

The Project Influence Rule

Project influence in a condemnation case refers to a positive or negative change in the market value of property as a result of the same public project for which all or a part of the property is being taken. When project influence is present, the market typically reacts to it in advance of the government's acquisition of a particular property. Thus, by the time the acquisition actually occurs, market transactions will reflect the market's view of the public project and its influence on market value. The majority rule in such instance is that any increase or decrease in market value directly attributable to the project should not be considered in determining market value. This rule is commonly referred to as the project influence rule.

The rationale underlying the project influence rule is straight-forward. Once property is slated for acquisition for a public improvement, it can no longer realize any benefits or suffer any damaging effects that the project may bring. Where the project enhances market value, excluding any value directly attributable to the project negates the impact of the project as to both the condemnor and condemnee, so that the government does not pay an enhancement attributable to its project and not normal market forces. Likewise, where the project negatively influences market value, these influences are excluded so that the property owner does not receive less than he would have but for the project. In simplest terms, the goal is to determine a property's value as of the "date of taking" assuming that it had traded in the marketplace on that date between a willing buyer and seller, neither being under compulsion to buy or sell, disregarding any special impact the project may have on the property's market value.

The project influence rule is a product of the indemnity principle that underlies our country's notion of "just compensation." Numerous courts have attempted to clarify what is meant by the words "just compensation." The general conclusion is that just compensation "means substantially that the owner shall be put in as good a position pecuniarily as he would have been if his property had not been taken."¹ A leading commentator in eminent domain has summarized the majority position that compensation shall be based on this indemnity principle:

"Compensation," as used in the constitutional provision as a limitation on the power of eminent domain, implies full indemnity to the owner, that is, equivalent (usually monetary) for the loss sustained by the owner for the land which has been taken or damaged. Many state constitutions require that compensation be "just," "reasonable" or "adequate," but these words are mere epithets rather than qualifications and add nothing to the meaning of the term. The phrase "just compensation" means the value of the land taken and the damage, if any, to land not taken. The adjective "just" only emphasizes what would be true if omitted—namely, that the compensation should be the equivalent of the property.... While valuation must be based upon the concept that the owner of the property is be left pecuniarily in the same position as he would have been had the property not been taken,

¹ *Seaboard Air Line Ry. Co. v. United States*, 261 U.S. 299, 304 (1923). *Accord*, *United States v. Reynolds*, 397 U.S. 14, 17 (1970); *United States v. Miller*, 317 U.S. 369, 373 (1943); *Porter v. United States*, 473 F.2d 1329, 1334 (5th Cir. 1973); *Carter v. City of Tyler*, 454 S.W.2d 771 (Tex. Civ. App.—Tyler 1970, writ ref'd n.r.e.); *Schlottman v. Wharton County*, 259 S.W.2d 325, 332 (Tex. Civ. App.—Fort Worth 1953, writ dism'd).

there is no guarantee that the owner will receive a return of his investment. It is his property, and not his investment, for which he must be compensated. While the government may not take advantage of the owner's bargain, it is not required to underwrite his loss.²

Under this formulation, the just compensation clause works not only for the benefit of the property owner, but also for the condemner. As the Supreme Court stated early on, "the theory of 'just compensation' under the Fifth Amendment is that such compensation is to be 'just' both to the owner of the property and to the public which pays the bill."³ The government should not have to pay more for the property than would a private purchaser simply because the government is exercising its condemnation power in the public's behalf. Instead, the government is to be equated to a private purchaser buying the property in question for its highest and best non-governmental use in the open market.⁴ In calculating the compensation owed a property owner in a condemnation action, neither the government nor the property owner should be allowed to gather so-called "market value" facts from a market that has been influenced by the specific project for which the government seeks to condemn the owner's property. Likewise, the government should not be permitted to artificially influence a market by various value-depressing acts so that the property it must acquire in that market will come at a cheaper price. An owner whose property is the type traded in the marketplace is entitled to compensation in a condemnation case based on free market transactions uninfluenced by such governmental activity. Equally as true, the government should not have to pay any more than is indicated in the free market for the property it needs, uninfluenced by its specific project. These concepts have become known as the "project influence" or "scope of the project" rule.

