

# Court Rules Out Identical Restoration in Condemnation Suit

BY WILLIAM JABINE

Several interesting questions had to be decided by the U.S. District court for the Western District of Pennsylvania in a condemnation case involving the taking of a 9-hole course by the federal government. In fact at one point in its opinion, the court described the case as "unique."

The sum of \$97,000 was awarded to the owners of the course, Kinzua Valley, in Warren County, Pa. The owners were not satisfied with that amount and moved for a new trial, contending that at the original trial the court had refused to allow the jury to take into consideration certain testimony that would have tended to increase the amount awarded. The owners also said the court refused to exclude testimony offered by the government in regard to the sale of other courses located at a considerable distance from Kinzua Valley.

## Cost First Concern

The first question considered by the court in considering the motion for a new trial was concerned with the cost of reproducing the Kinzua Valley course. The owners, through an expert, advanced a rather novel theory which is described by the court as follows: "On Sept. 19, 1961, the course proper, a public course situated in the foothills of the Allegheny Mountains consisted of approximately 65 cleared acres. On these were constructed nine holes and a practice green, a frame clubhouse with integral snack counter, a frame pro shop, a tool shed and parking area. The highest and best use of Tract 1027, it is agreed, was as a golf course.

"A golf course expert, a well known architect, testified for the landowners that

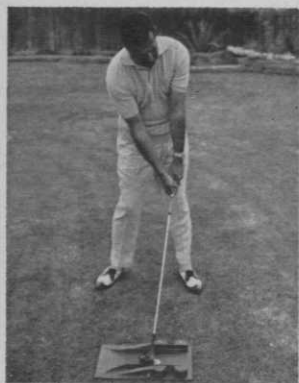
the course proper, as it stood on the date of taking, could be reproduced at a cost of \$165,396. Upon cross-examination, he conceded that \$84,000 of that sum was allocated to clearing a hypothetical wooded tract of trees, stumps, roots, brush, and large stones preliminary to actual reproduction of a course upon such a site. The rationale of this was that the course could be reproduced in a rustic and scenic setting identical to that in which Kinzua Valley lay, surrounded by mountains and wooded neighboring properties. This, the landowners insisted, could only be achieved by carving an identical golf course out of a wooded tract in similar surroundings, at a similar elevation and with a similar view, so as to make the land site for the reproduced golf course physically identical to the land site taken. We order this \$84,000 clearance allocation to be stricken. The jury was instructed not to consider the architect's estimate in the sum of \$165,000 as the cost of reproducing a course on timber land in the vicinity, but was told that it could consider an estimate of about \$80,600 for reproducing the Kinzua Valley course as it existed on the land prior to the taking."

## Evaluated As A Whole

After discussing the admissibility of reproduction costs as evidence and stating that they should be considered with other evidence in determining the market value of the property, the court continued: "In arriving at just compensation or the market value, the course, the buildings, and the land should be evaluated as a whole as of Sept. 19, 1961, the date of taking. It is too well settled for argument that the inquiry as to market value of property taken by condemnation is directed to the condition in which that property existed on the date of taking. (Citations.)

"It is our opinion in this unique case that if the cost of reproduction of this course is admissible at all, such reproduction must be upon land in the same cleared condition as it existed on Sept. 19, 1961. For years preceding that date, this land had existed as a course free of undesirable growth and stones.

*(Continued on page 114)*



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## Condemnation Suit

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"The cost of carving a golf course out of a wooded tract in an identical setting, with a similar view, surrounded by mountains and wooded property, in our opinion, is the type of evidence which was held to be inadmissible in *Anderson-Tully Co., v. United States*, 189 F. 2d 195 (5th Cir. 1951) \*\*\*"

### Prohibitive Costs?

"If the owners' argument is accepted, then in future condemnation proceedings, owners of such structures or improvements as arboricultural nurseries, parks, cemeteries, tennis courts, croquet courses, bowling greens, and special purpose farms, located in forested areas, could introduce reproduction costs in evidence and include therein the cost, however prohibitive, of clearing the land of woods, stumps, roots and stones. We are loathe to endorse this view as the law."

The USGA came into the picture when

a government witness testified: "To reproduce the Kinzua Valley Golf Course in its condition as of Sept. 19, 1961, would cost \$57,400, while to reproduce it as changed in design to meet minimum current USGA standards would cost \$83,317." In regard to this testimony, the Court said: "The court's charge instructed the jury to disregard the latter figure as reproduction costs, but permitted the jury to consider it for whatever questionable utility it may have had in reflecting market value. Clearly, the \$83,317 was not reproduction cost evidence in its proper sense, i.e. the cost of reproducing a structure or improvement according to its own particular design. Accordingly, no error was committed in so instructing the jury."

### Not in Neighborhood

The testimony of another Government witness who testified in regard to the sales of other golf courses, testimony to which the Kinzua owners objected because the three courses mentioned were not in the immediate neighborhood, was concerned with courses in New York State.

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The first was 31 miles from the Kinzua course; the second 51 miles away; and the third 33 miles distant. The court held that the testimony was admissible, saying: "In our opinion the alleged comparable course sales were sufficiently similar and proximate in time to be useful in reflecting the fair market value of the condemned golf course. Further, we believe that insofar as proximity of location is concerned, a court should exercise its discretion in accordance with exigencies of a case, and if land is not of a character commonly bought and sold, should allow evidence of the sales of similar land located at some distance from the land taken."

The motion for a new trial was denied and the \$97,000 award was allowed to stand without change. *United States v. 84.4 Acres of Land, Etc., 224 F. Supp. 1017.*

## Strains Lose Identity

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seedhead formation or remove all seedheads formed before they have had an opportunity to shed pollen and produce fertile viable seed. Our firm maintains small plot areas, almost in putting green condition, for a constant source of pure foundation material. Each year a small quantity is taken to plant an increase row to provide plant material to be used the following year for planting the production areas. The increase rows are given extremely close attention and extra care.

### Relatively Inexpensive

An investment in a putting green at today's labor costs makes it unwise to take a chance of having less than the finest turf. The cost of course construction has increased tremendously in the last 40 years. Bentgrass stolons used in putting green construction in the 1920's frequently accounted for as much as fifty per cent of the total construction cost. At today's prices the cost of the finest stolons is relatively negligible — about five per cent of the total cost of the green. Properly constructed and maintained greens can be expected to last 30 years or longer. In addition to better playing conditions, quality turf of uniform texture