

PROPERTY VALUATION AND RADIOACTIVE MATERIALS TRANSPORTATION: REFLECTIONS 12 YEARS AFTER *CITY OF SANTA FE V. KOMIS*

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ABSTRACT

In 1988, John and Leonia Komis sued the City of Santa Fe, which had annexed part of their ranch to build a bypass along which the U.S. Department of Energy would ship transuranic waste from Los Alamos National Laboratory to the Waste Isolation Pilot Plant near Carlsbad, New Mexico. The Komises made a unique claim—that the public fear of the proposed radioactive waste transportation had imposed stigma damages on the property they had left. They won, and the New Mexico Supreme Court upheld the verdict on appeal. In the twelve years since the case, environmental activists, politicians and others have predicted dire consequences would follow, resulting either in massive losses in property value or opposition that would make such transportation virtually impossible. Neither event has come to pass. This paper examines some potential reasons why.¹

INTRODUCTION

In August 1992, the New Mexico Supreme Court heard the appeal of the City of Santa Fe in a partial condemnation case, *City of Santa Fe v. Komis*. In November 1988, the landowners brought an action against the city, which annexed 43 acres of land to build a highway bypass around the town center. What made *Komis* special—unique, in fact—was that the highway was built ostensibly to carry a special commodity, radioactive waste, that would be trucked from the Department of Energy's (DOE's) Los Alamos National Laboratory (LANL) to the Waste Isolation Pilot Plant (WIPP) in the southeastern part of the state. For the first time, a court was asked to award damages resulting from public fears of radioactive waste transportation.

Although the shipments had not commenced, and although the city attempted to show that fears surrounding the transport of this commodity were unreasonable, the Court held that a loss in value from public perception of risk was compensable, regardless of the validity of the belief. In adopting this view,

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the Court analogized cases involving the placement of power lines and suits involving another common, if unsubstantiated, fear—the threat of cancer from electromagnetic fields.

The *Komis* case, and its potential to impact the transportation of radioactive materials across the country, has been a subject of discussion in newspaper articles, academic journals, public hearings, environmental publications, and even speeches on the floor of the U.S. House of Representatives. The implication behind the ruling—that property owners along transportation corridors used to ship radioactive materials might suffer diminishing property values—could conceivably involve millions of homeowners and billions of dollars. Yet as of early 2001, twelve years after the lawsuit was first filed, no reported cases involving a similar situation and following *Komis* on this specific point have appeared—either in New Mexico or anywhere else.

This paper examines the background and legal reasoning behind *Komis*, and looks in detail at the legal and sociopolitical ramifications related to this case. It also examines how the public debate on radioactive materials transportation continues to be shaped by *Komis*. Finally, the paper revisits the now-operational bypass around Santa Fe, to see whether the current situation along that route offers any lessons for the future.

KOMIS AND THE POWER LINE ANALOGY

On November 14, 1988, the City of Santa Fe condemned 43.431 acres of a ranch owned by John and Leonia Komis for construction of a highway bypass around the city to transport transuranic (TRU) waste from LANL.¹ Without the bypass, TRU waste shipments would travel through the city limits.² The Komises sued, and following a jury trial, were awarded \$888,192 in damages. The total amount included \$489,582.50 for the value of the 43.431 acres taken, \$60,794.50 for severance damages to the “buffer zone” along the taken land, and an additional \$337,815 for severance damages due to public perception of risk related to the planned shipments of TRU waste.³

The Komis’ land valuation expert testified that the loss to the remaining portion of the ranch because of this public perception of risk was \$1,000,000, or \$662,185 more than awarded by the jury. Both parties appealed, and the Court of Appeals certified the case to the New Mexico Supreme Court on January 10, 1992.⁴

Justice Franchini, writing for the majority, stated that “the underlying issue that forms the basis of the trial court’s rulings is whether in a partial condemnation action a property owner is entitled to receive compensation for the diminution of value to the remainder of the property caused by public perception.”⁵ The court, relying on a series of cases involving the placement of electric power lines, held that in a partial condemnation case, the diminution in market value of a property owner’s remaining land because of public fear of the transportation of the waste is compensable, regardless of whether the fear is a reasonable one.⁶

