

EFFECTIVE USE OF EXPERTS

IN EMINENT DOMAIN

John Baker





OVERVIEW

Identify the Issues

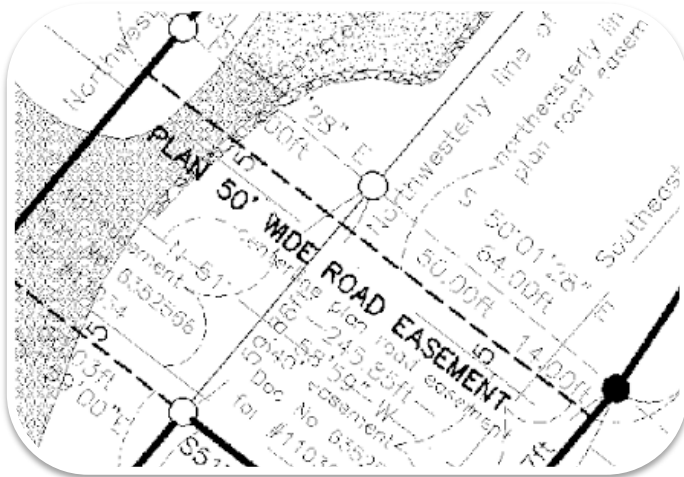
Pre-Condensation

Administrative Hearing

Preparing for Trial

Trial

IDENTIFYING THE RIGHT EXPERTS



Describing the land



Value of the taking



Value of the remainder

WHAT ARE THE ISSUES?

Potential development

- Commercial
- Residential
- Other

Engineering Issues

Special Considerations



PRE-CONDEMNATION: SURVEYOR



Describe the Property – Surveyor

The land being acquired through a condemnation action must be described.

See TEX. PROP. CODE ANN. § 21.012(b)

Without a surveyor and an adequate property description, it would be virtually impossible to effectively pass title and confirm the area being condemned.

Timing Issues

PRE-CONDEMNATION: APPRAISER



Appraiser – Finding the Right One

Type of Taking

Experience

Marketplace Familiarity



Appraiser – Finding the Right One

TEX. PROP. CODE ANN. § 21.0113

Willing Buyer Willing Seller Test

Timing

Familiarity with valuation methodology

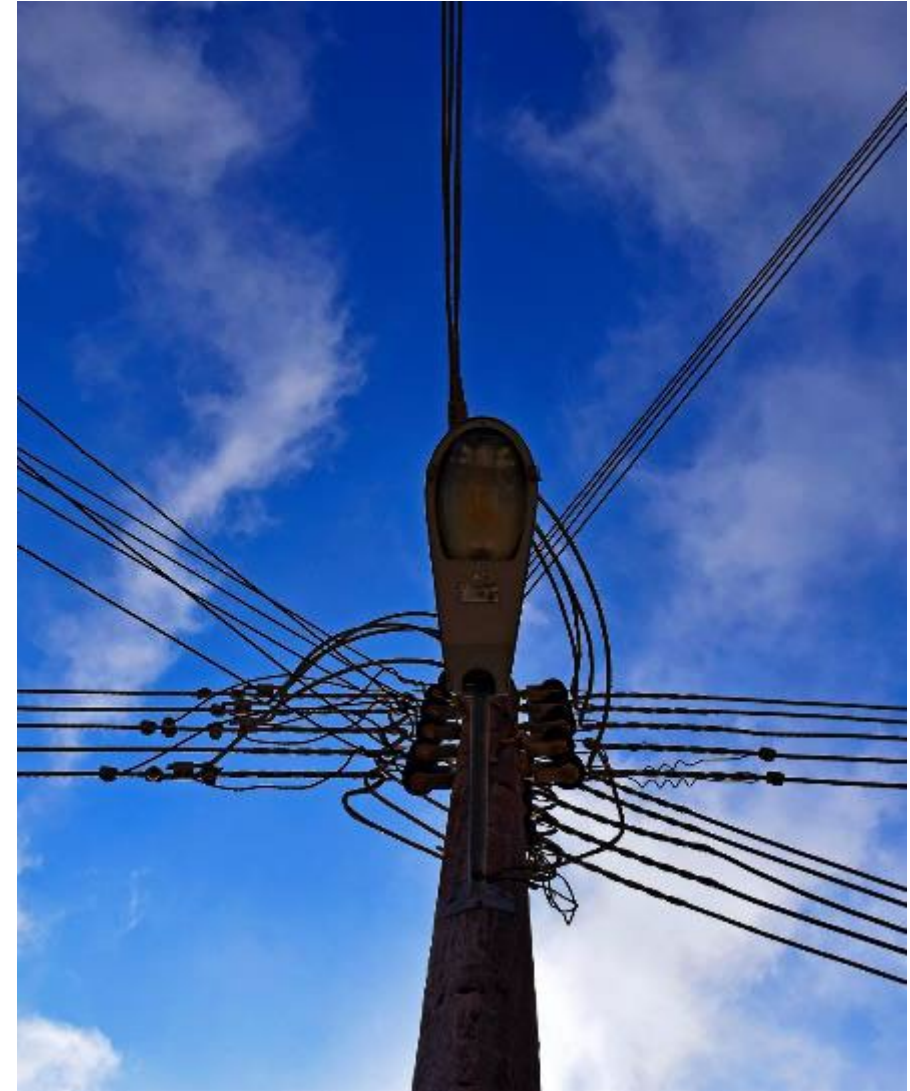
- Comparable Sales
- Cost Approach
- Income Approach

TEX. PROP. CODE ANN. § 21.042

- The special commissioners shall assess damages in a condemnation proceeding according to the evidence presented at the hearing.

Experts on Value

- Appraiser
- Brokers or Agents
- Landowner



ADMINISTRATIVE HEARING: OTHER EXPERTS



Engineers



Developers/Land Planners



Niche Experts on Value

PREPARING FOR DEPOSITIONS



Similar to any other expert deposition

Know the facts inside and out

Know the reports and work-files

Is everything up-to-date and complete?

Research

GENERAL TRIAL CONSIDERATIONS

Trial is De Novo

Right-to-Take Experts

Experts on Value - How are they going to hold up?

Other Supporting Experts

Rebuttal Experts





RULE 702

- (1) whether the field of expertise is a legitimate one;
- (2) whether the subject matter of the expert's testimony is within the scope of that field; and
- (3) whether the expert's testimony properly relies upon or utilizes the principals involved in the field

RELIABILITY OF EXPERT TESTIMONY

Expert testimony is unreliable if it is no more than subjective belief or unsupported speculation

Reliable foundation

A fact is not established merely because a witness – even an expert witness – says so.

RELIABILITY: DEVELOPERS



Land planners and Developers are often some of the most scrutinized experts.

- Why?



Presumption – land use as of date of taking is its highest and best use.



To rebut this presumption an expert must show:

- (1) that the property is adaptable to the other use;
- (2) that the other use is reasonably probable within the immediate future, or a reasonable time; and
- (3) that the market value of the land has been enhanced by that use. *City of Austin v. Cannizzo*, 267 S.W.2d 808, 814 (Tex. 1954).

PREPARING FOR TRIAL



Exhibits



Testimony –

Make it understandable and interesting

QUESTIONS?



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