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Condemnation and Eminent Domain

A practical overview for property owners, developers, purchasers, and real estate professionals

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Summary: Condemnation involves more than the amount offered for property. The value of the property acquired, damage to the remainder, project design, access, construction requirements, possession, procedure, payment timing, and tax treatment can affect the result. Property owners and condemnors can often improve a resolution by identifying these details early and addressing them through valuation, engineering, negotiation, mediation, or litigation.

Introduction

Condemnation is often described as a dispute over the amount a government agency, pipeline company, transportation authority, utility, drainage district, municipal utility district, or another condemning entity must pay for private property. The process involves much more.

These infrastructure projects may affect access to the remaining land, future development or permitted uses, water flow across several tracts, and business operations. Construction may affect fences, crops, livestock, topsoil, utilities, roads, or scheduling. Payment timing and tax treatment may affect the economic value of a settlement. The location of a gate, driveway, culvert, crossing, or construction entrance may also have substantial value to one party while imposing a comparatively modest cost on the other.

The condemnor knows its project in great detail before negotiations begin. It may know much less about the particular property, the owner's plans for the property, or the owner's concerns. The owner ordinarily has the opposite problem. The owner understands the property but may know little about the proposed project, the condemnor's engineering requirements, or the condemnation process.

Therefore, the details matter from the first offer through the final agreement.

A productive condemnation process requires both sides to answer two different questions: What does the law require? What does each party actually need?

The first question determines legal rights. The second may identify a negotiated or mediated solution.

The First Offer Is the Beginning of the Investigation

The amount offered is important, but it is only one part of the acquisition that the parties should evaluate.

The parties should begin by identifying what property the condemnor proposes to acquire, what legal rights the proposed deed or easement conveys, what improvements will be constructed, and how the completed project will affect the property that remains.

Each type of project may present unique considerations. A pipeline easement may include access, clearing, maintenance, replacement, temporary workspace, assignment rights, and restrictions on future buildings or roads. A highway acquisition may affect driveway locations, frontage, drainage, parking, signage, future subdivision of the tract, and the reservation of mineral interests. A drainage easement may affect fences, crossings, utilities, future development, and movement between portions of the owner's property. The agreements and instruments should include flexibility and should not necessarily conform to a strict unchangeable form that accommodates the fundamental interests of the owners and condemnor. Both parties benefit from identifying any differences early in the process. The condemnor can determine which rights are necessary to construct and operate the project. The owner can determine which additional rights have independent value.

Texas law requires a condemnor to follow a formal bona-fide-offer process before filing a condemnation proceeding. Property Code section 21.0113 prescribes written offers, appraisal information, waiting periods, and related requirements. Property Code section 21.047(d) provides for abatement and certain costs and professional fees when a condemnor fails to make a bona fide offer. The Texas Supreme Court explained the related inability-to-agree requirement in Hubenak v. San Jacinto Gas Transmission Co., 141 S.W.3d 172, 184-85 (Tex. 2004).

Compliance with the offer statute establishes a legal minimum. It does not establish that the parties have explored every practical method of resolving the acquisition.

Public opinion: Hubenak v. San Jacinto Gas Transmission Co.

A Partial Taking May Cause Damage Far Beyond the Property Acquired

A partial taking requires an examination of both the property acquired and the property left behind, often called the "remainder." The effects may create compensable remainder or severance damages, although every adverse project effect is not a separate compensable item of damages.

Suppose a highway project acquires three acres from a fifty-acre tract. The three acres have a market value. The completed project may also reduce access, change drainage, divide the remainder into poorly shaped parcels, eliminate visibility, interfere with utilities, or reduce development density.

A pipeline may occupy a comparatively narrow corridor but prevent buildings from being located where an owner intended to place them. A drainage channel may leave acreage on both sides while making access between them expensive or impractical. A transmission corridor may alter the future layout of a commercial or residential project.

