

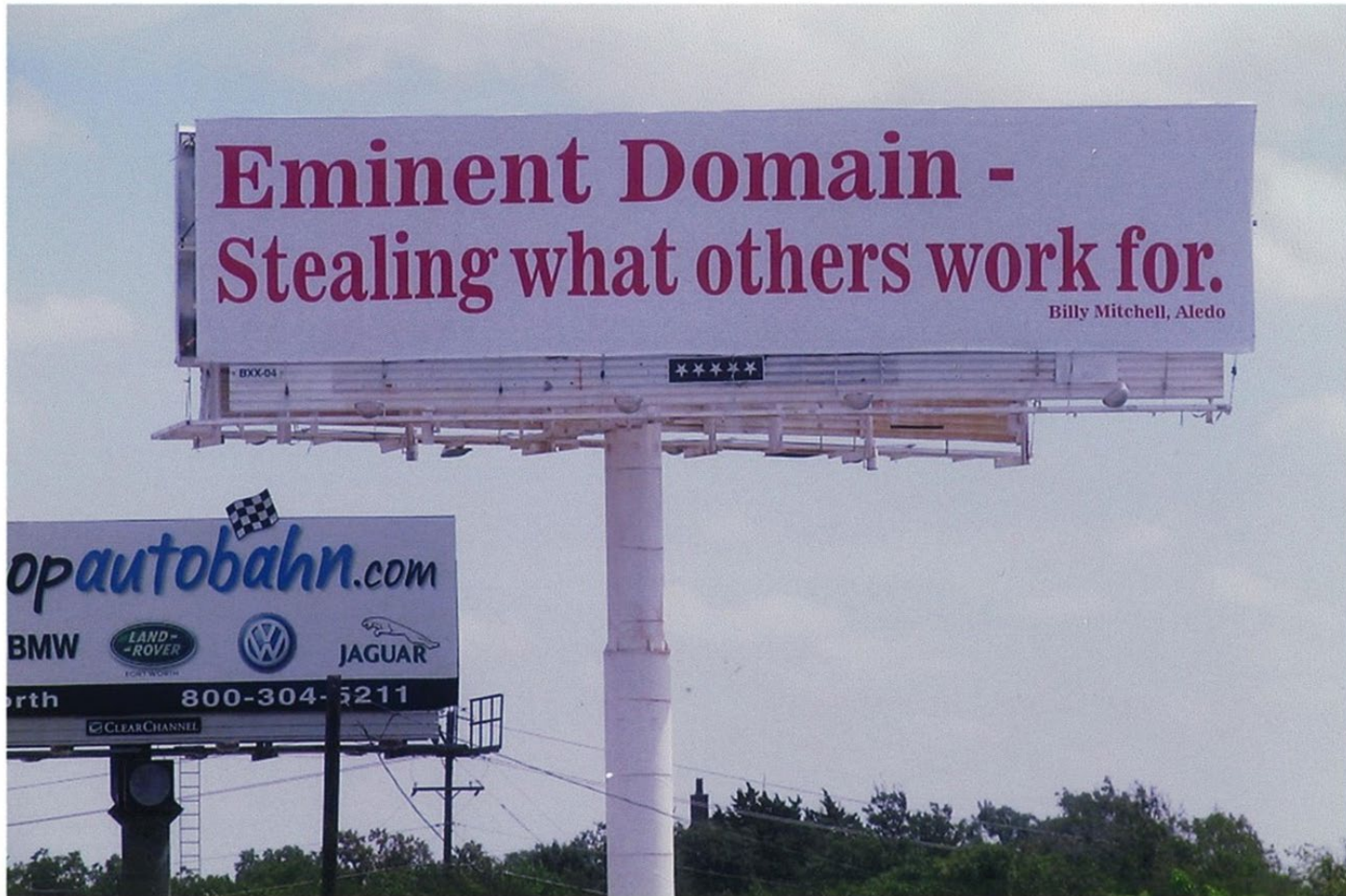
# Eminent Domain 101

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TEXAS CITY ATTORNEYS ASSOCIATION

# Eminent Domain: What is it?



# Eminent Domain: What is it?

- ▶ The acquisition of private property for public purpose in exchange for adequate compensation.
  - Texas Constitution article I, section 17.
  - Texas Property Code Chapter 21.
  
- ▶ “Public Purpose” includes:
  - Roads, highways, bridges
  - Railroads
  - Powerlines
  - Waterlines
  - Oil and gas pipelines
  - Schools
  - Fire/Police Stations
  - Parks
  - Lakes/Water Reservoirs



# Why certain entities have eminent domain authority

- The power of eminent domain comes from the common law.
- The federal government and states have inherent eminent domain authority.
- States can authorize entities, like cities, counties, and special districts, to condemn property for a public purpose.
  - In Texas, this includes certain utilities and pipelines.



