**TEXAS COURT OF APPEALS,
THIRD DISTRICT, AT AUSTIN**

NO. 03-18-00738-CV

Kimberley Ann Gunnarson, Individually and as Co-Trustee of the Trusts Created Pursuant to the Terms of the Last Will and Testament of Ivar Leonard Gunnarson, Deceased, and Gunnarson Outdoor Advertising, Inc., Appellants

v.

The State of Texas, Appellee

**FROM THE COUNTY COURT AT LAW
NO. 2 OF HAYS COUNTY NO. 15-0261-C,
THE HONORABLE DAVID GLICKLER,
JUDGE PRESIDING**

MEMORANDUM OPINION

This is an appeal from an award of compensation for real estate and fixtures the State condemned pursuant to Chapter 21 of the Texas Property Code, which requires a commission of laymen to determine the value of condemned property but allows an aggrieved party to seek judicial review of the resulting award. *See* Tex. Prop. Code §§ 21.001–.103 ("Eminent Doman"). Appellants Gunnarson Outdoor Advertising,

Inc., and Kimberly Ann Gunnarson[1] contend the trial court misconstrued the holdings of *State v. Clear Channel Outdoor, Inc*., 463 S.W.3d 488 (Tex. 2015), and *State v. Central Expressway Sign Assocs*., 302 S.W.3d 866 (Tex. 2009), when it sustained the State's objections to certain evidence and then reduced the commission's award of compensation from $745,000 to $245,010. We will affirm in part and reverse and remand in part.

BACKGROUND

As relevant to this appeal, Ms. Gunnarson owned a .413-acre tract of land along State Highway Loop 82 (also known as Aquarena Springs Drive) in San Marcos, Texas. This narrow tract of land—just 50 feet wide and 408 feet long and located between a railway and an access road—is situated near the football stadium at Texas State University, making the tract particularly desirable for outdoor advertising. For more than a decade, the tract had supported two double-sided billboards. Ms. Gunnarson would lease the improved tract to Gunnarson Outdoor, an advertising corporation she owns and operates.[2] Gunnarson Outdoor would then rent the four billboard faces to various advertising clients. On June 23, 2015, the State filed suit in a Hays County court at law, seeking to condemn the

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[1] For clarity, we will refer to Kimberly Ann Gunnarson as Ms. Gunnarson, the corporation as Gunnarson Outdoor, and the two collectively as Gunnarson.

[2] Ms. Gunnarson is the majority shareholder of the corporation. Family members apparently own a small percentage of shares but are not named as individual defendants.

tract of land and remove the billboards to allow room to improve Loop 82.

EMINENT DOMAIN

Our state constitution provides, "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." Tex. Const. art. I, § 17. "If an entity with eminent domain authority wants to acquire real property for public use but is unable to agree with the owner of the property on the amount of damages, the entity may begin a condemnation proceeding by filing a petition in the proper court." *See* Tex. Prop. Code § 21.012. "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." *See id.* § 21.014(a). Those commissioners must "swear to assess damages fairly, impartially, and according to the law." *Id*. § 21.014(b).

Compensation is constitutionally "adequate" if it reflects market value, defined as "the amount a willing buyer would pay a willing seller for the property." *See Central Expressway*, 302 S.W.3d at 871. "Texas recognizes three approaches to determining the market value of condemned property: the comparable sales method, the cost method, and the income method." *Id.* (citing *City of Harlingen v. Estate of Sharboneau*, 48

S.W.3d 177, 182 (Tex. 2001)). "The comparable sales method is the favored approach, but when comparable sales figures are not available, courts will accept testimony based on the other two methods." *Id*. (citing *Sharboneau*, 48 S.W.3d at 182–83). "The cost approach looks to the cost of replacing the condemned property minus depreciation." *Id*. (citing *Sharboneau*, 48 S.W.3d at 183, and *Religious of the Sacred Heart v. City of Houston*, 836 S.W.2d 606, 615–16 (Tex. 1992)). "The income approach is appropriate when the property would be priced according to the rental income it generates." *Id*. (citing *Sharboneau*, 48 S.W.3d at 183, and *Polk County v. Tenneco, Inc*., 554 S.W.2d 918, 921 (Tex. 1977)).

Where condemned property is subject to multiple interests—for example, those of an owner, a lessee, and a sublessee—the "undivided-fee rule" provides that "the property is valued for condemnation purposes as if it were owned by a single party." *See id.* at 873 (citing *State v. Ware*, 86 S.W.3d 817, 822 (Tex. App.—Austin 2002, no pet.), and *Aronoff v. City of Dallas*, 316 S.W.2d 302, 307–08 (Tex. App.—Texarkana 1958, writ ref'd n.r.e.)). "The purpose of the rule is to award full compensation for the land itself, and not for the sum of the different parts." *Id*. (citing *Ware*, 86 S.W.3d at 824). "While each interest holder is entitled to a share of the compensation award, the award should be paid for the property itself, then apportioned between them." *Id*. (citing *Aronoff*, 316 S.W.2d at 307–08) (cleaned up). "When the property is subject to a lease, the fact-finder first determines the market value of the entire property as though it belonged to one person, then

apportions that value between the lessee and the owner of the fee." *Id*. (citing *Urban Renewal Agency v. Trammel*, 407 S.W.2d 773, 774 (Tex. 1966), and *Aronoff*, 316 S.W.2d at 302)).

When a factfinder must determine the market value of commercial property, "Texas law allows income from a business operated on the property to be considered in . . . two situations: (1) when the taking, damaging, or destruction of property causes a material and substantial interference with access to one's property, and (2) when only a part of the land has been taken, so that lost profits may demonstrate the effect on the market value of the remaining land and improvements." *Id*. at 871 (citing *City of Austin v. The Avenue Corp.*, 704 S.W.2d 11, 13 (Tex. 1986), and *City of Dallas v. Priolo*, 242 S.W.2d 176, 179 (Tex. 1951)). "Absent one of these two situations, income from a business operated on the property is not recoverable and should not be included in a condemnation award." *Id*. Our state's highest court has applied this principle to outdoor advertising. *See Clear Channel*, 463 S.W.3d at 497 ("Valuing the billboards separately from the land cannot afford Clear Channel compensation for lost business income."); *Central Expressway*, 302 S.W.3d at 871 ("We are not inclined to create an exception for land on which a billboard is placed.").

PROCEDURAL HISTORY

After the State filed its petition for condemnation and Gunnarson filed its response, the trial court

appointed three special commissioners to determine the value of the condemned property and to calculate an award of damages. The commission held a hearing on June 30, 2015, and heard the following testimony:

- The State's appraiser, Lory Johnson, estimated the value of the land based on projected rental income and the value of the billboards using replacement cost less depreciation. She did not include Gunnarson Outdoor's advertising revenue. She recommended compensation of $125,000 for the tract and $120,010 for the two double-sided billboards.
- Gunnarson's appraiser, David Bolton, received instructions from Gunnarson's counsel to assume that the "gross advertising revenue from the signs is includable" when appraising the value of the billboards. Relying solely on the gross annual revenue Gunnarson Outdoor received from its advertisers, and after making certain adjustments not at issue here, he estimated the value of the condemned tract and its billboards as $1.28 million.
- Ms. Gunnarson testified as property owner and estimated a value of over $1.6 million for the tract and the two billboards. She based this figure on the net operating income Gunnarson Outdoor receives from its advertisers and what she referred to as a "multiplier of 18." It is unclear under what authority or theory she chose this multiplier.

All three witnesses testified that the best and highest use of the tract is for outdoor advertising. After

reviewing the evidence, the special commissioners awarded Gunnarson $745,000 for the condemned tract of land and the two billboards.

Both sides objected to the $745,000 award and sought de novo review, *see* Tex. Prop. Code § 21.063, with each side characterizing the award as inconsistent with recent precedent. Shortly before the State condemned Ms. Gunnarson's property, the Supreme Court of Texas had addressed the calculation of damages resulting from the condemnation of real property containing outdoor advertising structures. *See generally Clear Channel*, 463 S.W.3d 488. The Court explained, "[A] billboard should be reflected in the valuation of the land at its highest and best use," but that "the loss of the business is not compensable and cannot be used to determine the value of the billboard structure." *Id.* at 490. The Court then held, "'[E]vidence of valuation based on advertising income' is inadmissible, while '[g]eneral estimates of what the property would sell for considering its possible use as a billboard site are acceptable.'" *Id*. at 497 (quoting *Central Expressway*, 302 S.W.3d at 874).

While preparing for trial to the bench, the State obtained another expert—Matthew Whitney—to estimate the value of the condemned tract and its billboards. To estimate the value of the tract of land, he relied on the gross rental income received by other owners of land leased to billboard operators and calculated an appraised value of $114,314. He appraised the value of the billboards using replacement cost less

depreciation, resulting in an estimated value of $76,500 and a total recommended compensation of $190,814.

The parties raised cross-objections to the evidence regarding market value, with Gunnarson arguing that Whitney had improperly excluded the "income evidence" deemed admissible and relevant by the Supreme Court of Texas in *Clear Channel*, 463 S.W.3d at 497–98. The State, meanwhile, argued that Gunnarson's expert witness had improperly relied upon the "business income generated by the billboards" that the *Clear Channel* Court expressly held inadmissible as evidence of property value, *see id*., and maintained that Ms. Gunnarson herself could not satisfy the standard governing reliability of an owner's testimony on property value, *see generally Natural Gas Pipeline Co. of Am. v. Justiss*, 397 S.W.3d 150 (Tex. 2012). The parties also filed cross-motions for summary judgment on the ultimate issue before the court: the calculation of just compensation for the condemned property.

After a hearing on the cross-objections to the witnesses and the cross-motions for summary judgment, the trial court sustained the State's objections to Bolton's appearance as witness and to his appraisal, which the court described as "prohibited by the Texas Supreme Court in Clear Channel." The trial court, in its own words, "further ruled that the defendant, Ms. Gunnarson, would not be allowed to testify as to her expert opinion on the issue of valuation, due to her failing to be able [sic] to meet the standard required by

Justiss." The court then overruled Gunnarson's objections to Whitney's methodology.[3]

Following these rulings from the bench, Gunnarson did not produce alternate evidence of market value. Instead, Gunnarson successfully sought a continuance of the hearing to seek mandamus review of the exclusion of Bolton's appraisal, Bolton's testimony, and Ms. Gunnarson's testimony on market value. This Court and the Supreme Court of Texas denied mandamus relief. *See In re Gunnarson*, No. 03-17-00045-CV, 2017 WL 474086, at *1 (Tex. App.—Austin Feb. 3, 2017, orig. proceeding [mand. denied]).

With this Court and the Supreme Court of Texas having denied Gunnarson's petitions for mandamus relief, the trial court issued its order on summary judgment, explaining in pertinent part:

> This Court finds that the only credible evidence of valuation before this Court is the State's evidence, and the State's only credible evidence indicates two valuations, one for $190,814.00 and $245,010.00. Though there are two different valuations provided by the State's witnesses, one in a certified appraisal by an expert witness, and one by an appraiser provided under oath in a contested hearing,

[3] Specifically, the county court at law denied Gunnarson's motion to exclude Whitney's testimony, sustained the State's motion to exclude Bolton's testimony and its motion to exclude Gunnarson's testimony on valuation, and denied Gunnarson's motion for summary judgment. Other rulings from this hearing are not at issue on appeal.

> the Court finds . . . there are no material facts in dispute under the state of this record in this matter, based on this Court's prior rulings, and that Summary Judgment for the State is proper, and grants the State's motion for Summary Judgment.

The trial court then awarded compensation of $245,010.00 based on the State's highest appraised value of the condemned property and ordered the return of approximately $500,000.00 of the monies the State had deposited in the court registry following the hearing before the special commissioners. The trial court subsequently amended its order granting the State's cross-motion for summary judgment to render take-nothing final judgment against Gunnarson. Gunnarson timely perfected this appeal.