In Texas, the fact finder may not consider any specific damages or benefits to the value of one's property that results from the public improvement to be constructed on the property in determining market value.⁵ In *Corbin* and in a prior case, *Barshop v. City of Houston*,⁶ the Texas Supreme Court presented a number of formulations intended to establish the parameters of this rule:

The fact of condemnation itself is excluded; fair market value must, by definition, be computed as if there were no proceedings to eliminate that market.⁷

² 4 *Nichols on Eminent Domain* §12.01(4) (rev. 3d ed. 2006).

³ *Bauman v. Ross*, 167 U.S. 548, 570 (1897) (The Court continues: "The just compensation required by the Constitution to be made to the owner is to be measured by the loss caused to him by the appropriation. He is entitled to receive the value of what he has been deprived of, and no more. To award him less would be unjust to him; to award him more would be unjust to the public." *Id.* at 574).

⁴ *United States v. 499.472 Acres of Land*, 701 F.2d 545, 549 (5th Cir. 1983). *Accord United States v. 320 Acres of Land*, 605 F.2d 762, 781-83 (5th Cir. 1979).

⁵ *City of Fort Worth v. Corbin*, 504 S.W.2d 828, 830 (Tex. 1974).

⁶ 442 S.W.2d 682, 685 (Tex. 1969).

⁷ *Corbin*, 504 S.W.2d at 830

When it becomes known to prospective purchasers that the landowner's entire tract will soon lie beneath a highway or airport, the market should thereafter allow no benefit for that land because of that project.⁸

[T]he landowners' compensation should under some circumstances or at some time cease to include enhancement due to the project which is itself the purpose of condemnation.⁹

Another general rule is that value should not include any enhancement which is occasioned by the public facility itself.¹⁰

The overall premise is that a condemning authority should not have to pay for increases in market value that are attributable to the public facility itself for which the property is being acquired.

In the application of the project influence rule, there is a timing factor: Enhancement is allowed up to the time that the condemnor manifests a definite purpose to take the particular land. As stated by the Texas Supreme Court:

The manifestation or announcement must be done or made publicly and be of sufficient notoriety to insure that a person in the business of trading land in the vicinity, or a prospective purchaser of ordinary prudence, by making a reasonable effort to gain information on the uses and value of the land will either know of the inclusion of the land within the project or will be aware of the need for inquiry at a convenient source where the fact will be readily obtainable.¹¹

The process for applying the project influence rule is described in *State v. Bryan*:

The question of project enhancement is related to the comparability of the sale offered in support of the expert's opinion. Where a proper objection is made to a sale on the ground that it is not comparable or that the value of the property sold has been affected by the project, the trial court must determine whether or not the sale is comparable and whether or not the price received has been influenced by the project. Where it is shown that the sale occurred after the date of taking the burden is upon the party offering the testimony to develop the facts showing whether or not the price of the property under consideration was affected by the public improvement causing the condemnation.¹²

⁸ *Id.* at 831.

⁹ *Id.* at 830.

¹⁰ *Barshop*, 442 S.W.2d at 685.

¹¹ *Corbin*, 504 S.W.2d at 831.

¹² 518 S.W.2d at 932.

The first step is to determine a cutoff date for any alleged project enhancement. The determination of this cutoff date must be made by the court and not by the jury.¹³ This ruling should precede the determination of comparability of sales as well as the admissibility of other evidence, which are matters for the judge to decide.¹⁴ Under Texas law, enhancement from a project is allowed up to the time that the condemnor manifests a definite purpose to take the particular land.¹⁵

The exclusion of evidence under the project influence rule is not automatic.¹⁶ Instead, when an objection to evidence of a sale is made on the ground that the value was affected by the project, the burden is on the party offering the testimony to develop facts showing that the project did not affect the property's value.¹⁷ Evidence of sales of comparable land made subsequent to the project cutoff date may be admitted into evidence where it is proved that the price paid was not influenced by the project itself or the buyer did not pay more because of the project.¹⁸ The rule simply requires that the party seeking to offer evidence of a comparable sale show that the sale was not enhanced by the project.

