A NIGHTMARE ON MAIN STREET

Local Public Agencies & the Dilemma of Louisiana's Compensation to the Full Extent of the Owner's Loss

LOUISIANA’S TAKINGS CLAUSE

CONSTITUTION
OF THE
STATE OF LOUISIANA OF 1974

(January 1, 2007)

PREAMBLE

We, the people of Louisiana, grateful to Almighty God for the civil, political, economic, and religious liberties we enjoy, and desiring to protect individual rights to life, liberty, and property; afford opportunity for the fullest development of the individual; assure equality of rights; promote the health, safety, education, and welfare of the people; maintain a representative and orderly government; ensure domestic tranquility; provide for the common defense; and secure the blessings of freedom and justice to ourselves and our posterity, do ordain and establish this constitution.

ARTICLE I.
DECLARATION OF RIGHTS

§1. Origin and Purpose of Government

Section 1. All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, protect the rights, and promote the happiness and general welfare of the people. The rights enumerated in this Article are inalienable by the state and shall be preserved inviolate by the state.

§2. Due Process of Law

Section 2. No person shall be deprived of life, liberty, or property, except by due process of law.

§3. Right to Individual Dignity

Section 3. No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime.

§4. Right to Property

Section 4.(A) Every person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power.

(B)(1) Property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit. Except as specifically authorized by Article VI, Section 21 of this Constitution property shall not be taken or damaged by the state or its political subdivisions: (a) for predominant use by any private person or entity; or (b) for transfer of ownership to any private person or entity.

(2) As used in Subparagraph (1) of this Paragraph and in Article VI, Section 23 of this Constitution, "public purpose" shall be limited to the following:

(a) A general public right to a definite use of the property.

(b) Continuous public ownership of property dedicated to one or more of the following objectives and uses:

(i) Public buildings in which publicly funded services are administered, rendered, or provided.

(ii) Roads, bridges, waterways, access to public waters and lands, and other public transportation, access, and navigational systems available to the general public.

(iii) Drainage, flood control, levees, coastal and navigational protection and reclamation for the benefit of the public generally.

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-1-

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Louisiana Constitution & Just Compensation

Article I, §4

Louisiana has two just compensation standards.

General Standard

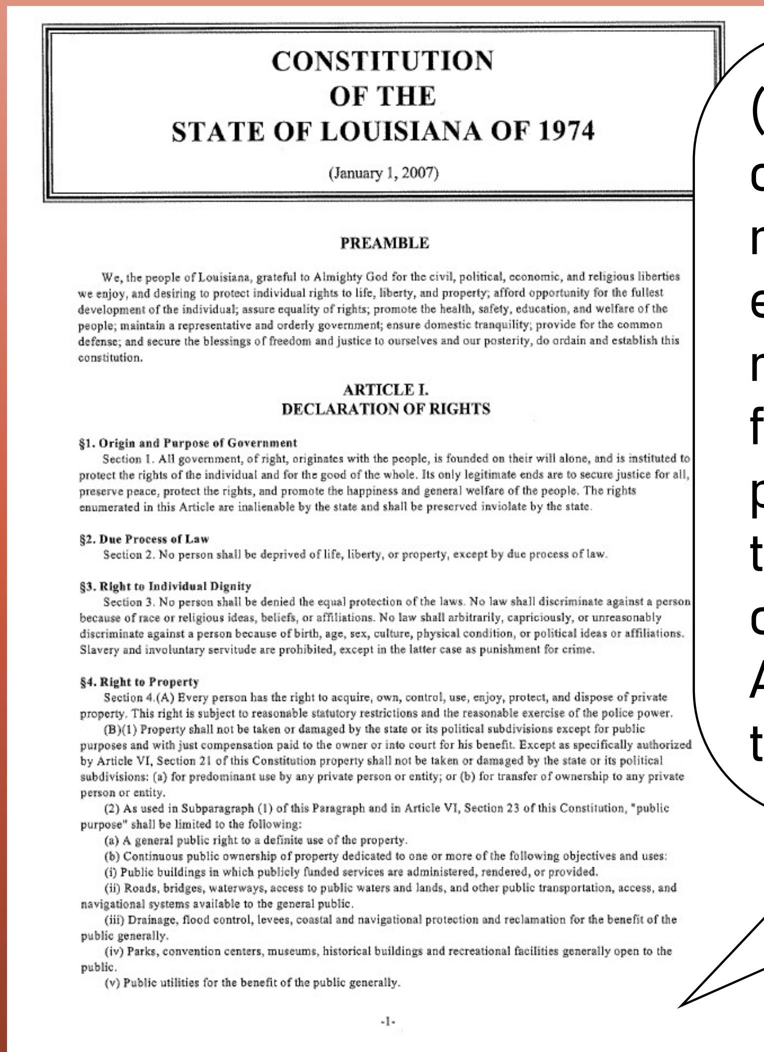
Special Standard for Hurricane Protection and Coastal Restoration

