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OPINION

WHAT TO KNOW IF YOU OWN A BUSINESS ALONG THE I-45 EXPANSION

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Guest contributor



More than 7,000 TxDOT projects are currently active or expected to begin this year with about \$12.4 billion in state infrastructure spending earmarked for Houston. This includes widening I-45 North from downtown to Beltway 8, adding new managed express lanes, bike and pedestrian infrastructure, and the realignment of I-45 to the east side of downtown.

Lawyers are already riling up landowners and businesses located along I-45 with fears of government seizing the property and displacing their businesses. These same landowners and businesses, who have already been hamstrung by the three-year pause on the project that created uncertain horizons for leasing, capital improvement and maintenance decisions, and redevelopment plans, are left to ask, "Can they really take it?"

The answer, of course, is that they can.

Almost 30 years of representing landowners against government and public-use entities has taught me that, despite lip service mostly for the benefit of farmers and ranchers, Texas is not a property rights state. Only 12 of the 50 states have laws on the books that prevent the use of eminent domain, and Texas isn't one of them. The only real protection afforded by the State constitution is the requirement that the State compensate impacted landowners not only for the property it needs for its project but also for any impacts the acquisition and project may have on the property that remains after construction of its project.

Here are five things to know about the eminent domain process:

► **Until the state has taken your property, it hasn't.** You can't let a proposed project interfere with or disrupt actual plans for the property, even if that means development

or redevelopment inconsistent with the impact of the proposed project. The State is only liable for taking private property for public use; it is not liable for saying it is going to take private property for public use.

► **You will receive an offer.** You do not need a lawyer to receive an offer, and you will not lose or waive any rights by waiting to receive the offer. A good condemnation lawyer will still have plenty of time to protect your rights, including securing an acceptable amount of compensation, even if you wait to see the offer before engaging a lawyer.

► **Similarly, you do not need a lawyer to accept the offer.** However, it is a good idea to have a condemnation lawyer review it even if you think it is fair. There may be impacts to your remaining property that are not obvious or that warrant additional scrutiny.

► **The acquisition process represents your one and only opportunity to be compensated for the impacts of the acquisition and the project.** If an offer is accepted, you will not be able to go back to the State for more money if it turns out the project was more impactful than anticipated.

► **You can fight City Hall.** The involuntary acquisition process is multitiered and somewhat complex, but it is intended to provide a mechanism for property owners to push back on the amount of compensation to be paid for the taking.

The Federal Highway Administration has given TXDOT's I-45 North project the go-ahead, and further review is unlikely. Whether or not it's a good project for Houston remains to be seen, but even good highway projects can damage the market value of the properties along its path. While there is little to be done to stop the road widening, there are steps you can take to ensure you receive fair compensation.

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