<sup>46</sup>

36. Despite Town acting in good faith in its construction of the sheet piling wall, the sheet piling wall has failed to mitigate erosion and water runoff both south of and onto the subject property, resulting in a separation of the wall from the soil on the south side of the sheet piling wall.<sup>47</sup> Various entities, including DEQ and Town, are concerned for the safety and integrity of the sheet piling wall both within the alleyway and onto the adjacent subject property. Stevens is mandated to fence off areas on the subject property and install “No Trespassing” signs.<sup>48</sup>

37. The subject property does not have curb-cut access from any of the surrounding streets, and Stevens accesses the subject property by “jump[ing] the curb” near the Town’s alleyway street-cut on River Street.<sup>49</sup>

38. A request for a curb-cut and an easement across the 20-foot utility easement between the curb and lot 1 of the subject property can be requested from Town to obtain access.<sup>50</sup>

39. Richard Rakness, a real estate broker, offered a broker’s opinion as to the value of the subject property on December 8, 2017, and what it might be worth if the development of the lots was complete.<sup>51</sup>

40. Town has not initiated formal condemnation proceedings pursuant to Wyo. Stat. § 1-26-501, et seq., Wyoming Eminent Domain Act.

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<sup>46</sup> See, *Consent Decree* at § D, ¶5.

<sup>47</sup> See Trial Transcript, 58:21-59:9, 159:24-160:17.

<sup>48</sup> See Trial Transcript, 54:23-55:10.

<sup>49</sup> See Trial Transcript, 50:3-12.

<sup>50</sup> See Trial Transcript, 214: 1-21; Plaintiff’s Exhibit 7, Letter from Charles Bartlett to Randy Stevens, dated March 28, 2011, at ¶ 5 states that Stevens’ submitted access location was approved but needed to be constructed in accordance with Town standards.

<sup>51</sup> See Trial Transcript, 134:12-21.

## II. CONCLUSIONS OF LAW

### 1. Inverse Condemnation and Taking Claims.

Inverse condemnation is the cause of action to remedy an unconstitutional taking, and a partial taking occurs when the condemnor takes less than the entirety of the landowner's tract.

Wyoming Statute Ann. § 1-26-516 sets forth the inverse condemnation statute:

When a person possessing the power of condemnation takes possession of or damages land in which he has no interest, or substantially diminishes the use or value of land, due to activities on adjoining land without the authorization of the owner of the land or before filing an action of condemnation, the owner of the land may file an action in district court seeking damages for the taking or damage and shall be granted litigation expenses if damages are awarded to the owner.

The inverse condemnation statute provides landowners with a specific cause of action when the government takes or damages an interest in private property without using formal condemnation procedures. *See, e.g., Cheyenne Airport Bd. v. Rogers*, 707 P.2d 717, 729 (Wyo. 1985) (stating that the takings clauses “apply to cases where governmental action effectively takes or destroys a private interest in property. These situations are described as inverse condemnation.”); *Smith v. Bd. of County Comm’rs of Park County*, 2013 WY 3, ¶ 23, 291 P.3d 947, 954 (Wyo. 2013) (recognizing that § 1–26–516 creates a cause of action to recover damages for an unlawful taking). *Bush Land Dev. Co. v. Crook Cty. Weed & Pest Control Dist.*, 2017 WY 12, ¶¶ 9-11, 388 P.3d 536, 540 (Wyo. 2017).

In the present matter, Town, as a governmental entity, possessed the power of condemnation of the subject property adjoining the Town’s alleyway. Instead of proceeding with a condemnation action, Town sought and obtained a *Permanent Restraining Order* restraining Stevens from permanent use of a portion of the subject property. Additionally, the parties

previously entered into the *Consent Decree* that contained a clause that Town, at its sole cost and expense, would maintain and stabilize the slopes and grades of the alleyway to minimize stormwater discharge and minimize erosion of the slope of the subject property. The *Consent Decree*, however, did not authorize Town to permanently encroach upon nor limit Stevens' full usage of the subject property.

Stevens presented testimony and evidence that the slopes and grades of the Town's alleyway have failed to minimize stormwater discharge and erosion onto his property, thus damaging the subject property. The record also shows that Stevens is permanently restrained from removing soil from the subject property that is "in, near, or under" the alleyway, and impedes Stevens' ability to incorporate the appropriate grades and slopes as required by DEQ, LDQ, and Town to properly develop it, thus diminishing Stevens' full use of the subject property.

The Court finds that Town has taken possession of and damaged portions of the subject property. Stevens is entitled to damages for a partial taking upon proof of the same.

## **2. Damages.**

The Fifth Amendment to the United States Constitution prohibits the government from taking private property for public use without just compensation. Likewise, *Wyoming Constitution art. 1, § 33*, states: "Private property shall not be taken or damaged for public or private use without just compensation." Importantly, under these provisions, the government is not prohibited from taking private property; it is only prohibited from taking property without just compensation. *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194–95, 105 S.Ct. 3108, 3120–21, 87 L.Ed.2d 126 (1985); *Rissler*, 917 P.2d at 1162.

Wyo. Stat. Ann. § 1-26-702(b) sets forth the measure of compensation for a partial taking as "...the greater of the value of the property rights taken or the amount by which the fair market value of the entire property immediately before the taking exceeds the fair market value of the remainder immediately after the taking."

The relevant portions of Wyo. Stat. Ann. § 1-26-704 sets forth the procedure for the determination of fair market value:

(a) Except as provided in subsection (b) of this section:

(i) The fair market value of property for which there is a relevant market is the price which would be agreed to by an informed seller who is willing but not obligated to sell, and an informed buyer who is willing but not obligated to buy;

(ii) The fair market value of property for which there is no relevant market is its value as determined by any method of valuation that is just and equitable;

(iii) The determination of fair market value shall use generally accepted appraisal techniques and may include:

(A) The value determined by appraisal of the property performed by a certified appraiser;

(B) The price paid for other comparable easements or leases of comparable type, size and location on the same or similar property;

(C) Values paid for transactions of comparable type, size and location by other public or private entities in arm's length transactions for comparable transactions on the same or similar property.

In the present case, Stevens presented the testimony of Richard Rakness,<sup>52</sup> a real estate broker, who provided a "broker's opinion" as the value of the subject property on December 8, 2017, and what it might be worth if developed entirely.<sup>53</sup> Such testimony failed to set forth the

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<sup>52</sup> See Trial Transcript, 125:24-135:12.

<sup>53</sup> See Trial Transcript, 134:12-21.

damages as directed by Wyo. Stat. Ann. § 1-26-702(b). Stevens did not prove the greater of the value of the property rights taken or the amount by which the fair market value of the entire property immediately *before* the taking exceeds the fair market value of the remainder immediately *after* the taking. As a result, the Court concludes that Stevens has not proven any damages.

**III. ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that Judgment be entered in favor of the Governing Body of the Town of Saratoga, Wyoming.

**SO ORDERED** this 31 day of October, 2019.

  
HON. DAWNESSA SNYDER  
DISTRICT JUDGE

Copies:  
James R. Salisbury  
Richard Rakness

State of Wyoming }  
County of Carbon } SS

Certified To Be A Full  
True and Correct Copy

  
Marla M Sanger  
Clerk of District Court

By:   
Deputy

Dated 11 Day 1 2019