The court did not permit the city to discuss the safety features and testing that had gone into the WIPP transportation system⁷. Had the city been allowed to do so, it might have stood a better chance of

prevailing. Type B packagings, like those used for WIPP shipments, are incredibly rugged containers, built to withstand severe accident conditions. The designs for such packagings are subjected to drop, puncture and immersion tests and are engulfed in diesel fuel fires designed to simulate a tank car conflagration.⁸ Demonstration tests involving crashing trucks into concrete walls and striking casks with speeding locomotives have supported the validity of the tests. Although there have been accidents, some involving shipments of highly radioactive materials like spent nuclear fuel, there has never been a spill that resulted in significant harm to the environment, and no one has ever been killed or seriously injured as a result of a release.⁹ The likelihood that an accident involving a shipment of radioactive materials would injure people or damage the environment because of the radioactive nature of the cargo is small. Moreover, the materials being shipped to WIPP have much lower level of radioactivity than typical commodities shipped in Type B packagings.

A public opinion poll conducted by Zia Research Associates comprised the key evidence that supported the Komis' argument. The City also tried to introduce evidence that property values along St. Francis Drive, the main corridor for radioactive materials shipments from and to Los Alamos, had been rising over a 5-year period. The court excluded this evidence because it did not show whether buyers and sellers knew about the transportation, whether they had perceptions of harm that affected prices, and how those values correlated to the Komis property.¹⁰

The City also tried to introduce testimony by its appraiser, Mr. Peter Patchin, that the poll results bore no relation to actual market value loss.¹¹ The Supreme Court later ruled on appeal that the trial court was acting within its discretion in limiting Mr. Patchin's testimony.

For reasons not stated by the trial court, and apparently not disputed by the City of Santa Fe, the decision placed great precedential weight on a series of cases dealing with electric power lines and subsequent fears of cancer from electromagnetic fields.

The *Komis* court relied heavily on electromagnetic power line cases. All over the country, courts have struggled with the question of whether compensation should be allowed to property owners for the devaluation of their remaining land based on public fear of electromagnetic fields. Landowners have claimed that when a power company condemns a portion of their land to put power lines over it, the land surrounding the power lines is devalued because people are afraid of the electromagnetic field surrounding the lines. . . owners receive less money for the [remaining] property than they would have received before the condemnation occurred.¹²

In rendering its opinion, the Supreme Court essentially drew an analogy between the power line cases and applied them to radioactive waste transportation. As discussed below, this analogy may not be the most appropriate one to draw.

In *Alabama Power Co. v. Keystone Lime*,¹³ one of the earliest power line cases, the Alabama Supreme Court alluded to a risk-benefit comparison that may be particularly appropriate when considering the issue of radioactive waste transportation:

The right of eminent domain resides exclusively in and is [a] necessary attribute of the state, and the state, in permitting its exercise either does so—as, for instance, in condemning lands for courthouses, jails, public roads, parks, etc.—directly and exclusively for the public, or indirectly for the public by requiring property condemned to another's use to be actually used for the public benefit.¹⁴

In other words, public benefits in takings cases sometimes do outweigh private ownership interests, and courts engage in a balancing of equities when they take public perceptions of risk (whether reasonable or not) into account. Although *Komis* has been cited by cases in New Mexico, to date none have followed the case's holding on the specific issue of radioactive waste transportation and public risk perception—twelve years later, *Komis* stands alone.¹⁵

SOCIETAL BENEFIT: AN ALTERNATIVE ANALYSIS

Looking beyond power line cases, when other public perception-value diminution cases are examined, courts are motivated to look beyond just economic effects. As attorney Andrew James Schutt states in his analysis of power line economics:

One must distinguish, however, power companies from actors who are either unable to avoid costs, spread the loss, or who provide significant societal benefits when measured against the landowner's interests, and who thus should not be required to compensate a private landowner. For example, it may be inappropriate to require compensation where homeless shelters, homes for maladjusted teens, or AIDS hospices have caused a diminution in an individual's property value.¹⁶

The issue of whether public perception is rational in a particular case may thus be disregarded when the societal need for the activity is particularly compelling. Schutt points out in his discussion of the "reasonableness paradigm" that "[t]he dilemma is whether to focus on the parties and their relationship or on society and its needs. Courts following the minority view employ the latter dynamic, which [in power line cases] favors the power company, perhaps because they fear that finding in favor of property owners will ultimately impede progress and, therefore, hurt society."¹⁷