General Standard

General Rule applies in most takings cases (e.g., roads, bridges, drainage, utilities, etc.)

Special Standard

Special standard applies only to hurricane protection and coastal protection and restoration projects.



CONSTITUTION
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ARTICLE I.
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-1-

(G) Compensation paid for the taking of, or loss or damage to, property rights for the construction, enlargement, improvement, or modification of federal or non-federal hurricane protection projects, including mitigation related thereto, shall not exceed the compensation required by the Fifth Amendment of the Constitution of the United States of America.

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ARTICLE I. DECLARATION OF RIGHTS

§1. Origin and Purpose of Government

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(F) Further, the legislature may place limitations on the extent of recovery for the taking of, or loss or damage to, property rights affected by coastal wetlands conservation, management, preservation, enhancement, creation, or restoration activities

LEGISLATIVE ACTION

B. Compensation paid for the taking of, including loss or damage to, property rights affected by coastal wetlands conservation, management, preservation, enhancement, creation, or restoration activities shall be governed by and strictly limited to the amount and circumstances required by the Fifth Amendment of the Constitution of the United States of America.

La. R.S. 49:214.5.6(B)

US 5th Amendment Just Compensation

1. Market value of property taken

2. Severance damages to the remainder, if any.

General Standard

General Rule applies in most takings cases (e.g., roads, bridges, drainage, utilities, etc.; i.e., all non-hurricane and coastal protection projects)

(vi) Public ports and public airports to facilitate the transport of goods or persons in domestic or international commerce.

(c) The removal of a threat to public health or safety caused by the existing use or disuse of the property.

(3) Neither economic development, of tax revenue, or any incidental benefit to the public shall be considered in determining whether the taking or damaging of property is for a public purpose pursuant to Subparagraph (1) of this Paragraph or Article VI, Section 23 of this Constitution.

enhancement (4) Property shall not be taken or damaged by any private entity authorized by law to expropriate, except for a public and necessary purpose and with just compensation paid to the owner; in such proceedings, whether the purpose is public and necessary shall be a judicial question.

(5) In every expropriation or action to take property pursuant to the provisions of this Section, a party has the right to trial by jury to determine whether the compensation is just, and the owner shall be compensated to the full extent of his loss. Except as otherwise provided in this Constitution, the full extent of loss shall include, but not be limited to, the appraised value of the property and all costs of relocation, inconvenience, and any other damages actually incurred by the owner because of the expropriation.

(6) No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or halting competition with a government enterprise. However, a municipality may expropriate a utility within its jurisdiction.

(C) Personal effects, other than contraband, shall never be taken.

(D) But the following property may be forfeited and disposed of in a civil proceeding, as provided by law: contraband drugs; property derived in whole or in part from contraband drugs; property used in the distribution, transfer, sale, felony possession, manufacture, or transportation of contraband drugs; property furnished or intende to be furnished in exchange for contraband drugs; property used or intended to be used to facilitate any of the abo conduct; or other property because the above-described property has been rendered unavailable.

(E) This Section shall not apply to appropriation of property necessary for levee and levee drainage purposes.

(F) Further, the legislature may place limitations on the extent of recovery for the taking of, or loss or damage to, property rights affected by coastal wetlands conservation, management, preservation, enhancement, creation, o restoration activities.

(G) Compensation paid for the taking of, or loss or damage to, property rights for the construction, enlargeme improvement, or modification of federal or non-federal hurricane protection projects, including mitigation related thereto, shall not exceed the compensation required by the Fifth Amendment of the Constitution of the United Stat of America. However, this Paragraph shall not apply to compensation paid for a building or structure that was destroyed or damaged by an event for which a presidential declaration of major disaster or emergency was issued, the taking occurs within three years of such event. The legislature by law may provide procedures and definitions the provisions of this Paragraph.

