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"Profitable Mineral Management"
BREAKFAST SERIES *for*
Surface and Mineral Owners
Admission by Invitation Only

DATE: **March 21, 2017**

TOPIC: **Condemnation**

LOCATION: **San Antonio Petroleum Club**
8620 N New Braunfels, Suite 700
San Antonio, TX 78217-6363
P 210.824.9014
F 210.829.5443

TIME: **7:30 AM Breakfast - 8:00 AM Presenters - 8:50 AM Questions & Answers**

INTRODUCTIONS: **E.O. (Trey) Scott, III, Trinity Mineral Management, Ltd.**

PRESENTERS: **The Honorable Jacqueline Lucci Smith**

Condemnation

- Domain Legislation
- Landowner Compensation Impact
- Pipeline Condemnation
- Changes Brought About by *Denbury Green*
- Challenging A Company's Right to Condemn Your Land

UPCOMING:

APR 18	Bruce Gillooly & Anastasia Valdes, TX Water Exchange
AUG 15	Trey Scott, Trinity Mineral Management
SEP 19	To Be Announced
OCT 17	To Be Announced

Jacqueline Lucci Smith

Lucci Smith Law, PLLC
10810 Katy Freeway, Suite 102
Houston, Texas
832.494.1700

Experience

Lucci Smith Law, PLLC / Managing Member / 2013- Present

Practice areas: Real Estate, Condemnation, Appellate, Alternative Dispute Resolution

- Founder and Managing Member
- Represent clients in all types of real estate transactions and litigation; primary focus in Condemnation matters
- Appellate law
- Mediator and Arbitrator
- Commercial Litigation

Winstead, P.C. / Of Counsel / 2012 - 2013

Practice areas: Condemnation, Appellate, Mediations

- Segment Leader for pipeline project
- Represented Winstead at various political events
- Coordinator for Winstead sponsorship of the Houston Realty Business Coalition
- Member of the Judicial PAC

Harris County Civil Court-at-Law 2 / Judge / 2007 - 2012

- Completed 100 jury trials in first 12 months of office
- Disposed of over 15,000 cases, including 4,000 bench trials, 250 jury trials and 600 appeals from JP courts
- Implemented new procedures to reduce docket from 5500 to 3200 cases
- Developed internship program with Spring Branch ISD
- Implemented standards for guardian ad litem in cases involving minors
- Developed new condemnation guidelines to implement SB 18 changes
- Frequent featured speaker for continuing legal education seminars on SB 18
- Developed pro bono program for county courts
- Administrative Judge 2010 & 2011

Harris County Tax Office / Director & Legal Counsel / 2001 - 2006

- Operational director and member of executive staff
- Managed and reported on activities of various departments
- Oversaw all litigation, collection activities, foreclosure sales, condemnations, and bankruptcy
- Supervised outside litigation firms
- Representative of Tax Office on Interlocal Committee
- Managed and responded to all public information requests and media inquiries
- Advised officeholder on various legal, administrative, and operational issues
- Frequently handled media inquiries on behalf of Paul Bettencourt
- Proposed, drafted, and lobbied legislation
- Developed new tax foreclosure procedures

Harris County Attorney / Assistant County Attorney / 1998 - 2001 Appellate and General Counsel Divisions

- Assisted in drafting legislation
- Presenter for in-house CLE on new discovery rules
- Liaison to Harris County Tax Office and Paul Bettencourt
- Developed and implemented new procedures for organizing foreclosure sales
- Member of Open Records Committee
- Member of Opinion Committee

Colton Investment Corporation / General Counsel / 1998

- Managed all warranty issues with homeowners and contractors
- Managed all arbitrations
- Negotiated various contracts

Jacqueline Lucci, P.C. / President, Attorney / 1993 - 1998

- Appellate practice, with a concentration in commercial litigation
- Lead appellate counsel, successfully briefed and argued several cases to various Courts of Appeals
- Prepared brief and presented oral argument in precedent-setting case to the Supreme Court of Texas

Education

South Texas College of Law / Juris Doctorate, 1992

- Dean's List and Order of the Lytae
- Board of Advocates, Director
- Delta Theta Phi, Exchequer
- National Moot Court Team, final pen and oralist

Lynn University, f/k/a College of Boca Raton / BS - Business Administration, 1987

- Summa Cum Laude
- Completed 2-year curriculum in 13 months

TRINITY MINERAL MANAGEMENT BREAKFAST

Eminent Domain



Presented by:
Jacqueline Lucci Smith
Lucci Smith Law, PLLC



OVERVIEW OF STATUTORY CONDEMNATIONS

TEXAS PROPERTY CODE (TCP)
CHAPTER 21

PUBLIC USE AND NECESSITY

- PUBLIC USE
 - The Project the Property is being acquired for serves a public use.
- NECESSITY
 - The Property taken is necessary to advance the public use.
 - Can't take more than needed
 - Can't take greater interest than needed



