The Basics of Eminent Domain in Texas

Freeport, Texas
November 2, 2019
Why are we here?

- The Port of Freeport has a plan to expand its terminal and wants all East End property to do so.
Properties the Port Seeks to Acquire

2017: 358 properties
2018: 382 properties
2019: 399 properties
What is the Port?

- Independent government entity created by Texas in the 1920s.
- Provides for the construction and improvement of waterways to aid in navigation.
What Is Eminent Domain?

- Eminent domain = government’s power to take private property for public use.
- Condemnation = the process of taking property using eminent domain.
- Taking = the same thing as condemnation.
Common Terms in Eminent Domain

- **Condemnor** = the government unit that wants to take the private property.
- **Landowner (condemnee)** = the property owner whose property the government wants to take.
When Does the Law Allow Eminent Domain?

- U.S. Constitution: the government may take private property for “public use” after paying “just compensation” to the owner.
- Texas Constitution: the government may take private property for “public use” after paying “adequate compensation” to the owner.
Who Can Use Eminent Domain?

- Texas law gives many government units eminent domain authority.
  - Examples: Cities, counties, state agencies.
- Texas law gives “navigation districts,” like ports, eminent domain authority.
Limits on Eminent Domain

- Public Use
- Compensation to landowner
- Notice to landowner
- Opportunity for landowner to challenge the taking
  - Three-step process
What Is Public Use?

- A use that benefits the public
  - May also benefit a private business
  - Courts have often sided with the condemnor on public use
  - Ports can do many different things and call them public use
Changes in Public Use Law

- 2005: US Supreme Court case
  - Kelo v. City of New London
- 2005: Changes to Texas Government Code
- 2009: Amendment to Texas Constitution
  - Giving land to a private business for economic development is NOT public use
What Is Adequate Compensation?

- Texas law says the compensation must be adequate and tied to current market value.

- Getting an appraisal helps you get adequate compensation.
Port of Freeport’s Plan to Use Eminent Domain

• Port Commissioners’ Resolution on October 10, 2019
• Port has to assert a “public use” for each taking.
• Port has to pay “adequate” or “just” compensation to each landowner.
Condemnation Procedure in Texas
Three-Step Process (at most)

- **Step #1: Negotiation**
  - If negotiation does not work, move to step #2.

- **Step #2: Administrative Hearing**
  - If you object to the Commissioners’ decision, move to step #3.

- **Step #3: Court Case**
What are your Rights in the Eminent Domain Process?

- You always have the right to an attorney
- You have the right to adequate compensation for the loss of your property
  - Current local market value
Your Strategy in the Eminent Domain Process

• Focus on maximizing compensation
  - Attorney
  - Appraisal

• Be aware: challenging “public use” is possible but has rarely succeeded.
Step #1 - Negotiation with Port

Port Makes an Initial Offer in Writing

- Accepted
  - Port makes a final "bona fide" offer that must include certified appraisal, deed, and landowner's bill of rights.

- Not Accepted
  - Negotiations Continue

At least 30 days later

Accept offer within 14 days?

- Yes
  - Payment is made; Deed given to Port

- No
  - Port Files Condemnation Petition
Step #1 - Negotiation with Port

- Port makes **first** offer in writing; you don’t have to respond.

- Port makes **final** offer in writing 30 days later
  - Must include an **appraisal** of your property by a **certified appraiser**

- You have **14 days** to accept or the offer expires; you don’t have to accept this offer.
Step #1: Your Rights During Negotiation

You are entitled to a "bona fide offer" from Port in writing, which includes:

- Copy of the Port’s appraisal of your property
- Copy of the deed
- Landowner’s bill of rights (if not already given)
Step #1: Your Rights During Negotiation

- Right to discuss the terms of your offer or agreement with others or keep it confidential.

- Port must disclose any appraisals of your land for the past 10 years in its possession.

