

Valuation of Easements

“Market value” in condemnation cases has long been defined by Texas courts as “the price the property will bring when offered for sale by one who desires to sell, but is not obliged to sell, and is bought by one who desires to buy, but is under no necessity of buying.” See *State v. Carpenter*, 89 S.W.2d 979, 980 (Tex. 1936) (op. on reh’g). Three main approaches have been approved in determining “market value” for the tract of land taken: the comparable sales method (sometimes referred to as paired sales), cost method, or income method. None of these methods allow for the consideration of freely negotiated comparable easement sales in determining a “market value” to account for damages to the remainder of a condemned tract.

Damages to the remainder in partial condemnation cases have long been recognized by Texas courts. A brief survey of Texas transmission line cases reveals that appellate courts routinely uphold jury verdicts awarding damages to the remainder for landowners

For example, in the late 1940’s Southwestern Public Service Co. (“SPS”) acquired a thirty foot easement for an electrical transmission line. SPS objected to the jury’s award of \$5248.96, which amounted to remainder damages of 6%. See *Southwestern Public Service Co. v. Goodwine*, 228 S.W.2d 925 (Tex. App. – Amarillo 1949, writ ref’d n.r.e.). The court upheld the damages award.

In 1959, the Eastland Court of Appeals upheld a finding of 15% damages to the remainder. *Texas Electrical Service Co. v. Etheredge*, 324 S.W.2d 322 (Tex. App. – Eastland 1959, no writ). Here, the utility company took a fifty foot easement, placing 4 wooden H-frames in the easement that were fifty-six feet tall with thirty-two foot cross-arms. The remainder damages amounted to nearly 9 times the amount of the value of the take.

In 1965, the Corpus Christi appellate court affirmed a finding of 10% damages to the remainder for 8 monopoles along a fifty foot easement containing 4.3 acres out of an 88.23 acre farm. See *South Texas Electric Cooperative, Inc. v. Ermis*, 396 S.W.2d 955 (Tex. App. – Corpus Christi 1965, no writ). Here, the poles were forty-six feet high, with two cross-arms.

In 2010, the San Antonio Court of Appeals affirmed a jury finding of approximately 10% damages to the remainder to a larger tract and approximately 25% damages to the remainder in a smaller tract in a case in which a pipeline easement containing 16.92 acres crossed both tracts comprised of a total of approximately 8,080 acres. The court affirmed the damages to the remainder of approximately 4,146 acres on the ranch even though the evidence showed the line crossed only a portion of the entire ranch. See *LaSalle Pipeline, LP v. Donnell Lands, L.P.*, 336 S.W.3d 306 (Tex.App.—San Antonio 2010, pet. denied).

Damages to the remainder can be an integral part of just compensation to the landowner. While the range of damage awards has remained relatively constant, from a percentage standpoint, absolute dollar figures have risen in proportion to the rise in Texas land values. Likewise, infrastructure size and the amount of power transmitted in present day infrastructure projects have dramatically increased, leaving an ever greater footprint across Texas farms and ranches.

The statutory revision proposed below aims to rectify and provide stability in the determination of market value and damages to the remainder for partial takings in eminent domain cases. By allowing for the use of comparable easement sales in privately negotiated transactions made in the absence of condemnation authority and of similar type, size and location, the subjective analysis involved in determining a market value and damages to the remainder can be reduced.

Tex. Prop. Code § 21.041. Evidence; Market Value Defined; Approved Forms

(a) As the basis for assessing actual damages to a property owner from a condemnation, the special commissioners shall admit evidence on:

- (1) the value of the property being condemned;
- (2) the injury to the property owner;
- (3) the benefit to the property owner's remaining property; and
- (4) the use of the property for the purpose of the condemnation.

(b) The court may admit evidence on the price paid for pipeline or powerline rights of way in privately negotiated transactions made in the absence of potential, actual, or threatened condemnation authority.