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BREAKFAST SERIES for
Surface and Mineral Owners
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- DATE:** March 20, 2018
- TOPIC:** Eminent Domain Reform--Problems, Principles and Proposed Legislation
- LOCATION:** San Antonio Petroleum Club
8620 N New Braunfels, Suite 700
San Antonio, TX 78217-6363
P 210.824.9014
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- 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:** Eric Opiela
Eminent Domain Reform--Problems, Principles and Proposed Legislation
- Constitutional Right to Just Compensation, not Preventing the Taking
 - What Problems do Landowners Face?
 - Easement Negotiation Terms
 - For Most, it's Not About the Money
 - Cost of Negotiation / Attorney Fees Swamping the Recovery
 - Last Session's Eminent Domain Reform Effort
 - What to Look Forward to in the Upcoming Session

Eric Opiela
South Texans' Property Rights Association
Director, Chair Eminent Domain Committee
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Eric Opiela is a 5th generation Texan, rancher, and attorney. With a working ranch of over 2000 acres in Karnes, Bee, and Live Oak Counties, Eric understands why the rights of private property owners are sacred.

As Chairman of the Eminent Domain Committee and a director of the South Texans' Property Rights Association, and as a real estate attorney Eric stood up for landowners by taking on overreaching federal government and intrusive state agencies—and winning. Mr. Opiela is also a recognized expert in Texas groundwater and property law, having represented land owners for over a decade. He also is a published scholar on the Texas Rule of Capture and serves as a member of the Texas Comptroller's Endangered Species Task Force.

Eric served as the Executive Director of the Republican Party of Texas from 2008-2009, and most recently was its Associate General Counsel from 2010-2017. He was Chairman of the Karnes County Republican Party for four years, represented Senate District 21 on the Texas State Republican Executive Committee for two terms, and represented Texas on the Credentials Committee of the last two Republican National Conventions. In addition to his volunteer service as an elected party official, he has represented numerous federal, state, and local candidates and political committees in campaign finance and election law matters.

He is also active in his community, serving as founding President of the Karnes City Independent School District Education Foundation, where he remains as a director, raising over a quarter of a million dollars annually for the rural schools of Karnes County, as Treasurer of the Catholic Community Foundation of the Archdiocese of San Antonio, and as a trustee of the Catholic Fraternity Fund, which provides investment opportunities for catholic charitable organizations in the Archdiocese and beyond.

Eric graduated with honors from the University of Texas at Austin and earned his law degree from the University of Texas School of Law. After law school, he clerked for The Honorable Mary Ellen Coster Williams, on the United States Court of Federal Claims in Washington, DC. He is admitted to practice before the Supreme Court of the United States, the United States Court of Appeals for the Federal Circuit, and the United States District Court for the Western District of Texas.

Eric and his wife, Lara, split time between Karnes City and Austin with their two children, Natalie and Ryan.

Texas Eminent Domain-Past, Present, and Future

March 20, 2018

Trinity Mineral Management Speakers Series

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South Texans' Property Rights Association



South Texans' Property Rights Association

What is Eminent Domain?

Eminent Domain is the power of the government or authorized private entities to take private or public property interests through condemnation.

What is Condemnation?

Condemnation is the procedure that governmental bodies and authorized private entities must follow when they exercise their eminent domain authority to force the sale of a landowner's private property.

Limited by the United States Constitution:

“nor shall private property be taken for public use, without just compensation.” –U.S. CONST. ART. V

... and the Texas Constitution:

“(a) No person's property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person, and only if the taking, damage, or destruction is for:

(1) the ownership, use, and enjoyment of the property, notwithstanding an incidental use, by:

(A) the State, a political subdivision of the State, or the public at large; or

(B) an entity granted the power of eminent domain under law; or

(2) the elimination of urban blight on a particular parcel of property.

...

(d) When a person's property is taken under Subsection (a) of this section, except for the use of the State, compensation as described by Subsection (a) shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities shall be made; but all privileges and franchises granted by the Legislature, or created under its authority, shall be subject to the control thereof.”” –Tex.Const.Art. I, Sec. 17

and

“No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.”