(H)(1) Except for leases or operation agreements for port facilities, highways, qualified transportation faciliti or airports, the state or its political subdivisions shall not sell or lease property which has been expropriated and h for not more than thirty years without first offering the property to the original owner or his heir, or, if there is no heir, to the successor in title to the owner at the time of expropriation at the current fair market value, after which property can only be transferred by competitive bid open to the general public. After thirty years have passed fron the date the property was expropriated, the state or political subdivision may sell or otherwise transfer the propert provided by law.

(2) Within one year after the completion of the project for which the property was expropriated, the state or it political subdivision which expropriated the property shall identify all property which is not necessary for the publ purpose of the project and declare the property as surplus property.

(3) All expropriated property identified as surplus property shall be offered for sale to the original owner or h heir, or, if there is no heir, to the successor in title to the owner at the time of expropriation at the current fair mark value, within two years after completion of the project. If the original owner, heir, or other successor in title refuse or fails to purchase the surplus property within three years from completion of the project, then the surplus proper may be offered for sale to the general public by competitive bid.

(4) After one year from the completion of the project for which property was expropriated, the original owne his heir, or, if there is no heir, the successor in title to the owner at the time of expropriation may petition the state its political subdivision which expropriated the property to have all or any portion of his property declared surplu the state or its political subdivision refuses or fails to identify all or any portion of the expropriated property as surplus, the original owner or the successor in title may petition any court of competent jurisdiction to have the property declared surplus.

Amended by Acts 1989, No. 840, §1, approved Oct. 7, 1989, eff. Nov. 7, 1989; Acts 2003, No. 1295, §1, approved Oct. 4, 2003, eff. Nov. 6, 2003; Acts 2003, No. 1304, §1, approved Oct. 4, 2003, eff. Nov. 6, 2003; Acts 2006, No. 851, §1, approved Sept. 30, 2006, eff. Oct. 31, 2006; Acts 2006, No. 853, §1, approved Sept. 30, 2006, eff. Oct. 31, 2006; Acts 2006, No. 859, §1, approved Sept. 30, 2006, eff. Oct. 31, 2006.

-2-

In every expropriation or action to take property pursuant to the provisions of this Section, a party has the right to trial by jury to determine whether the compensation is just, *and the owner shall be compensated to the full extent of his loss*.

What does it mean to
compensate an owner
“to the full extent of his loss”?

The Answer (or at least the beginning of the answer):

The Louisiana Supreme Court decision in State, Dept. of Highways v. Constant, 369 So.2d 699 (La. 1979).

FACT FINDINGS OF THE <u>CONSTANT</u> COURT

1. DOTD expropriated property for the construction of a new bridge and its approaches.

2. The property expropriated was taken from an ongoing marina business operating in the area.

3. The parent tract was 1.56 acres with the part taken being 0.56 acres (i.e., the remainder was 1.0 acres).

State, Dept. of Highways v. Constant

FACT FINDINGS OF THE CONSTANT COURT

4. The value of the entire parent tract in the before status was $53,000.

5. The value of the part taken was $26,537.

6. The value of the remainder was $6,000.

7. Accordingly, there was an indicated severance damage of $20,463.

State, Dept. of Highways v. Constant

FACT FINDINGS OF THE CONSTANT COURT

8. The entire loading and parking area was within the part taken.

9. The taking of the loading and parking areas effectively destroyed the business operations of the marina.

10. The cost to replace the loading and parking areas on adjacent wetland marsh was $64,916.

State, Dept. of Highways v. Constant

FACT FINDINGS OF THE CONSTANT COURT

11. There was no evidence introduced (by either side) at trial of the value of the business operations conducted on the premises, although the landowner did introduce substantial evidence of the commercial uses of the property including its uniqueness for those operations.

State, Dept. of Highways v. Constant

THE ARGUMENTS

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LA DOTD'S Principal Arguments

1. The landowner cannot be compensated beyond the value of land taken and severance because it put on no evidence of the amount of economic damage that would be caused by loss of the loading and parking areas.

State, Dept. of Highways v. Constant

THE ARGUMENTS

LA DOTD'S Principal Arguments

2. In any event, the landowner cannot be compensated beyond the value of the marina (i.e., $53,000), because to do so would be an "economic waste" by DOTD (i.e., a windfall to the landowner).