To fully understand the proper application of the project influence rule, one must consider the facts of the cases in which it has been applied. The seminal case is *Barshop v. City of Houston*.¹⁹ In *Barshop*, the City sought to take 52.66 acres of land from Barshop for Houston's new Intercontinental Airport. The difficulty in applying the rule in that case was the long period of time that passed between the City's initial plans for the airport and the date that Barshop's property was specifically targeted for final acquisition. Discussions and planning for the airport began in June 1950. In April 1958, the City acquired 3,125 acres for the airport. It was generally known, however, that additional land would be necessary. The subject property bordered the southern edge of the 3,125 acres.

In 1959, the subject tract sold for \$79,000 to a private investor, and on April 20, 1960, Barshop acquired it for \$90,000. The *Barshop* Court characterized both of these transactions as "enhanced."²⁰ On October 11, 1960, the City authorized the purchase of the Barshop tract for \$63,192. Still, the City did not make an offer to purchase the tract until almost three years later. In the interim, the City enacted an ordinance in which it designated the area within which the airport would be located. This designated area included the Barshop property. However, the City deferred to aviation authorities to determine the specific lands within the designated area that actually would be needed. On October 23, 1961, the City adopted the master plan for the airport identifying where the airport would be built and the land required. This master plan also

¹³ *Corbin*, 504 S.W.2d at 831 ("The determination of the cutoff date for project enhancement is a matter for the trial court and must generally precede any determination of comparability of sales.").

¹⁴ *Id.* (citing *State v. Oakley*, 163 Tex. 463, 356 S.W.2d 909 (1962)).

¹⁵ *See, e.g., Fuller*, 461 S.W.2d at 598; *Barshop*, 442 S.W.2d at 685.

¹⁶ *City of Austin v. Bergstrom*, 448 S.W.2d 246, 253 (Tex.Civ.App.—Austin 1969, writ ref'd n.r.e.).

¹⁷ *State v. Bryan*, 518 S.W.2d at 932.

¹⁸ *See Bergstrom*, 448 S.W.2d at 254; *State v. Williams*, 357 S.W.2d 799, 801 (Tex.Civ.App.—Texarkana 1962, writ ref'd n.r.e.).

¹⁹ 442 S.W.2d 682 (Tex. 1969).

²⁰ *Id.* at 684.

included the Barshop tract. On June 18, 1963, the City offered Barshop the \$63,192 that it had previously approved in 1960 as compensation for his property. The offer was rejected, and a condemnation suit was filed in September, 1963, to take the property. The parties agreed that the date of take was July 7, 1964.

At trial, the City sought to exclude all evidence of influence from the project's inception and requested the trial court to instruct the jury to disregard any influence caused by the airport project after October 1960. The trial court denied the City's request, and a verdict was returned in Barshop's favor. The court of appeals reversed and remanded the case, finding that the trial court should have instructed the jury that it was not to consider any enhancement attributable to the airport project that occurred after October 11, 1960 – the date of Houston's ordinance which authorized the City attorney to make an offer for the property.

The Texas Supreme Court reversed and reinstated the trial court's judgment. The Court held that the trial court did not err in denying the City's requested instruction because the instruction sought to exclude *all* evidence of enhancement. Because considerable time had passed between the project's original announcement and the date that the City manifested a specific intent to take the Barshop property, the owner was entitled to the value generated by the market's anticipation of the project during that time. For these reasons, the Court determined that the instruction requested by the City was not substantially correct: Barshop was entitled to some enhancement. The City's requested instruction would have excluded valuation evidence that was proper to consider. The *Barshop* opinion emphasizes that the passage of 14 years, coupled with the uncertainty throughout that time as to whether Barshop's property would be taken, entitled the owner to the increased value attributable to the project until the City manifested a specific intent to take it.