- You have the right to get your own appraisal, but you must pay for it.
Step #1: Your Strategy During Negotiation with Port

- Hire an attorney on a contingency basis.
- You/your attorney may get an appraisal from a certified appraiser.
  - But: Be strategic.
- You may share offers with your neighbors.
- Keep and record every communication between you and Port.
Step #1: Your Strategy During Negotiation with Port

Initial offer: $20,000
What you get in the end: $30,000
Difference: $30,000 - $20,000 = $10,000
Lawyer takes percent of the difference = 40% of $10,000 = $4,000

In the end:
Lawyer gets: $4,000
You get: $30,000 - $4,000 = $26,000
Step #1: Your Strategy During Negotiation with Port

- Hire an attorney on a contingency basis.
- You/your attorney may get an appraisal from a certified appraiser.
  - But: Be strategic.
- You may share offers with your neighbors.
- Keep and record every communication between you and Port.
Step #1: Your Strategy During Negotiation with Port

Stay calm; some tactics are likely—

- The first offers are likely to be low.
- The Port’s appraisal might not be accurate.
- The Port may try to rush you.
- You do not have to accept the Port’s offers during this phase.
Step #1: Important Deadlines

You must share any appraisals that you have with the Port before:

- the 10th day after receiving an appraisal report; or
- the third business day before the date of a special commissioner's hearing if an appraisal report is to be used at the hearing,

whichever comes first.
Step #1 - Summary

Payment is made; Deed given to Port

Port Makes an Initial Offer in Writing

Accepted

Port makes a final "bona fide" offer that must include certified appraisal, deed, and landowner's bill of rights.

Not Accepted

Negotiations Continue

At least 30 days later

Accept offer within 14 days?

YES

Payment is made; Deed given to Port

NO

Port Files Condemnation Petition
Step #2 - Administrative Hearing

- Court Appoints Special Commissioners
- Special Commissioners' Hearing and Award
- Award Accepted?
  - YES: Payment is made; Deed given to Port
  - NO: You must file objection, but Port takes title and you must move.
Step #2 - Administrative Hearing

I. First, the Port files a petition for condemnation.

II. Then, judge picks 3 landowners to be the special commissioners.

III. At the hearing, the commissioners:
   • decide what amount of money should be paid for your land (award)
   • but cannot decide if the Port is properly using eminent domain procedure.
Step #2: Your Rights in Administrative Hearing

Before the special commissioners’ hearing:

- Port must send you a copy of its condemnation petition.
- You must be notified of the time and place of the hearing at least 20 days before the hearing.
- You have the right to strike one commissioner.
Step #2: Your Rights in Administrative Hearing

During and after the hearing:

- You have the right to speak and present evidence and witnesses at the hearing.
- You must be notified of the commissioners' award in writing.
- You can accept or object to the commissioners' award.
Step #2: Your Strategy in Administrative Hearing

- Use an attorney.

- Your attorney might recommend that you present your own appraisal and the testimony of your appraiser as evidence at the hearing.
Step #2: Be aware!

If the commissioners' award is less than or equal to the amount the Port offered during the negotiation stage, then you must pay the costs of the hearing.
After Step #2:

- Once the commissioners make an award, the Port puts the money into escrow.
- The Port can take your property and evict you, even if you move to the court trial (Step #3).
- If you take the money from escrow, you can’t challenge public use in Step #3.
Step #2 - Summary

Administrative Hearing

Payment is made; Deed given to Port

Court Appoints Special Commissioners

Special Commissioners' Hearing and Award

Award Accepted?

YES

NO

You must file objection, but Port takes title and you must move.
Step #3 - Court Case

At trial, you may challenge the Special Commissioners' Award and/or the Port's Eminent Domain Procedure.

Final Judgment
Step #3 - Court Case

同樣，您需要在委員會作出裁決後不到一個月內提出具體的對抗意見。

您可以要求陪審團

在博索縣法院進行聆訊

聆訊可以審查裁決，並且是否符合法律（如果港口遵循程序）。

您需要在委員會作出裁決後不到一個月內提出具體的對抗意見。

您可以在博索縣法院提起聆訊。

聆訊可以審查裁決和是否符合法律（如果港口遵循程序）。
Step #3: Your Rights in the Court Case

- Right to challenge the award decision of the special commissioners and the Port’s use of eminent domain.

- If the court says the Port did not make a bona fide offer in step #1, you are entitled to:
  - A bona fide offer
  - Special commissioners' hearing fees
  - Attorney’s fees
Step #3: Your Strategy in the Court Case

- Use an attorney.

- Use all the correspondence with the Port you have saved to show procedural errors.

- Use your appraisal and appraiser to get fair compensation.
Step #3: Be Aware!

If the court’s award is less than or equal to the amount the Port offered during the negotiation stage, the you must pay the costs of the proceeding.
Step #3 – Summary

At trial, you may challenge the Special Commissioners' Award and/or the Port's Eminent Domain Procedure.