Instead of looking to power line cases for guidance in resolving radioactive materials transportation-related valuation cases, courts might consider applying alternative analogies. Beginning in the sixteenth century, property-related arguments were heard over the siting of smallpox hospitals. Today, similar cases deal with AIDS hospices.¹⁸ The statement of one treatise on the subject is hauntingly familiar to the court's rationale in *Keystone Lime*: "the Court will not restrain by injunction the erection of a hospital for persons suffering from small-pox merely on the ground of an apprehension of danger. The Court must be satisfied that there is a well-grounded apprehension of danger, or at least that the danger is appreciable."¹⁹ Even during the height of the tuberculosis epidemic of the early twentieth century, courts refused to award damages to neighbors of clinics due to the "mere disturbance of market

value.’²⁰ Dismayed property owners next sought legislative solutions through zoning and other statutory mechanisms, which were mostly struck down on constitutional grounds.²¹

Although public debate on this issue became relatively quiet, in the 1980s the AIDS epidemic engendered a recurrence of opposition to socially necessary caregiving facilities.²² Hysteria about AIDS led to some cases where clearly irrational fears were deemed sufficient cause to discriminate. The trial judge in one case involving refusal to give a manicure to an AIDS victim held that “a risk of death, however minimal, cannot be acceptable or tolerated.”²³ Following this holding to its logical conclusion would make modern life very difficult. Such simple decisions as whether to get out of bed in the morning and what to eat for breakfast involve a balancing of risk. The bare assertion that any risk is unacceptable is unrealistic.

To be sure, a truck of radioactive waste does not stir compassion in the hearts of most people, as might the plight of homeless or sick persons. At the same time, however, such transport may have more in common with social service operations than with sited waste disposal plants. Unlike fixed facilities that may emit hazardous substances to a limited area for many years, transportation is, well, transient. Presumably, no environmental stigma attaches to neighboring properties after transportation has been concluded, so incident-free operation should not raise fears of lingering environmental damage the way a permanent facility might.

The waste transportation—social necessity analogy may also hold true in siting cases where the purpose of the facility is unrelated to nursing the afflicted, such as group homes for ex-convicts or drug addicts. In these cases, there may actually be some arguable impact (especially given current rates of repeat offenders), but courts have generally been unsympathetic to community opposition in these cases.²⁴

A comparison of power line cases and other types of diminution cases (like hospice siting/zoning cases) suggests that some courts may not be looking at economic efficiency or even equity as a practical matter at all. One possible explanation may be that some courts are not using economic rationales in making their decisions, but rather look at the “worthiness” of the cause and the condemnor’s ability to pay.

The *Komis* decision may seem ominous to managers and attorneys facing claims of stigma damages from radioactive waste. However, even if a court embraces the power line analogy as legitimate, as the New Mexico Supreme Court did, it could also adopt the “societal interest” argument and thereby distinguish its case from *Komis*. As Schutt concludes, “while the majority view, supported by strict liability rationales, encourages imposition of losses caused by the public’s fear upon the actor most responsible for the fear, it does not preclude courts or legislatures from recognizing that the balance may tip against the landowner where overriding societal interests are at stake.”²⁵

LEGAL AND SOCIOPOLITICAL IMPACTS OF THE *KOMIS* CASE

In 1997, the U.S. Congress considered amending the Nuclear Waste Policy Act to hasten characterization of Yucca Mountain and bring resolution to the issue of commercial spent nuclear fuel storage. The Act proposed, among other things, mandating the temporary storage of tons of commercial

spent nuclear fuel at the Nevada Test Site beginning in 2002, whether or not a permanent disposal site was ever developed. The Nevada congressional delegation objected strenuously to the Act's passage, and Rep. Gibbons of Nevada took to the floor to outline the potential adverse consequences that could impact other states besides Nevada:

Madam Speaker, what will a temporary nuclear waste repository at Yucca Mountain, Nevada, mean to private property owners in some districts? It will mean large government payoffs because the transportation of this radioactive waste will devalue their property. The New Mexico Supreme Court ruled that Mr. John Komis of Santa Fe be awarded more than \$884,000 resulting from devaluation damage to his land due to the transportation of radioactive waste past his property. If [the Act] passes, almost 80,000 tons of nuclear waste will be transported across this country, devaluing property along the way. And who will pay for this devaluation in private property? Of course, the American taxpayer. . . .²⁶

The consequences outlined by Rep. Gibbons seem ominous; if *Komis* has precedential effect in other state courts examining other shipping campaigns, the future of waste transportation and the cleanup programs it supports may be gravely threatened.