City of Fort Worth v. Corbin similarly involved a municipality's construction of an airport, in this case the Dallas/Fort Worth Regional Airport. The Corbins owned property that was needed for the airport, which was constructed on an area of over 18,000 acres between Fort Worth and Dallas. On September 27, 1965, the City of Dallas and the City of Fort Worth signed a contract providing for the interim steps to be taken towards construction of the airport. This plan was halted on June 16, 1967 when voters in Dallas County defeated the proposition that would have created a North Central Texas Airport Authority.

On April 15, 1968, the two cities executed a new contract providing that the regional airport was to be constructed by the joint effort of the cities without the creation of a separate governmental authority. The Dallas/Fort Worth Regional Airport Board was assigned the tasks of planning and operating the airport. On September 27, 1968, the Airport Board formally adopted and approved its preliminary plan for the construction of the airport. The preliminary plan included maps delineating the boundaries of the airport. The Corbins' tracts of land were located within these boundaries. On September 30, 1968, the Fort Worth City Council adopted an ordinance or resolution approving the Airport Board's plan. The City Council thereby found and determined the land enclosed within the boundaries of the airport as reflected on the maps in the Board's plan to be "needed for essential public airport and essential governmental purposes." Through this determination, the Airport Board was authorized to proceed with the construction and operation of the airport in accordance with the September 27, 1968 plan.

On October 27, 1969, the Airport Board first notified landowners that their land would be acquired for the airport project, by condemnation if necessary. The City of Fort Worth filed a petition in condemnation against the Corbins on October 28, 1970. On December 8, 1970, the amount of the award was deposited by the City, establishing the date of taking. In the judicial case, the City contended that its approval of the plan and maps on September 30, 1968 made it definite that the Corbin tracts would be taken for the airport and that no enhancement in value due to the construction of the airport should be allowed thereafter. The Corbins contended that they could not be charged with notice of this designation for taking of their land until October 27, 1969, when they received first notice of the project, and that enhancement in the value of the land because of the airport should be allowed until that date.

The trial court agreed with the Corbins, and the City's offer of expert opinion testimony of value without project enhancement after September 30, 1968 was excluded. The City's witnesses were only allowed to testify before the jury that the land taken was valued at \$5,000 per acre assuming project enhancement due to the airport was not excluded until after October 27, 1969; these witnesses testified in a bill of exceptions that if the cutoff date on project enhancement was September 30, 1968, their opinion of the value of the land would be approximately \$2,500 per acre. The Corbins offered value testimony that ranged from \$6,000 to \$10,000 per acre, and a jury awarded \$6,000 per acre.

In reversing this outcome, the Court first recognized the indemnity principle that is at the heart of the just compensation clause:

The fact of condemnation itself is excluded; fair market value must, by definition, be computed as if there were no proceedings to eliminate that market. By virtue of the hypothetical exercise, the courts could add an increment of project enhancement to the market up to the time of taking by simply decreeing it. To do so would add an artificial increment and place the landowner in a better position than he would have enjoyed had there been no construction or condemnation. The objective of the judicial process under the constitution and statutes is to make the landowner whole and to award him only what he could have obtained for his land in a free market.²¹

Therefore, the Court held that when it becomes known that land will be taken for a public project, the market should "thereafter allow no benefit for that land because of that project."²² Whatever benefit arising out of the project may exist, the market would recognize that property needed for the project would not be able to participate in this benefit. Enhancement to the market value of land as a result of the airport was conceded in *Corbin*. Because there was never any uncertainty about whether the Corbins' land would be needed for the airport after the September 30, 1968 designation of the boundaries of the project, the Corbins were not entitled to recover for this enhancement from that point going forward.

²¹ *Corbin*, 504 S.W.2d at 830-31.

²² *Id.* at 831.

One of the only Texas cases to address project influence in the context of a highway condemnation is *State v. Fuller*.²³ The dispute in the case was whether the Fullers' property should be valued as having highway frontage. The Fullers previously had been determined to be the owners of the eastern half of an abandoned railroad right of way that separated their property from US Highway 69. The State subsequently condemned that eastern half of the abandoned right of way for the widening of US Highway 69. The Fullers valued the property as having access to the highway on the date of taking and as therefore comparable to tracts with frontage on US Highway 69. The State's witness, who was not permitted to testify, valued the property as not having highway frontage, since the property was separated from the existing highway by the western half of the abandoned right of way.