# Why condemn private property?

- There is a dispute about compensation.
- To clear title due to liens or multiple owners.
- The landowner is unknown.
- The landowner is unavailable to execute documents.
- The landowner will not sell at any price.



# Eminent Domain: How is it done?

- ▶ Initial contact and the Landowner's Bill of Rights
- ▶ Bona Fide Offers
  - Initial Offer
  - Final Offer
- ▶ Special Commissioners Hearing
- ▶ Objections to the Special Commissioners Award
- ▶ Civil trial if objections are filed.
- ▶ The entire process can take several years.



# Landowner's Bill of Rights

- ▶ The landowner should be given a copy of the Landowner's Bill of Rights "before or at the same time" the entity first discusses eminent domain with a landowner.
- ▶ The Landowner's Bill of Rights is drafted by the Office of the Attorney General of Texas and can be found on its website.



# Bona Fide Offer

- ▶ An initial offer must be made in writing.
- ▶ A written appraisal must be obtained and provided to the landowner.
- ▶ A final offer must be made in writing no sooner than 30 days after the initial offer (30-day negotiation period).
- ▶ A copy of the proposed conveyance instrument (deed, easement, etc.) must be provided to the landowner.
- ▶ The landowner must have at least 14 days to review the final offer.





# Appraisal Process

- ▶ The appraisal process is multi-step:
  - **First**, the whole property is valued.
  - **Second**, the appraiser determines the value of the part acquired by the condemnor.
  - **Third**, the appraiser values the remaining land before and after the acquisition.
  - **Fourth**, the appraiser determines any damages to the remaining property.
- ▶ The condemnor must always pay for the part acquired but may also need to pay for any “damages” to the remaining land.
  - “Damages” are the difference between the value of the remainder before and after the acquisition.



# Jurisdiction

- ▶ District and County Courts at Law have concurrent jurisdiction.
- ▶ Constitutional County Courts do not have jurisdiction.
- ▶ Many counties have special venue rules on the filing of condemnation petitions – always check the statutes or call the clerk and find out.



# Condemnation Petition

- ▶ The petition must:
  - Describe the property being acquired,
  - State the public use,
  - State the name of the landowner,
  - State that the parties are unable to agree on a price,
  - State that the landowner's bill of rights has been provided, and
  - State that a bona fide offer was made.
- ▶ A copy of the petition must be provided to the landowner by certified mail, return receipt requested.
- ▶ See Texas Property Code § 21.012.



# Special Commissioners

- ▶ Special Commissioners are three disinterested landowners in the county appointed by the judge.
- ▶ Each party presents testimony and evidence of value. The landowner can testify about the value of their property.
- ▶ The Special Commissioners determine only value, not any legal issues.
- ▶ Check for local rules on how Special Commissioners are appointed.



# Special Commissioners Hearing

- ▶ A special commissioners' hearing shall occur "promptly" but no sooner than twenty days after the commissioners are appointed.
- ▶ Every party is entitled to written notice, served at least twenty days before the date of the hearing.
- ▶ Be sure to set the hearing far enough into the future that all parties can be served at least twenty days before.
- ▶ No discovery, and the Rules of Evidence do not apply.
- ▶ The Award must be filed and served on all parties.
- ▶ See Texas Property Code § 21.015-21.016, 21.049.



# Objections and Trial

- ▶ The special commissioners' hearing is akin to non-binding arbitration. Any party that disagrees with the amount of the award can file a written objection with the court.
- ▶ Objections must be filed by the first Monday following 20 days after the Award is **filed** with the court.
  - This is a jurisdictional deadline. **Do not miss it!**
- ▶ If objections are filed, the condemnation case converts into a regular civil proceeding.
- ▶ If no party files objections, the award amount becomes the final judgment amount.



# Post-Objection Litigation

- ▶ After objections are filed, the condemnation case converts into a regular civil proceeding.
- ▶ Citations need to be served on all parties by the party who filed objections.
- ▶ Discovery is allowed and the Rules of Civil Procedure and Rules of Evidence apply.
- ▶ If the condemnor wants to take possession of the property during the litigation, it must pay the amount of the special commissioners' award. Texas Property Code § 21.021.



# Civil Trial

- ▶ The case proceeds in the normal manner as other civil trials.
- ▶ The parties can agree to a bench trial or have it heard by a jury – of either six or twelve, depending on the jurisdiction.
- ▶ The date of value to be used to determine adequate compensation is the date on which the condemnor deposited the amount of the award.
- ▶ The amount of adequate compensation includes the value of the property condemned and any damages to the remaining property.