Final Judgment
The Port’s Condemnation of East End Properties
What are the Port’s next steps?

- The Port will appraise the value of each property it seeks to acquire.
- The Port will make offers to East End landowners.
- The Port will negotiate with each landowner.
How long does this take?

- **Step #1:** as little as 30 days.
  - Port can give extensions, but it’s optional

- **Step #2:** usually 4–7 months.
  - Port gets title after step #2 even if proceeding to #3
  - So, usually around 8–9 months from first offer to the taking/eviction, but it can be sooner.

- **Step #3** can take more than 2 years.
What are your next steps?

- Start researching attorneys:
  - Landowners can hire attorneys before or after getting an offer from the Port.

- Start researching the appraisal process:
  - Landowners can hire an appraiser directly, or their attorney can hire one.
Be Aware: Hiring Attorneys

- You can hire attorneys on a contingency basis.

- Ask your potential attorney:
  - If they specialize in eminent domain.
  - What appraisers they often work with.
  - If they have done an eminent domain case (how many?)
  - If they have they ever gone to trial?
  - If they have references?
Be Aware: Appraisals

If you hire an appraiser, s/he must be certified.

https://www.talcb.texas.gov/

• Talk to your appraiser about appraisal methods.

• Appraisers might give discounted prices if hired by a large group in the same neighborhood.
Things to know if you are renting:

Check your lease: Does it waive your right to receiving part of the award? (condemnation clause)

If there is no condemnation clause, you are entitled to a portion of the award.

If you are a month-to-month renter, you may not be entitled to part of the award.
Condemnation. If the whole or any part of the Premises, Building or Project shall be taken by power of eminent domain or condemned by any competent authority for any public or quasi-public use or purpose . . . Landlord shall have the option to terminate this Lease . . .

Tenant shall not because of such taking assert any claim against Landlord or the authority for any compensation because of such taking and Landlord shall be entitled to the entire award or payment in connection therewith . . .
Summary

• 1) The Port is using eminent domain and has to follow the law.
  ➢ You may want an attorney to challenge public use and to get you more money.

• 2) You do not need to accept the Port’s offers during negotiations.

• 3) You have the chance to increase your compensation with lawyers and appraisers.
Citations

- US Constitution, 5th Amendment – Takings Clause
- TX Constitution, Article 1, § 17 – Takings Clause
- Tex. Water Code § 62.105 – the Port’s power to use eminent domain
- Tex. Water Code § 60.101 – the Port’s many types of public use
- Tex. Property Code § 21.0111 – the condemnees must share appraisals
- Tex. Property Code § 21.0113 – bona fide offer (initial and final offer)
East End Overview

2017: 357 properties

2018: 382 properties

2019: 399 properties
Property Acquisition

Port Freeport

The Coast is Clear
City Properties in the East End
City-Owned Lots in Freeport’s East End as of March 2019

46 Lots
Lincoln Park
500 E. Fourth St. @ Poplar St.
### Lincoln Park

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Section 253.001 - Texas Local Government Code

- Allows a city to sell land “that the [city] owns, holds, or claims as a public ... park.”
- Requires the City Council to obtain voter approval first.
- City must adopt an ordinance directing the mayor or city manager to execute the sale or transfer.
Section 26.001(a) – Texas Parks & Wildlife Code

- City must also provide:
  - public notice and
  - a hearing

before approving any program or project that requires the taking of any public land used as a park.
Interlocal Agreement between Port and City of Freeport

- Port Commission approved an agreement with City of Freeport on February 25, 2016:

24. Approval of an Interlocal Agreement between Port Freeport and the City of Freeport.

A motion was made by Commissioner Kresta to approve the agreement contingent on the City providing a title policy of the park. The motion was seconded by Commissioner Pirtle with all Commissioners present voting in favor of the motion.
Freeport City Council discussed the Interlocal Agreement

February 16
April 4
May 24
2019: City of Freeport claims no agreement exists

2. The Interlocal Agreement between the City and Port of Freeport, approved by the Port Commission on or about February 25, 2016, concerning Lincoln Park.

We have no records responsive to your request.
QUESTIONS?

Join LSLA's EJ Team's mailing list.

Just send your email address by text message:

Text

EJUSTICE

to 22828 to get started.

Amy Dinn
Colin Cox
Heejin Hwang
Velimir Rasic

Equitable Development Initiative
713-652-0077 ext 8108