An appraisal is important, but the appraisal may depend upon engineering and land-use facts. A civil engineer may determine whether drainage damage can be prevented. A land planner may determine whether a proposed easement eliminates lots or changes a development layout. A surveyor may identify another alignment. An agricultural consultant may identify problems involving irrigation, livestock movement, or productive topsoil.

The condemnor should evaluate the same evidence. A project modification may cost less than the reduction in market value it prevents.

Therefore, the facts may show that modifying the project produces a more favorable economic result than paying a larger severance-damage claim. Hence, engineering and valuation should not be treated as separate subjects. Consequently, project design can become an important part of condemnation negotiations.

Each Property Owner May Have Different Concerns

Large infrastructure projects commonly cross many properties. Standard forms and standardized acquisition procedures are understandable because the condemnor may be acquiring dozens or hundreds of tracts. The bottom line is that properties are not standard, and courts frequently recognize the unique characteristics of real property.

A ranch owner may have special procedures related to cattle movement, gates, and continuous fencing. A farmer may take issues with construction occurring after harvest and about stripping, stockpiling, and replacing productive topsoil or require double ditching. A developer may have issues related to about future roads, drainage connections, and utility crossings. A commercial owner may care about preserving a particular entrance. An industrial owner may need access throughout construction.

Payment terms may also be important, and tax treatment can affect the owner's net recovery. One owner may prefer prompt payment. Another may need time to evaluate replacement property or federal tax treatment. A settlement may include compensation for the property acquired, severance damages, temporary use, interest, or other supported claims. A factually supportable allocation among those components may affect the owner's tax consequences.

The condemnor may begin negotiations without knowing any of these priorities. Learning and understanding the owner's issues can create bargaining opportunities. A crossing that costs relatively little to install may have substantial value to the owner. The owner may agree to an earlier possession date in exchange for a construction term the condemnor can readily provide. A particular fence design may eliminate an operational problem and reduce the owner's damages claim. Disagreement about five-strand barbed wire, post quality, or post spacing can prevent an agreement. The same analysis works in the opposite direction. The owner should learn what matters to the condemnor. A pipeline company may face a narrow construction window. A highway authority may need possession before a contractor mobilizes. A drainage project may not function until several connected tracts become available.

Thus, the parties often possess different things of value. Hence, a disagreement about compensation does not always require a larger settlement payment to resolve every issue. Consequently, identifying each party's actual interests can broaden the possible terms of settlement.

Construction Details May Carry Substantial Value for Each Party

Significant settlement provisions or terms of instruments often do not fit neatly within an appraisal or the statutory notices. Issues related to topsoil, fencing, access, utility or highway crossings, and timing can also affect damages. Working before planting, after harvest, or during a planned shutdown may materially reduce the owner's loss without materially increasing the condemnor's project cost.

Adjacent owners may present another opportunity. A coordinated drainage structure, road connection, construction entrance, culvert, utility crossing, or fencing plan may reduce severance damages across several tracts. Several owners may also share an engineer or compare project information.

The condemnor benefits when coordinated solutions reduce claims and construction conflicts. The owners benefit when the project is designed to preserve greater usefulness in the remaining properties.

The details matter because a relatively modest construction accommodation may have economic value far beyond its direct cost.

The Special Commissioners' Hearing Is an Important Step in the Process

If voluntary negotiations do not produce an agreement, the condemnor may file a condemnation petition. Following the filing, the court appoints special commissioners, who hear evidence and determine compensation. Notices and other procedural requirements must be followed and completed.

The hearing should not be treated as a simple preliminary event. Each party may present appraisal evidence, engineering evidence, surveys, photographs, development plans, evidence concerning remainder damages, and other relevant expert testimony. The owner and condemnor should be prepared to explain the project, the estate being acquired, the valuation evidence, the claimed damages, and the effects on the property. The commissioners make an award at the end of the hearing.