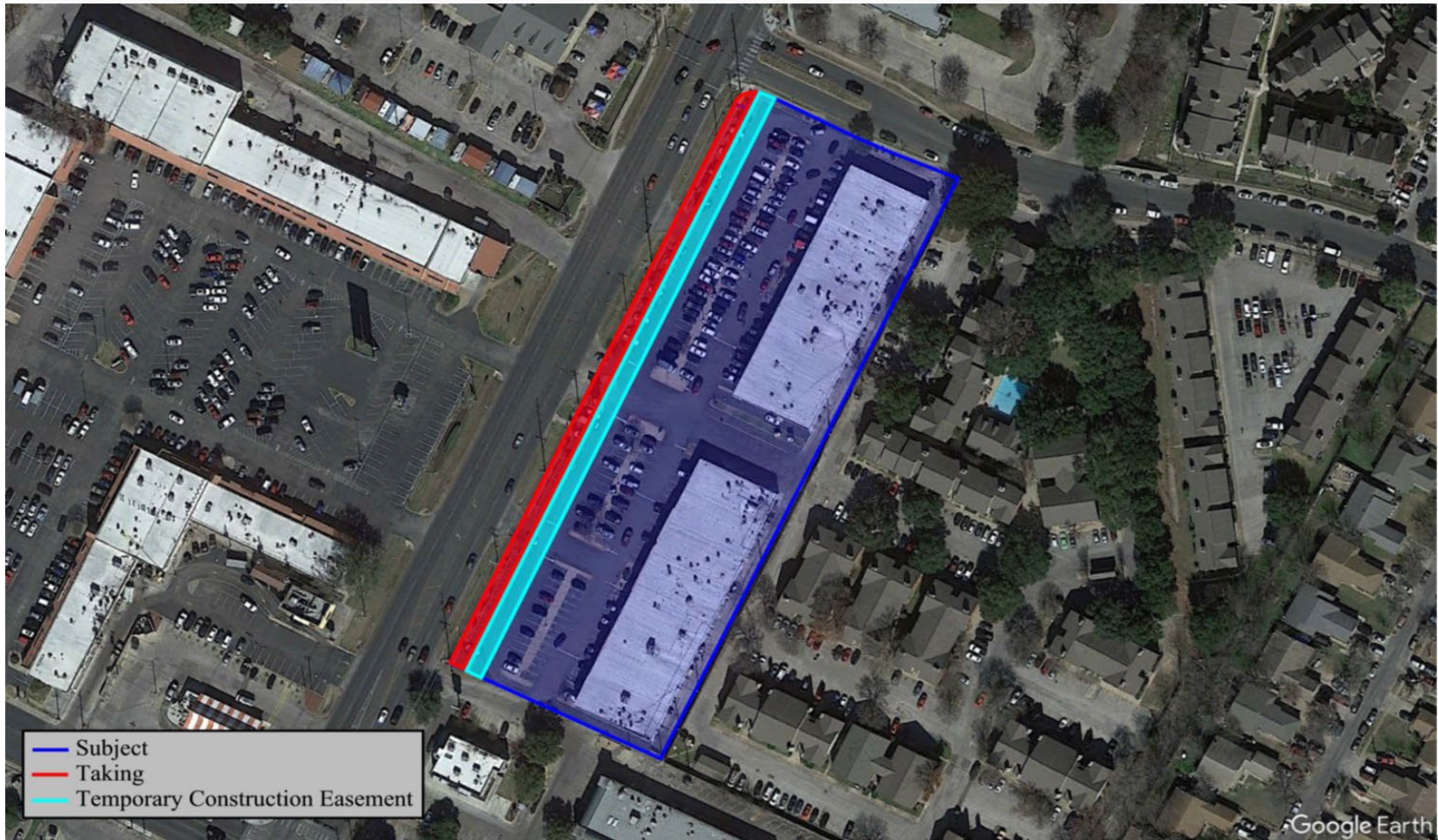


# Settlement Concerns

- ▶ The condemnor is required to pay, at a minimum, the compensation determined by the appraiser it hires to value the property.
- ▶ However, the condemnor may pay a greater amount under its authority to settle pending litigation and purchase real estate.
  - The amount may be limited by state law or by contract with the agency that provides funding for the project.
    - e.g., article III, Section 52(a) of the Texas Constitution.
    - Partner entities may require detailed justifications for settlements greater than the appraised value.
  - Litigation costs are typically a valid consideration (i.e., attorney and expert fees).
- ▶ Most cases settle prior to trial.



# Example



# Questions?

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