–Tex. Const.Art. I, Sec. 17

Chapter 21, Texas Property Code:

I. Bona Fide Offer to Purchase Required – Section 21.0113, Property Code, requires Condemning Entities to make a bona fide offer. An entity with eminent domain authority has made a bona fide offer if:

- (1) an initial offer is made in writing to a property owner;
- (2) a final offer is made in writing to the property owner;
- (3) the final offer is made on or after the 30th day after the date on which the entity makes a written initial offer to the property owner;
- (4) before making a final offer, the entity obtains a written appraisal from a certified appraiser of the value of the property being acquired and the damages, if any, to any of the property owner's remaining property;
- (5) the final offer is equal to or greater than the amount of the written appraisal obtained by the entity;
- (6) the following items are included with the final offer or have been previously provided to the owner by the entity:
 - (A) a copy of the written appraisal;
 - (B) a copy of the deed, easement, or other instrument conveying the property sought to be acquired; and
 - (C) the landowner's bill of rights statement prescribed by Section 21.0112; and
- (7) the entity provides the property owner with at least 14 days to respond to the final offer and the property owner does not agree to the terms of the final offer within that period.

Chapter 21, Texas Property Code:

2. Under Texas law, condemning authorities are required to negotiate with landowners. *Lapsley v. State*, 405 S.W.2d 406 (Tex. Civ.App.—Texarkana 1966, writ ref'd n.r.e.) To satisfy the legal requirements, condemnation authorities must be able to demonstrate a good faith attempt to reach an agreement for the sale of the property. *City of Houston v. Plantation Land Co.*, 440 S.W.2d 691 (Tex. Civ.App.—Houston [14th Dist.] 1969, writ ref'd n.r.e.); see *State v. Dowd*, 867 S.W.2d 781 (Tex. 1993).

3. If the condemning entity is unable to reach an agreement on the damages (purchase price), the condemning entity must file a condemnation petition. The petition must:

- (1) describe the property to be condemned;
- (2) state with specificity the public use for which the entity intends to acquire the property;
- (3) state the name of the owner of the property if the owner is known;
- (4) state that the entity and the property owner are unable to agree on the damages;
- (5) if applicable, state that the entity provided the property owner with the landowner's bill of rights statement in accordance with Section 21.0112; and
- (6) state that the entity made a bona fide offer to acquire the property from the property owner voluntarily as provided by Section 21.0113.

4. An entity that files a petition must provide a copy of the petition to the property owner by certified mail, return receipt requested. (Sec. 21.012, Tex. Property Code).

Landowner's Bill of Rights:



THE STATE OF TEXAS
LANDOWNER'S
BILL OF RIGHTS

PREPARED BY THE



OFFICE OF THE
ATTORNEY GENERAL OF TEXAS



STATE OF TEXAS LANDOWNER'S BILL OF RIGHTS

This Landowner's Bill of Rights applies to any attempt by the government or a private entity to take your property. The contents of this Bill of Rights are prescribed by the Texas Legislature in Texas Government Code Sec. 402.031 and Chapter 21 of the Texas Property Code.

1. You are entitled to receive adequate compensation if your property is taken for a public use.
2. Your property can only be taken for a public use.
3. Your property can only be taken by a governmental entity or private entity authorized by law to do so.
4. The entity that wants to take your property must notify you that it wants to take your property.
5. The entity proposing to take your property must provide you with a written appraisal from a certified appraiser detailing the adequate compensation you are owed for your property.
6. The entity proposing to take your property must make a bona fide offer to buy the property before it files a lawsuit to condemn the property - which means the condemning entity must make a good faith offer that conforms with Chapter 21 of the Texas Property Code.
7. You may hire an appraiser or other professional to determine the value of your property or to assist you in any condemnation proceeding.
8. You may hire an attorney to negotiate with the condemning entity and to represent you in any legal proceedings involving the condemnation.
9. Before your property is condemned, you are entitled to a hearing before a court appointed panel that includes three special commissioners. The special commissioners must determine the amount of compensation the condemning entity owes for the taking of your property. The commissioners must also determine what compensation, if any, you are entitled to receive for any reduction in value of your remaining property.
10. If you are unsatisfied with the compensation awarded by the special commissioners, or if you question whether the taking of your property was proper, you have the right to a trial by a judge or jury. If you are dissatisfied with the trial court's judgment, you may appeal that decision.

