

# Procedural Landmines in Eminent Domain

Loren Smith  
Olson & Olson, LLP

# Pre-Petition Procedural Requirements

- The Texas Legislature clearly **HATES** the use of the power of Eminent Domain by Local Governmental Entities.
- In the last several years, the procedural requirements have increased dramatically.
- “The rules are not so much Draconian as they are Byzantine.” Jay Bilas



- Jay Bilas also successfully defended a costume company from a copy-right infringement claim by the makers of Barney.

# The Landowners Bill of Rights

- An entity with eminent domain authority must provide a copy of the Texas Landowners Bill of Rights to the property owner before or at the time that the “entity possesses eminent domain authority.”
- The Landowners Bill of Rights must also be posted on the governmental entity’s website.

# Offer Letters

- Prior to an entity exercising its eminent domain authority, it must send two offer letters: an initial offer letter and, no sooner than 30 days after the initial offer letter, a final offer letter.
- These letters must include certain information and documents.

# Initial Offer Letter

- The Initial Offer Letter must contain:
  - Landowners Bill of Rights;
  - A statement in **bold print** and a larger font than the other portions of the offer indicating:
    - That the offer includes damages to the remainder, if any
    - An appraisal by a certified real estate appraiser;
  - An instrument of conveyance; and
  - A metes and bounds description of the property.

# Initial Offer Letter

- The Initial Offer Letter must also contain:
  - Copies of any previous offers to purchase the property.
  - Any appraisals of the property acquired within the previous 10 years.
  - A statement that the offer is not confidential and that the owner has the right to discuss the offer with anyone.

# Final Offer Letter

- The Final Offer Letter must include:
  - Landowners Bill of Rights
  - Appraisal by a certified real estate appraiser
  - Conveyance instrument
  - Metes and bounds description of the property
- Must wait 14 days from issuance of final offer letter before filing eminent domain petition.



# Vote to Authorize the Use of Eminent Domain

- Section 2206.053 of the Texas Government Code requires that a resolution to authorize the use of the power of eminent domain:
  - Be approved at a public meeting the notice of which must contain notification that consideration of the use of eminent domain is an agenda item;
  - Be approved by record vote.

# Vote to Authorize the Use of Eminent Domain

- Section 2206.053 of the Texas Government Code requires that a resolution to authorize the use of the power of eminent domain:
  - The motion to approve must be made a form substantially similar to: “I move that the [name of governmental entity] authorize the use of the power of eminent domain to acquire [describe the property] for [describe the public purpose].”

# Special Commissioners

- Once a petition is filed, the Judge will appoint 3 Special Commissioners.
- Once appointed, the parties to the proceeding may strike 1 of the Special Commissioners within the later of 20 days after the petition is filed or 10 days after the order appointing the Special Commissioners is signed.

# Good News!

- In 2004, the Texas Supreme Court decided the *Hubenak v. San Jacinto Gas Transmission Company* case.
- In *Hubenak*, the Texas Supreme Court decided that the requirement to negotiate in good faith prior to filing a petition is not jurisdictional.
  - Same reasoning has been applied to other procedural requirements of condemnation.