BONA FIDE OFFER

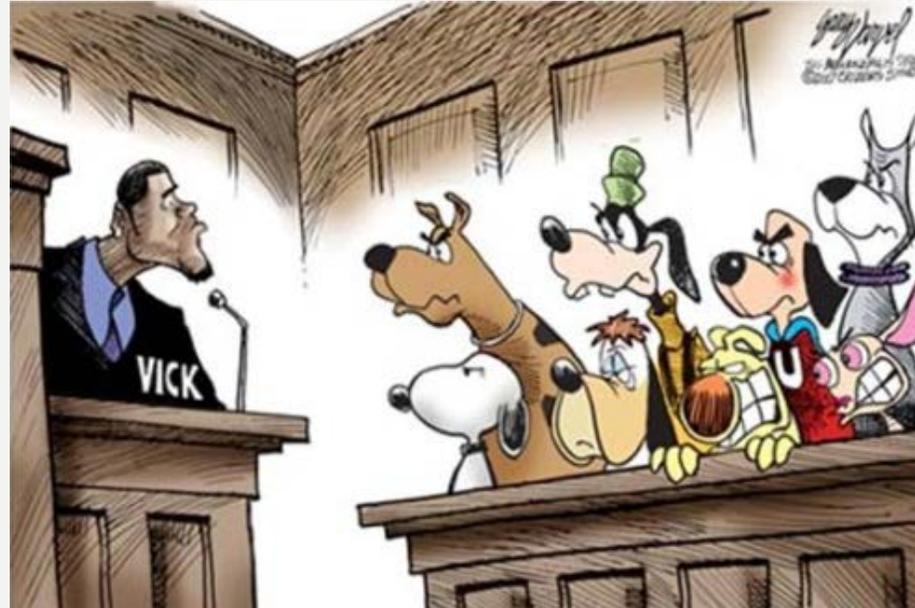


- Initial Offer
 - Written
 - Landowner's Bill of Rights (LBOR) usually included.
 - Does not require an appraisal, but TxDOT includes one.
 - Must give LO 30 days to respond before sending final offer.
- The Final Offer
 - Written
 - Must be equal or greater than included appraisal of the value of part taken and damage to remainder
 - Copy of deed, easement or conveyance
 - LBOR
 - Must give LO at least 14 days to respond before filing suit.

THE LAWSUIT

- Administrative Phase

- Judge appoints 3 Special Commissioners to determine market values of the property taken and damages to remainder
- SC's hold hearing, listen to evidence, assess damages, sign and file Award
- Any party may object to Award
 - No objection- Award becomes final, non-appealable judgment
 - Objection- converted to judicial proceeding, like any other civil case



- General Points:

- Condemnor must deposit amount of the award into court's registry, which sets the date of take.
- LO bears the burden of proving greater value and essentially becomes the Plaintiff.
- If the LO withdraws the money from the court's registry, he cannot challenge the ED authority, i.e. right to take. The only issue in the case is damages, FMV of the part taken and damages to the remainder property.



85TH TEXAS LEGISLATURE

**CURRENT BILLS RELATING TO
EMINENT DOMAIN**

HB 2090

REP. VANDEAVER



- **Acquiring Family Heritage Property through Eminent Domain**

- Real Property continuously owned within the same family for 100 years or more.
- LO has burden to provide certified copies of deeds to prove family ownership.
- Condemnor must offer 150% of appraised value and damages to remaining property.
- Allows Project Influence to be considered in determining value

HB 2160/2161

REP. WRAY

- **Damages for high speed rail**

- High Speed Rail means private railroad company that creates, funds, develops, or operates a rail system operating at speeds greater than 100 mph (but not over 120).
- TPC 21.042 does not apply, and any denial or impairment of access is compensable
 - TPC 21.042 – Damages include material impairment of direct access affecting the market value of remaining property, but not consider circuitry of travel or diversion of traffic.
- Provision or routing of utilities is also compensable.



OTHER HIGH SPEED RAIL BILLS

- HB 2173 and SB 982 – State Legislators may request report from TxDOT proposed high speed rail projects, with specific reporting requirements.
- HB 2179 and SB 979 – Authorizing use of ED by private companies except for intercity service.





SB 243 BURTON

A Commissioners Court may disapprove of a condemnation:

(1) by public entity of a residential homestead if the property is located outside the territorial boundaries of the public entity; or

(2) by a private entity.