DISCUSSION

Gunnarson raises what it describes as eight points of error. To facilitate this discussion, we will consolidate and summarize these arguments into three broad issues on appeal. *See Gene Hamon Ford, Inc. v. David McDavid Nissan, Inc.*, 997 S.W.2d 298, 304 n.9 (Tex. App.—Austin 1999, pet. denied) (consolidating points of error for discussion); *Niess v. State*, No. 03-11-00213-CR, 2012 WL 2383300, at *1 (Tex. App.—Austin June 21, 2012, no pet.) ("Though Niess raises these arguments in thirteen separate points of error, for convenience we have grouped the points of error into four legal issues on appeal."). First, Gunnarson alleges the trial court abused its discretion by sustaining the

State's evidentiary objections and overruling Gunnarson's objections to the State's witnesses. Second, Gunnarson argues the court erred in its disposition of the cross-motions for summary judgment. And third, Gunnarson contends that Chapter 21 of the Property Code and other statutes violate the United States and Texas constitutions.

Evidentiary Objections

In its challenges to the trial court's evidentiary rulings, Gunnarson complains that the court erroneously: 1) sustained the State's objections to Gunnarson's appraisal expert without allowing Gunnarson to submit a formal bill of exception on the excluded testimony; 2) sustained the State's objections to Gunnarson's testimony as the property owner; and 3) overruled Gunnarson's objections to the State's appraisal experts. "The qualification of a witness to testify as to value [of condemned property] is one for a trial court to determine, and will not be disturbed on appeal unless there is an abuse of discretion." *Huckabee v. State*, 431 S.W.2d 927, 932 (Tex. App.—Beaumont 1968, writ ref'd n.r.e.); *see also Larson v. Downing*, 197 S.W.3d 303, 304–05 (Tex. 2006); *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 499 (Tex. 2001). "'The test for abuse of discretion is whether the trial court acted without reference to any guiding rules or principles.'" *Broders v. Heise*, 924 S.W.2d 148, 151 (Tex. 1996) (quoting *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549, 558 (Tex. 1995)). "Moreover, we will not reverse a trial court for an erroneous evidentiary ruling

unless the error probably caused the rendition of an improper judgment." *Owens-Corning Fiberglas Corp. v. Malone*, 972 S.W.2d 35, 43 (Tex. 1998) (citing Tex. R. App. P. 44.1; *Gee v. Liberty Mut. Fire Ins.*, 765 S.W.2d 394, 396 (Tex. 1989)).

Exclusion of Bolton's Testimony

Gunnarson complains the trial court abused its discretion by misconstruing relevant precedent as requiring the exclusion of Bolton's valuation testimony on Gunnarson Outdoor's advertising revenue. It further insists that the trial court compounded that abuse by denying its request to file a bill of exception. The State disagrees, maintaining that the trial court correctly interpreted *Clear Channel*'s distinction between the rental income attributable to the land itself, which a factfinder may consider as evidence of fair market value, versus the "business income generated by the billboards," which he may not. *See Clear Channel*, 463 S.W.3d at 498. We agree with the State.

The admissibility of expert testimony is governed by Rule 702 of the Texas Rules of Evidence. Rule 702 requires that a witness be qualified to testify on the subject matter and "also requires the proponent to show that the expert's testimony is relevant to the issues in the case and is based on a reliable foundation." *See Robinson*, 923 S.W.2d at 556 (citing Tex. R. Evid. 702). In both *Central Expressway* and *Clear Channel*, the Supreme Court of Texas unequivocally held that revenue from outdoor advertising is not a reliable

foundation upon which an expert may base his estimated value of condemned real estate or fixtures.

Central Expressway was a dispute over the market value of a tract of land encumbered by three property interests: the fee simple, whose holder had already settled with the State; an easement owned by Central Expressway; and a leasehold owned by Viacom, which operated billboards it had erected in the easement pursuant to the terms of the lease. *See* 302 S.W.3d at 869. After the owner of the fee simple settled with the State and Viacom relocated its billboards, the remaining parties disagreed how to appraise the value of the easement. *See id.* Central Expressway and Viacom successfully urged the court to admit evidence of Viacom's advertising revenue and to exclude testimony from the State's expert, who did not incorporate that revenue into his valuation of the easement. *See id*. at 869–70. The court of appeals affirmed the resulting award, *see id.* at 870, but the Supreme Court deemed the exclusion of the State's expert witness an abuse of discretion, *see id*. The *Central Expressway* court reversed the award and remanded the case, clarifying: "On remand, the trial court should not allow evidence of valuation based on advertising income." *See id*.

Six years later, *Clear Channel* reaffirmed *Central Expressway*'s evidentiary holding. The case involved a dispute over the compensation due to Clear Channel as lessee of the condemned tract and owner of two billboards on that tract. *See* 463 S.W.3d at 490. Whereas in *Central Expressway* the owner of the billboard had relocated its advertising fixtures, *see* 302 S.W.3d at

869, Clear Channel did not move its billboards prior to condemnation, *see* 463 S.W.3d at 490. After the landowner and Clear Channel accepted a settlement offer of compensation for the fee simple and the leasehold, Clear Channel insisted on additional compensation for the two billboard structures destroyed in the condemnation. *See id*. at 491. The trial court agreed and allowed Clear Channel to produce its advertising revenue from the two billboards as evidence of market value, and the court of appeals affirmed the resulting award of damages. *See id.* On petition for review, the high court agreed with the lower courts that the State must compensate Clear Channel for the loss of its fixtures. *See id.* at 493–96. The Court cautioned, however, that "valuing the billboards separately from the land cannot afford Clear Channel compensation for lost business income that could not be recovered in [*Central Expressway*]," and emphasizing that "the property its expert valued—the billboard advertising operations—was not the property taken." *See id.* at 497. It then reversed the judgment and remanded for a new trial.

Gunnarson contends the trial court misconstrued this precedent when it sustained the State's objection to Belton's planned testimony. But *Central Expressway* and *Clear Channel*, taken together, preclude property valuation based on advertising revenue unless an exception applies.[4] Equally clear is the high court's

[4] The factfinder may, however, consider business revenue as some evidence of the best and highest use of the property. *See State v. Clear Channel Outdoor, Inc*., 463 S.W.3d 488, 498 (Tex.

position that a factfinder must calculate a single value for the condemned property, irrespective of how many competing interests encumber that property. In urging an alternate construction of this precedent, Gunnarson observes, "This site was income producing property—nothing more," and then posits the rhetorical question, "[W]hy is the valuation process for this site different from any other income producing site?" Yet the import of these two cases is that outdoor advertising *is* evaluated like any other income-producing endeavor. *See id.* at 873 (rejecting business owner's argument that billboards are "unique" as location-based income-producing structures). Thus, the trial court correctly deemed Belton's planned testimony inadmissible due to his improper reliance on gross advertising income as evidence of the value of the condemned tract and the fixtures upon it.

Gunnarson characterizes *Clear Channel* and *Central Expressway* as distinguishable from the present case due to the close relationship between Ms. Gunnarson as the landowner and Gunnarson Outdoor as the leaseholder. Gunnarson contends, "In this case, the ownership of the land, the billboards, and the grandfathered permits are integrated so that the income stream is directly and verifiably tied to the land" and complains that "[t]he State had no evidence of condemnations of billboard properties with an integrated

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2015) ("The business income may be some indication of the rental value of the land for use as a billboard site, though other market factors are likely to be equally important, such as the availability of similar sites.").

owner." It is unclear where Gunnarson derived its "integrated owner" theory of property valuation, as it offers no supporting authority from Texas or any other jurisdiction. But regardless of whether Gunnarson considers this land encumbered by the separate property interests of Ms. Gunnarson and Gunnarson Outdoor or the single property interest of an "integrated owner," total compensation for the property is unchanged: it must reflect "the market value of the entire property as though it belonged to one person." *Central Expressway*, 463 S.W.3d at 497 (citing *Urban Renewal Agency*, 407 S.W.2d at 774, and *Aronoff*, 316 S.W.2d at 302)).

Gunnarson's other contentions regarding the lower court's interpretation of precedent center on the alleged unfairness of excluding evidence of business income given the disparity between Bolton's appraised value of $1.28 million and the State's appraisals of between $190,814 and $245,010. In its briefing here and below, Gunnarson cites various trade publications that describe unique aspects of outdoor advertising that render evidence of business income critical to estimating the fair market value of billboards. But this State's highest court has identified only two exceptions to the general rule excluding business income as evidence of property value, and that court has rejected arguments nearly identical to those Gunnarson raises here. *See In re Farmers Ins. Exch.*, 143 S.W.3d 354 (Tex. App.—Austin 2004, mand. denied) ("Absent further guidance from the Texas Supreme Court, we decline Relators' invitation to extend *CSR, Ltd. v. Link*, 925 S.W.2d 591,

596–97 (Tex. 1996), and *National Industrial Sand Ass'n v. Gibson*, 897 S.W.2d 769, 771 (Tex. 1995). . . ."));
Loe v. Murphy, 611 S.W.2d 449, 452 (Tex. App.—Dallas 1980, writ ref'd n.r.e.) ("Defendant is essentially asking us to either extend one of the exceptions discussed above, or to create a new exception. We decline to do either."). Thus, because no exception applies, the trial court acted within its discretion by excluding Bolton's testimony based on advertising revenue.

Exclusion of Gunnarson's Testimony

Gunnarson also complains of the trial court's ruling sustaining the State's objection to Ms. Gunnarson's planned testimony on market value. Although the court allowed Ms. Gunnarson to testify on other subjects, it concluded she could not satisfy the governing standard for offering lay testimony on property value. In some contexts, "[a] property owner may testify to the value of his property." *Justiss*, 397 S.W.3d at 155. However, "a property owner's testimony must be based on market, rather than intrinsic or some other speculative value of the property." *See id.* (quoting *Porras v. Craig*, 675 S.W.2d 503, 505 (Tex. 1984)). Here, Ms. Gunnarson based her planned testimony on the market value of her company's "face rents" and net advertising income. As already explained, the Supreme Court of Texas has repeatedly characterized evidence of business income as too "speculative" to reflect market value. *See*, *e.g.*, *Clear Channel*, 463 S.W.3d at 496; *Central Expressway*, 302 S.W.3d at 871 (citing *Herndon v. Housing Auth.*, 261 S.W.2d 221, 223 (Tex. App.—Dallas

1953, writ ref'd)). Thus, because Gunnarson's planned testimony was based on speculation rather than market value of the property, the trial court did not abuse its discretion in sustaining the State's objection and limiting Gunnarson's testimony to other subjects.

Exclusion of Stokes's Letter

Gunnarson complains that "the trial court erred in striking the Chris Stokes' [sic] letter," which included an advertising executive's opinion of the approximate value of the tract. Gunnarson asked Stokes to write the letter and had planned to have Bolton and Ms. Gunnarson incorporate his estimate into their own valuation testimony. Gunnarson contends that Bolton could properly have offered testimony regarding the letter because "[a]n expert may base an opinion on facts or data that the expert has been made aware of, reviewed, or personally observed." *See* Tex. R. Evid. 703. But even assuming the letter constitutes "facts or data" that Bolton had "been made aware of, reviewed, or personally observed," expert testimony still must rest on a reliable foundation, *see id.* R. 702, and Bolton's appraisal methodology did not provide one. Nor could the Stokes letter provide such a foundation, as no one was able to identify the basis for Stokes's valuation of the property. For example, during deposition, counsel asked Ms. Gunnarson, "Do you know the basis by which [Stokes] came up with the value?" She responded in the negative. When Bolton was asked if he knew of "any of the analysis that went on behind the letter" and its estimate, he also answered in the negative. The Stokes letter

thus could not have provided a reliable foundation for Bolton's testimony.

With respect to Ms. Gunnarson's anticipated reliance on the Stokes letter, the district court properly excluded the letter and its estimate. Ms. Gunnarson intended to rely on the letter as evidence of the property value stated therein, thus rendering the letter hearsay. *See id.* R. 801 (defining hearsay as declarant's statement not made during testimony at current proceeding but offered to prove truth of matter asserted). Gunnarson has not identified an exception such that the letter and its valuation might be admissible. *See id.* R. 802 (prohibiting admission of hearsay unless statute or rule provides exception). The district court therefore did not abuse its discretion in excluding the Stokes letter and its estimate of the condemned property's value.