State, Dept. of Highways v. Constant

THE ARGUMENTS

The Landowner's Argument

The replacement cost of the loading and parking areas, regardless of cost, is the correct measure of compensation because it compensates the landowner to the full extent of his loss.

State, Dept. of Highways v. Constant

RULINGS OF THE TRIAL AND APPELLATE COURTS

Trial Court, 17th JDC, Lafourche Parish

The replacement cost of the loading and parking areas is the most appropriate measure of compensation because it would compensate the landowner to the full extent of the economic damage caused to its marina business operations.

State, Dept. of Highways v. Constant

RULINGS OF THE TRIAL AND APPELLATE COURTS

The First Circuit Court of Appeal

"Owner is entitled to recover for the loss of his marina operation in order to obtain compensation to the full extent of his loss. We find, however, that such loss cannot reasonably exceed the value of the marina [property as a whole], less the value of the remaining property…We find that our award [so measured] will place Owner in the same pecuniary position he enjoyed prior to the taking."

State, Dept. of Highways v. Constant

RULINGS OF THE TRIAL AND APPELLATE COURTS

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"Owner is entitled to recover for the loss of his marina operation in order to obtain compensation to the full extent of his loss. We find, however, that such loss cannot reasonably exceed the value of the marina [property as a whole], less the value of the remaining property…We find that our award [so measured] will place Owner in the same pecuniary position he enjoyed prior to the taking. We also find that in this case, any award greater than that granted would constitute an economic waste. We deem it inappropriate to require payment of damages greater than the established value of a property utilized as a going business in the absence of proof of business losses."

State, Dept. of Highways v. Constant

LOUISIANA SUPREME COURT

The Louisiana Supreme Court disagreed with the First Circuit, not on its statement of law, but rather on its ultimate conclusion, stating the following:

"Under the evidence in the record before us (see below), the landowners are entitled to recover the replacement costs of constructing a new loading and parking area for their marina business operations."

State, Dept. of Highways v. Constant

WHY?

State, Dept. of Highways v. Constant

WHY?

As explained by the Supreme Court,

“The evidence so taken does not prove any other method by which the owners may be placed in as good a position pecuniarily as they enjoyed prior to the taking. Without the replacement of their loading area, their marina business operations will be substantially destroyed.”

State, Dept. of Highways v. Constant

WHY?

“It is thus apparent, as the trial court found, that for this loss the defendant landowners must be compensated by an amount additional to the surface value of the land and improvements taken in order that they ‘be compensated to the full extent of his [their] loss’, as required by Article 1, Section 4, of our state constitution.”

State, Dept. of Highways v. Constant

WHY?

"In the absence of other evidence in the record justifying a different award, we find no error in the trial court's determination that the replacement of their taken landing area, or the award to them of the cost to do so, is required to compensate them for this loss."

State, Dept. of Highways v. Constant

WHY?

In responding to the DOTD's argument that the landowner failed to prove an economic loss (i.e., a loss of profits) from its business operations as a result of the taking, the Supreme Court stated that DOTD could have put that evidence on if it had desired such a measure of damage:

"If the department felt that a capitalized income approach would be a more adequate basis by which to estimate the landowners' loss, the department itself could have produced evidence to this effect. For instance, discovery and subpoenas of the defendants' business records could have supplied this information for the trier of fact."

State, Dept. of Highways v. Constant

WHY?

The Supreme Court cautioned, however, that such an approach may not necessarily have demonstrated the economic damage caused to the business by the loss of the parking and loading areas:

"…a capitalized-income approach, under the rather unique circumstances of the present case, may not have produced as certain a measure of the landowners' loss as did the replacement costs introduced in evidence of the present case. Even with full evidence as to the capitalized value of all of the defendants' business operations at the site, the estimate of the percentage to which the loading strip contributed to each would of necessity have been something of a speculative estimate – for instance, how many crewboat rentals would the defendants have lost, conducting their operations from another site, is not likely to have been a matter determined other than by informed guess."

State, Dept. of Highways v. Constant

WHY?

Instead, the Supreme Court recognized that the landowner had put on evidence of an alternative measure of its damage:

“The landowners did in fact produce evidence of a *different* method by which to calculate an amount to fully compensate them for their loss, i.e. the replacement costs of a new loading area. This is an appropriate method of compensation, under the constitutional mandate, to repair fully the loss occasioned by their taking. (It is, perhaps, the most direct and sensible means of doing so, considering the unique value of the loading area to their commercial operations conducted at the site.)”

