

Eminent Domain Power Granted to Private Pipeline Companies:



Urban Resistance

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Can Private Pipeline Companies Take My Land?

- Yes.
- “Common Carriers” and “Gas Utilities” in Texas have the statutory right of eminent domain pursuant to the Texas Utilities Code §181.004; Article 2.01, Texas Business Corporation Act; and the Texas Natural Resources Code §111.000 *et seq.*

Scope of the Takings Power (Texas Constitution)

- "No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof."

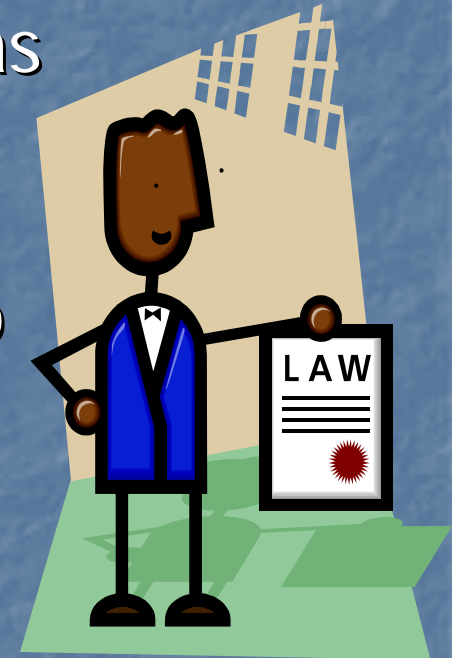
Tex. Const. Art. I, § 17



What are my Rights as a Landowner?

- The Texas Attorney General's Office has created a Texas Landowner's Bill of Rights that the pipelines, or any condemning authority, must provide to you before initiating condemnation proceedings.
- See Texas Gov't Code §402.031; and Texas Property Code § 21.0112.
- Obtain a copy at the Texas Attorney General's website at:

http://www.oag.state.tx.us/agency/Landowners_billofrights.pdf

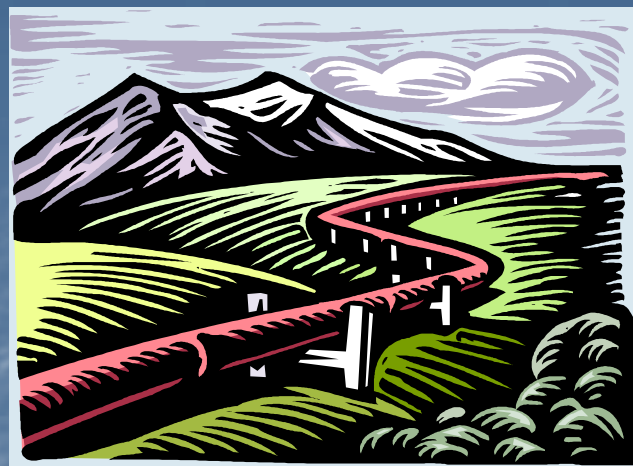


Can the Pipeline Enter my Property Before Filing for Condemnation?



- Yes. The right of a pipeline to enter your property to conduct “surveys” has been held to be ancillary to the power of eminent domain. *IP Farms v. Exxon Pipeline Co.*, 646 S.W.2d 544 (Tex. App.-Houston [1st Dist] 1982, no writ).

Pipeline Route



- The route of the pipeline is determined by the pipeline operator.
- The Railroad Commission does not have authority to determine the route a pipeline takes.
- The pipeline's determination of the "necessity for acquiring certain property is conclusive, absent fraud, bad faith, abuse of discretion, or arbitrary or capricious actions." *Valero Eastex Pipeline Co. v. Jarvis*, 990 S.W.2d 852, 856 (Tex. App.—Tyler 1999, pet. denied).

Measuring Adequate Compensation

- Article 1, Section 17 of the Texas Constitution provides that no person's property shall be taken, damaged or destroyed for or applied to public use without *adequate compensation* being made...
- Adequate compensation includes:
 - the fair market value of the property taken,
 - plus damages.
- Does not include an award of attorney's fees unless condemnation is dismissed. Tex. Prop. Code §21.019