The Supreme Court determined that the relevant issue was not whether the property had access to the highway as of the date of taking but whether the Fullers' valuation of their property included enhancement occasioned by the public facility itself.²⁴ The Court held that it did include enhancement from the project, namely highway frontage that would not have existed but for the State's widening of US Highway 69, the very project for which their property was acquired.

In its ongoing widening project of the Katy Freeway, the State is attempting to assert a new, more aggressive formulation of the project influence rule, a formulation that would turn the indemnity principle underlying Texas's just compensation framework on its head. The law on project influence has not changed since the *Corbin* decision in 1974. The rule has been applied to numerous projects such as airports, schools, and sports arenas, all public improvements that would be expected to foster economic development and, thus, to enhance market value. A classic example of such a project influence was presented in downtown Houston when the Houston Sports Authority acquired property for the construction of a new stadium for the Houston Astros' baseball club. The Sports Authority selected a somewhat depressed area of downtown Houston for the stadium's location. Upon announcement of the new stadium's location, the market value of property in this area increased sharply. This increase was a direct result of the planned construction of the new stadium and could not be considered in determining the market value of properties needed for the stadium's construction.

In sharp contrast to these types of projects, the exclusion of evidence under the project influence rule has never been applied to a highway widening of an existing highway. For reasons that should be obvious, the rule has little or no application when the influence asserted is the result of the expansion of an existing highway project, like the widening of the Katy Freeway. *Corbin* involved the taking of land for the construction of a new regional airport. *Barshop* also involved a city's condemnation of land for a new airport. Although *State v. Fuller* ostensibly involved a highway widening, the dispositive fact was the Fullers' lack of highway frontage before the State's project. In each of these cases, the "enhancement" was derived from the new facility to be constructed as a result of the project. In each case, it was undisputed that the new facility enhanced the market value of the land to be acquired. It was under these circumstances that the Supreme Court recognized that a property owner's compensation "should

²³ 461 S.W.2d 595 (Tex. 1970).

²⁴ Id. at 598 (citing *Barshop*, 442 S.W.2d at 685).

under some circumstances or at some time cease to include enhancement due to the project which is itself the purpose of condemnation.”²⁵

The State now seeks to invoke this exclusion in highway widening cases relating to its Katy Freeway project. The widening of an existing highway, however, is a very different circumstance from the introduction of a new airport or other new facility to an area where none existed before. First, the benefit of a widened highway to an abutting commercial property is less clear. In the case of the Katy Freeway, the commercial development along the highway is the product of the strong residential areas surrounding the Katy corridor and, in part, exposure to the volume of traffic on the Katy Freeway. High home values in the Memorial and Spring Branch neighborhoods have made the commercial corridor along the Katy Freeway one of the most desirable retail commercial locations in the city. The almost universal presence of deed restrictions in these residential areas has increased this impact by making the areas along the Katy Freeway the only property available for commercial development.

The State fails to recognize that all of these factors existed before its widening project and are completely unrelated to its widening project. Government does not build infrastructure to attract people; government builds infrastructure to address the needs of the people. In the case of the Katy Freeway, the State did not decide to widen the freeway to attract more traffic to this already congested corridor. Instead, the State’s decision to widen the freeway was to address the excess in traffic that already existed in the corridor. In fact, if the State were to look at its project honestly, it would have to recognize an obvious negative impact of the project on the commercial development along the Katy Freeway.

The purpose of the Katy Freeway widening project, as its engineers have conceded, is to facilitate the flow of traffic from downtown to the area of the Katy Mills Mall in Katy. The project is, by anyone’s account, a huge benefit to far west Harris County. This benefit coincides with the precinct boundaries of the project’s strongest proponent in the county, Harris County Commissioner Steve Radack. Increasing the flow of traffic from downtown to Katy, including the addition of toll lanes and HOV lanes with limited access to the frontage lanes of the freeway, however, cannot benefit those commercial properties along the Katy Freeway. Instead, for these properties the expanded freeway will tend to function as a bypass, which can only have a negative influence on market value.