State, Dept. of Highways v. Constant

AS A RESULT OF THESE RULINGS, THE SUPREME COURT MADE THE FOLLOWING AWARD:

$64,916.00	Costs of replacing loading and parking areas
$3,360.00	Value of land on which the parking and loading area was reconstructed
$370.00	Improvements taken
$1,735.75	Uncontested amounts due for taking/severance for two non-contiguous parcels
$70,642.75	Total Just Compensation
«$34,594.00»	Less deposit
$36,048.75	Net Judgment (excluding interest and attorney fees)

Explaining its ruling and placing it in the context of Louisiana expropriation law generally, the Supreme Court stated:

"We do not, by these rulings, announce any general principle that replacement cost is always the most appropriate measure of awarding a landowner compensation for the taking of a physical asset used in his business, nor that the depreciation of the foregoing asset should never be considered."

State, Dept. of Highways v. Constant

“Generally, we assume, the landowners may be compensated fully by other approaches than by awarding them the replacement costs of the improvement taken, especially where (unlike the present instance) the property is not shown to be both unique in nature and location and also indispensable to the conduct of the landowner’s business operations on the site from which a part is taken. Likewise, in the usual situation the depreciated value of the asset taken will have some lessening effect on the award to the landowner, since he may be full compensated by the actual pecuniary value of the asset taken. For instance, the full compensation constitutionally provided does not require that the owner receive a new building to replace as dilapidated one which is expropriated.”

State, Dept. of Highways v. Constant

WHERE ARE WE NOW?

WHERE ARE WE NOW?

1. A landowner is compensated to the full extent of his loss which means to be put in same “pecuniary position” he occupied prior to the taking.

WHERE ARE WE NOW?

2. The starting point is a “before and after” appraisal:

    a. market value of land and improvements taken, but not considering any effects of the new construction on such property.

    b. after market value of the remainder land and improvements, but taking into consideration the effects of the project on such property.

WHERE ARE WE NOW?

3. But, economic damages can recovered by a property owner in addition to the value of the land taken and any severance to the remainder.

So, what economic damages are recoverable?

Economic Damages

Where economic losses suffered by a business have been proven, damages for incidental and consequential loss must be awarded to fully compensate the owner.

DOTD v. Dietrich, 555 So. 2d 1355, 1358 (La. 1990).

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· 300-acre Cattle farm was split diagonally by Interstate 49 in Natchitoches Parish.

· Cattle farmer owned a slaughterhouse located elsewhere in Natchitoches Parish where he processed the cattle from his farm and claimed his slaughterhouse business was damaged in the form of lost past and future profits.

· Supreme Court ruled that economic losses suffered by cattle farmer and his separate slaughterhouse business were recoverable under “full extent of the loss.”

DOTD V. DIETRICH, 555 SO. 2D 1355, 1359 (LA. 1990).

Economic damages awarded:

· Past damage to slaughterhouse and cattle-raising operations:	$85,220
· Loss from forced sale of cattle:	$39,700
· Future damage to slaughterhouse and cattle-raising operations:	$85,220
· Necessary improvements to western parcel:	$40,000
· Total	$250,140

(note: the DOTD deposit was just $47,800 for the part taken)

DOTD V. DIETRICH, 555 SO. 2D 1355, 1358-59 (LA. 1990).

"Where economic losses suffered by a business have been proven, damages for incidental and consequential loss must be awarded to fully compensate the owner. Article I, Section 4, provides that the landowner should be compensated for "his loss" not merely the loss of the land."

"Where the landowner challenges the amount the DOTD deposits for compensation, a greater value must be proven by a preponderance of the evidence. Proof of economic loss may be determined by various methods, *and it may exceed the market value of the property.* However, the method employed for proof of loss must demonstrate by a preponderance of the evidence that an actual loss was sustained by the business because of the taking."

(citations omitted)

WHERE ARE WE NOW?

4. “Cost to cure” (or “cure damages”) can be awarded if:

a. it will place the property owner back in the same pecuniary position;

b. it will reduce the amount of the severance award (i.e., the damage to the remainder is greater than the cost of the cure and the cure will decrease the total award)…or

c. where the severance award will not fully compensate the landowner (i.e., the landowner has business or other pecuniary damages in excess of or at least in addition to the severance).

Alexandria Volkswagen, 348 So. 2d 176 (La. App. 3d. Cir. 1997).