The resulting award matters because Property Code section 21.021 may permit the condemnor to obtain possession after satisfying the statutory deposit and security requirements while the litigation continues. Therefore, the commissioners' award may affect both compensation and possession. Hence, preparation for the commissioners' hearing can influence later negotiations even when either party expects to file objections.

Notice and Service Matter

Property Code section 21.016 requires notice of the commissioners' hearing and establishes requirements concerning service. The identity of the person served matters. The date of service matters. The authority of an agent or attorney receiving service matters. The contents of the return matter.

Court opinions are instructive on issues that can arise at this stage of the proceeding. In City of Houston v. Kunze, 262 S.W.2d 947 (Tex. 1953), the Texas Supreme Court examined attempted service through an attorney who was not shown to possess authority to receive the condemnation notice for the owner. The Court treated statutory notice as essential to the commissioners' authority to act against the owner. State v. Bristol Hotel Asset Co., 65 S.W.3d 638 (Tex. 2001), also illustrates the importance of proper service when service is challenged. An older Harris County proceeding, City of Houston v. Broussard, provides another example. The owners challenged the procedures surrounding the commissioners' proceeding, including notice. The trial court granted temporary relief after finding inadequate notice and threatened injury from continued entry and construction. The appellate proceeding later produced a substituted opinion affirming in part and reversing and remanding in part. Texas condemnation law has changed materially since Broussard. The changes include a stronger constitutional public-use provision adopted in 2009, more detailed statutory acquisition requirements, and later appellate decisions addressing procedure and forum. The underlying lesson remains useful: general eminent-domain authority does not excuse mistakes in the particular proceeding. A material defect in notice or service may affect the commissioners' authority to proceed and the validity of an award. The effect of a particular defect on the court's judicial authority depends on the defect and the procedural posture of the case.

Public opinion: City of Houston v. Kunze

Public opinion: State v. Bristol Hotel Asset Co.

Timely Objections Matter Even When Procedure Is Disputed

Property Code section 21.018 provides a short period for filing objections after the commissioners file their findings. Timely objections move the controversy into its judicial phase. The case then proceeds under ordinary civil procedure, often with a docket control order governing discovery, experts, motions, mediation, and trial.

An owner may preserve issues involving compensation, severance damages, service, public use, condemnation authority, excessive taking, or other proper grounds. The condemnor may then defend its authority, possession, and valuation through ordinary litigation procedures. Continuing negotiations do not automatically suspend the objection deadline.

A party who believes the commissioners' proceeding was defective in any way should consider both the procedural challenge and the statutory objection deadline. Treating one as a substitute for the other can create unnecessary risk.

Public Use and the Condemnor's Authority Matter

The existence of eminent-domain authority in general does not establish the validity of every proposed taking.

Texas voters amended Article I, section 17 of the Texas Constitution in 2009. The present provision adds restrictions on takings primarily intended for economic development or increased tax revenues. The Legislature later strengthened the condemnation petition requirements. Property Code section 21.012 now requires the petition to state the public use with specificity.

The Fourteenth Court of Appeals applied this requirement in Jones v. Port Freeport in 2025. The court rejected the proposition that a broad categorical description of a larger port project necessarily satisfied the statutory requirement. The petition must identify the particular public use sufficiently to permit judicial review.

Therefore, a condemnor should be prepared to identify both its legal authority and the specific public use supporting the particular acquisition. Hence, an owner should distinguish a genuine right-to-take issue from an ordinary disagreement over value. Consequently, legal authority and compensation should be analyzed separately even though both may affect settlement.

Public opinion: Jones v. Port Freeport

Possession Can Change the Practical Position of the Owner and Condemnor

In the litigation phase, possession of the property at issue may become a significant point in the condemnation process. Before entry, the property remains physically unchanged. After clearing, excavation, pipeline installation, roadway work, or drainage construction begins, restoration becomes increasingly difficult. The condemnor also faces significant consequences from delay. Contractors may be scheduled, equipment may be mobilized, financing may depend upon construction milestones, and the project may require possession of several connected tracts. These competing concerns can create an opportunity to negotiate or mediate meaningful settlement terms.