Nevertheless, the State has asserted in the trials of Katy Freeway cases that the project influence rule required the wholesale exclusion of relevant market data along the Katy Freeway corridor. The sole basis for this exclusion is the striking increase in market values that has transpired in the market area in the years since its project was announced. A proper analysis of project influence looks to the nature of the public project and determines whether it has impacted market value. In contrast, the State has perceived an increase in market value and seeks to attribute this increase to its project.

The problem with the State’s analysis is that there is no facet of its project that would explain or result in an increase in market values. Initially, the State argued that it was the new highway facility itself that was attracting the new development to the corridor. This was

²⁵ *Id.* at 830.

nonsense. First, it is the traffic on the roadway, and not the quality of the roadway, that interests commercial endeavors. Additionally, if this proposition were true, which is dubious, this impact would not manifest itself until the facility was completed, which is not expected until 2008 or 2009. In the meantime, the inconvenience from the State's construction is the only discernable impact of the State's project, and it has been a decidedly negative one. Ultimately, this argument was rejected by the State's own appraisers and has been abandoned.

Influenced by these same appraisers, the State replaced this argument with a more complicated, if equally unconvincing, argument: the State's taking of commercial land and conversion of this land from a commercial to a governmental (highway) use has reduced the supply of commercial land along the market area, thus increasing the price of property. The appeal of the argument is two-fold. Appraisal is a subfield of economics, and the laws of supply and demand are in full effect. Additionally, the State's premise seems incontrovertible: If the State takes 200 acres of commercial land along the freeway and devotes this land to highway use, there must be 200 fewer acres of commercial land.

The State's analysis is overly simplistic. The argument that by taking commercial land and devoting it to highway use you have decreased the supply of commercial land fails to take into consideration the impact of partial takings on improved properties. It is true that the State acquired a lot of vacant land. It also acquired a lot of land from improved tracts, and in several instances along the Katy Freeway, the State's taking of a portion of an improved property resulted in the demolition of the improvements located on that property. Once this consideration is factored into the vacant land analysis, it turns out that the State's project actually increased the acreage of vacant land by over 80 acres.

To date, the State's project influence arguments have focused on the sales prices of comparable land sales along the freeway corridor. The argument the State has not yet made is that its project resulted in increased rents of commercial properties along the freeway. Under the facts, this argument would strain all credibility. The evidence is exceedingly clear that the only impact evidenced to date is a negative one. Construction of the State's project has resulted in rent concessions, increased vacancy, increased defaults, and increased relocations of businesses away from this market area. Any benefit or enhancement to rents could not be measured or even perceived until construction is completed, which is still a few years away.

Like the State's argument regarding land sales, any asserted enhancement of rentals is not likely to be supported by the market data. One facet of the State's project is that, because many older improved properties were impacted and, ultimately, demolished as a result of the State's project, there is a renewal of improvements along the freeway after the taking. In other words, not only did the State's project increase the supply of vacant land along the Katy Freeway, but when these vacant tracts are improved, they replace outmoded or outdated uses of land with additional retail commercial properties, resulting in a net increase in retail space available for rent. In other words, the exact opposite of the State's premise is true: its project results in an increased supply of both vacant land and, as a result thereof, an increased supply of retail space available for lease.

There are additionally problems with the State's broad supply and demand formulation of the project influence rule. The alleged impact, if true, would not be limited to the Katy Freeway

commercial corridor. The decrease in the supply of land, if true, should have an incremental effect on the price of land everywhere. An investor in income-producing, commercial real estate does not have a vested interest in a particular location or market area. The decrease in supply of land in one market area, therefore, should affect all land with the same highest and best use. Because every transaction is impacted by every other transaction, the State's posited formulation of project influence, at its logical conclusion, would mean that all sales that follow the project's announcement are project influenced and could not be considered, regardless of location.