WHERE ARE WE NOW (ON CURE)?

So, if a landowner has damages beyond the before and after appraisal, the DOTD is obligated to compensate the landowner for those damages.

If a cure will adequately remedy the damage, then the cure will be used, but only if the cure is less than the damage caused (i.e., a mitigation).

If the cure costs more than the damage, then paying the damage will restore the landowner to the same “pecuniary position” he occupied prior to the taking (i.e., without the cure).

WHERE ARE WE NOW?

5. On other damages recoverable under full extent of the loss:

- The Louisiana Constitution Article I, Section 4(B)(5) has no limits.

LA. CONST. ART. I, §4(B)(5)

(vi) Public ports and public airports to facilitate the transport of goods or persons in domestic or international commerce.

(c) The removal of a threat to public health or safety caused by the existing use or disuse of the property.

(3) Neither economic development, of tax revenue, or any incidental benefit to the public shall be considered in determining whether the taking or damaging of property is for a public purpose pursuant to Subparagraph (1) of this Paragraph or Article VI, Section 23 of this Constitution.

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(5) In every expropriation or action to take property pursuant to the provisions of this Section, a party has the right to trial by jury to determine whether the compensation is just, and the owner shall be compensated to the full extent of his loss. Except as otherwise provided in this Constitution, the full extent of loss shall include, but not be limited to, the appraised value of the property and all costs of relocation, inconvenience, and any other damages actually incurred by the owner because of the expropriation.

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(F) Further, the legislature may place limitations on the extent of recovery for the taking of, or loss or damage to, property rights affected by coastal wetlands conservation, management, preservation, enhancement, creation, or restoration activities.

(G) Compensation paid for the taking of, or loss or damage to, property rights for the construction, enlargement, improvement, or modification of federal or non-federal hurricane protection projects, including mitigation related thereto, shall not exceed the compensation required by the Fifth Amendment of the Constitution of the United States of America. However, this Paragraph shall not apply to compensation paid for a building or structure that was destroyed or damaged by an event for which a presidential declaration of major disaster or emergency was issued, if the taking occurs within three years of such event. The legislature by law may provide procedures and definitions for the provisions of this Paragraph.

(H)(1) Except for leases or operation agreements for port facilities, highways, qualified transportation facilities or airports, the state or its political subdivisions shall not sell or lease property which has been expropriated and held for not more than thirty years without first offering the property to the original owner or his heir, or, if there is no heir, to the successor in title to the owner at the time of expropriation at the current fair market value, after which the property can only be transferred by competitive bid open to the general public. After thirty years have passed from the date the property was expropriated, the state or political subdivision may sell or otherwise transfer the property as provided by law.

(2) Within one year after the completion of the project for which the property was expropriated, the state or its political subdivision which expropriated the property shall identify all property which is not necessary for the public purpose of the project and declare the property as surplus property.

(3) All expropriated property identified as surplus property shall be offered for sale to the original owner or his heir, or, if there is no heir, to the successor in title to the owner at the time of expropriation at the current fair market value, within two years after completion of the project. If the original owner, heir, or other successor in title refuses or fails to purchase the surplus property within three years from completion of the project, then the surplus property may be offered for sale to the general public by competitive bid.

(4) After one year from the completion of the project for which property was expropriated, the original owner or his heir, or, if there is no heir, the successor in title to the owner at the time of expropriation may petition the state or its political subdivision which expropriated the property to have all or any portion of his property declared surplus. If the state or its political subdivision refuses or fails to identify all or any portion of the expropriated property as surplus, the original owner or the successor in title may petition any court of competent jurisdiction to have the property declared surplus.

Amended by Acts 1989, No. 840, §1, approved Oct. 7, 1989, eff. Nov. 7, 1989; Acts 2003, No. 1295, §1, approved Oct. 4, 2003, eff. Nov. 6, 2003; Acts 2003, No. 1304, §1, approved Oct. 4, 2003, eff. Nov. 6, 2003; Acts 2006, No. 851, §1, approved Sept. 30, 2006, eff. Oct. 31, 2006; Acts 2006, No. 853, §1, approved Sept. 30, 2006, eff. Oct. 31, 2006; Acts 2006, No. 859, §1, approved Sept. 30, 2006, eff. Oct. 31, 2006.

-2-

Except as otherwise provided in this Constitution, the full extent of loss shall include, but not be limited to, the appraised value of the property and all costs of relocation, inconvenience, and any other damages actually incurred by the owner because of the expropriation.