An owner may agree to a certain possession date in exchange for additional compensation, access improvements, restoration requirements, construction limitations, crossings, fencing, or other protections. A condemnor may value a dependable possession date because it reduces project uncertainty and delay.

The details matter because possession itself may be part of the negotiated exchange.

Temporary Injunctions May Matter, but the Court Matters Too

Temporary injunctive relief may become appropriate when the condemnor claims a present right of possession under a proceeding the owner contends is void or unauthorized and physical entry or construction threatens immediate injury.

An injunction serves a particular function. It preserves the controversy long enough for the proper court to decide the disputed legal issue.

The owner must seek relief in the proper court.

When the Condemnation Court Already Has the Case

The 2026 decision in Ceiba Land Co. v. Bay Runner Pipeline, LLC provides an important current example.

Bay Runner filed a pipeline condemnation proceeding in county court. The commissioners issued an award, Bay Runner deposited the required amount and bonds, and Ceiba timely objected. Ceiba later filed a separate district-court action challenging the condemnation and seeking injunctive relief.

The Thirteenth Court of Appeals held that the county court already possessed dominant jurisdiction over the condemnation controversy. County courts at law and district courts have concurrent eminent-domain jurisdiction, and Property Code section 21.064 does not give the district court exclusive power to issue an injunction. The owner's challenges belonged in the existing condemnation proceeding. Consequently, when a county court or county court at law already has jurisdiction over the condemnation and can decide the right-to-take and possession issues, the owner ordinarily should seek temporary relief in that court.

Tonahill v. Gulf States Utilities Co., 446 S.W.2d 301 (Tex. 1969), explains the other side of the rule. The owner attempted to use a separate district-court action to stop the special commissioners before they performed their statutory function. The Supreme Court of Texas rejected this attempt because the condemnation procedure provided an adequate remedy. The Court expressly preserved the possibility of district-court relief if the condemnor later attempted to enter or damage the property under the purported authority of a void condemnation proceeding.

Therefore, Ceiba and Tonahill can be read together. The facts show that a landowner generally should use the condemnation court when that court already possesses jurisdiction and can provide the requested relief. Hence, a separate district-court proceeding has a narrower role when threatened entry or damage occurs under an allegedly void proceeding and an existing condemnation court does not provide the operative forum. Consequently, the choice of court is itself an important detail.

Public opinion: Ceiba Land Co. v. Bay Runner Pipeline, LLC

Public opinion: Tonahill v. Gulf States Utilities Co.

Procedure Can Affect the Negotiated Result

A Harris County condemnation provides a practical example of notice, service, possession, and temporary injunctive relief.

A local Municipal Utility District reached a point in negotiations where the parties could not agree. The MUD filed a condemnation proceeding and, after a hearing, obtained a special commissioners' award of $89,182 for approximately 1.7 acres required for a drainage project.

The owner retained counsel after the commissioners' hearing and after the MUD asserted possession and began work on the property. Counsel intervened and timely challenged the award. Specifically, the owner filed objections and alleged and proved defects in service of the commissioners' notice. The return referred to delivery to a law firm without establishing that the recipient represented the owner or had authority to receive the statutory notice.

In the next step, after filing objections challenging the award, the owner sought a temporary injunction in the same court where the condemnation was pending. The Court agreed with the owner and the service and notice were defective. The MUD asserted that its deposit of the commissioners' award entitled it to possession, it had actually started removing dirt from the owners land; and, when the owner obtained an injunction stopping it; the MUD moved to dissolve the temporary injunction.