The 1997 Act was vetoed by President Clinton, but the issue of corridor property valuation continues. In July 2000, Public Citizen's Critical Mass Energy Program issued a series of fact sheets on radioactive waste transportation issues; one was entitled "Get the Facts on Property Values and Nuclear Waste Transportation!"²⁷ Among other things, the fact sheet claimed:

1. Most states require sellers to disclose that a property is along a nuclear waste transportation route; and
2. The *Komis* case "proved" that property values decline due to such transportation.

With regard to the disclosure issue, the pamphlet cites no relevant statutory language from any state. A search of all 50 state statutes has, to date, revealed no such language. The statement that the *Komis* decision "proves" that property values decline is inaccurate, as proof is an issue specific to every trial and each individual fact pattern. As discussed below, current evidence may indicate the opposite to be the case.

The issue surfaced again in the summer of 2000 during hearings held by the U.S. Nuclear Regulatory Commission (NRC) related to licensing of Private Fuel Storage, Inc. (PFS). PFS is a group of eight nuclear utilities that are seeking to operate a temporary spent fuel storage facility on the Goshute Indian Reservation in Skull Valley, Utah.²⁸ As might be expected, there is considerable public opposition to the proposed facility, prominently led by Utah's Governor Mike Leavitt, who in 1997 stated "Our state faces the threat of becoming the nation's dumping ground for high level nuclear waste, and I want to stop it from happening."²⁹

Proponents of the PFS facility, including several tribal members and the chairman of the Skull Valley Goshutes, argued that area industrial development had already affected the value and usability of the land, and the impact of nuclear waste storage paled in comparison to the activities of adjoining sites. On June 18, 1999, reporter Steve Curwood of the radio show “Living on Earth” visited the Goshute reservation:

[the Goshute chairman] says attracting investors to the reservation is difficult because of the site’s neighbors. There’s the Army chemical and biological warfare laboratories and testing range, three hazardous waste dumps including one for low-level nuclear waste, an incinerator that burns 43% of the national’s stockpile of chemical weapons, and an Air Force bombing range.³⁰

Despite the proximity of such potentially dangerous industrial operations, comments focused on the adverse consequences to property values that would be posed by the spent fuel facility, not by nerve gas testing labs or hazardous waste incinerators. On August 21, 2000, Mac Brubaker, President of the Utah Association of Realtors (UAR), testified before the NRC hearing panel that his members feared a direct impact on property values. He stated that *Komis* “involved many serious and detailed studies”³¹ (the valuation evidence was based on the solitary Zia poll). He added that, based on the data obtained from that study and extrapolated to the planned corridor through Utah for the PFS shipments, Utah property owners could expect “a single business enterprise to take, without just compensation, five to twenty billion dollars” along a 100-mile transportation corridor.³²

The UAR conducted a poll of its own to derive its lower-end estimate of a drop of 15 percent, or \$5 billion, which UAR counsel characterized as “conservative.”³³ The formula for calculating this sum was developed as follows:

$$\mathbf{RDAP=V} \qquad \qquad \qquad \text{(Eq. 1)}$$

Where R represents the land within one-half mile of a 100-mile railroad track, D equals an average density of 3 homes per acre or 2,000 per square mile, A equals the average value of a home in Utah’s Wasatch Front (\$163,000), P equals the percentage loss in value based on poll data (15 percent), and V equals the total amount of property value lost. Therefore,

$$\mathbf{(100)(2,000)(163,000)(0.15) = \$4,890,000,000} \qquad \qquad \qquad \text{(Eq. 2)}$$

The UAR termed this figure conservative because its poll data suggest the diminution of value due to radioactive waste could be greater than 15 percent, and that the effects on property value could extend far beyond one-half mile. These findings are in line with those of similar polls which have shown that respondents in other areas also feel such transport will lower property values.³⁴

Assume for the sake of argument that these numbers are not unrealistic—that the mere prospect of radiation along a transport corridor could cost Utah citizens \$5 billion. What could this mean for the

nation, which not only has been transporting thousands of shipments across the country for more than 40 years, but may ultimately ship spent nuclear fuel from commercial reactors to a site like Yucca Mountain, Nevada, for permanent disposal?