Bill of Exception

We find unpersuasive Gunnarson's contention that the trial court abused its discretion in declining to allow a bill of exception or offer of proof on the excluded testimony and evidence. Gunnarson had presented both Ms. Gunnarson's testimony and Belton's appraisal to the special commissioners, and a record of their respective opinions—including the improper reliance on advertising revenue—was already before the trial court. The record also includes extensive deposition testimony regarding the Stokes letter, thereby rendering a bill of exception unnecessary. *See* Tex. R.

App. P. 33.2 (requiring bill of exception to preserve issues that "would not otherwise appear in the record").

Admission of State's Evidence

Gunnarson's challenge to the testimony of the State's expert is similarly unavailing. Gunnarson argues that "the Property was uniquely desirable for its highest and best use, and there was no evidence of a truly comparable property." Among the apparently desirable qualities of this tract were its location near the junction of Loop 82 and Interstate 35, its proximity to the football stadium, and the unusually low vacancy on the four faces of the billboards. As the trial court described it, "The [condemned property] was unique because: (i) it was located at a busy intersection, (ii) the billboards were visible from five separate roads, the Texas State University Bobcat Stadium along with associated parking areas, a baseball field and a golf course, and (iii) it was near a railroad crossing." In preparing his appraisal, Whitney evaluated tracts used for outdoor advertising along I-35 and other heavily traveled corridors in Hays County. He used those ground leases and the acreage of the condemned tract to estimate the market value of Ms. Gunnarson's land. Gunnarson contends Whitney's appraisal "should have taken into account the facts that the necessary permits were in place and that the site was especially suited to that use." But Whitney used tracts with similar operating permits to appraise the value of the condemned property, and Gunnarson has not identified any lack of reliability in Whitney's methodology. Thus, the trial

court did not abuse its discretion in admitting Whitney's testimony.

Having rejected each of Gunnarson's evidentiary challenges, we hold that the trial court acted within its discretion in overruling Gunnarson's objections to Whitney's testimony and in sustaining the State's objections to the testimony of Bolton and Ms. Gunnarson.

Summary Judgment

In its next issue, Gunnarson contends the trial court erred by granting the State's motion for summary judgment and denying Gunnarson's cross-motion for summary judgment. Both motions sought summary judgment on the market value of the condemned tract and billboards. Summary judgment is proper when the evidence before the trial court shows there are no disputed issues of material fact and the movant is entitled to judgment as a matter of law. *See* Tex. R. Civ. P. 166a(c). When multiple parties move for summary judgment on overlapping issues, we undertake de novo review of all evidence and issues presented, and, if the trial court erred, render the judgment the trial court should have rendered. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005); *see also* Tex. R. App. P. 43.2(c).

Gunnarson argues:

> In this case the trial court erred because the State's own evidence (as well as [Gunnarson's]) created a fact issue as to the fair market value of the Property. [Ms.] Gunnarson

> established through her testimony as the property owner a value of $1,600,000.00 because of its highly desirable location for a billboard. The State also introduced into evidence Lory Johnson's report and testimony. . . . With three valuations, Johnson's testimony creates a material fact question even before the trial court considered Whitney or Appellants' experts.

We agree. Even after the exclusion of Gunnarson's evidence of market value, the State's evidence alone created a genuine question of fact on the issue. It offered into evidence two appraisals of the real estate and fixtures: one of approximately $245,000 and one of approximately $190,000. These competing appraisals create a material question of fact regarding the fair market value of the condemned property. *See Read Rd. Mun. Util. Dist. v. Speed Shop Food Stores, Ltd*, 337 S.W.3d 846, 855–56 (Tex. 2011) (holding that appraisal originally offered at hearing before special commissioners remained relevant evidence of value of condemned property). And although the trial court resolved this dispute in Gunnarson's favor by awarding the higher of the appraised values, the two valuations together create a fact issue that precludes summary judgment. Thus, because the State did not meet its burden to establish fair market value as a matter of law, the trial court erred by granting its motion for summary judgment. We therefore sustain Gunnarson's point of error and reverse the entry of summary judgment and the award of damages.

Constitutional Challenges

In its final issue on appeal, Gunnarson challenges the constitutionality of Chapter 21 of the Property Code, Section 402.31 of the Government Code, and various related rules and regulations. Gunnarson argues:

> A review of the Texas Property Code reveals that the Texas statute only requires the State to make a bona fide offer to the property owner. There is no obligation to pay the property owner fair market value or just compensation. . . . This deficiency is further compounded in Texas Property Code Section 21.042(b), which directs special commissioners to calculate the property owner's damages as "local market value." There is no definition of local market value and nowhere does the legislature indicate that the damages of the condemnee must be "just compensation" or "fair market value" as that term [sic] is understood.

Gunnarson further complains that "[i]n this case, the State engaged in the most serious form of invasion of [Gunnarson's] rights and refused to justly compensate them" before alleging that "the statutes upon which the State relies to justify its actions are unconstitutional." Yet while Gunnarson argued below that the State's proposed compensation and the compensation awarded by the special commission are constitutionally inadequate, Gunnarson never pleaded or argued a constitutional challenge to the statutes or regulations themselves. "A constitutional challenge not raised properly in the trial court is waived on appeal."

Johnson v. Lynaugh, 800 S.W.2d 936, 939 (Tex. App.—Houston [14th Dist.] 1990, writ denied) (citing *Walker v. Employees Retirement Sys.*, 753 S.W.2d 796, 798 (Tex. App.—Austin 1988, writ denied)); *see also Mercer v. Phillips Nat. Gas Co.*, 746 S.W.2d 933, 936 (Tex. App.—Austin 1988, writ denied) ("Taking part in a proceeding which fixes liability without challenging the constitutionality of the law which gives rise to the cause of action may constitute a waiver of the right to question that law subsequently." (citing *Humbird v. Avery*, 195 U.S. 480, 502–03 (1904), and 16 *C.J.S. Constitutional Law* §§ 78–84 (1984))). We therefore do not address Gunnarson's argument.

CONCLUSION

Because the county court at law erred by granting the State's cross-motion for summary judgment, we reverse its Modified Order disposing of that motion to the extent it awarded Gunnarson $245,010 in compensation for the condemned real estate and fixtures. We affirm the order in all other respects and remand for further proceedings consistent with this opinion.

Edward Smith, Justice

Before Chief Justice Rose, Justices Triana and Smith

Affirmed in Part; Reversed and Remanded in Part

Filed: February 26, 2020

**TEXAS COURT OF APPEALS,
THIRD DISTRICT, AT AUSTIN**

JUDGMENT RENDERED FEBRUARY 26, 2020

NO. 03-18-00738-CV

Kimberley Ann Gunnarson, Individually and as Co-Trustee of the Trusts Created Pursuant to the Terms of the Last Will and Testament of Ivar Leonard Gunnarson, Deceased, and Gunnarson Outdoor Advertising, Inc., Appellants

v.

The State of Texas, Appellee

APPEAL FROM COUNTY COURT AT LAW NO. 2 OF HAYS COUNTY BEFORE CHIEF JUSTICE ROSE, JUSTICES TRIANA AND SMITH AFFIRMED IN PART; REVERSED AND REMANDED IN PART – OPINION BY JUSTICE SMITH

This is an appeal from the Modified Order signed by the trial court on November 14, 2018. Having reviewed the record and the parties' arguments, the Court holds that there was reversible error in the court's Modified Order. Therefore, the Court reverses the trial court's Modified Order to the extent it awarded Gunnarson

$245,010 in compensation for the condemned real estate and fixtures. We affirm that order in all other respects and remand for further proceedings consistent with this opinion. Each party shall bear its own costs relating to this appeal, both in this Court and in the court below.

NO. 15-0261-C

THE STATE OF TEXAS	§	CONDEMNATION
	§	PROCEEDING
V.	§	FILED
CURTIS LYLE GUNNARSON, ET AL.	§	IN THE COUNTY
	§	COURT AT LAW
	§	NO. 2
	§	
	§	OF HAYS COUNTY,
	§	TEXAS

MODIFIED
ORDER ON STATE'S CROSS MOTION FOR SUMMARY JUDGMENT

On December 13, 2016, the State of Texas filed a Cross Motion for Summary Judgment. A hearing was held on the competing Summary Judgment motions on January 5, 2017. At the time of the hearing the evidence before this Court was conflicting as to the only issue before this Court, namely, the value of the property taken by the State of Texas and to be compensated to Gunnarson. At the conclusion of the hearing, this Court ruled that Ms. Gunnarson's expert witness would not be allowed to testify, due to his use of a valuation scheme this Court believed was prohibited by the Texas Supreme Court in *Clear Channel*. This Court further ruled that the defendant, Ms. Gunnarson, would not be allowed to testify as to her expert opinion as landowner on the issue of valuation, due to her failing to be able to meet the standard required by *Justiss*. This issue was challenged in the appellate courts via a

writ of mandamus, which was denied without the merits being reached. Thus the delay between the January 2017 hearing and this Court's ruling.

This Court finds that the only credible evidence of valuation before this Court is the State's evidence, and the State's only credible evidence indicates two valuations, one for $190,814.00 and $245,010.00. Though there are two different valuations provided by State's witnesses, one in a certified appraisal by the expert witness, and one by an appraiser provided under oath in a contested hearing, this Court finds in equity that, there are no material facts in dispute under the state of the record in this matter, based on this Court's prior rulings, and that Summary Judgment for the State is proper, and grants the State's Motion for Summary Judgment, and finds in equity that the highest and best use of the property results in a "value of the property taken by the State of Texas and to be compensated to Gunnarson" is **TWO HUNDRED, FORTY FIVE THOUSAND TEN DOLLARS AND NO CENTS ($245,010.00)**, which represents the reasonable market value of the property and improvements thereon as of July 23, 2015, and the damages if any to Defendants' remaining property. The State of Texas is thus awarded a fee simple title in and to the property.

The Court orders that the remaining **FOUR HUNDRED, NINETY NINE THOUSAND, NINE HUNDRED NINETY' DOLLARS AND NO CENTS ($499.990.00)**, deposited into the Registry of the Court, shall be returned to Plaintiff.

This Court further finds that the following parties named as defendants by the State in its Petition for Condemnation and its First Amended Petition for Condemnation have not appeared or participated in this matter since its inception on April 13, 2015: Curtis Lyle Gunnarson, as Co-Trustee of the Trusts Created Pursuant to the Terms of the Last Will and Testament of Ivar Leonard Gunnarson, Deceased; Adele Delaine Gunnarson, as Co-Trustee of the Trusts Created Pursuant to the Terms of the Last Will and Testament of Ivar Leonard Gunnarson, Deceased; Union Pacific Railroad Company, successor in interest to International Railroad, as their interest may appear; Capital One, NA aka Capital One Bank (USA), NA; City of San Marcos; Hays County; Special Road District; San Marcos Consolidated Independent School District; Edwards Aquifer Authority, successor in interest to Edwards Underground Water District; and Upper San Marcos Watershed Reclamation and Flood Control District; and the Court ORDERS that these parties shall TAKE NOTHING.

This Modified Order on State's Cross Motion for Summary Judgment is a FINAL JUDGMENT, as the orders and rulings of this Court have disposed of all issues and parties in this case.

Signed this the 14th day of November, 2018.

/s/ David Glickler
DAVID GLICKLER
JUDGE PRESIDING

NO. 15-0261-C

THE STATE OF TEXAS	§	CONDEMNATION
	§	PROCEEDING
V.	§	FILED
CURTIS LYLE GUNNARSON, ET AL.	§	IN THE COUNTY
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	§	NO. 2
	§	
	§	OF HAYS COUNTY,
	§	TEXAS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

1. Kimberley Ann Gunnarson, Individually ("**K. Gunnarson**") owned a 0.413 tract of land located at the northeast corner of Loop 82 and Old Post Road in San Marcos, Hays County, Texas (the "**Land**").

