Eminent Domain

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LEGISLATIVE UPDATE

"WE'RE JUST LIVIN' IN THE FUTURE AND NONE OF THIS HAS HAPPENED YET"

- **WHAT DIDN'T PASS**
  - **HB 1432**
    - Right of repurchase for property owner if:
      - project is cancelled,
      - no progress made for 5 years, or
      - property becomes unnecessary for public use for which it was acquired

"WE'RE JUST LIVIN' IN THE FUTURE AND NONE OF THIS HAS HAPPENED YET"

- **WHAT DIDN'T PASS**
  - **Proposed amendment to Texas Constitution**
    - Require payment of relocation expenses by condemning authority for the acquisition of homestead or farm to ensure owner is fully compensated *and maintains their standard of living*

"I HAD SOME VICTORY THAT WAS JUST FAILURE IN DECEIT"

- The voters will be asked to decide next month a proposed amendment to Article I, Section 17 of the Texas Constitution.

Proposition

Sec. 17. (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

Proposition cont'd.

(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.

CASES

"THERE'S TREASURE FOR THE TAKING, FOR ANY HARD WORKING MAN"
TAKINGS FOR ECONOMIC DEVELOPMENT

- ***Cascott, L.L.C. v. City of Arlington,* 278 S. W. 3d 523, (Tex. App. – Fort Worth 2009, pet. denied)**
  - Arrangement for City to own new Dallas Cowboy Stadium and to lease it to Cowboys on a long term basis
  - Landowners argued condemnation violated Art. 1, Sec. 17 of Constitution

"THERE'S TREASURE FOR THE TAKING, FOR ANY HARD WORKING MAN"
TAKINGS FOR ECONOMIC DEVELOPMENT

Cascott, L.L.C. v. City of Arlington cont'd.

- Fort Worth Court of Appeals "[T]he [legislative] determination of public necessity is presumptively correct, absent proof by the landowner of the [condemning authority's] fraud or proof that the condemning authority acted arbitrarily or capriciously.
- "[t]he mere fact that a private actor will benefit from a taking of property for public use, however, does not transform the purpose of the taking of the property, or the means used to implement that purpose, from a public to a private use."

"THE PRICE YOU PAY"
DISMISSAL OF A CONDEMNATION CASE

- *PR Investments and Specialty Retailers, Inc. v. State,* 251 S.W. 3d 472 (Tex. 2008)
  - State sought to condemn a .3407-acre strip from a property owned by PR Investments which was an office complex and distribution facility and leased to Special Retailers, Inc.
  - The State's plan included narrowing the frontage road at the entrance of the complex to one lane.

"THE PRICE YOU PAY"
DISMISSAL OF A CONDEMNATION CASE

PR Investments and Specialty Retailers, Inc. v. State, cont'd.

- Both companies complained citing safety issues and TxDOT redesigned their plan.
- Satisfied SRI did not attend the Special Commissioners' Hearing.
- PRI asked for additional damages.
- PRI and the State appealed the Award.

"THE PRICE YOU PAY"
DISMISSAL OF A CONDEMNATION CASE

PR Investments and Specialty Retailers, Inc. v. State, cont'd.

- Before trial, the State returned to their initial plan to which both SRI and PRI objected.
- The trial court dismissed the case without prejudice and awarded SRI and PRI all expert witness and attorneys' fees and expenses.
- The Court of Appeals reversed the trial court's judgment and remanded the case.
- The Supreme Court affirmed the ruling stating there is no statutory requirement that the condemnor even mention its plans for the condemned property beyond stating "the purpose for which the entity intends to use the property."

"THE PRICE YOU PAY"
DISMISSAL OF A CONDEMNATION CASE

- ***FKM Partnership, Ltd. v. Board of Regents of the University of Houston System*, 255 S.W. 3d 619 (Tex. 2008)**
  - FKM owned a tract of land adjacent to the University of Houston campus with the University acquired for expansion.
  - FKM appealed the amount of the Special Commissioners' award.

"THE PRICE YOU PAY"
DISMISSAL OF A CONDEMNATION CASE

FKM Partnership, Ltd. v. Board of Regents of the University of Houston System, cont'd.

- The University amended its Petition reducing the size of its proposed acquisition.
- FKM filed a Motion to Dismiss.
- Trial Court granted the motion and awarded fees, expenses and damages to FKM.

"THE PRICE YOU PAY"
DISMISSAL OF A CONDEMNATION CASE

FKM Partnership, Ltd. v. Board of Regents of the University of Houston System, cont'd.

– Court of Appeals reversed.

– Supreme Court held the trial court's de novo proceeding is not limited to the exact compensation facts and issues presented to Commissioners.

"THIS HARD LAND"
DEFINING COMPENSABLE PROPERTY INTERESTS

- ***Canyon Regional Water Authority v. Guadelupe- Blanco River Authority,* 258 S.W.2d 613 (Tex. 2008)**
  – Condemnor sought to condemn property already dedicated to another public use.
  – When a public entity seeks to condemn property already dedicated to another public use, the condemnee with authority over the property to be condemned, to prevent the condemnation, must show that the new condemnation would practically destroy the public use to which it has been devoted.