BOTH LAND AND LOST BUSINESS VALUE

We find that the trial court's award of $558,475.00 in lost profits was reasonable and supported by the record.

Bd. of Sup'rs of LSU. v. Gerson, 260 So. 3d 634, 651 (La. App. 4 Cir. 11/14/18),, writ denied, 2018-2054 (La. 2/25/19), 266 So. 3d 292

GERSON, CONT'D

Landowner recovered both for the value of his land and improvements and the value of his business as a going concern.

Responding to LSU's claim that this was a double recovery, the court states: "This same "double recovery" argument was rejected by this Court in *Board of Supervisors of Louisiana State Univ. & Agric. & Mech. College v. Villavaso*, 14-1277 (La. 4 Cir. 12/23/15), 183 So.3d 757. In *Villavaso*, the Board argued that the trial court erred in awarding the owner the fair market value of the property and the business losses resulting from the taking because it "amounted to an impermissible double recovery." This Court found no merit in the Board's argument."

Note: Villavaso allowed recovery for taking of both a parking lot and a parking lot business from the same owner (was the cost of renting replacement parking lot included in the lost BV analysis?).

ECONOMIC LOSS FOR UNPROFITABLE BUSINESS

Awarding economic damages to cotton gin business that lost money in the five years preceding its taking; evidence supporting economic loss was that the gin made money in 2 of 5 years albeit small and was paying off its $1.8 Million debt.

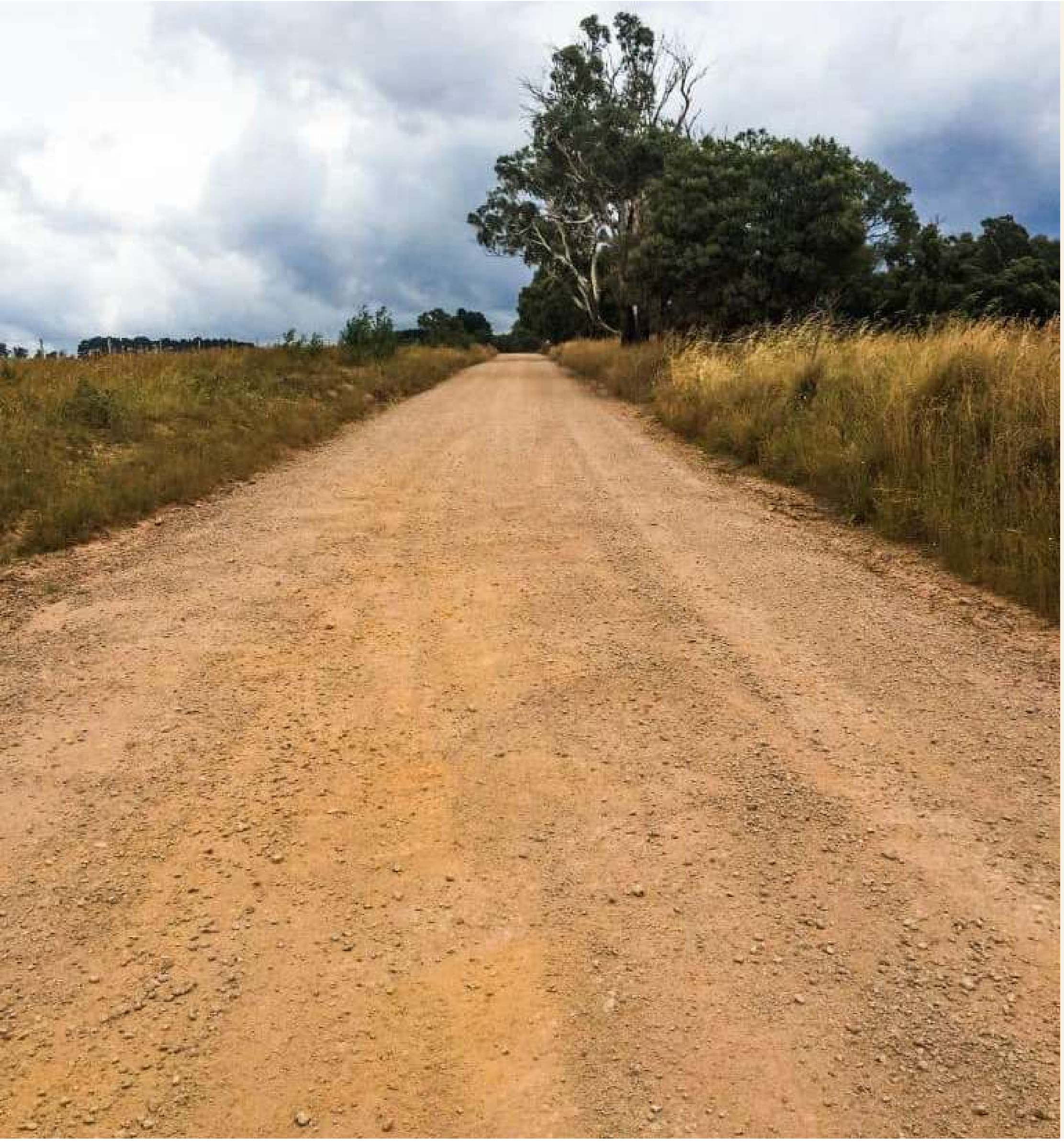
State, DOTD v. McKeithen, 42,830 (La. App. 2 Cir. 2/20/08), 976 So. 2d 832, 839.