2. K. Gunnarson owned the billboard structures on the Land (the "**Billboards**") which were leased to Gunnarson Outdoor Advertising, Inc. ("GOA")[1].

3. GOA contracted with various advertisers for the use of the Billboards for outdoor advertising.

4. There were two Billboards permanently affixed on the Land and a part of the Land: one (1) eight by sixteen double-faced billboard sign and one (1) twelve by forty double-faced billboard sign (the Land

[1] K. Gunnarson and GAO are collectively referred to as "**Gunnarson**"

and Billboards are collectively referred to as the "**Property**").

5. The entire Property was condemned by the State of Texas under its powers of eminent domain.

6. The State of Texas, after depositing the amount of the June 30, 2015, Award of the Special Commissioners, $745,000.00, has taken possession of the Property and destroyed the Billboard structures.

7. Because the Billboards were double-faced, there were four (4) sign faces available for rent.

8. There had been only one (1) month's vacancy of one billboard face in the past sixteen (16) years until the condemnation.

9. The Land was unique because: (i) it was located at a busy intersection, (ii) the billboards were visible from five separate roads, the Texas State University Bobcat Stadium along with associated parking areas, a baseball field and a golf course, and (iii) it was near a railroad crossing.

10. The parties, through their experts, agreed that, due to its narrow nature, the Land was of limited use; the highest and best use of the Land was as a site for billboard structures.

11. K. Gunnarson was the sole owner of the Land, the Billboards, the permits and is the majority owner of GOA.

12. K. Gunnarson's daughter, Leela, owns a small percentage of GOA.

13. GOA leased the Land on which the Billboards were located from K. Gunnarson for $117,600.00 per year.

14. K. Gunnarson received all of the income generated by the billboard structures.

15. The Billboards were permanently affixed to the real property and are a part of the real property taken by the State.

16. K. Gunnarson had been in the outdoor advertising business since she was fourteen (14) years old.

17. GOA owns a number of billboard structures and also leases property from third parties for the billboard structures.

18. K. Gunnarson bought property, sold property, leased property, negotiated contracts and was familiar with the outdoor advertising industry.

19. The Billboards were legally non-conforming because they were built prior to the adoption of current City of San Marcos' sign ordinance's regulations and enjoyed a "grandfathered" status.

20. At the condemnation hearing on June 30, 2015, the Special Commissioners awarded Gunnarson $745,000.00.

21. K. Gunnarson objected to the Special Commissioners' Award because, in her opinion, the fair market value of the property is $1,600,000.00.

22. In Court, K. Gunnarson testified about the lease values and rates of billboards. (Gunnarson transcript, p.7).

23. K. Gunnarson testified that sign rents are determined by "the industry." K. Gunnarson also testified that "industry rate" is "just a knowledge that everybody has."

24. K. Gunnarson testified that the land valuation lease rents in this case were determined by multiplying the rate for the lease of the sign faces. (Gunnarson transcript, pp. 23, 35).

25. K. Gunnarson testified that she based her opinion of value as the property owner on "the industry standard," offers she had received, and on her experience in the "industry."

26. K. Gunnarson testified that one of the factors she considered in determining her opinion was the rents the sign faces commanded due to the unique location of the Property.

27. K. Gunnarson testified that she negotiated the land lease for the Property on behalf of both sides to the lease transaction, herself and GOA. (Gunnarson transcript, p. 26).

28. K. Gunnarson provided no work file, no specific items of market data, and no additional information other than the gross multiplier.

29. The State also objected, taking the position that the Special Commissioners' Award was too high.

30. The State's expert through the Special Commissioners' Hearing, Lory Johnson, presented three opinions of value: $96,667.00, $182,510.00 and, $245,010.00.

31. The State's expert for trial, Matthew Whitney's opinion of value was $190,814.00.

32. Mr. Whitney did not consider the billboards' income stream at all when determining his opinion of fair market value.

33. Mr. Whitney determined that the only contribution to the value of the land from the Billboards would be recognized by considering the cost to replace the billboard structures.

34. There are no replacement sites for the Property available at a comparable market location.

35. There were no comparable properties to the condemned property in the State of Texas.

36. None of Mr. Whitney's comparables were on Loop 82.

37. None of Mr. Whitney's comparables had signs that were owned by the landowner.

38. None of Mr. Whitney's comparables were across from any type of sports stadium or could be seen from Bobcat Stadium.

39. Mr. Whitney used Ms. Johnson's data and relied on it to determine his opinion.

40. Mr. Whitney did not consider the income stream that the improvements could command, at all.

41. Mr. Whitney did not consider the permits held by the Property.

42. Mr. Whitney refused to consider the rent GOA paid K. Gunnarson because it was a "related party."

43. David Bolton was retained by Gunnarson to determine the fair market value of the Property.

44. David Bolton's sole appraisal approach was the Income Method, which was based on advertising revenues from the faces of the billboard.

45. Mr. Bolton was instructed to consider, and did consider, the income stream from the face rents in compiling his appraisal of the subject property.

46. Mr. Bolton's appraisal as indicated by his prior testimony considered the business income generated by the billboards, which is income from advertising.

47. Mr. Bolton did not consider the value of the loss of the business to GOA.

48. Mr. Bolton appraised the Property at $1,280,000.00.

CONCLUSIONS OF LAW

1. The fact issue to be determined in this case is the fair market value of the Property condemned by the State of Texas under its powers of eminent domain.

2. In a condemnation action, in order to adequately compensate the owner, the proper measure of damages is: (1) the fair market value of the property actually condemned, plus (2) any diminution in value to the remainder.

3. Adequate compensation means fair market value of the property on the date it was appropriated.

4. Fair Market Value is the price the property will bring when offered for sale by one who desires to sell, but is not obliged to sell, and is bought by one who desires to buy, but is under no necessity of buying.

5. Thus, the proper valuation method must approximate the amount a willing buyer would pay a willing seller for the property.

6. The Texas Supreme Court's decision in *State v. Clear Channel Outdoor, Inc.*[2], holds that "evidence of valuation based on advertising income is inadmissible, while general estimates of what the property would sell for

[2] *State v. Clear Channel Outdoor, Inc.*, 463 S.W.3d 488 (Tex. 2015).

considering its possible use as a billboard site are acceptable.

7. The *Clear Channel* decision also states that "the relevant income in valuing a billboard site is that received by the unified fee-holder for the use of the land, the property being condemned, not the business income generated by the billboards, the operator's profits."[3]

8. The Supreme Court in *Clear Channel* further held that Clear Channel was "not entitled to value the structures based on the income from its advertising operations, and evidence of that income was inadmissible."[4]

9. A property owner cannot consider the property's income stream when formulating the property owner's opinion of fair market value.

10. In this case, because the entire property was condemned by the State, diminution in value to the remainder is not an issue.

11. Under Rule 702 of the Texas Rules of Evidence, an expert must be qualified to give an expert opinion by knowledge, skill, experience, training or education, if the scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact issue.

12. A property owner's opinion of value must meet the criteria of Rule 701, Rule 702 and

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[3] *Id. At* 497-498.

[4] *Id. At* 498

E.I. du Pont de Nemours & Co. v. Robinson, 923 S.W.2d 549 (Tex. 1995).

13. Under the Texas Supreme Court's holding in *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549 (Tex. 1995), each part of an expert's opinion must be reliable. The criteria for reliability under *Robinson* are that the theory can be or has been tested, the technique does not rely heavily on the expert's subjective interpretation, the theory has been or could be subjected to peer review or publication, the technique's potential rate of error, the underlying technique or theory has been generally accepted as relevant by other experts in the field and must be based upon sufficient underlying facts or data.

14. The three traditional appraisal approaches to value are the Cost Approach, Sales Comparison Approach, and Income Capitalization Approach.

15. The Cost Approach is indicated by the current cost to construct a replacement for the improvements, less the amount of depreciation from all causes evident in the improvements, plus the value of the land.

16. The Sales Comparison approach is based on elements of direct comparison. Adjustments are made to the sale price of each comparable property to reflect the differences between the comparable and the subject property, including time, conditions of sale, and physical characteristics.

17. The Income Capitalization Approach is based on measuring the present value of the rental income of the subject property.

18. The Income Capitalization Approach "proceeds on the premise that a buyer of income-producing property is primarily interested in the income its property will generate."[5]

19. The Income Method estimates the future income of the property and applies a capitalization rate to that income to determine market value.[6]

20. The expert must explain the methodology used to formulate his opinion, and such methodology must be reliable since an unreliable methodology will not produce testimony to assist the jury.

21. The opinions of experts must also be supported by an adequate foundation of relevant facts, data, or evidence.

22. The absence of such foundation requires striking the expert opinion if based on conjecture or speculation.

23. The source of underlying data for the expert's opinion "must themselves be reliable."[7]

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[5] *City of San Antonio v. El Dorado Amusement Co.*, Inc., 195 S.W.3d. 238, 248 (Tex. App. – San Antonio 2006, pet. denied).

[6] *Id.*; *City of Dallas v. Redbird Dev. Corp.*, 143 S.W.3d 375, 384 (Tex. App.– Dallas 2004, no pet.).

[7] *Workers' Compensation Commission v. Garcia*, 862 S.W.2d 61, 105 (Tex. App.-San Antonio 1993), *rev 'd* on other grounds, 893 S.W.2d 504 (Tex. 1995).

24. The cost approach used by Mr. Whitney is the most appropriate method to determine the fair market value of the Property.

25. Because Mr. Bolton considered the income stream of the Property, his opinion was inadmissible.

26. Ms. Gunnarson, the property owner, may testify as to the value of her property, however it must be based on market value, and not on some speculative value of property.[8]

27. A landowner's testimony must have a basis for their valuation.[9]

Signed this the 24th day of January, 2017.

/s/ David Glickler
DAVID GLICKLER
JUDGE PRESIDING

[8] Natural Gas Pipeline Co. of America v. Justiss, 397 S.W.3d 150 (Tex. 2012).

[9] *Id.*

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RE: Case No. 20-0566 DATE: 6/11/2021
COA #: 03-18-00738-CV TC#: 15-0261-C
STYLE: GUNNARSON v. STATE

Today the Supreme Court of Texas denied the petitions for review in the above-referenced case.

MR. SHELDON E. RICHIE
RICHIE & GUERINGER, P.C.
100 CONGRESS AVENUE, SUITE 1750
AUSTIN, TX 78701
* DELIVERED VIA E-MAIL *

FILE COPY

RE: Case No. 20-0566 DATE: 8/27/2021
COA #: 03-18-00738-CV TC#: 15-0261-C
STYLE: GUNNARSON v. STATE

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

MR. SHELDON E. RICHIE
RICHIE & GUERINGER, P.C.
100 CONGRESS AVENUE, SUITE 1750
AUSTIN, TX 78701
* DELIVERED VIA E-MAIL *

THE TEXAS CONSTITUTION

ARTICLE 1. BILL OF RIGHTS

Sec. 17. TAKING PROPERTY FOR PUBLIC USE; SPECIAL PRIVILEGES AND IMMUNITIES; CONTROL OF PRIVILEGES AND FRANCHISES. (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.

(b) In this section, "public use" does not include the taking of property under Subsection (a) of this section for transfer to a private entity for the primary purpose of economic development or enhancement of tax revenues.

(c) On or after January 1, 2010, the legislature may enact a general, local, or special law granting the power of eminent domain to an entity only on a two-thirds vote of all the members elected to each house.

(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.

(Amended Nov. 3, 2009.)

THE TEXAS CONSTITUTION

ARTICLE 1. BILL OF RIGHTS

Sec. 19. DEPRIVATION OF LIFE, LIBERTY, PROPERTY, ETC. BY DUE COURSE OF LAW. 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.

PROPERTY CODE

TITLE 4. ACTIONS AND REMEDIES

CHAPTER 21. EMINENT DOMAIN

SUBCHAPTER A. JURISDICTION

Sec. 21.001. CONCURRENT JURISDICTION. District courts and county courts at law have concurrent jurisdiction in eminent domain cases. A county court has no jurisdiction in eminent domain cases.