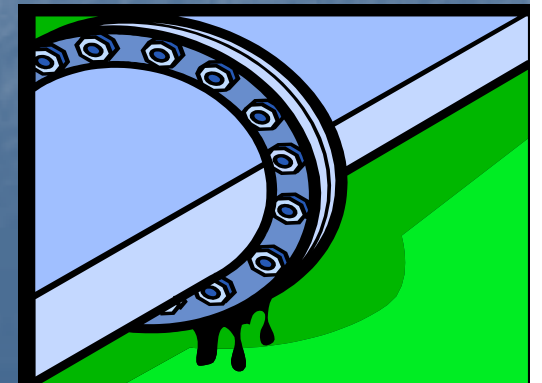
Proposed Constitutional Amendment

- HJR No. 65 (Yvonne Davis-Dallas) proposes an amendment to Article 1, Section 17 of the Texas Constitution to define “adequate compensation” when the property taken is a homestead or farm.
- In eminent domain takings where relocation of a farm or homestead is necessary, “adequate compensation” would include the cost to relocate the property owner to another property that affords the owner the same standard of living as he or she enjoyed immediately before the taking.



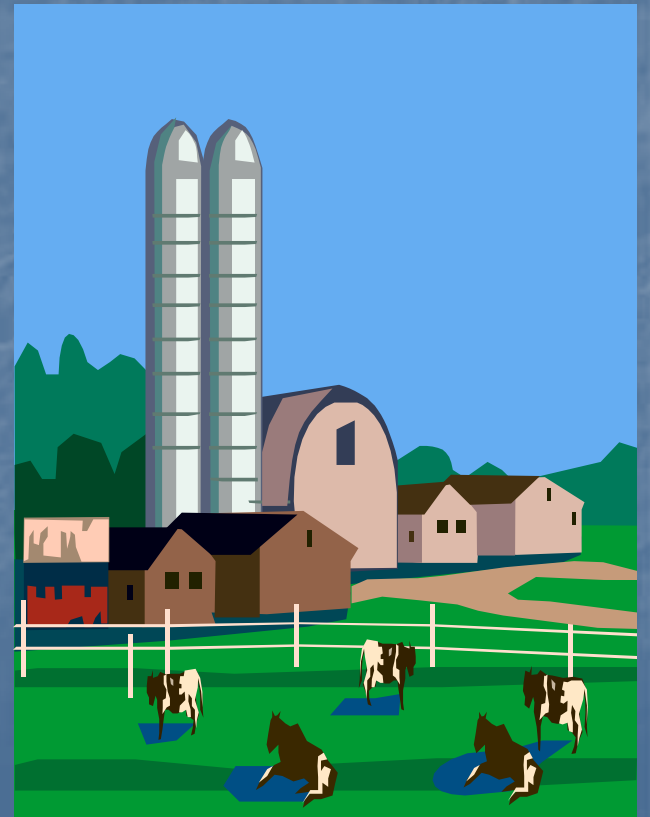
Compensation

- Compensation for easements measured by market value at the date of taking.
- Damages to remainder measured by difference in market value of the remainder immediately before and after the taking.



What Other Damages are Recoverable?

- In addition to being entitled to receive the market value of the property taken, you are entitled to damages to the remainder.
- The condemnor must also pay for special repair and mitigation costs that would not be reflected in the lost market value.





Typical Easement

- A standard pipeline easement is 50 feet wide. Tex. Nat. Resources Code §111.0194. However, an easement agreement may provide for a wider or narrower easement.
- Pipelines normally are buried at a depth of three feet, but pipeline operators are not required to maintain this depth if erosion occurs after the installation of the pipeline.



City of Fort Worth Ordinance- 18449-02-2009 General Pipeline Regulations

- Pipelines may not interfere with existing utilities (15-46.A.1);
- Pipeline Operator must comply with noise regulations in section 15-42.B of the ordinance(15-46.A.2);
- 10 day written notice to owners, residents and tenants located adjacent to proposed Pipeline is required prior to the commencement of construction (15-46.A.5);
- Simultaneous submission of information (plans, drawings, substance material safety data sheet, cross sections, names and addresses of property owners, residents and tenants adjacent to Pipeline, etc...) to City when Pipeline records are submitted to the Texas Railroad Commission (15-46.A.6);

City of Fort Worth Ordinance- General Pipeline Regulations Cont.