Here's what it might mean: according to studies conducted by the Nevada Nuclear Waste Project Office, shipments from reactors to Yucca Mountain will utilize 13,700 and 18,800 miles of highway and rail lines, respectively.³⁵ If it is assumed the housing density and property value of the Wasatch Front approaches the national average (admittedly a vast oversimplification), the numbers can be applied to the formula with the following results:

$$(32,500)(2,000)163,000(0.15) = \$1,589,250,000,000 \quad (\text{Eq. 3})$$

about \$1.6 trillion dollars, or a little more than the current Federal budget. This enormous sum seems to suggest that perhaps one or more of the underlying assumptions may be flawed.

THE WIPP RELIEF ROUTE TODAY

In November 2000, the authors visited Santa Fe to drive Highway 599, the WIPP Relief Route, and obtain available information about real estate conditions in the area. To all appearances, the bypass appears much like any other newly opened bypass anywhere in the country—fresh pavement, new road markings and signs, newly-opened exits. A fair amount of (nonradioactive) truck traffic was noted along the route, which is perhaps unsurprising given the alternative route is congested St. Francis Drive. Some heavy trucks were observed coming to and from the Caja del Rio municipal landfill.

State Highway Department Community Relations Director Kathie Leyendecker in May told a reporter from the Albuquerque Journal that “[the bypass] literally takes you around Santa Fe and puts you up on the hill. It's a pretty drive.”³⁶ A drive along the route, recently renamed the Veterans' Memorial Highway, bears this out.



Fig. 1. Panoramic View Along the Veterans' Memorial Highway, November 2000

In a formal press release, State Highway and Transportation Secretary Pete Rahn announced:

We have worked with the city of Santa Fe to build a controlled access roadway that will relieve congestion on St. Francis Drive and Cerrillos Road and provide a faster route around the city when Santa Fe is not the traveling public's destination.³⁷

Secretary Rahn made no mention of the WIPP shipments in his press release.

During this trip, the authors briefly spoke with Mr. Richard Montoya, a Santa Fe realtor, who confirmed that the Las Campanas development just west of Highway 599 has been a popular residential development in the area.³⁸ Tamar Stieber of the *New Mexico Business Journal Online* described a bus tour of property in the area, which progressed:

along the frontage road of the *eagerly anticipated Santa Fe Relief Route* (a.k.a. the Santa Fe Bypass) to the 4,700-acre gated community of Las Campanas, famous for its Jack Nicklaus-signature championship golf courses. (emphasis added).³⁹

New Mexico is a nondisclosure state, which means that buyers and sellers are not required to disclose the purchase price of houses and property to third parties. However, during the interview Mr. Montoya estimated that unimproved residential lots in a development like Frijoles Village (since renamed Aldea de Santa Fe) might sell for between one hundred and one hundred and fifty thousand dollars per acre.⁴⁰



Fig. 2. Entrance Signpost, Aldea de Santa Fe

The Aldea development has a website, <http://www.frijolesvillage.com>. Designed by a professional town planner⁴¹, Aldea (“small village” in Spanish), “will be a place where people of diverse income levels, ethnic heritage, and professions can live and work together in a community of attractive homes, plazas and parks set amidst the great natural beauty of northern New Mexico.”⁴² The University of New Mexico and the Santa Fe College of Design are said to be considering Aldea for new campus sites.⁴³

Not everyone is enamored with the new bypass and the new development in the northwestern quadrant. One critic, John H. Farr, relates his experience with the bypass as follows:

I took that aptly named “Santa Fe Relief Route” (State Road 599), a soon-to-be 4-lane bypass that skirts the city to the west and luckily goes by the airport. But that road is a disaster in the making! Within six months of its completion it’ll be just as congested as the main highway that goes south through Santa Fe down to Albuquerque. Anyone with the proverbial half an ounce of sense can see that the thing is really designed to open up vast tracts of pinon and juniper for developers, and the “estates” signs are already going up. Fools!⁴⁴

Other residents voiced similar concerns. Shirley O'Rourke of Los Alamos posted a note on the Northern New Mexico Citizen's Advisory Board (an organization to provide stakeholder input into cleanup issues at Los Alamos). She described how the “deep concern” of the city's citizens led to construction of the bypass “at great expense,”⁴⁵ and went on to state:

I have recently learned of a proposal by Las Campanas to build a resort complex...along the route...while I understand that this increase to the tax base for the city would be welcome, I cannot help wondering why the concern for public safety has been so quickly diminished...Does the city/county no longer believe that there is really no potential for exposure, as the DOE has long maintained, or is the potential for more dollars overriding their often-expressed concern for public safety?⁴⁶