Acts 1983, 68th Leg., p. 3498, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.002. TRANSFER OF CASES. If an eminent domain case is pending in a county court at law and the court determines that the case involves an issue of title or any other matter that cannot be fully adjudicated in that court, the judge shall transfer the case to a district court.

Acts 1983, 68th Leg., p. 3498, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.003. DISTRICT COURT AUTHORITY. A district court may determine all issues, including the authority to condemn property and the assessment of damages, in any suit:

(1) in which this state, a political subdivision of this state, a person, an association of persons, or a corporation is a party; and

(2) that involves a claim for property or for damages to property occupied by the party under the

party's eminent domain authority or for an injunction to prevent the party from entering or using the property under the party's eminent domain authority.

Acts 1983, 68th Leg., p. 3498, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. PROCEDURE

Text of section effective on January 01, 2022

Sec. 21.0101. EFFECT OF CHAPTER ON SURVEY ACCESS RIGHTS. Nothing in this chapter prevents an entity from seeking survey access rights as provided by law.

Added by Acts 2021, 87th Leg., R.S., Ch. 826 (H.B. 2730), Sec. 5, eff. January 1, 2022.

Sec. 21.011. STANDARD PROCEDURE. Exercise of the eminent domain authority in all cases is governed by Sections 21.012 through 21.016 of this code.

Acts 1983, 68th Leg., p. 3498, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.0111. DISCLOSURE OF CERTAIN INFORMATION REQUIRED; INITIAL OFFER. (a) An entity with eminent domain authority that wants to acquire real property for a public use shall, by certified mail, return receipt requested, disclose to the property owner at the time an offer to purchase or lease the property is made any and all appraisal reports produced or acquired by the entity relating specifically to

the owner's property and prepared in the 10 years preceding the date of the offer.

(a-1) An entity seeking to acquire real property through the use of eminent domain shall, not later than the third business day before the date of a special commissioner's hearing, disclose to the property owner any and all current and existing appraisal reports produced or acquired by the entity relating specifically to the owner's property and used in determining the entity's opinion of value, if an appraisal report is to be used at the hearing.

(b) A property owner shall disclose to the entity seeking to acquire the property any and all current and existing appraisal reports produced or acquired by the property owner relating specifically to the owner's property and used in determining the owner's opinion of value. Such disclosure shall take place not later than the earlier of:

(1) the 10th day after the date of receipt of an appraisal report; or

(2) the third business day before the date of a special commissioner's hearing if an appraisal report is to be used at the hearing.

(c) An entity seeking to acquire property that the entity is authorized to obtain through the use of eminent domain may not include a confidentiality provision in an offer or agreement to acquire the property. The entity shall inform the owner of the property that the owner has the right to:

(1) discuss any offer or agreement regarding the entity's acquisition of the property with others; or

(2) keep the offer or agreement confidential, unless the offer or agreement is subject to Chapter 552, Government Code.

(d) A subsequent bona fide purchaser for value from the acquiring entity may conclusively presume that the requirement of this section has been met. This section does not apply to acquisitions of real property for which an entity does not have eminent domain authority.

Added by Acts 1995, 74th Leg., ch. 566, Sec. 1, eff. Aug. 28, 1995. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 7, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 54 (S.B. 721), Sec. 1, eff. September 1, 2021.

Sec. 21.0112. PROVISION OF LANDOWNER'S BILL OF RIGHTS STATEMENT REQUIRED. (a) Not later than the seventh day before the date a governmental or private entity with eminent domain authority makes a final offer to a property owner to acquire real property, the entity must send by first-class mail or otherwise provide a landowner's bill of rights statement provided by Section 402.031, Government Code, to the last known address of the person in whose name the property is listed on the most recent tax roll of any appropriate taxing unit authorized by law to levy property taxes against the property. In addition to the other

requirements of this subsection, an entity with eminent domain authority shall provide a copy of the landowner's bill of rights statement to a landowner before or at the same time as the entity first represents in any manner to the landowner that the entity possesses eminent domain authority.

(b) The statement must be:

(1) printed in an easily readable font and type size; and

(2) if the entity is a governmental entity, made available on the Internet website of the entity if technologically feasible.

Added by Acts 2007, 80th Leg., R.S., Ch. 1201 (H.B. 1495), Sec. 3, eff. February 1, 2008. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1145 (H.B. 2685), Sec. 1, eff. January 15, 2010.

Sec. 21.0113. BONA FIDE OFFER REQUIRED. (a) An entity with eminent domain authority that wants to acquire real property for a public use must make a bona fide offer to acquire the property from the property owner voluntarily.

Text of subsection effective until January 01, 2022

(b) 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.

Text of subsection effective on January 01, 2022

(b) 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 that includes:

(A) a copy of the landowner's bill of rights statement prescribed by Section 402.031, Government Code, including the addendum prescribed by Section 402.031(c-1), Government Code, if applicable;

(B) a statement, in bold print and a larger font than the other portions of the offer, indicating whether the compensation being offered includes:

(i) damages to the remainder, if any, of the property owner's remaining property; or

(ii) an appraisal of the property, including damages to the remainder, if any, prepared by a certified appraiser certified to practice as a certified general appraiser under Chapter 1103, Occupations Code;

(C) an instrument of conveyance, provided that if the entity is a private entity as defined by Section 21.0114(a), the instrument must comply with Section 21.0114, as applicable, unless:

(i) the entity has previously provided an instrument complying with Section 21.0114;

(ii) the property owner desires to use an instrument different than one complying with

Section 21.0114 and consents in writing to use a different instrument; or

(iii) the property owner provided the entity with the instrument prior to the issuance of the initial offer; and

(D) the name and telephone number of a representative of the entity who is:

(i) an employee of the entity;

(ii) an employee of an affiliate providing services on behalf of the entity;

(iii) a legal representative of the entity; or

(iv) if the entity does not have employees, an individual designated to represent the day-to-day operations of the entity;

(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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 8, eff. September 1, 2011. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 826 (H.B. 2730), Sec. 6, eff. January 1, 2022.

Text of section effective on January 01, 2022

Sec. 21.0114. REQUIRED TERMS FOR INSTRUMENTS OF CONVEYANCE OF CERTAIN EASEMENTS. (a) In this section, "private entity":

(1) means:

(A) a for-profit entity, as defined by Section 1.002, Business Organizations Code, however organized, including an affiliate or subsidiary, authorized to exercise the power of eminent domain to acquire private property for public use; or

(B) a corporation organized under Chapter 67, Water Code, that has a for-profit entity, however organized, as the sole or majority member; and

(2) does not include an entity governed by the Natural Gas Act (15 U.S.C. Section 717 et seq.), unless the entity seeks to acquire property under this chapter.

(b) This section:

(1) applies only to a deed, agreement, or other instrument of conveyance for a pipeline right-of-way easement or an electric transmission line right-of-way easement that is included with an offer made under this chapter to acquire a property interest for a public use; and

(2) does not apply in relation to:

(A) a pipeline or appurtenance that is:

(i) downstream of the point where natural gas is measured and custody is transferred from a transmission pipeline to a gas local distribution company for distribution to end-use customers; or

(ii) at a location where a gas utility taps a transmission pipeline to a city gate, provided that the pipeline does not exceed 100 feet; or

(B) an electric power line that operates below 60 kilovolts.

(c) Except as provided by Subsections (d), (e), and (f), a deed, agreement, or other instrument of conveyance provided to a property owner by a private entity with eminent domain authority to acquire the property interest to be conveyed must address the following general terms, as applicable:

(1) if the instrument conveys a pipeline right-of-way easement or an easement related to pipeline appurtenances:

(A) the maximum number of pipelines that may be installed under the instrument for a pipeline right-of-way;

(B) a description of the types of pipeline appurtenances that are authorized to be installed under the instrument for pipeline-related appurtenances, such as pipes, valves, compressors, pumps, meters, pigging stations, dehydration facilities, electric facilities, communication facilities, and any other appurtenances that may be necessary or desirable in connection with a pipeline;

(C) the maximum diameter, excluding any protective coating or wrapping, of each pipeline to be initially installed under the instrument for a pipeline right-of-way;

(D) the type or category of substances permitted to be transported through each pipeline to be installed under the instrument;

(E) a general description of any above-ground equipment or facility the private entity intends to install, maintain, or operate under the instrument for a pipeline easement on the surface of the easement;

(F) a description or illustration of the location of the easement, including a metes and bounds or centerline description, plat, or aerial or other map-based depiction of the location of the easement on the property;

(G) the maximum width of the easement under the instrument;

(H) the minimum depth at which each pipeline to be installed under the instrument for a pipeline right-of-way will initially be installed;

(I) a provision identifying whether the private entity intends to double-ditch areas of the pipeline easement that are not installed by boring or horizontal directional drilling;

(J) a provision requiring the private entity to provide written notice to the property owner at the last known address of the person in whose name the property is listed on the most recent tax roll of any taxing unit authorized to levy property taxes against the property if and when the private entity assigns the interest under the instrument to another entity, provided that the provision does not require notice by the

private entity for assignment to an affiliate or to a successor through merger, consolidation, or other sale or transfer of all or substantially all of its assets and businesses;

(K) a provision describing whether the easement rights are exclusive or nonexclusive;

(L) a provision limiting the private entity's right to grant to a third party access to the easement area for a purpose that is not related to the construction, safety, repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed under the instrument and of pipeline appurtenances to be installed under the instrument;

(M) a provision regarding the property owner's right to recover actual monetary damages arising from the construction and installation of each pipeline to be installed under the instrument, or a statement that the consideration for the instrument includes any monetary damages arising from the construction and installation of each pipeline to be installed under the instrument;

(N) a provision regarding the property owner's right after initial construction and installation of each pipeline to be installed under the instrument to actual monetary damages arising from the repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed under the instrument, or a statement that consideration for the instrument includes any monetary damages arising from the repair, maintenance, inspection, replacement,

operation, or removal of each pipeline to be installed under the instrument;

(O) a provision:

(i) regarding the removal, cutting, use, repair, and replacement of gates and fences that cross the easement or that will be used by the private entity under the instrument; or

(ii) providing for the payment for any damage caused by the private entity to gates and fences described by Subparagraph (i), if any, to the extent that the gates or fences are not restored or paid for as part of the consideration paid for the instrument;

(P) a provision:

(i) regarding the private entity's obligation to restore the pipeline easement area and the property owner's remaining property, if any, used by the private entity to as near to original condition as is reasonably practicable and to maintain the easement in a manner consistent with the purposes for which the easement will be used by the private entity under the instrument; or

(ii) providing for the private entity to reimburse the property owner for actual monetary damages incurred by the property owner that arise from damage to the pipeline easement area or the property owner's remaining property, if any, to the extent caused by the private entity and not restored or paid for as part of the consideration for the instrument; and

(Q) a provision describing the private entity's rights of ingress, egress, entry, and access on, to, over, and across the property owner's property under the instrument;

(2) if the instrument conveys an electric transmission line right-of-way easement:

(A) a general description of the uses of the surface of the property to be encumbered by the easement the entity intends to acquire;

(B) a description or illustration of the location of the easement, including a metes and bounds or centerline description, plat, or aerial or other map-based depiction of the location of the easement on the property;

(C) the maximum width of the easement under the instrument;

(D) the manner in which the entity will access the easement under the instrument;

(E) a provision limiting the private entity's right to grant to a third party access to the easement area for a purpose that is not related to the construction, safety, repair, maintenance, inspection, replacement, operation, or removal of the electric and appurtenant facilities installed under the instrument;

(F) a provision regarding the property owner's right to recover actual monetary damages arising from the construction, operation, repair, maintenance, inspection, replacement, and future removal of

lines and support facilities after initial construction in the easement, if any, or a statement that the initial consideration for the easement instrument includes such damages;

(G) a provision:

(i) regarding the removal, cutting, use, repair, and replacement of gates and fences that cross the easement or that will be used by the private entity under the instrument; or

(ii) providing for the payment for any damage caused by the private entity to gates and fences described by Subparagraph (i), if any, to the extent that the gates or fences are not restored or paid for as part of the consideration for the instrument;

(H) a provision regarding the private entity's obligation to restore the easement area and the property owner's remaining property to the easement area's and the remaining property's original contours and grades, to the extent reasonably practicable, unless the safety or operational needs of the private entity and the electric facilities would be impaired, and:

(i) a provision regarding the entity's obligation to restore the easement area and the property owner's remaining property following any future damages directly attributed to the use of the easement by the private entity, to the extent reasonably practicable, unless the safety or operational needs of the private entity and the electric facilities would be impaired; or

(ii) a provision that the consideration for the easement instrument includes damages as described by Subparagraph (i) to the easement area and the property owner's remaining property;

(I) a provision describing whether the easement rights are exclusive, nonexclusive, or otherwise limited under the terms of the instrument; and

(J) a prohibition against the assignment of the entity's interest in the property to an assignee that will not operate as a utility subject to the jurisdiction of the Public Utility Commission of Texas or the Federal Energy Regulatory Commission without written notice to the property owner at the last known address of the person in whose name the property is listed on the most recent tax roll of any taxing unit authorized to levy property taxes against the property;

(3) a prohibition against any use by the private entity of the property rights being conveyed by the instrument, other than a use stated in the instrument, without the express written consent of the property owner; and

(4) a provision that the terms of the instrument will bind the successors and assigns of the property owner and private entity.