CONDEMNATION PROCEDURE

Eminent domain is the legal authority that certain entities are granted that allows those entities to take private property for a public use. Private property can include land and certain improvements that are on that property.

Private property may only be taken by a governmental entity or private entity that is authorized by law to do so. Your property may be taken only for a public purpose. That means it can only be taken for a purpose or use that serves the general public. Texas law prohibits condemnation authorities from taking your property to enhance tax revenues or foster economic development.

Your property cannot be taken without adequate compensation. Adequate compensation includes the market value of the property being taken. It may also include certain damages if your remaining property's market value is diminished by the acquisition itself or by the way the condemning entity will use the property.

Chapter 21, Texas Property Code:

5. Jurisdiction and Venue - Section 21.001 of the Property Code states that district and county courts at law have concurrent jurisdiction over eminent domain proceedings. However, not all county courts at law have jurisdiction over eminent domain proceedings because the statute authorizing their creation does not authorize them to hear these types of proceedings. See, i.e., Tex. Gov't Code Secs. 25.1032, 25.2293 (special provisions for Harris and Travis County courts). Additionally, questions of title must be resolved by district courts. *Zucht v. City of San Antonio*, 698 S.W.2d 168 (Tex.App.—San Antonio 1984, no writ). If the defendant landowner is an estate, the proceeding must be held in the probate court handling the probate of the estate. Tex. Probate Code § 4B. If none of these restrictions apply, if there is a county court at law in a county, the condemnation proceeding must be filed in that court. Sec. 20.013, Tex. Prop. Code. The proper venue for a condemnation proceeding is the county in which the property owner resides—if the owner resides in the same county as the property. If the property owner does not reside in the same county as the property, proper venue lies in any county in which at least part of the condemned property is located. *Id.*

6. Special Commissioners – Sec. 21.014, Tex. Prop. Code:

- (a) The judge of a court in which a condemnation petition is filed or to which an eminent domain case is assigned shall appoint three disinterested real property owners who reside in the county as special commissioners to assess the damages of the owner of the property being condemned. The judge appointing the special commissioners shall give preference to persons agreed on by the parties. The judge shall provide each party a reasonable period to strike one of the three commissioners appointed by the judge. If a person fails to serve as a commissioner or is struck by a party to the suit, the judge shall appoint a replacement.
- (b) The special commissioners shall swear to assess damages fairly, impartially, and according to the law.
- (c) Special commissioners may compel the attendance of witnesses and the production of testimony, administer oaths, and punish for contempt in the same manner as a county judge.

Chapter 21, Texas Property Code:

7. Hearing Procedures - Once appointed, the commissioners must schedule a hearing for the parties. Tex. Prop. Code Sec. 21.015. Written notice informing the parties of the time and place of the hearing must be given at least 20 days prior to the hearing. *Id.* Sec. 21.016(b). Notice of the commissioners' hearing may be served by anyone competent to testify (and therefore prove the notice was delivered). *Id.* Notice is accomplished, usually by the condemning entity acting for the commissioners:

1. By delivering a copy of the notice to a party, the party's agent or to the party's attorney;
2. If the property belongs to a deceased's estate, a minor or an otherwise legally disabled person and that person or estate has a legal representative, by delivering a copy to that representative; or
3. If the property belongs to a non-resident and such resident has not been personally served, the commissioners may use service by publication if the owner is unknown or if the owner of the property is avoiding service of process. *Id.* Sec. 21.016(d).

Unless the Property Code specifies otherwise, the Rules of Civil Procedure generally do not apply to service of notice for the commissioners' hearing.

Once proper notice has been served upon all potential parties, the special commissioners may convene a hearing and consider the evidence presented by each party. *Id.* Sec. 21.015(b). A landowner who makes an appearance before the special commission during the special commissioners' hearing waives any ability to subsequently claim that service was defective. *Jones v. City of Mineola*, 203 S.W.2d 1020 (Tex. Civ.App.—Texarkana 1947, writ ref'd). The special commissioners' hearing is an administrative proceeding, not a judicial proceeding.