"THIS HARD LAND"
DEFINING COMPENSABLE PROPERTY INTERESTS

Canyon Regional Water Authority v. Guadelupe-Blanco River Authority, cont'd

– The Court of Appeals found that the Water Authority's proposed new intake structure will result in practical destruction of part of the lake's existing public use.

– The Supreme Court, noting that newly created easement would only restrict access to less than one half of one percent of Lake Dunlap's total surface area, due to an existing intake easement that could be overlapped, found that there would be no practical destruction of the existing recreational use and reversed and remanded the case to the trial court to consider condemnation damages.

"THIS HARD LAND"
DEFINING COMPENSABLE PROPERTY INTERESTS

- ***Block House Municipal Utility District v. City of Leander,* 291 S.W. 3d 537 (Tex. App. – Austin 2009, no pet)**
  - The City of Leander sought to acquire a wastewater easement across parkland dedicated by the Block House Municipal Utility District.
  - MUD argued not only the paramount public purpose, but also asserted that Section 26.001 of the Texas Parks and Wildlife Code required the City to make a specific finding that no feasible and prudent alternative to the taking existed.

"THIS HARD LAND"
DEFINING COMPENSABLE PROPERTY INTERESTS

Block House Municipal Utility District v. City of Leander, cont'd.

- Without specifically addressing whether a "feasible and prudent alternative" existed, the Court indicated that such a determination was subject to judicial review only upon a showing of fraud, bad faith, or arbitrary and capricious action on the part of the City.
- The Court analogized the determination to the determination required of every municipal action in eminent domain by Section 251.001 of the Texas Local Government Code that the City "considers it necessary." Once the city meets that burden, a presumption of necessity arises and the fact of necessity can only be challenged by a showing of fraud, bad faith, or arbitrariness.

"THIS HARD LAND"
DEFINING COMPENSABLE PROPERTY INTERESTS

- ***Southwestern Bell Telephone, L.P. v. Harris County Toll Road Authority,* 282 S.W. 3d 59 (Tex. 2009)**
  - SW Bell made a claim for expenses related to the relocation of its facilities to allow the construction of a toll road project.
  - The Texas Supreme Court relied on the long established rule that a utility company forced to relocate from a public right-of-way must bear the cost of such relocation and denied the claim.

"THIS HARD LAND"
DEFINING COMPENSABLE PROPERTY INTERESTS

Southwestern Bell Telephone, L.P. v. Harris County Toll Road Authority cont'd.

- Unless the state specifically assumes part of the expense, utility companies can clearly be "required to remove at their own expense any installations owned by them and located in public rights of way whenever such relocation is made necessary by highway improvements."

"PAY ME MY MONEY DOWN"
COMPENSABLE INTERESTS IN BILLBOARDS

- ***State v. Central Expressway Sign Associates*, 2009 WL 1817305 (Tex.), 52 Tex. Sup. Ct. J. 978**
  - Sign company argued that billboard advertising revenues should be included in the analysis of fair market value of the billboard easement being acquired.
  - The Supreme Court rejected the sign company's argument pointing out that Texas law only allows the income approach to be considered when the taking causes a material and substantial interference with access to the property or when only a part of the land is being taken, so that lost profits may demonstrate the effect on the market value of the remaining property.

"PAY ME MY MONEY DOWN"
COMPENSABLE INTERESTS IN BILLBOARDS

State v. Central Expressway Sign Associates, cont'd.

- The application of this rule is supported for "two reasons: first, because profits from a business are speculative and often depend more upon the capital invested, general market conditions, and the business skill of the person conducting it that it does on the business's location; and second, because only the real estate and not the business has been taken and the owner can presumably continue to operate the business at another location."

"HIDING ON THE BACKSTREETS"

LOST AND DIMINISHED ACCESS

"DO WHAT YOU LIKE, BUT DON'T DO IT HERE"
REGULATORY TAKINGS

- ***City of San Antonio v. Pollock*, 284 S.W. 3d 809 (Tex. 2009)**
  - Inverse condemnation claim -- homeowners argued City's negligence related to a municipal landfill allowed benzene to contaminate their property and reduce their property values.
  - The Supreme Court reiterated that mere negligence which leads to the destruction of property is not a taking. To constitute a taking, the government must act intentionally. "This requirement is rooted in the constitutional provision that a compensable taking occurs 'only if property is damaged or appropriated for or applied to a public use.'"

"THE (W)REST(LER)"
CASES INCAPABLE OF CLASSIFICATION

- *Martin v. City of Rowlett,* 2008 WL 5076629 (Tex. App. – Dallas 2008, no pet)
  - She argued that the Special Commissioners did not have jurisdiction over the case because it was held in a different room of the Courthouse than was listed on the notice.
  - Landowner did not appear at Special Commissioners' Hearing but admitted she received notice and did not make an attempt to attend.

"THE (W)REST(LER)"
CASES INCAPABLE OF CLASSIFICATION

Martin v. City of Rowlett, cont'd.

– The Supreme Court held that the special commissioners did indeed have jurisdiction of the case and overruled Mrs. Martin's plea to the jurisdiction.