- Pipeline Operators transporting gas, oil, liquids or hydrocarbons through a Pipeline located in the City shall be a member of the One Call system(15-46.A.7);
- At permitting and annually thereafter while the Pipeline remains active, Pipeline Operators must provide information on two primary and two alternate emergency contacts(15-46.A.8);
- Concurrent filing with the City of pipeline safety, incident, and emergency reports provided to U.S. Dept of Transportation or the Railroad Commission of Texas (15-46.A.9);
- File with the City an annual verified report certifying that the Pipeline has no outstanding safety violations within the City(15-46.A.10);

City of Fort Worth Ordinance 18449-02-2009



- General Pipeline Regulations (15-46.A.) apply to all Pipelines laid within the City (15-31.RR. and 15-46.A)
- Certain other regulations in the ordinance apply only to City Regulated Pipelines (15-46.B)

City Regulated Pipelines

- “City Regulated Pipelines” means those pipelines within the City that under federal and state rules and regulations are not exempt from City regulations and ordinances regarding mapping, inventorying, locating, or relocating of pipelines, including, but not limited to, pipelines over, under, along, or across a public street or alley, pipelines from the well to the first point of custody transfer or in Private Residential Areas within the boundaries of the City. City of Fort Worth Ord. 18449-02-2009, §15-31.J.



City of Fort Worth Ordinance- City Regulated Pipelines

- Prior to Pipeline Construction, a Pipeline Operator shall obtain a Pipeline Permit from the City (15-46.B.2);
- At the time an Operator submits a Gas Well drilling permit application, the Pipeline operator is required to submit a proposed Pipeline route to the City (15-46.B.3);
- The application for a Pipeline Permit must be submitted before the Pipeline Operator may make any offer or begin negotiations for easements or other property rights (15-46.B.4);
- Pipeline shall be buried at a minimum depth of ten feet (10') below the finished grade, except in public-rights-of-way where minimum cover over the top of the pipe is at the discretion of the City (15-46.B.5);
- All City Regulated Pipelines must be equipped with an automated pressure monitoring system that detects leaks and automatically shuts off any line or section of line that develops a leak (15-46.B.6);

City of Fort Worth Ordinance- City Regulated Pipelines Cont.

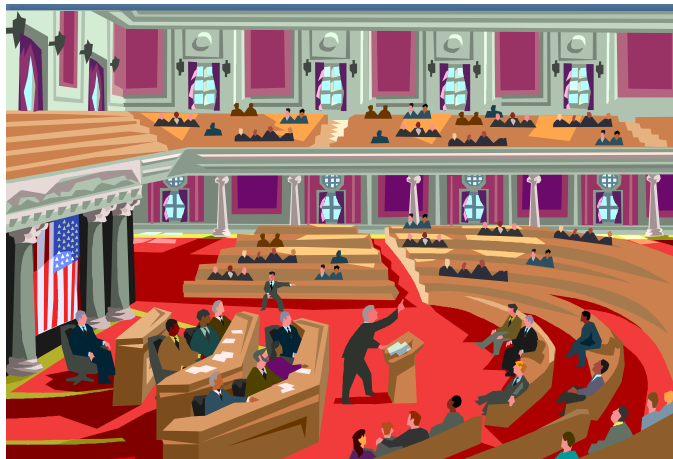


- The Gas Drilling Review Committee shall review all applications for Pipelines located in a Private Residential Area (15-46.C);
- Thirty (30) day notice to City if Pipeline is abandoned or a previously abandoned Pipeline is reactivated (15-46.E.);
- A minimum of five (5) days' prior notice to residents and businesses of non-emergency repairs and excavation (15-46.G.);

City of Fort Worth Ordinance- City Regulated Pipelines Cont.

- A permit and written agreement with the City is required before a Pipeline Operator may undertake any Pipeline Construction on, over, under, along, or across any public-rights –of-way, utility easements or other City-owned property (15-46.I);
- Pipeline Permits expire within one (1) year from the date of the issuance of the Permit if construction has not begun by that date, or within two (2) years from the date of the issuance of the Permit if Construction has begun but has not been completed by that date (15-46.J.);
- Separate Regulations for Salt Water Pipelines (15-47).

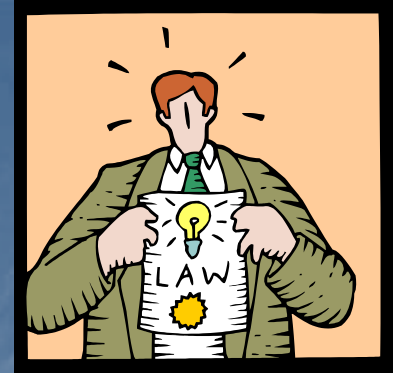




Proposed Legislation

- As of April 10, 2009, there are 17 Bills relating to the exercise of eminent domain that are pending in the Texas Legislature.
- Major concerns addressed by the proposed legislation include:
 - Compensation and damages for property taken by eminent domain;
 - Public purpose requirements / private use prohibitions;
 - Good faith negotiations;
 - Attorney's fees in condemnation; and
 - Disclosure of appraisals /value information by all condemning authorities, not just governmental agencies