Chapter 21, Texas Property Code:

Special commissioners have no authority to rule on questions of law, such as whether the condemning entity has the right to condemn the property at all. *Amason v. Natural Gas Pipeline Co.*, 682 S.W.2d 240 (Tex. 1984). As a result, the hearings are not required to follow strict rules of evidence and other procedures observed in a trial court. *Dueitt v. Harris County*, 249 S.W.2d 636, 639 (Tex. Civ.App.—Galveston 1952, writ ref'd). Special commissioners may compel the attendance of witnesses, necessitate the production of testimony, administer oaths, and punish parties for contempt in the same manner as a county judge. Tex. Prop. Code Sec. 21.014(c). The principal responsibility of the special commissioners is to assess the economic damages a landowner will incur as a consequence of the taking of the property. This duty involves a determination of the value of the land taken and the amount of consequential damages suffered by the landowner. *Texas Elec. Service Co. v. Perkins*, 23 S.W.2d 320 (Tex. 1930). The commissioners' authority over the condemnation proceedings ends once they file their decision with the appointing judge. The judge may not interfere with the proceedings before a decision has been filed, because the court has no such authority during the administrative proceedings. *Peak Pipeline v. Norton*, 629 S.W.2d 185, 186 (Tex. Ct.App.-Tyler 1982).

8. How are damages valued? - In fairly and impartially assessing damages, the special commissioners are governed by Sections 21.041 and 21.042 of the Property Code.

Section 21.041 provides that the commissioners shall admit evidence on the following topics:

- a. The value of the property being condemned;
- b. Any injury to the property owner;
- c. Any benefit to the property owner's remaining property; and
- d. The use of the property by the condemning entity seeking to acquire the property.

Chapter 21, Texas Property Code:

Section 21.042 sets out the parameters under which the special commissioners are to make their assessments:

1. Special commissioners shall assess the damages according to the evidence presented.
2. If an entire tract of land is taken, the damage to the property owner is the fair market value of the property at the time of the special commissioners' hearing.
3. If a portion of a tract of land is condemned, the commissioners shall determine the damage to the property owner after estimating the extent of the injury and benefit to the property owner. The special commissioners must also take into account the effect of the condemnation on the value of the property owner's remaining property. (The damages will be the fair market value of the portion taken and the damages, if any, to the remainder property as a result of the taking.) *State v. Carpenter*, 89 S.W.2d 194 (Tex. Comm'n App. 1936, opin. adopted).
4. When estimating injury or benefit, the special commissioners shall consider injury or benefit that is peculiar to the property owner and that relates to the property owner's ownership, use, or enjoyment of the particular parcel of real property—now or in the reasonable, foreseeable future. The commissioners may not consider injury or benefit that the property owner is likely to experience in common with the general public.
5. If a portion of a tract or parcel of real property is condemned for use in conjunction with a highway project, the special commissioners shall consider the special and direct benefits that arise from the project that are peculiar to the property owner and that relate to the property owner's use, ownership, and enjoyment of a particular parcel or the remaining property. Tex. Prop. Code Sec. 21.042(e)

Any valuation must always consider the highest and best use of the property—both immediately or in the reasonable, foreseeable future. *City of Austin v. Cannizzo*, 267 S.W.2d 808 (Tex. 1954).

Chapter 21, Texas Property Code:

9. Who pays for the condemnation proceeding? - After assessing damages (the appropriate compensation for the property), the special commissioners must then determine the cost of the condemnation proceeding. Section 21.047(a) of the Property Code states:

Special commissioners may adjudge the costs of an eminent domain proceeding against any party. If the commissioners award greater damages than the condemnor offered...the condemnor shall pay all costs. If the commissioners' award...is less than or equal to the amount the condemnor offered before proceedings began, the property owner shall pay the costs. Tex. Prop. Code Sec. 21.047(a).

Section 21.047(d) of the Property Code states:

If a court hearing a suit under this chapter determines that a condemnor did not make a bona fide offer to acquire the property from the property owner voluntarily as required by Section 21.0113, the court shall abate the suit, order the condemnor entity to make a bona fide offer, and order the condemnor to pay (1) all costs as provided by Subsection (a); and (2) any reasonable attorney's fees and other professional fees incurred by the property owner that are directly related to the violation. Tex. Prop. Code Sec. 21.047(d).