(d) A private entity shall notify the property owner that the property owner may negotiate for the following general terms to be included in a deed, agreement, or other instrument of conveyance described by Subsection (c):

(1) a provision regarding the property owner's right to negotiate to recover damages, or a statement that the consideration for the instrument includes damages, for:

(A) damage to certain vegetation; and

(B) the income loss from disruption of existing agricultural production or existing leases based on verifiable loss or lease payments; and

(2) a provision:

(A) requiring the private entity to maintain at all times while the private entity uses the easement, including during construction and operations on the easement, commercial liability insurance or self-insurance:

(i) issued by an insurer authorized to issue liability insurance in this state, if maintaining commercial liability insurance; and

(ii) insuring the property owner against liability for personal injuries and property damage sustained by any person to the extent caused by the negligence of the private entity or the private entity's agents or contractors and to the extent allowed by law; or

(B) if the private entity is subject to the electric transmission cost-of-service rate jurisdiction of the Public Utility Commission of Texas or has a net worth of at least $25 million, requiring the private entity to maintain self-insurance or commercial liability

insurance at levels approved by the Public Utility Commission of Texas in the entity's most recent transmission cost-of-service base rate proceeding.

(e) A private entity or the property owner may, after the entity provides an instrument in compliance with Section 21.0113(b)(1)(C):

(1) negotiate for and agree to terms and conditions not required by Subsection (c), including terms and conditions that differ from or are not included in a subsequent condemnation petition; and

(2) negotiate for and agree to a deed, agreement, or other instrument of conveyance that does not include or includes terms that differ from the terms required by Subsection (c).

(f) Except as provided by this subsection, this section does not prohibit a private entity or the property owner from negotiating for or agreeing to amend, alter, or omit the terms required by Subsection (c) at any time after the private entity first provides a deed, agreement, or other instrument containing the required general terms to the property owner, whether before or at the same time that the entity makes an initial offer to the property owner. A private entity that changes the terms required by Subsection (c) must provide a copy of the amended deed, agreement, or other instrument of conveyance to the property owner not later than the seventh day before the date the private entity files a condemnation petition relating to the property unless the parties agree in writing to waive the notice.

(g) A private entity that changes or amends a deed, agreement, or other instrument has satisfied the requirements of Section 21.0113 if the requirements were previously satisfied as part of the initial offer made in accordance with Section 21.0113(b)(1)(C).

Added by Acts 2021, 87th Leg., R.S., Ch. 826 (H.B. 2730), Sec. 7, eff. January 1, 2022.

Sec. 21.012. CONDEMNATION PETITION. (a) If an entity with eminent domain authority wants to acquire real property for public use but is unable to agree with the owner of the property on the amount of damages, the entity may begin a condemnation proceeding by filing a petition in the proper court.

(b) 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.

Text of subsection effective until January 01, 2022

(c) An entity that files a petition under this section must provide a copy of the petition to the property owner by certified mail, return receipt requested.

Text of subsection effective on January 01, 2022

(c) An entity that files a petition under this section must concurrently provide a copy of the petition to the property owner by certified mail, return receipt requested, and first class mail. If the entity has received written notice that the property owner is represented by counsel, the entity must also concurrently provide a copy of the petition to the property owner's attorney by first class mail, commercial delivery service, fax, or e-mail.

Acts 1983, 68th Leg., p. 3498, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1201 (H.B. 1495), Sec. 4, eff. February 1, 2008.

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 9, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 826 (H.B. 2730), Sec. 8, eff. January 1, 2022.

Sec. 21.0121. CONDEMNATION TO ACQUIRE WATER RIGHTS. (a) In addition to the contents prescribed by Section 21.012(b), a condemnation petition filed by a political subdivision of this state for the purpose of acquiring rights to groundwater or surface water must state that the facts to be proven are that the political subdivision has:

(1) prepared a drought contingency plan;

(2) developed and implemented a water conservation plan that will result in the highest practicable levels of water conservation and efficiency achievable in the political subdivision's jurisdiction;

(3) made a bona fide good faith effort to obtain practicable alternative water supplies to the water rights the political subdivision proposes to condemn;

(4) made a bona fide good faith effort to acquire the rights to the water the political subdivision proposes to condemn by voluntary purchase or lease; and

(5) made a showing that the political subdivision needs the water rights to provide for the domestic needs of the political subdivision within the next 10-year period.

(b) A court shall deny the right to condemn unless the political subdivision proves to the court that the political subdivision has met the requirements of Subsection (a).

Added by Acts 2003, 78th Leg., ch. 1032, Sec. 1, eff. Sept. 1, 2003.

Sec. 21.013. VENUE; FEES AND PROCESSING FOR SUIT FILED IN DISTRICT COURT. (a) The venue of a condemnation proceeding is the county in which the owner of the property being condemned resides if the owner resides in a county in which part of the property is located. Otherwise, the venue of a condemnation proceeding is any county in which at least part of the property is located.

(b) Except where otherwise provided by law, a party initiating a condemnation proceeding in a county in which there is one or more county courts at law with jurisdiction shall file the petition with any clerk authorized to handle such filings for that court or courts.

Text of subsection effective until January 01, 2022

(c) A party initiating a condemnation proceeding in a county in which there is not a county court at law must file the condemnation petition with the district clerk. The filing fee shall be due at the time of filing in accordance with Section 51.317, Government Code.

Text of subsection effective on January 01, 2022

(c) A party initiating a condemnation proceeding in a county in which there is not a county court at law must file the condemnation petition with the district clerk. The filing fee shall be due at the time of filing.

(d) District and county clerks shall assign an equal number of eminent domain cases in rotation to each court with jurisdiction that the clerk serves.

Acts 1983, 68th Leg., p. 3499, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1993, 73rd Leg., ch. 760, Sec. 1, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 756, Sec. 1, eff. June 18, 1999. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 4.09, eff. January 1, 2022.

Sec. 21.014. SPECIAL COMMISSIONERS.

Text of subsection effective until January 01, 2022

(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.

Text of subsection effective on January 01, 2022

(a) The judge of a court in which a condemnation petition is filed or to which an eminent domain case is

assigned shall, not later than the 30th calendar day after the petition is filed, 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 and appoint two disinterested real property owners who reside in the county as alternate special commissioners. The judge appointing the special commissioners shall give preference to persons agreed on by the parties, if any, before the court appoints the special commissioners. The judge shall provide the names and contact information of the special commissioners and alternate special commissioners to the parties. Each party shall have until the later of 10 calendar days after the date of the order appointing the special commissioners or 20 days after the date the petition was filed to strike one of the three special commissioners. Any strike of a special commissioner must be filed electronically with electronic service provided concurrently to any represented party and first class mail service provided concurrently to any other party. If a person fails to serve as a special commissioner or is struck by a party to the suit in accordance with this subsection, an alternate special commissioner shall serve as a replacement for the special commissioner based on the order that the alternate special commissioners are listed in the initial order of appointment. If a party exercises a strike, the other party may, by the later of the third day after the date of filing of the initial strike or the date of the initial strike deadline, strike a special commissioner from the resulting panel, provided the other party has not earlier exercised a strike.

(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.

Text of subsection effective on January 01, 2022

(d) Each party in an eminent domain proceeding is entitled to a copy of the court's order appointing special commissioners under Subsection (a). The court must promptly provide the signed order to the party initiating the condemnation proceeding and that party must provide a copy of the signed order to the property owner and each other party by certified mail, return receipt requested. If the entity has received written notice that the property owner is represented by counsel, the party initiating the condemnation proceeding must concurrently provide a copy of the signed order to the property owner's attorney by first class mail, commercial delivery service, fax, or e-mail.

Acts 1983, 68th Leg., p. 3499, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 10, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 826 (H.B. 2730), Sec. 9, eff. January 1, 2022.

Sec. 21.015. HEARING. (a) The special commissioners in an eminent domain proceeding shall promptly schedule a hearing for the parties at the earliest practical time but may not schedule a hearing to assess damages before the 20th day after the date the special commissioners were appointed. The special commissioners shall schedule a hearing for the parties at a place that is as near as practical to the property being condemned or at the county seat of the county in which the proceeding is being held.

(b) After notice of the hearing has been served, the special commissioners shall hear the parties at the scheduled time and place or at any other time or place to which they may adjourn the hearing.

Acts 1983, 68th Leg., p. 3500, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 11, eff. September 1, 2011.

Sec. 21.016. NOTICE. (a) Each party in an eminent domain proceeding is entitled to written notice issued by the special commissioners informing the party of the time and place of the hearing.

(b) Notice of the hearing must be served on a party not later than the 20th day before the day set for the hearing. A person competent to testify may serve the notice.

(c) A person who serves a notice shall return the original notice to the special commissioners on or before the day set for hearing. The person shall write a

return of service on the notice that states how and when it was served.

(d) Notice may be served:

(1) by delivering a copy of the notice to the party or to the party's agent or attorney;

(2) if the property being condemned belongs to a deceased's estate or to a minor or other legally disabled person and the person or estate has a legal representative, by delivering a copy of the notice to the legal representative; or

(3) if the property being condemned belongs to a nonresident of this state and there has been no personal service on the owner, if the identity or the residence of the property owner is unknown, or if the property owner avoids service of notice by hiding, by publication in the same manner as service of citation by publication in other civil cases in the district courts or county courts at law.

Acts 1983, 68th Leg., p. 3500, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 12, eff. September 1, 2011.

Sec. 21.017. ALTERNATIVE PLEADINGS. (a) This state, a political subdivision of this state, a person, an association of persons, or a corporation that is a party to a suit covered by Section 21.003 of this code by petition, cross-bill, or plea of intervention may

assert a claim to the property or, alternatively, seek to condemn the property.

(b) A plea under this section is not an admission of an adverse party's title to the property in controversy.

Acts 1983, 68th Leg., p. 3501, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.018. APPEAL FROM COMMISSIONERS' FINDINGS. (a) A party to a condemnation proceeding may object to the findings of the special commissioners by filing a written statement of the objections and their grounds with the court that has jurisdiction of the proceeding. The statement must be filed on or before the first Monday following the 20th day after the day the commissioners file their findings with the court.

(b) If a party files an objection to the findings of the special commissioners, the court shall cite the adverse party and try the case in the same manner as other civil causes.

Acts 1983, 68th Leg., p. 3501 ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.019. DISMISSAL OF CONDEMNATION PROCEEDINGS. (a) A party that files a condemnation petition may move to dismiss the proceedings, and the court shall conduct a hearing on the motion. However, after the special commissioners have made an award, in an effort to obtain a lower award a condemnor may not dismiss the condemnation proceedings merely to institute new proceedings that involve substantially

the same condemnation against the same property owner.