LO petitions CC and CC holds a hearing to approve or disapprove the condemnation. Entity cannot file petition unless CC approves.



HB 2631 REP DUTTON

Allowing residents of a city to require the city to take remedial action against an alleged public nuisance that is occurring in the city, including the use of eminent domain.

HB 2556

REP HOLLAND



- **Bona Fide offer Requirements:**

- Appraisal in final offer must include damages arising from
 - Any construction, maintenance, repair replacement, or removal of a structure on the property made necessary by the proposed acquisition
 - Any replacement, relocation, or removal of, or injury to, any other property, real or personal, including livestock, growing crops, or other growing plants.



HB 2684, BURNS

HB 3687 ASHBY

HB 2694 KACAL

SB 740, 742 KOLKHORST

PRIVATE ENTITIES ONLY

Bona Fide Offers

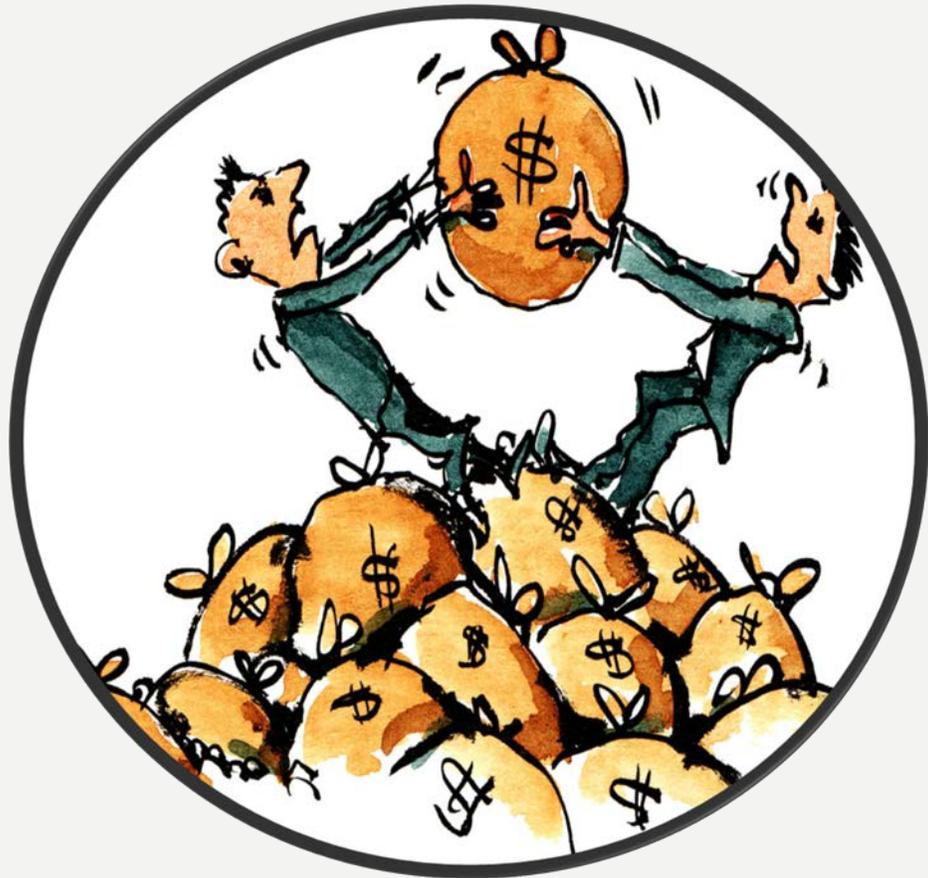
Condemnor has duty to disclose amended appraisal prior to SCH

Specific Requirements for PL

Including max #, diameter, product, surface use, width, depth, double ditching, no transfer to non-ED entity, non-exclusive, limited 3P access, specific access points, certain damages, including growing crops and livestock, (current and future, in/out and of easement area), no other use, lock gates (livestock), maintain of ROW.

Specifics for Electrical ROW

Including max #, spacing and capacity, surface uses, width, non-exclusive, limited 3P access, certain damages, lock gates, maintain ROW, no other uses, indemnification and insurance.