Chapter 21, Texas Property Code:

10. How do you appeal a Special Commissioner's Decision? - A condemnation proceeding only becomes a civil litigation subject to the courts' jurisdiction if objections to the commissioners' Award are filed with the appropriate court within the time prescribed by Section 21.018 of the Property Code.

Section 21.018 states that a party in a condemnation proceeding may object to the findings of the special commissioners by filing a written statement detailing both specific objections and the ground for these objections. The statement must be filed with the court that has jurisdiction over the condemnation proceeding. This filing must occur on or before the first Monday following 20 days from the date that the commissioners' findings were filed with the court. Tex. Prop. Code Sec. 21.018. However, the amount of time allotted to object the filing is tolled until the court clerk sends notice of the commissioners' award by certified or registered U.S. mail—return receipt requested—to the parties involved in the proceedings or their attorneys of record at their addresses of record. *John v. State*, 826 S.W.2d 138 (Tex. 1992). If no party files objections to the special commissioners' award within a timely manner, the decision of the commissioners becomes final and the court is without authority to try the case. *Sinclair v. City of Dallas*, 44 S.W.2d 465 (Tex. Civ.App.—Waco 1931, writ ref'd). The court must adopt the commissioners' award as a judgment of the court. Tex. Prop. Code Sec. 21.061. A party who files an objection to the special commissioners' award must ensure that notice of the citation (the appeal) is issued to the adverse party. If the objecting party fails to secure service of citation to the other party within a reasonable time, the trial court must dismiss the objections for want of prosecution and must also reinstate the special commissioners' award. *State v. Ellison*, 788 S.W.2d 868 (Tex.App.—Houston [1st Dist.] 1990, writ denied). However, some circumstances, such as filing one's own objections, may submit a party to the jurisdiction of the court even if a party has not been formally served. *City of Tyler v. Beck*, 196 S.W.3d 784 (Tex. 2006).

Chapter 21, Texas Property Code:

If objections to the commissioners' award are filed in a timely matter, the county court at law or district court at law would try the case "de novo." A trial de novo is a judicial proceeding in which the entire case is reconsidered. Neither party is limited to the claims or evidence presented during the special commissioners' hearing.


10. Then what? - After the commissioners make their decision, the condemnor may start construction of the project by posting adequate bond with the court. The construction continues even though either party might appeal. If neither party appeals, the process concludes. If appealed, landowners' attorney fees and appraiser fees cannot be recovered as part of a judgment even when the landowners prevail.




It's not all about the money...

- Never grant an exclusive easement. Always retain the right to grant joint use or occupancy of the easement as long as it does not unreasonably interfere with the condemnor's usage. Never grant a permanent, perpetual or irrevocable easement.
- If the proposal allows the installation of communication equipment or facilities (telecommunication or otherwise), limit them to private, nonpublic use. Otherwise, commercial use is allowed without additional compensation.
- Terminate the easement if not used continuously for a specific number of months. Never rely on abandonment to terminate the easement. The legal definition of the term includes more than just nonuse. Require the condemnor to remove all equipment and fixtures and reclaim the land and pay damages, once the easement ends.
- In addition to payment for the easement, include compensation for each structure placed on the property. If not, limit permitted structures to those placed within the easement during the construction phase. After that, require compensation for any structures added. Limit surface structure placement (including signage) to fence-lines.
- In all likelihood, the condemnor will assign the easement to another entity in the future. Require notification of the assignment as a condition for it to become binding on the landowner.
- What must the condemnor do with trees and brush removed from the easement? Must they be stacked and burned, shredded or buried? Must larger trees be cut and piled for firewood? Require that rocks exceeding a certain diameter be removed and stacked at locations designated by the landowner.

It's not all about the money...

