

CONDEMNATIONS

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Texas Constitution

Article 1 Section 17

- No property shall be taken unless:
 - Just compensation
 - Use by State, subdivision of State, or public in general
 - Entity with power of eminent domain, or
 - Eliminate urban blight
- Does not allow for transfer to private entity for economic development or tax revenue

Kohl v. United States

91 U.S. 367 (1875)

- U.S. condemnation for Post Office in Cincinnati Ohio
- Landlord and tenants, some with just verbal leases
- Two elements:
 - Public use
 - Just compensation
 - Costs, relocation, leasehold interest



Kohl v. United
States
91 U.S. 367 (1875)

“If the right to acquire property for such uses may be made a barren right by the unwillingness of property-holders to sell, or by the action of a State prohibiting a sale to the Federal government, the constitutional grants of power may be rendered nugatory, and the government is dependent for its practical existence upon the will of a State, or even upon that of a private citizen. This cannot be.” *Id.* at 371.

ELEMENT #1: PUBLIC USE

- What is considered a “public use”?
 - LCG 251.001(a) provides a list of public uses
- How is a public use proven?
- According to *Whittington v. City of Austin*, City Council in their resolution should expressly provide that the taking is a public use and what the public use will be.

EXAMPLE

That the City Council of the City of Waco, Texas, hereby officially determines that a public use and necessity exists for the City of Waco, Texas, to acquire a 0.056-acre permanent pedestrian access and utility easement said tract and all of said acreage on property located across a portion of 5535 Speegleville Road Woodway, Texas, (and being further described as being situated in Lot 2, Block 1, Bridgewood Addition to the City of Waco, McLennan County, Texas according to the plat thereof recorded in the McLennan County Clerk's Document 2014034253 of the Official Public Records of McLennan County, Texas), and being described in the surveys and field notes in **Exhibits A and B** ("Property")—which is attached hereto and incorporated herein—all for the purpose of the expansion and widening of Speegleville Road ("the Project").

ELEMENT #2 JUST COMPENSATION

- Compensation for land taken by eminent domain is measured by the market value of the land at the time of the taking.
- Market value is defined as the price that the property would bring when it is offered for sale by one who desires but is not obligated to sell and is bought by one who is under no necessity of buying.
- What if a municipality is only taking a part of a tract of land?
 - market value of what the municipality is taking, and
 - The damages to the remainder because of the taking

PROCEDURE FOR CONDEMNATIONS

Texas Property Code Chapter 21

- Chapter 21 of the Texas Property Code governs the eminent domain process in Texas.
- TPC 21.012 -21.016.
- The steps from this statute must be taken in order

TIMELINE

- Day 1: Initial Offer Letter
- Between Day 1 and Day 31: Get Governing Body Authority
- Day 24: Must Send Land Owner's Bill of Rights
- Day 31: Final Offer Letter
- Day 46 or later: File Petition, Commissioners appointed, Commissioners set the hearing, notice served on landowner of the special commissioners hearing
- Day 76 or later: hold the hearing. (This includes 10 days to strike commissioners)
- Day 96 or later: Objection to the award of special commissioners

BONA FIDE OFFER

- Texas Property Code Section 21.0113.
 - 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.
- Two Requirements:
 - Written Initial Offer Letter to Landowner
 - Written Final Offer Letter to Landowner

1ST STEP: Initial Offer Letter

- Initial Offer Letter
 - Initial negotiations with Landowner
 - This offer **MUST** be in writing
- Will include:
 - Project
 - Draft of deed or easement document
 - Appraisal Report, if any
 - Dollar amount
 - Landowner's Bill of Rights
 - Contact information for Entity's representative
- How to Deliver Initial Offer Letter:
 - Property code requires the offer is delivered to the landowner's last residence as indicated by tax rolls and delivered by first class mail.
 - Best Practice: Certified mail return receipt requested and regular mail
 - Shows the court that you have evidence that you complied with that step.

APPRAISAL REPORT

- Entity must disclose all appraisal reports produced or prepared within the 10 years preceding the date of the offer.
- Must obtain an appraisal in order to provide a dollar amount in the final offer letter.
- Must be made by certified mail, return receipt requested.
- If there is not an appraisal report already made at the time the initial offer is made, then no appraisal report is required to be included in the initial offer

2nd Step: SENDING LANDOWNER'S BILL OF RIGHTS

- Not required with initial offer letter (but good practice)
- Must be sent 7 days before the final offer letter
- Landowner must receive
 - Required: Send to last known address of the property owner based on the most recent tax roll of any appropriate taxing unit authorized to levy taxes
 - Optional: Send to address where you KNOW landowner resides
- Best practice: Certified Mail Return Receipt Requested and First Class Mail
- LOBR must be made available on government's website if technologically feasible

LANDOWNERS BILL OF RIGHTS

- The State of Texas Landowner's Bill of Rights
- Texas Attorney General prepared form
- Lists 11 rights such as:
 - Just compensation
 - Public use
 - Must give notice
 - Must provide a written appraisal
 - Good faith offer under Tex. Prop. Code Ch. 21
 - Right to appeal

WAITING PERIOD...

- During the waiting period between the initial offer letter and the final offer letter, here are some things that can be done:
 - Run title
 - Check ad valorem taxes
 - Continue negotiations with landowner
 - Go to governing body for authority to condemn

Governing Body Authority

- Government Code Sec. 2206.053(a)(1) &(2)
- Before a governmental entity initiates a condemnation proceeding by filing a petition under Section 21.012 of the Texas Property Code, the governmental entity must:
 - (1) authorize the initiation of the condemnation proceeding at a public meeting by a record vote; and
 - (2) include in the notice for the public meeting as required by Subchapter C, Chapter 551, in addition to other information as required by that subchapter, the consideration of the use of eminent domain to condemn property as an agenda item.