Proposed Legislation



- **HB 4:** Relating to eminent domain, including certain limitations, procedures, and standards relating to the use of eminent domain (Orr | et al.).
- **HB 369:** Relating to assessment of damages in a condemnation proceeding (Brown, Betty).
- **HB 402:** Relating to the use of eminent domain authority (Woolley).
- **HB 417:** Relating to the acquisition of and compensation for real property, including blighted property, for public purposes through condemnation or certain other means (Callegari).
- **HB 1385:** Relating to the assessment of damages to a property owner from condemnation (Davis, Yvonne).
- **HB 1389:** Relating to the acquisition of real property for public use (Davis, Yvonne).
- **HB 1432:** Relating to a landowner's repurchase of real property from an entity that acquired the property through condemnation (Jackson, Jim).
- **HB 1483:** Relating to the use of eminent domain authority (Pitts | et al.).
- **HB 1535:** Relating to the requirement that gas corporations obtain a permit from the Railroad Commission of Texas before condemning property to construct certain gas pipelines (Burnam).

Proposed Legislation

- **HB 3709:** Relating to certain charitable corporations granted eminent domain power (Coleman).
- **HJR 65:** Proposing a constitutional amendment to require compensation for certain property taken where the use is public and necessary (Davis, Yvonne).
- **SB 18:** Relating to the use of eminent domain authority (Estes | et al.).
- **SB 533:** Relating to eminent domain, including certain limitations, procedures, and standards relating to the use of eminent domain (Duncan).
- **SB 622:** Relating to access to the state highway system and damages for diminished access to the state highway system (Hegar).
- **SB 728:** Relating to the exercise of eminent domain authority by private entities (Carona | et al.).
- **SB 1023:** Relating to the exercise of eminent domain authority (Ogden).
- **SB 2433:** Relating to condemnation of municipal property for and municipal regulation of pipeline operations (Davis, Wendy).

HB 4



- Proposes to amend Texas Property Code Chapter 21 and Texas Government Code Chapter 2206.
- Requires condemnors to disclose any and all appraisal reports relating to the subject property to property owners at the time an offer to purchase is made;
- Property owners may request that an appraisal be prepared at the condemnors' expense;
- Property owners have a right to request that condemnors disclose all appraisals, offers, and negotiated purchase prices paid for neighboring properties;
- Good faith negotiation required;
- Two offers to purchase required;
- 20 days' notice of commissioners' hearing;
- A finding that the condemnor failed to negotiate in good faith results in an award of attorneys fees and costs to property owner.



SB 18

- Proposes to amend Texas Property Code Chapter 21, Texas Government Code Chapter 2206, and Subchapter B, Chapter 111 of the Texas Natural Resources Code.
- Defines “public use.”
- Grants property owners the express right to construct streets or roads over any easement condemned under Texas Property Code Chapter 21;
- Governmental entities must authorize the initiation of condemnation at a public meeting by a record vote;
- Requires condemnors to make a “bona fide offer” to purchase subject property before initiating condemnation proceedings;
- If a the public use for a prior taking is cancelled, giving the prior landowner the right to repurchase the property, the repurchase price paid by the landowner shall be the same price paid by condemnor at the taking (not fair market value at time public use was cancelled);
- Requires disclosure by condemnor of information “related to the taking” of the subject property when requested by property owner and allows for an award of attorneys fees for refusal to disclose;
- 21 days’ notice of commissioners’ hearing required in condemnations by common carriers;

Safety Concerns

- WHAT IS TEXAS ONE CALL SYSTEM?
- Texas One Call System is a computerized notification center. It establishes a communication link between those who dig underground (*excavators*) and those who operate underground facilities (*operators*).
- Texas One Call System is funded by members who are operators engaged in:
 - Communications
 - Gas Distribution
 - Gas Transmission & Gathering
 - Electric Power
 - Products/Pipelines
 - Water & Wastewater
- Texas One Call will determine the location of the work from the excavator and notify all members with underground facilities in the area where the excavation will take place. Notification will also be sent to all registered notification centers in Texas.
- All operator members of Texas registered notification centers will mark their facilities in the area of the excavation.
- **ONLY ONE CALL IS NECESSARY.**



Urban Property Owner Issues

- Safety
- Noise
- Appraisal Value / Remainder Damages
- Litigation / Negotiation Costs
- Stigma
- Repairs
- Appurtenances
- Removal / Abandonment
- Construction Disruption
- Subsequent Owners/ Assignees / Operators
- Insensitivity

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