(b) A court that hears and grants a motion to dismiss a condemnation proceeding made by a condemnor under Subsection (a) shall make an allowance to the property owner for reasonable and necessary fees for attorneys, appraisers, and photographers and for the other expenses incurred by the property owner to the date of the hearing.

(c) A court that hears and grants a motion to dismiss a condemnation proceeding made by a property owner seeking a judicial denial of the right to condemn or that otherwise renders a judgment denying the right to condemn may make an allowance to the property owner for reasonable and necessary fees for attorneys, appraisers, and photographers and for the other expenses incurred by the property owner to the date of the hearing or judgment.

Acts 1983, 68th Leg., p. 3501, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 483, Sec. 1, eff. Aug. 31, 1987.

Sec. 21.0195. DISMISSAL OF CERTAIN CONDEMNATION PROCEEDINGS; TEXAS DEPARTMENT OF TRANSPORTATION. (a) This section applies only to the dismissal of a condemnation proceeding that involves the Texas Department of Transportation.

(b) The department may move to dismiss a proceeding it files, and the court shall conduct a hearing on the motion. The court may grant the motion only if

the court determines that the property owner's interest will not be materially affected by the dismissal. The department may not dismiss the condemnation proceedings merely to institute new proceedings that involve substantially the same condemnation against the same property owner solely to obtain a lower condemnation award.

(c) If a court dismisses a condemnation proceeding on the motion of the department or as a result of the failure of the department to bring the proceeding properly, the court shall make an allowance to the property owner for the value of the department's use of the property while in possession of the property, any damage that the condemnation has caused to the property owner, and any expenses the property owner has incurred in connection with the condemnation, including reasonable and necessary fees for attorneys.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 1.46(a), eff. Sept. 1, 1997.

Sec. 21.020. REINSTATEMENT OF CONDEMNATION PROCEEDINGS. If a condemnor moves to dismiss a condemnation proceeding and subsequently files a petition to condemn substantially the same property interest from the same property owner, the court may not appoint new special commissioners but shall enter the award of the special commissioners in the first proceeding as the award in the second. The court shall award the property owner triple the amount of the expenses that were allowed the property owner prior to the dismissal of the first proceeding.

Acts 1983, 68th Leg., p. 3502, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.021. POSSESSION PENDING LITIGATION. (a) After the special commissioners have made an award in a condemnation proceeding, except as provided by Subsection (c) of this section, the condemnor may take possession of the condemned property pending the results of further litigation if the condemnor:

(1) pays to the property owner the amount of damages and costs awarded by the special commissioners or deposits that amount of money with the court subject to the order of the property owner;

(2) deposits with the court either the amount of money awarded by the special commissioners as damages or a surety bond in the same amount issued by a surety company qualified to do business in this state, conditioned to secure the payment of an award of damages by the court in excess of the award of the special commissioners; and

(3) executes a bond that has two or more good and solvent sureties approved by the judge of the court in which the proceeding is pending and conditioned to secure the payment of additional costs that may be awarded to the property owner by the trial court or on appeal.

(b) A court shall hold money or a bond deposited under Subdivision (1) or (2) of Subsection (a) to secure the payment of the damages that have been or that may be awarded against the condemnor.

(c) This state, a county, or a municipal corporation or an irrigation, water improvement, or water power control district created under legal authority is not required to deposit a bond or the amount equal to the award of damages under Subdivisions (2) and (3) of Subsection (a).

(d) If a condemnor deposits money with a court under Subdivision (2) of Subsection (a), the condemnor may instruct the court to deposit or invest the money in any account with or certificate or security issued by a state or national bank in this state. The court shall pay the interest that accrues from the deposit or investment to the condemnor.

Acts 1983, 68th Leg., p. 3502, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 1(b), eff. Oct. 2, 1984.

Sec. 21.0211. PAYMENT OF AD VALOREM TAXES. (a) A court may not authorize withdrawal of any money deposited under Section 21.021 unless the petitioner for the money files with the court:

(1) a tax certificate issued under Section 31.08, Tax Code, by the tax collector for each taxing unit that imposes ad valorem taxes on the condemned property showing that there are no delinquent taxes, penalties, interest, or costs owing on the condemned property or on any larger tract of which the condemned property forms a part; and

(2) in the case of a whole taking that occurs after the date the ad valorem tax bill for taxes imposed

by a taxing unit on the property is sent, a tax receipt issued under Section 31.075, Tax Code, by the tax collector of the taxing unit that imposes ad valorem taxes showing that the taxes on the condemned property for the current tax year, prorated under Section 26.11, Tax Code, have been paid.

(b) For purposes of Subsection (a)(2), a "case of a whole taking" means a case in which the location, size, and boundaries of the property assessed for ad valorem taxes are identical to that of the condemned property.

Added by Acts 2005, 79th Leg., Ch. 1126 (H.B. 2491), Sec. 27, eff. September 1, 2005.

Sec. 21.022. AUTHORITY OF COURTS. Laws that formerly governed the performance of functions by county clerks and judges in eminent domain proceedings are applicable to the clerks and judges of district courts and county courts at law.

Acts 1983, 68th Leg., p. 3503, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.023. DISCLOSURE OF INFORMATION REQUIRED AT TIME OF ACQUISITION. An entity with eminent domain authority shall disclose in writing to the property owner, at the time of acquisition of the property through eminent domain, that:

(1) the owner or the owner's heirs, successors, or assigns may be entitled to:

(A) repurchase the property under Subchapter E; or

(B) request from the entity certain information relating to the use of the property and any actual progress made toward that use; and

(2) the repurchase price is the price paid to the owner by the entity at the time the entity acquired the property through eminent domain.

Added by Acts 2003, 78th Leg., ch. 1307, Sec. 1, eff. Jan. 1, 2004. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 13, eff. September 1, 2011.

Sec. 21.025. PRODUCTION OF INFORMATION BY CERTAIN ENTITIES. (a) Notwithstanding any other law, an entity that is not subject to Chapter 552, Government Code, and is authorized by law to acquire private property through the use of eminent domain is required to produce information as provided by this section if the information is:

(1) requested by a person who owns property that is the subject of a proposed or existing eminent domain proceeding; and

(2) related to the taking of the person's private property by the entity through the use of eminent domain.

(b) An entity described by Subsection (a) is required under this section only to produce information relating to the condemnation of the specific property owned by the requestor as described in the request. A request under this section must contain sufficient

details to allow the entity to identify the specific tract of land in relation to which the information is sought.

(c) The entity shall respond to a request in accordance with the Texas Rules of Civil Procedure as if the request was made in a matter pending before a state district court.

(d) Exceptions to disclosure provided by this chapter and the Texas Rules of Civil Procedure apply to the disclosure of information under this section.

(e) Jurisdiction to enforce the provisions of this section resides in:

(1) the court in which the condemnation was initiated; or

(2) if the condemnation proceeding has not been initiated:

(A) a court that would have jurisdiction over a proceeding to condemn the requestor's property; or

(B) a court with eminent domain jurisdiction in the county in which the entity has its principal place of business.

(f) If the entity refuses to produce information requested in accordance with this section and the court determines that the refusal violates this section, the court may award the requestor's reasonable attorney's fees incurred to compel the production of the information.

Added by Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 14, eff. September 1, 2011.

SUBCHAPTER C. DAMAGES AND COSTS

Sec. 21.041. EVIDENCE. As the basis for assessing actual damages to a property owner from a condemnation, the special commissioners shall admit evidence on:

(1) the value of the property being condemned;

(2) the injury to the property owner;

(3) the benefit to the property owner's remaining property; and

(4) the use of the property for the purpose of the condemnation.

Acts 1983, 68th Leg., p. 3504, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.042. ASSESSMENT OF DAMAGES. (a) The special commissioners shall assess damages in a condemnation proceeding according to the evidence presented at the hearing.

(b) If an entire tract or parcel of real property is condemned, the damage to the property owner is the local market value of the property at the time of the special commissioners' hearing.

(c) If a portion of a tract or parcel of real property is condemned, the special commissioners shall

determine the damage to the property owner after estimating the extent of the injury and benefit to the property owner, including the effect of the condemnation on the value of the property owner's remaining property.

(d) In estimating injury or benefit under Subsection (c), the special commissioners shall consider an 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, including a material impairment of direct access on or off the remaining property that affects the market value of the remaining property, but they may not consider an injury or benefit that the property owner experiences in common with the general community, including circuity of travel and diversion of traffic. In this subsection, "direct access" means ingress and egress on or off a public road, street, or highway at a location where the remaining property adjoins that road, street, or highway.

(e) If a portion of a tract or parcel of real property is condemned for the use, construction, operation, or maintenance of the state highway system or of a county toll project described by Chapter 284, Transportation Code, that is eligible for designation as part of the state highway system, or for the use, construction, development, operation, or maintenance of an improvement or project by a metropolitan rapid transit authority created before January 1, 1980, with a principal municipality having a population of less than 1.9 million and established under Chapter 451,

Transportation Code, the special commissioners shall determine the damage to the property owner regardless of whether the property owner makes a claim for damages to the remaining property. In awarding compensation or assessing the damages, the special commissioners shall consider any special and direct benefits that arise from the highway improvement or the transit authority improvement or project that are peculiar to the property owner and that relate to the property owner's ownership, use, or enjoyment of the particular parcel of remaining real property.

(f) In awarding compensation or assessing damages for a condemnation by an institution of higher education, as defined by Section 61.003, Education Code, the special commissioners may not include in the compensation or damages any amount that compensates for, or is based on the present value of, an exemption from ad valorem taxation applicable to the property before its condemnation.

(g) Notwithstanding Subsection (d), if a portion of a tract or parcel of real property that, for the then current tax year was appraised for ad valorem tax purposes under a law enacted under Section 1-d or 1-d-1, Article VIII, Texas Constitution, and is outside the municipal limits or the extraterritorial jurisdiction of a municipality with a population of 5,000 or more is condemned for state highway purposes, the special commissioners shall consider the loss of reasonable access to or from the remaining property in determining the damage to the property owner.

Acts 1983, 68th Leg., p. 3504, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 29, Sec. 1, eff. Oct. 2, 1984; Acts 1989, 71st Leg., ch. 734, Sec. 5, eff. June 15, 1989; Acts 1997, 75th Leg., ch. 165, Sec. 30.244, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 669, Sec. 117, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1266, Sec. 1.15, eff. June 20, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.94, eff. June 14, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 15, eff. September 1, 2011.

Sec. 21.0421. ASSESSMENT OF DAMAGES: GROUNDWATER RIGHTS. (a) In a condemnation proceeding initiated by a political subdivision under this chapter, the special commissioners or court shall admit evidence relating to the market value of groundwater rights as property apart from the land in addition to the local market value of the real property if:

(1) the political subdivision proposes to condemn the fee title of real property; and

(2) the special commissioners or court finds, based on evidence submitted at the hearing, that the real property may be used by the political subdivision to develop or use the rights to groundwater for a public purpose.

(b) The evidence submitted under Subsection (a) on the market value of the groundwater rights as property apart from the land shall be based on generally

accepted appraisal methods and techniques, including the methods of appraisal under Subchapter A, Chapter 23, Tax Code.

(c) If the special commissioners or court finds that the real property may be used by the political subdivision to develop or use the rights to groundwater for a public purpose, the special commissioners or court may assess damages to the property owner based on:

(1) the local market value of the real property, excluding the value of the groundwater in place, at the time of the hearing; and

(2) the market value of the groundwater rights as property apart from the land at the time of the hearing.

(d) In assessing damages based on the market value of groundwater rights under Subsection (c)(2), the special commissioners or court shall consider:

(1) the amount of groundwater the political subdivision can reasonably be expected to produce from the property on an annual basis;

(2) the number of years the political subdivision can reasonably be expected to produce groundwater from the property;

(3) the quality of the groundwater;

(4) the location of the real property in relation to the political subdivision for conveyance purposes;

(5) any potential environmental impact of producing groundwater from the real property;

(6) whether or not the real property is located within the boundaries of a political subdivision that can regulate the production of groundwater from the real property;

(7) the cost of alternative water supplies to the political subdivision; and

(8) any other reasonable factor that affects the market value of a groundwater right.