Real estate broker Anthony Atwell, phrased the issue this way: “The relief route zoning for NM 599, running on Santa Fe's NW to SW side [is] now refining it's (sic) vision of the bypass.”⁴⁷

CONCLUSION

Civil courts, trials, and the process of legal fact finding are always imperfect and incomplete attempts to assess damages, determine monetary equivalents for plaintiffs' losses, and—not incidentally—to bring finality to disputed issues. The *Komis* court had to decide a case of first impression—involving a fact pattern that had never been seen before. When courts are confronted with unique conditions without precedent, they often seek to apply case law having some resemblance to the matter at hand. As carriages are to railroads, the reasoning might go, so are power lines to radioactive materials transportation. In retrospect, perhaps other analogies might have made a better fit.

One question remains—are homeowners now and in the future going to be subject to financial loss because a radioactive shipment passes (or will pass, or may pass) their property? The *Komis* court, weighing the evidence it had before it at the time, said yes. With the benefit of 12 years' hindsight, including no significant development of the case law and the extensive real estate business development along the corridor that was the center of the controversy, perhaps the correct conclusion is no.

Every home buyer is unique. Although trends in valuation and appreciation are drawn all the time, nearly every property sale involves the purchase of a *particular* property by a *particular* buyer. Some avoid property near commercial areas or adjacent to heavy truck routes—along which many different commodities may be transported. Some people no doubt will avoid a property, or pay less for it,

because a WIPP truck goes past periodically. Others may pay much more to live in a new development in beautiful Santa Fe because land is scarce and getting scarcer. Should the government, or the local gasoline distributor, or UPS, or other carriers, provide compensation because poll subjects think they *might* pay less or more for a theoretical property with those potential drawbacks or advantages?

One fact is clear—people completing public opinion surveys about how much this or that should detract from the value of homes in general are almost certainly not simultaneously signing a contract to buy a house. A poll that asks people what they would do does not necessarily indicate what they will do, or what they are doing, in a specific circumstance. The mere prospect of event-free radioactive materials transportation should not be enough to be, to use a legal phrase, the “proximate cause” of significant diminution in property value. The *Komis* court looked at the evidence 12 years ago and thought it could be; with hindsight, it seems it likely is not. That *Komis* stands by itself after twelve years, during which millions of similarly situated property owners might have pursued claims, seems to support this conclusion.

ENDNOTES

¹ City of Santa Fe v. Komis, 114 N.M. 659 (N.M. 1992), 659.

² *Id.* at 659.

³ *Id.* at 661.

⁴ *Id.* at 662. Under N.M.S.A. 1978, Section 35-5-14(C)(2), Courts of Appeal may send a case directly to the Supreme Court if the issue involves a significant question of law or pertains to a substantial public interest. *Id.*

⁵ *Id.* at 659.

⁶ *Id.* at 662.

⁷ At trial, Kevin Donovan of DOE was called by the City, which attempted to introduce testimony from Donovan concerning the safety of the TRU waste packaging and transportation system. The trial court refused to allow this evidence, as it went to the reasonableness of the public’s perception of risk, and the Supreme Court held that the testimony was therefore irrelevant. *Id.* at 666.

⁸ U.S. Department of Energy, *Transporting Radioactive Materials: Answers to Your Questions* (1997), at 17.

⁹ *Id.* at 28.

¹⁰ *Id.* Note 1 at 666.

¹¹ *Id.* at 667.

¹² Peggi Whitmore, *Property Owners in Condemnation Actions May Recover Compensation for Diminution in Value to Their Property Caused by Public Perception: City of Santa Fe v. Komis*, 24 N.M. L. Rev. 535 (Summer 1994), at 537.

¹³ Alabama Power Co. v. Keystone Lime, 67 So. 833 (Ala. 1914).

¹⁴ 67 So. 833 at 836.

¹⁵ *Komis* was cited and discussed briefly in City of Albuquerque v. Westland Development Co., 121 N.M. 144, P 2d 25 (Oct. 28, 1995). While the court said the *Komis* holding “implied” that use of the taken portion could merit compensation, it acknowledged that “*Komis*, however, does not completely

answer our questions.” 121 N.M. 149. The case dealt with condemnation proceedings related to a landfill, not nuclear waste transportation, and included an extended discussion of the temporality problems inherent in property valuation. To date, all other cases citing *Komis* have done so in reference to evidentiary precedents unrelated to the valuation issue.