At a hearing on the issuance of additional injunctive relief, the parties resolved the dispute before the hearing in the courtroom with the Judge’s permission. In the agreement resolving the dispute, total compensation increased from $89,182 to $200,000. The agreement also addressed roadway and access issues, drainage and engineering information, fencing, mineral rights, and other property concerns. The owner then agreed to immediate possession.

This example does not establish that every procedural challenge will produce a comparable settlement. However, it does show that the details matter and that something as simple as service can result in a full stop of construction. It also reveals an example of the real value of the owner’s interests in property and that an owner might even elect to proceed to challenge awards and/or proceed to a trial. Moreover, it exemplifies good faith negotiations and/or mediations can result in good outcomes for all parties. The case demonstrates that compensation, possession, engineering, construction requirements, and future property use can become parts of one negotiated resolution. Procedural rights such as service, notice, and an opportunity to be heard at a hearing may have practical importance beyond the ultimate legal ruling. Consequently, both the condemnor and the owner benefit from examining the entire dispute rather than concentrating exclusively on the commissioners' valuation.

Mediation Can Address Issues a Judgment May Not Resolve

Mediation and negotiation can be particularly useful in condemnation matters because each property presents different issues. Litigation also has a role because a court or jury can determine legal rights and compensation. A negotiated settlement can address how the project will operate on the property.

For example, an owner may accept possession on a particular date if the condemnor agrees to a permanent crossing. A pipeline company may be unable to relocate a line but may be able to change temporary workspace or provide an additional crossing. A transportation authority may have limited flexibility in roadway geometry but greater flexibility in temporary access or construction sequencing. A drainage district may coordinate several neighboring properties and reduce damages through a common engineering solution.

A useful mediation can address compensation, severance damages, payment timing, possession, access, drainage, fencing, restoration, topsoil handling, crop schedules, future utility crossings, retained mineral rights, and tax-sensitive settlement provisions.

The details matter because a trial judgment may determine the amount owed without resolving many of these practical concerns.

Tax Treatment Can Affect the Actual Settlement Value

A settlement payment can have tax consequences that differ depending upon what the payment represents. Compensation for property acquired, severance damages, interest, temporary use, and payments allocated to other claims may receive different federal tax treatment. Internal Revenue Code section 1033 may also permit deferral of qualifying gain from an involuntary conversion. Any allocation of damages or amounts paid should correspond to the actual facts and claims being settled. A legitimate allocation supported by the appraisal, damages analysis, pleadings, settlement negotiations, and written agreement can make the tax treatment clearer for the owner. Tax advice should be obtained before the final agreement is executed.

Therefore, tax considerations belong in the settlement process before the final documents are executed. A settlement amount alone may not describe the owner's economic recovery. Consequently, the parties should evaluate both the amount and the character of the settlement payment.

The Details Matter Because the Final Agreement Can Do More Than Fix Compensation

A condemnation judgment primarily determines legal rights and compensation. A negotiated or mediated agreement can do more.

The owner may obtain compensation together with access protections, drainage improvements, crossings, construction controls, restoration requirements, payment timing, or retained property rights.

The condemnor may obtain a defined property interest, dependable possession, a coordinated construction schedule, reduced severance exposure, and an end to litigation.

The process improves when it is addressed in a deliberate order: first understand the property and project; next identify the economic effects; then determine the legal rights and procedural requirements; thereafter, identify concerns that can be resolved through engineering, scheduling, payment terms, or rights; and document the entire agreement before possession or dismissal changes the parties' positions.

The details matter. The location of a driveway matters. The language of an easement matters. The identity of the person served matters. The objection deadline matters. Jurisdiction and temporary relief matter. The engineering plans, condition of the remainder, date of possession, and allocation of settlement proceeds may matter. The forum in which relief is requested may be particularly important.

Condemnation should not be approached as an appraisal followed by a dispute over a single amount. The process requires attention to law, valuation, engineering, construction, procedure, and the individual characteristics of the property. Careful attention to the details can create opportunities for both the property owner and the condemnor to reach a more complete and workable resolution.

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