(e) This section does not:

(1) authorize groundwater rights appraised separately from the real property under this section to be appraised separately from real property for property tax appraisal purposes; or

(2) subject real property condemned for the purpose described by Subsection (a) to an additional tax as provided by Section 23.46 or 23.55, Tax Code.

Added by Acts 2003, 78th Leg., ch. 1032, Sec. 2, eff. Sept. 1, 2003.

Sec. 21.043. DISPLACEMENT FROM DWELLING OR PLACE OF BUSINESS. (a) A property owner who is permanently physically displaced from the property owner's dwelling or place of business and who is not entitled to reimbursement for moving expenses under another law may recover, in addition to the property owner's other damages, the reasonable expenses of

moving the property owner's personal property from the dwelling or place of business.

(b) A recovery under this section may not exceed the market value of the property being moved. The maximum distance of movement to be considered is 50 miles.

Acts 1983, 68th Leg., p. 3504, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.044. DAMAGES FROM TEMPORARY POSSESSION. (a) If a court finally determines that a condemnor who has taken possession of property pending litigation did not have the right to condemn the property, the court may award to the property owner the damages that resulted from the temporary possession.

(b) The court may order the payment of damages awarded under this section from the award or other money deposited with the court. However, if the award paid to or appropriated by the property owner exceeds the court's final determination of the value of the property, the court shall order the property owner to return the excess to the condemnor.

Acts 1983, 68th Leg., p. 3505, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.045. TITLE ACQUIRED. Except where otherwise expressly provided by law, the interest acquired by a condemnor under this chapter does not include the fee simple title to real property, either public or private. An interest acquired by a condemnor is not

lost by the forfeiture or expiration of the condemnor's charter and is subject to an extension of the charter or the grant of a new charter without a new condemnation.

Acts 1983, 68th Leg., p. 3505, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.046. RELOCATION ASSISTANCE PROGRAM. (a) A department, agency, instrumentality, or political subdivision of this state shall provide a relocation advisory service for an individual, a family, a business concern, a farming or ranching operation, or a nonprofit organization that is compatible with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C.A. 4601, et seq.

(b) This state or a political subdivision of this state shall, as a cost of acquiring real property, pay moving expenses and rental supplements, make relocation payments, provide financial assistance to acquire replacement housing, and compensate for expenses incidental to the transfer of the property if an individual, a family, the personal property of a business, a farming or ranching operation, or a nonprofit organization is displaced in connection with the acquisition.

(c) A department, agency, instrumentality, or political subdivision of this state that initiates a program under Subsection (b) shall adopt rules relating to the administration of the program.

(d) Neither this state nor a political subdivision of this state may authorize expenditures under Subsection (b) that exceed payments authorized under the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C.A. 4601, et seq.

(e) If a person moves or discontinues the person's business, moves personal property, or moves from the person's dwelling as a direct result of code enforcement, rehabilitation, or a demolition program, the person is considered to be displaced because of the acquisition of real property.

Acts 1983, 68th Leg., p. 3505, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 16, eff. September 1, 2011.

Sec. 21.047. ASSESSMENT OF COSTS AND FEES. (a) Special commissioners may adjudge the costs of an eminent domain proceeding against any party. If the commissioners award greater damages than the condemnor offered to pay before the proceedings began or if the decision of the commissioners is appealed and a court awards greater damages than the commissioners awarded, the condemnor shall pay all costs. If the commissioners' award or the court's determination of the damages is less than or equal to the amount the condemnor offered before proceedings began, the property owner shall pay the costs.

(b) A condemnor shall pay the initial cost of serving a property owner with notice of a condemnation proceeding. If the property owner is ordered to pay the costs of the proceeding, the condemnor may recover the expense of notice from the property owner as part of the costs.

Text of subsection effective until January 01, 2022

(c) A court that has jurisdiction of an eminent domain proceeding may tax $10 or more as a reasonable fee for each special commissioner as part of the court costs of the proceeding.

Text of subsection effective on January 01, 2022

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 5.01(i), eff. January 1, 2022.

(d) 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 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.

Acts 1983, 68th Leg., p. 3506, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 17, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 18, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 5.01(i), eff. January 1, 2022.

Sec. 21.048. STATEMENT OF DAMAGES AND COSTS. After the special commissioners in an eminent domain proceeding have assessed the damages, they shall:

(1) make a written statement of their decision stating the damages, date it, sign it, and file it and all other papers connected with the proceeding with the court on the day the decision is made or on the next working day after the day the decision is made; and

(2) make and sign a written statement of the accrued costs of the proceeding, naming the party against whom the costs are adjudged, and file the statement with the court.

Acts 1983, 68th Leg., p. 3507, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 1(c), eff. Oct. 2, 1984.

Sec. 21.049. NOTICE OF DECISION OF SPECIAL COMMISSIONERS. The judge of a court hearing a proceeding under this chapter shall inform the clerk of the court as to a decision by the special commissioners

on the day the decision is filed or on the next working day after the day the decision is filed. Not later than the next working day after the day the decision is filed, the clerk shall send notice of the decision by certified or registered United States mail, return receipt requested, to the parties in the proceeding, or to their attorneys of record, at their addresses of record.

Added by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 1(d), eff. Oct. 2, 1984.

SUBCHAPTER D. JUDGMENT

Sec. 21.061. JUDGMENT ON COMMISSIONERS' FINDINGS. If no party in a condemnation proceeding files timely objections to the findings of the special commissioners, the judge of the court that has jurisdiction of the proceeding shall adopt the commissioners' findings as the judgment of the court, record the judgment in the minutes of the court, and issue the process necessary to enforce the judgment.

Acts 1983, 68th Leg., p. 3507, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.062. WRIT OF POSSESSION. If a condemnor in a condemnation proceeding has taken possession of property pending litigation and the court finally decides that the condemnor does not have the right to condemn the property, the court shall order the condemnor to surrender possession of the property and issue a writ of possession to the property owner.

Acts 1983, 68th Leg., p. 3507, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.063. APPEAL. (a) The appeal of a judgment in a condemnation proceeding is as in other civil cases.

(b) A court hearing an appeal from the decision of a trial court in a condemnation proceeding may not suspend the judgment of the trial court pending the appeal.

Acts 1983, 68th Leg., p. 3507, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.064. INJUNCTIVE RELIEF. (a) A court hearing a suit covered by Section 21.003 of this code may grant injunctive relief under the rules of equity.

(b) Instead of granting an injunction under this section, a court may require a condemnor to provide security adequate to compensate the property owner for damages that might result from the condemnation.

Acts 1983, 68th Leg., p. 3508, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.065. VESTED INTEREST. A judgment of a court under this chapter vests a right granted to a condemnor.

Acts 1983, 68th Leg., p. 3508, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER E. REPURCHASE OF REAL PROPERTY FROM CONDEMNING ENTITY

Sec. 21.101. RIGHT OF REPURCHASE. (a) 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 as provided by this subchapter if:

(1) the public use for which the property was acquired through eminent domain is canceled before the property is used for that public use;

(2) no actual progress is made toward the public use for which the property was acquired between the date of acquisition and the 10th anniversary of that date; or

(3) the property becomes unnecessary for the public use for which the property was acquired, or a substantially similar public use, before the 10th anniversary of the date of acquisition.

(b) In this section, "actual progress" means the completion of three or more of the following actions:

(1) the performance of a significant amount of labor to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;

(2) the provision of a significant amount of materials to develop the property or other property

acquired for the same public use project for which the property owner's property was acquired;

(3) the hiring of or contracting with and the performance of a significant amount of work by an architect, engineer, or surveyor to prepare a plan, plat, or easement that includes the property or other property acquired for the same public use project for which the property owner's property was acquired;

(4) application for state or federal funds to develop the property or other property acquired for the same public use project for which the property owner's property was acquired; or

(5) application for a state or federal permit or certificate to develop the property or other property acquired for the same public use project for which the property owner's property was acquired.

(b-1) Notwithstanding Subsection (b), a navigation district or port authority, or a water district implementing a project included in the state water plan adopted by the Texas Water Development Board, may establish actual progress for purposes of this section by:

(1) the completion of one action described by Subsection (b); and

(2) the adoption by a majority of the entity's governing body at a public hearing of a development plan for a public use project that indicates that the entity will not complete more than one action described

by Subsection (b) before the 10th anniversary of the date of acquisition of the property.

(c) A district court may determine all issues in any suit regarding the repurchase of a real property interest acquired through eminent domain by the former property owner or the owner's heirs, successors, or assigns.

Added by Acts 2003, 78th Leg., ch. 1307, Sec. 2, eff. Jan. 1, 2004. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 19, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 86 (S.B. 726), Sec. 1, eff. September 1, 2021.

Sec. 21.102. NOTICE TO PREVIOUS PROPERTY OWNER REQUIRED. Not later than the 180th day after the date an entity that acquired a real property interest through eminent domain determines that the former property owner is entitled to repurchase the property under Section 21.101, the entity shall send by certified mail, return receipt requested, to the property owner or the owner's heirs, successors, or assigns a notice containing:

(1) an identification, which is not required to be a legal description, of the property that was acquired;

(2) an identification of the public use for which the property had been acquired and a statement that:

(A) the public use was canceled before the property was used for the public use;

(B) no actual progress was made toward the public use; or

(C) the property became unnecessary for the public use, or a substantially similar public use, before the 10th anniversary of the date of acquisition; and

(3) a description of the person's right under this subchapter to repurchase the property.

Added by Acts 2003, 78th Leg., ch. 1307, Sec. 2, eff. Jan. 1, 2004. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 19, eff. September 1, 2011.

Sec. 21.1021. REQUESTS FOR INFORMATION REGARDING CONDEMNED PROPERTY. (a) On or after the 10th anniversary of the date on which real property was acquired by an entity through eminent domain, a property owner or the owner's heirs, successors, or assigns may request that the condemning entity make a determination and provide a statement and other relevant information regarding:

(1) whether the public use for which the property was acquired was canceled before the property was used for the public use;

(2) whether any actual progress was made toward the public use between the date of acquisition and the 10th anniversary of that date, including an

itemized description of the progress made, if applicable; and

(3) whether the property became unnecessary for the public use, or a substantially similar public use, before the 10th anniversary of the date of acquisition.

(b) A request under this section must contain sufficient detail to allow the entity to identify the specific tract of land in relation to which the information is sought.

(c) Not later than the 90th day following the date of receipt of the request for information, the entity shall send a written response by certified mail, return receipt requested, to the requestor.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 19, eff. September 1, 2011.

Sec. 21.1022. LIMITATIONS PERIOD FOR REPURCHASE RIGHT. Notwithstanding Section 21.103, the right to repurchase provided by this subchapter is extinguished on the first anniversary of the expiration of the period for an entity to provide notice under Section 21.102 if the entity:

(1) is required to provide notice under Section 21.102;

(2) makes a good faith effort to locate and provide notice to each person entitled to notice before

the expiration of the deadline for providing notice under that section; and

(3) does not receive a response to any notice provided under that section in the period for response prescribed by Section 21.103.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 19, eff. September 1, 2011.

Sec. 21.103. RESALE OF PROPERTY; PRICE. (a) Not later than the 180th day after the date of the postmark on a notice sent under Section 21.102 or a response to a request made under Section 21.1021 that indicates that the property owner, or the owner's heirs, successors, or assigns, is entitled to repurchase the property interest in accordance with Section 21.101, the property owner or the owner's heirs, successors, or assigns must notify the entity of the person's intent to repurchase the property interest under this subchapter.

(b) As soon as practicable after receipt of a notice of intent to repurchase under Subsection (a), the entity shall offer to sell the property interest to the person for the price paid to the owner by the entity at the time the entity acquired the property through eminent domain. The person's right to repurchase the property expires on the 90th day after the date on which the entity makes the offer.

Added by Acts 2003, 78th Leg., ch. 1307, Sec. 2, eff. Jan. 1, 2004. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 19, eff. September 1, 2011.