¹⁶ Andrew James Schutt, *The Power Line Dilemma: Compensation for Diminished Property Value Caused by Fear of Electromagnetic Fields*, 24 Fla. St. U. L. Rev. 125 (Fall 1996), at 156.

¹⁷ *Id.* at 149.

¹⁸ David Bernstein, *From Pesthouses to AIDS Hospices: Neighbors' Irrational Fears of Treatment Facilities for Contagious Diseases*, 22 Col. Hum. Rts. L. Rev. 1 (1990), at 1.

¹⁹ *Kerr on Injunctions* 184 (6th ed. 1927), cited in Bernstein at 2.

²⁰ *City of Northfield v. Board of Chosen Freeholders*, 85 N.J. Eq. 47, 95 A. 745 (1915), cited in Bernstein at 5.

²¹ Bernstein at 6.

²² *Id.*

²³ *Jasperson v. Jessica's Nail Clinic*, 216 Cal. App. 3d 1099, 265 Cal. Rptr. 301 (1989), cited in Bernstein at 10.

²⁴ Michael B. Gerrard, *The Victims of NIMBY*, 21 Fordham Urb. L.J. 495 (Spring 1994), at 500.

²⁵ Schutt at 159.

²⁶ 143 Cong. Rec. H8166 (daily ed. Sept. 30, 1997).

²⁷ Public Citizen Critical Mass Energy Project, “Get the Facts on Property Values and Nuclear Waste Transportation”, July 2000. This factsheet (and others) can be found on the Web at <http://www.citizen.org/cmep/RAGE/radwaste/radwaste.html>.

²⁸ Private Fuel Storage, LLC “About the Project” (information series), 2000. This factsheet and other information can be found on the PFS website at <http://www.privatefuelstorage.com>.

²⁹ Environment News Service, “Nuclear Waste Storage on Utah Tribal Land Wins Safety Approval,” Oct. 9, 2000 (can be found on the Web at <http://ens.lycos.com/ens/oct2000/2000L-10-09-15.html>).

³⁰ “Goshute Tribe and Nuclear War,” (*Living on Earth* radio broadcast, June 18, 1999).

³¹ Letter from Mac Brubaker, President, Utah Association of Realtors, to the Nuclear Regulatory Commission, Doc. No. SL3-05 (Aug. 21, 2000).

³² *Id.*

³³ *Id.*

³⁴ See, among others, James H. Flynn, C.K. Mertz, and Paul Slovic, *Results of a 1997 National Nuclear Waste Transportation Survey*, Jan. 1998.

³⁵ Planning Information Corporation, *The Transportation of Spent Nuclear Fuel and High-Level Nuclear Waste: A Systematic Basis for Planning and Management at the National, Regional, and Community Levels*, Sept. 1996 (can be found on the Nevada NWPO website at <http://www.state.nv.us/nucwaste/trans/1pichome.htm>).

³⁶ D'Val Westphal, Road Warrior, *Albuquerque Journal* (May 16, 2000). Online version is available at <http://abqjournal.com/use/1traffic05-16-00.htm>.

³⁷ New Mexico State Highway and Transportation Department, “Santa Fe Relief Route to Open in November,” Oct. 2000. Can be found on the NMSHTD website at <http://www.nmshtd.state.nm.us>.

³⁸ Interview with Richard Montoya, Jr., Old Santa Fe Realty Co., in Santa Fe, N.M. (Oct. 16, 2000).

³⁹ Tamar Steiber, "Focus on Santa Fe: A Better City Different," *New Mexico Business Journal Online*, 1999 (can be found at <http://www.nmbiz.com/cpprofiles>).

⁴⁰ *Id.*

⁴¹ *Id.* at 2.

⁴² Aldea de Santa Fe Website, <http://www.frijolesvillage.com>.

⁴³ Steiber at 8.

⁴⁴ John H. Farr, "Farr Site" (Dec. 13, 1999), found at <http://applelinks.com/farrsite/dec13.shtml>.

⁴⁵ Shirley O'Rourke, Public Comment Forum, Jan. 27 2000, found at http://www.nnmcab.org/Pub_comment/orourke.htm.

⁴⁶ *Id.*

⁴⁷ Anthony Atwell, "Santa Fe Real Estate: Free Newsletter," found at http://tonyatwell.com/nl/nl_0799.html.