HB 2684 BURNS (CON'T)
HB 3687 ASHBY
SB 740, 742 KOLKHORST

PRIVATE ENTITIES ONLY

- **Evidence and Damages:**
 - Allows evidence of the price paid for acquiring easements without use of ED. (HB 3441)
 - If award by SC or Court is > 20%, Condemnor shall pay costs and fees.
- **To Appeal Trial Court Judgment:**
 - Condemnor must pay LO or post bond in the amount of the TC judgment.
 - Failure to comply within 30 days after notice by LO:
 - dismissal of appeal and TC judgment is final;
 - loss of right to take, including occupancy damages, costs and fees; cost to restore property.
- **Establishes Date of Take for Property Taxes**

HB 3170 REP BELL

- **LO Rights**
 - **Condemnation Proceeding dismissed if Condemnor Fails to Comply with Requirements of TPC**
 - **Currently not all TCP requirements are considered jurisdictional based on case law. This makes all requirements jurisdictional.**
 - **Awards costs, fees and expenses.**



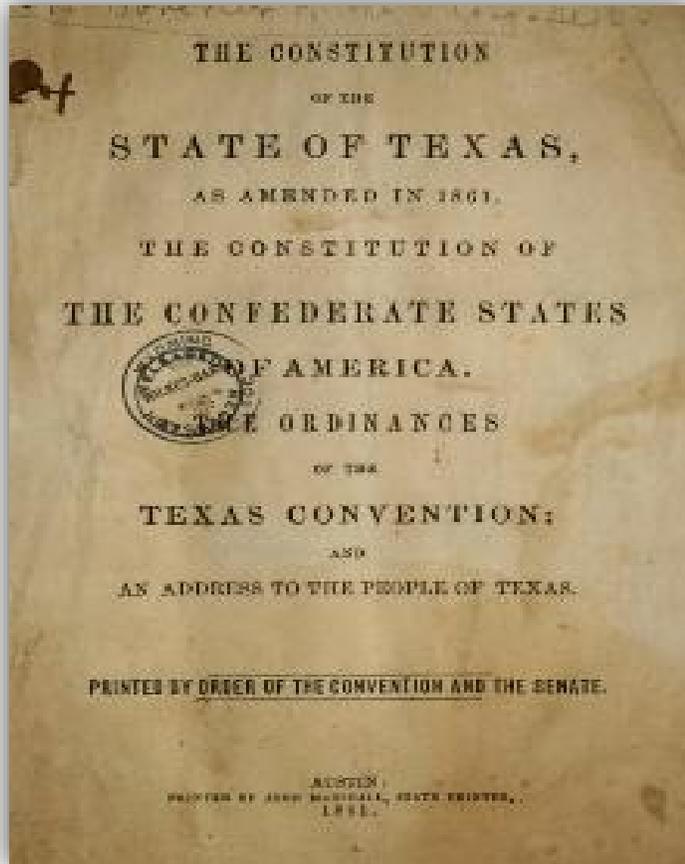
HB 528 SCHOFIELD

- **Right to Repurchase Property**
 - Establishes criteria for determining when a LO is entitled to repurchase the property if no progress/publc use
 - Must meet 3 of these 5 criteria
 - Performance of labor, provision of materials, hiring of architect, engineer, etc., application for funding or permits.
 - Previously, the governing body need only approve the Project.
- **SB 628 adds section for navigation districts, only requiring one criteria be met.**



HJR 40 REP SCHOFIELD

CONSTITUTIONAL AMENDMENT



A person from whom a real property interest is acquired by an entity through eminent domain for a public use, or that person's heirs, successors, or assigns, is entitled to repurchase the property under the conditions provided by this section. A governmental entity shall offer to [may] sell real property acquired through eminent domain to the person who owned the real property interest immediately before the governmental entity acquired the property interest, or to the person's heirs, successors, or assigns, at the price the entity paid at the time of acquisition if:

- (1) the public use for which the property was acquired through eminent is canceled;
- (2) no actual progress is made toward the public use during a prescribed period of time; or
- (3) the property is unnecessary for the public use.

This proposed constitutional amendment shall be submitted to the voters at an election to be held November 7, 2017. The ballot shall be printed to provide for voting for or against the proposition:

"The constitutional amendment to require a governmental entity to offer for sale under certain conditions real property acquired through eminent domain to the previous owner at the price the entity paid to acquire the property."



SB 741 KOLKHORST

- Bona fide offer may include a royalty or % of net profits to the LO generated from the project necessitating the acquisition.
- The SC shall consider the value of the royalty or % in assessing damages.
- The SC may consider the price paid for privately negotiated easements without ED.



SB 786 NICHOLS

Eminent Domain cannot be used for recreational purposes, including parks, sidewalks, greenbelts, and hike & bike trails,



SB 1979 SCHWERTNER

Agricultural Tax Exemption and
Rollback Taxes

If Property use changes, triggering
a rollback, the rollback taxes are
the personal liability of the
condemning authority.



ANY
QUESTIONS?

A large, white, scalloped-edged shape is centered on a gold background. The shape is roughly circular with a decorative, wavy border. Inside this shape, the words "THANK YOU" are written in a bold, black, sans-serif font.

THANK YOU

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