3RD STEP: FINAL OFFER LETTER

- The final offer letter can be sent any time after at least 30 days have passed from the time the initial offer letter was sent and at least 7 days after LOBR was sent. SEND ON 31ST DAY OR LATER!
- Must be in writing
- Must allow landowner 14 days to respond
- Must include:
 - Appraisal report
 - Copy of deed, easement, or other instrument conveying the property
 - LOBR
- The final offer must be equal to or greater than the amount of the written appraisal report
- Still continue negotiations with the Landowner.

4th STEP: FILE PETITION

- TPC 21.013
- The condemning entity may file a condemnation petition after the entity has given the landowner 14 days to respond to the final offer.
 - Best practice: make sure the landowner received the final offer before starting this clock
- Venue: county in which the property owner resides if part of the property is located in that county. Otherwise, in any county in which at least part of the property is located.
- Court to file in:
 - If there are county courts at law in that county, file in one of those courts
 - If no county court at law, file in district court that is in that county.

4TH STEP: PETITION REQUIREMENTS

- TPC 21.012
- The petition must:
 - Describe the property to be condemned
 - State with specificity the public use for which the entity intends to acquire the property
 - State the name of the owner of the property if the owner is known
 - State the entity and the property owner are unable to agree on the damages
 - State that the LOBR were provided
 - State that a Bona Fide Offer was made to the property owner
- Petition must be provided to the property owner by certified mail, return receipt requested and first class mail. If property owner represented by an attorney, provide petition by first class mail, commercial delivery service, fax, or email.

5TH STEP: FILE AN ORDER TO APPOINT SPECIAL COMMISSIONERS

- This order will tell the judge that an administrative hearing is going to happen and that the judge will need to appoint three special commissioners.
 - This is not litigation at this point. Still administrative.
- Commissioners must live and own property in the county where the property is located.
- Judge will sometimes give preference to commissioners that are agreed to by the parties.

6TH STEP: SPECIAL COMMISSIONERS ORDER A HEARING DATE

- Once the special commissioners are appointed, the commissioners will order a hearing date
- The special commissioners hearing must be at least 20 days after the date the special commissioners are appointed.

STRIKING A COMMISSIONER

- A judge will give both parties 10 days to strike a commissioner from the date the judge signs the order to appoint the commissioners

7TH STEP: SERVING NOTICE OF HEARING

- Once there is a hearing date, notice of the hearing must be served on the landowner.
 - Notice must be served not later than the 20th day prior to the hearing.

8TH STEP: SPECIAL COMMISSIONERS HEARING

- At the hearing, each party will argue their case on what they believe the value of the property to be. THIS IS ALL THE SPECIAL COMMISSIONERS CAN HEAR
 - There cannot be an argument made as to whether there can be a taking or whether there were any insufficiencies in any of the prior steps...etc.
 - They can only decide the VALUE!

9TH STEP: COMMISSIONERS ISSUE RULING

- Once the commissioners hear both sides and come up with a value for the taking, an order will be filed with the court the petition was filed in.
- The clerk of the court must send the notice of decision by certified or registered mail, return receipt requested, by the first business day following the day commissioners file their decision.

10th STEP: ENTITY MAY TAKE POSSESSION OF PROPERTY

- Governmental entities may take possession of the property after the entity deposits the amount awarded by the special commissioners into the registry of the court.

OBJECTING TO THE SPECIAL COMMISSIONERS AWARD

- Either party may object to the award set by the special commissioners
- This objection must be in writing and filed the first Monday following 20 days after the commissioners filed their findings with the court.

LANDOWNER REFUTING THE TAKING

- Landowner may argue the taking is not for a public use in his answer or on appeal.
- However, this does not stop the entity from taking possession of the property.
- Once landowner withdraws money from the registry of the court, the landowner can no longer argue whether the taking is for a public use. The landowner may only argue the value of the taking.

TEMPORARY POSSESSION DAMAGES

- TPC 21.044(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
- TPC 21.044(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

TEXAS RELOCATION ASSISTANCE PROGRAM

- TPC: 21.046(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.

TEXAS RELOCATION ASSISTANCE PROGRAM

- TPC 21.046(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.
- The Texas State law that governs this is in the Texas Transportation Code.

ASSESSMENT OF DAMAGES FOR RELOCATION EXPENSES

- TPC 21.042: the special commissioners assess the damages from a taking based on the evidence presented at the special commissioners hearing.
- If the landowner presents evidence of his relocation expenses, the special commissioners can base their award off that evidence
- However, landowner does not lose the right to his relocation damages if he does not present such evidence at the hearing.
- Landowner may for the first time bring up his relocation expenses on appeal.

RELOCATION EXPENSES

- TPC 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.

Regulatory Takings

Nollan v. California Coastal Commission, 483 U.S. 825 (1987)

- Nollan had a lease to own beach property
 - Requested permit to build second house
 - City said only if include public easement to access beach
- Ruling:
 - Permanent physical occupation – taking
 - No substantial Government interest – no NEXUS

Dolan v. City of Tigard, 512 U.S. 374 (1994)

- Dolan's plumbing and electric supply store on Main St.
 - Sought permit to expand
 - City required open space for flood plain and bike path
 - Dolan sued for regulatory taking
- Ruling – Two-part test:
 - Nexus to substantial government interest
 - Proportionality between exaction and development

The image features a dark blue background. A large, semi-transparent circle is positioned on the right side, overlapping the center. A vertical bar of a slightly lighter shade of blue is located on the left side. The word "QUESTIONS?" is written in white, uppercase letters in the center of the image.

QUESTIONS?