PROOF OF MITIGATION

"The expropriation took from G & B a profitable [gas station] business, the value of which was not replaced through the profits of other locations."

State, Dep't of Transp. & Dev. v. G & B Oil Prods., Inc., 1999-1248 (La. App. 3 Cir. 6/21/00), 762 So. 2d 1123, 1127, writ denied sub nom. State, DOTD v. G & B Oil Prods., Inc., 2000-2196 (La. 10/27/00), 772 So. 2d 649

Note: had newly opened stations been closer to takings site, outcome could have been different



ACCESS COSTS:

Affirming trial court decision that access road was “indispensable” and that award of $431,700 award is reasonably supported by the evidence.

Bd. of Comm'rs N. Lafourche Conservation, Levee & Drainage Dist. v. Del-Mar Farms, Inc., 2013-1604 (unreported) (La. App. 1 Cir. 5/22/14)

Note; no discussion of severance or economic damages.

TREE VALUES

Generally, in considering the fair market value of the land taken, native trees should be considered only in determining the value of the land as a whole.

State, Dep't of Transp. & Dev. v. Knoll & Dufour Lands, LLC, 2013-399 (La. App. 3 Cir. 10/23/13), 158 So. 3d 1, 8; citing, State, Dep't of Highways v. Glassell, 226 La. 988, 77 So.2d 881 (La.1955).

A FINAL THOUGHT ON FULL EXTENT OF THE LOSS…

"The burden of proof on the property owner in an expropriation case is to establish his claims by a reasonable preponderance of the evidence; speculation, conjecture, mere possibility and even unsupported probability are not sufficient to support a judgment."

State, Dep't of Transp. & Dev. v. Manuel, 640 So. 2d 299, 301 (La. Ct. App.), writ denied, 641 So. 2d 203 (La. 1994); *State of Louisiana, through the Department of Highways v. Levy,* 242 La. 259, 136 So.2d 35 (1961); *State of Louisiana, Department of Transportation and Development v. Estate of Clark,* 432 So.2d 405 (La.App. 1st Cir.1983).

LOCAL PUBLIC AGENCIES

Limited knowledge, less experience, and small budgets create problems for right of way professionals.

LOCAL PUBLIC AGENCIES

Many LPA's do not have even working knowledge of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*) ("Uniform Act").

LPAs will not have a working knowledge of the federal regulations that implement the Uniform Act (49 CFR Part 24).

Louisiana LPAs will undoubtedly not comprehend the exposures associated with Just Compensation "to the full extent of the loss."

What Can We Do As ROW Professionals?

First, we can all recognize that outcomes are uncertain.

Where businesses are affected, we need to be cognizant that we do not know everything there is to know about a business' operation.

We need to engage business owners early and often to get them involved in the acquisition process. We need to avoid being dismissive of their claims, particularly early on in the process.

We need to communicate the "full extent of the loss" risks to the LPAs we counsel.

A NIGHTMARE ON MAIN STREET:

LOCAL PUBLIC AGENCIES & THE DILEMMA OF LOUISIANA'S COMPENSATION TO THE FULL EXTENT OF THE OWNER'S LOSS

James L Bradford III

Daigle Fisse & Kessenich, APLC