- Require that berms and terraces be constructed on steep slopes to prevent erosion. Require reconstruction of terraces.
 - Do not allow the condemnor to enter and leave the premises wherever and whenever it pleases. Limit access solely to and through the easement. Temporary access outside the easement may be granted for additional compensation during the construction phase.
 - After the construction phase ends, require the condemnor to change the locks on all gates and give 24- to 48-hour advance notice of any subsequent entry except during emergencies.
 - Require welding crews to carry firefighting equipment or be accompanied by water trucks with high-pressure sprayers to prevent range fires. Make the condemnor liable for any fire damage resulting from its operations.
 - Get an indemnification agreement for tort and environmental liability caused by the condemnor's activities.
 - Require inclusion as an additional insured under the condemnor's liability policy.
 - Insert "Time is of the Essence" in the agreement. Without this language, there are no hard and fast deadlines for compliance with agreement provisions.
 - Deny any rights to hunt and fish on the property.
- 


It's not all about the money...

- Require all fences be braced before cutting. Specify how the braces will be constructed. Require corner post bracing.
 - Require the condemnor to install and maintain gates where fences are cut. Landowners may require a specific local contractor to do all fence work, gate installation and other similar work.
 - Require the landowner's permission to remove deer blinds and feeders from the easement during the construction period. Otherwise, they could be bulldozed or destroyed.
 - Specify that the condemnor takes subject to any and all existing easements, both visible and those of record. Also, it takes subject to all surface, wind, water and mineral leases on the property.
 - Never agree that the initial, lump-sum payment for the easement covers all damages. Present damages may be covered but not future damages. Make sure compensation includes damages outside the easement.
 - Require compensation for all livestock killed or injured as a result of the condemnor's operations. Compensation should include damages for any livestock or trophy game animals that escape when a fence is cut or a gate is left open, especially in cases of properties with high fences. Include the cost of rounding up the livestock and resulting damages from any diseases introduced into the herd.
 - Require restoration of the land within the easement at the end of the construction phase. Specify grass will be restored to the satisfaction of landowner. Also, specify how frequently the easement must be maintained.
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It's not all about the money...

- Some landowners may wish to deny the use of all chemicals (or certain chemicals) to control weeds and brush (no broad-spectrum herbicides to prevent loss of grass, otherwise a large "dead-zone" could be created along ROW).
- Require all trucks to be washed before entering the premises to prevent the spread of noxious weeds.
- Include specific monetary fines to be paid to landowner for each act of noncompliance.
- Never warrant title to the land. Specify the condemnor takes the title to the easement solely at its risk. If title fails, the landowner will not be required to return any consideration.
- Recent jury verdict: LaSalle Pipeline LP in McMullen County \$600,000 for 14 acres. \$625/rod. A rod=16.5 ft.

Special thanks to The Office of the Texas Attorney General; and the Real Estate Center at Texas A&M University for some of the content of this presentation, including some of these negotiation tips.



The Need for Reform...



The 2017 Legislative Session brought together an impressive coalition of landowner groups:

Texas and Southwestern Cattle Raisers Association

Texas Wildlife Association

Texas Farm Bureau

Texas Association of Realtors

South Texans' Property Rights Association

Texas Forestry Association

Texas Sheep and Goat Raisers Association

Texas Poultry Federation

Independent Cattlemen's Association of Texas

Texas Grain Sorghum Association

Plains Cotton Growers Inc.

Texas Land and Mineral Owners Association

Texas Association of Dairymen

Texas Cattle Feeders Association

Corn Producers Association of Texas

Riverside and Landowners Protection Coalition

Texas Grain and Feed Association

Texas Citrus Mutual

Texas Hill Country Heritage Association

Texas Coalition for Conservation

Texas Wheat Producers Association

Texas Agricultural Land Trust

Ranchers and Landowners Association of Texas

Texas Nursery and Landscape Association

Tax Exchange Institute

Greater Edwards Aquifer Alliance

Central Texas Private Property Rights Coalition

TEXANS for PROPERTY RIGHTS

We proposed common sense reforms:

1. REIMBURSEMENT OF LANDOWNER COSTS AND EXPENSES

- Due to litigation costs and other legal expenses, landowners who challenge in courts for just compensation are often never made whole when their property is taken.
- Condemnors should be required to pay the costs and fees incurred by property owners in eminent domain proceedings if final damages awarded are greater than 125 percent of the entity's offer.

2. BOND REQUIREMENT

- Some condemnors have refused to purchase a bond and then claimed bankruptcy or insolvency to avoid payment to the landowner for just compensation.
- As a condition of appealing a judgement, a condemning entity should be required to either pay the award or secure a bond in the amount of the award in order to guarantee payment to a prevailing landowner at the conclusion of the legal proceedings.

