

By: Brown of Kaufman

H.B. No. 1626

A BILL TO BE ENTITLED

AN ACT

relating to assessment of damages in a condemnation proceeding.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 21.042, Property Code, is amended by amending Subsections (c)-(e) and adding Subsections (f) and (g) to read as follows:

(c) If a portion of a tract or parcel of real property is condemned and the property owner seeks an award for damage caused by the condemnation to the property owner's remaining property, the total amount of the award for damage to the property condemned and to the remaining property is based on the difference in the local market value of the entire property immediately before the condemnation and the local market value of the remaining property immediately after the condemnation, considering any benefit or injury that the construction or operation of the condemnor's project has on the market value of the remaining property~~[, the special commissioners shall determine the damage to the property owner after estimating the extent of the injury and benefit to the property owner, including the effect of the condemnation on the value of the property owner's remaining property]~~.

(d) Any increase or decrease in the market value of an entire tract or parcel of real property caused by the condemnor's proposed project before the condemnation may not be considered in estimating the market value of that property before condemnation.

Any increase or decrease in the market value of any remaining real property caused by the condemnor's proposed project after the condemnation shall be considered in estimating the market value of that property after the condemnation ~~[In estimating injury or benefit under Subsection (c), the special commissioners shall consider an injury or benefit that is peculiar to the property owner and that relates to the property owner's ownership, use, or enjoyment of the particular parcel of real property, but they may not consider an injury or benefit that the property owner experiences in common with the general community].~~

(e) In the case of a condemnation by or for the Texas Department of Transportation of real property for a state or federal highway, in estimating the market value of the property condemned and of any remaining property if ~~[If]~~ a portion of a tract or parcel of real property is condemned, the special commissioners shall consider all factors considered in the marketplace that may affect the property's market value, including:

(1) vehicular and pedestrian access to and from and on and off the property;

(2) traffic circulation and count in and around the property;

(3) visibility and appearance of and from the property;

(4) productivity and convenience of use of the property, including its highest and best use; and

(5) the property's access to utilities and drainage ~~[for the use, construction, operation, or maintenance of the state~~

1 ~~highway system or of a county toll project described by Chapter 304,~~
2 ~~Acts of the 50th Legislature, Regular Session, 1947 (Article~~
3 ~~6795b-1, Vernon's Texas Civil Statutes), that is eligible for~~
4 ~~designation as part of the state highway system, or for the use,~~
5 ~~construction, development, operation, or maintenance of an~~
6 ~~improvement or project by a metropolitan rapid transit authority~~
7 ~~created before January 1, 1980, with a principal city having a~~
8 ~~population of less than 1,200,000 and established under Chapter~~
9 ~~141, Acts of the 63rd Legislature, Regular Session, 1973 (Article~~
10 ~~1118x, Vernon's Texas Civil Statutes), the special commissioners~~
11 ~~shall determine the damage to the property owner regardless of~~
12 ~~whether the property owner makes a claim for damages to the~~
13 ~~remaining property. In awarding compensation or assessing the~~
14 ~~damages, the special commissioners shall consider any special and~~
15 ~~direct benefits that arise from the highway improvement or the~~
16 ~~transit authority improvement or project that are peculiar to the~~
17 ~~property owner and that relate to the property owner's ownership,~~
18 ~~use, or enjoyment of the particular parcel of remaining real~~
19 ~~property].~~

20 (f) The effect that the condemnation has on any of the
21 market value characteristics required to be considered under
22 Subsection (e) shall be considered in estimating the market value
23 of any remaining portion of a tract or parcel of real property that
24 is condemned regardless of whether any other property in the area is
25 similarly affected by the condemnation.

26 (g) Notwithstanding any other provision of this section, if
27 the property condemned is owned by a public entity or by a person

1 organized and operated on a non-profit basis and the property is
2 devoted to and needed by the property owner in good faith to perform
3 a public function or to provide a non-profit educational,
4 charitable, or eleemosynary service, the damage award may not be
5 less than the financial cost of replacing the property.

6 SECTION 2. The changes in law made by this Act apply only to
7 assessment of damages in a condemnation proceeding for which a
8 special commissioners' hearing begins on or after the effective
9 date of this Act. Assessment of damages in a condemnation
10 proceeding for which a special commissioners' hearing began before
11 the effective date of this Act is governed by the law as it existed
12 at the time the hearing began, and the former law is continued in
13 effect for that purpose.

14 SECTION 3. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect September 1, 2007.