3. ROYALTY PAYMENTS

- Often landowners are not aware that they have the ability to request royalty payments as an option in negotiating payment.
- Statute should state condemning entities and landowners can agree to royalty payments. This option should be permissive but noticeably available to landowners.

4. PROPERTY RIGHTS PROTECTION IN BONA FIDE OFFER

- While state law grants the power of eminent domain to public and private entities there is hardly any oversight or protections to keep the entities who exercise this authority acting in good faith. It is left up to landowners to protect themselves against lowball offers and bad actors. This is difficult to do when they are provided little transparency as to the nature of the project for which their land is condemned for public use.
- As a requirement of a true bona fide offer a condemning entity should disclose certain information about the project and provide a minimum amount of property right protections in order to be allowed to condemn.

We proposed common sense reforms: (continued)

5. DISCLOSURE OF APPRAISALS

- Some condemning entities are taking advantage of a loophole in the law regarding appraisals. Although entities will make an appraisal available at the time of initial and final offer, they are being allowed to present a new or updated appraisal immediately before a commissioners court hearing. Meanwhile, landowners are required to provide appraisals no later than three business days prior to a hearing.
- Appraisals or opinions of property value, and damages caused by the condemnation, should be made available to the landowner at the time of the initial and final offer, no less than three business days prior to the special commissioners court hearing.

6. VALUATION OF EASEMENTS

- As the basis for assessing damages to a landowner from a condemnation, evidence of sales of freely negotiated comparable easements are usually not admissible in condemnation proceedings.
- The court should admit evidence on the price paid for pipeline or powerline rights-of-way in privately negotiated transactions made in the absence of condemnation authority.

7. ENFORCEABILITY OF POSSESSION AND USE AGREEMENTS

- There are instances where landowners give possession of their property to a condemning entity through possession and use agreements. Any written agreement made between the condemning authority and the property owner during a condemnation case should be enforceable.

8. PROPERTY TAXES

- When landowners transfer possession of property to condemning entities under possession and use agreements, they still have to pay taxes on that property. Dispossessed property owners should not have to pay taxes on land once exclusive possession is granted to an entity with eminent domain authority.

We will be back next session...



January 21, 2018

Dear Representative,

Thank you for making the decision to serve the people of Texas in elective office. The challenges that face our state are serious, and they require the attention of thoughtful leaders who are willing to invest their time to seek office and find solutions. In this spirit, we look forward to working with you to achieve solutions that will preserve, protect, and defend private property rights in Texas.

Some protections for private property rights exist in Texas law. Unfortunately, other protections require legislative attention to update and strengthen based on the current challenges to private property rights.

As you run for office, we ask that you consider this opportunity to demonstrate your support for private property rights by joining us in advocating for these basic, common-sense principles of eminent domain reform:

- 1. Full disclosure of size, location, product(s), and number of utilities/roadways/pipelines to be installed**
- 2. Incentives for fair and reasonable first offers of purchase prices by condemning entities**
- 3. Disclosure of all appraisals in advance of purchase transactions and appeals**
- 4. Admission of all evidence of land values in appeals proceedings**
- 5. Protection against unfair property taxation obligations**
- 6. Bonding requirements to ensure against default by condemning entities**

By agreeing with these principles, you can communicate to your voters and we can communicate to our fellow property rights organizations, some with thousands of members that you join with us in favoring responsible reforms that will better protect private property and curb eminent domain abuses.

The principles that we have listed provide policy solutions that promote the fair and just use of eminent domain authority while protecting our Texas heritage of private property rights. We welcome all candidates for state office to publicly agree with these principles.

Please let us know if you agree with these six principles so that we can disseminate that information throughout the property rights community. Thank you again for your willingness to serve the people of Texas. We look forward to hearing from you.

Sincerely,

Berdon Lawrence
Board Chair

Eric Opiela
STPRA Eminent Domain Committee Chair

How can you help?

1. Get your Representative / Senator / Candidates to sign on with us and support the principles in our letter.

2. Give us your stories. Legislators need to know this is a real problem impacting constituents who vote in their district.

3. Join us. www.stpra.org www.texansforpropertyrights.org