In its focus on lowering the compensation to be paid to property owners, the State has failed to recognize that other Houston market areas, removed from the Katy Freeway corridor, experienced similar levels of appreciation in market value over the same time periods. Before you could reasonably conclude that the increase in values along the Katy Freeway was the undefined product of the State's widening project, you would have to explain why properties in this market area would not be subject to the comparable appreciation in values experienced by other market areas in the city. There is no explanation available. An increase in values is not enough to trigger the project influence rule. For the exclusion of market data on which a property owner can rely to establish its compensation claim to apply, the project must be shown to influence the sales price of the particular transaction. This evidence has eluded the State because it does not exist.

The State has proposed an alternate formulation of the project influence rule for sales of remainder tracts. Under this formulation, sales of remainder tracts would be excluded from consideration because, but for the State's project, the property would not have been available for sale. In other words, regardless of whether the project influenced the price for which the property would sell, because it is a sale of a remaining portion of a larger tract—a portion of the larger tract having been acquired for the State's project—the sale of this remainder tract would not have occurred but for the State's acquisition and, thus, the sale is enhanced and should not be considered in determining the market value. This rule of exclusion is not supported by any case authority. It is a veiled attempt to prevent property owners from recovering the compensation that it is due based upon probative market data occurring within a reasonable time from the "date of taking." Moreover, it ignores the only critical inquiry with which a court should be concerned in this regard: whether the **price paid** for the comparable was enhanced by the State's project.

The State's focus is misdirected. The price paid is the focus—not whether the property which sold is a remainder parcel. Exclusion on this basis makes no sense. For example, if there are two identical parcels, both of which sold the same day for essentially the same price, and one was a remainder parcel and the other was not, based on the State's argument, the remainder sale should not be considered irrespective of whether it was proved that the price paid was not influenced by the condemnor's project. This is not the law. Just because a property is made available for sale because part of the larger parcel of which the remainder was a part has been condemned is of no consequence in a "project influence" analysis. Instead, the only relevant inquiry is whether the **price** paid for the property was influenced by the project—if it was not, assuming the sale is comparable, it should be considered by the factfinder.

The Court's opinion in *City of Houston v. Collins*²⁶ is instructive in this regard.

[T]he question of admissibility of the sale **price** of other comparable property in the same locality ordinarily involves those sales which have been made before the date of taking. However, we see no reason why the same rule should not be applicable to sales subsequent to the taking *as long as the price sought to be offered after the taking is not derived from the sale of any property which has been benefited by the project or improvements occasioning the taking.*²⁷

In concert with *Collins* is the court's opinion in *Housing Authority of the City of Dallas v. Hubbard*²⁸ in which the court made it clear that there is no automatic exclusion of sales that have occurred after the date of taking in the vicinity of the project.

We agree with appellant that when property is taken by condemnation the condemnor should not have to pay an increased value due to the public improvement *itself*. But we find no testimony in the record to support the contention that such was the fact in this case. We cannot say as a matter of law that comparable values soon after a condemnation are necessarily greater, or that the increase, if there has been any, is necessarily due to the condemnation. As pointed out by appellant itself in its brief, not every public project increases the value of surrounding land.²⁹

The court in *State v. Williams*³⁰ agreed:

There is authority for the admission of evidence of sales of comparable land made subsequent to the date of condemnation where the sales considered involve land that was not benefited or its market value affected by the public improvement causing the condemnation.³¹

Furthermore, the court in *State v. Bryan* made it clear that evidence of sales after the date of the condemnation may be admitted into evidence so long as it is proven that the *price* of the property under consideration was not affected by the public improvement causing the condemnation.

Evidence of sales of comparable land made subsequent to the date of condemnation may be admitted into evidence where the sales considered involved land that was not benefited or its market value affected by the public improvement causing the condemnation. . . .

²⁶ 310 S.W.2d 697 (Tex. Civ. App.—Houston 1958, no writ).

²⁷ *Id.* at 705 (emphasis added).

²⁸ 274 S.W.2d 165 (Tex. Civ. App.—Dallas 1954, no writ).

²⁹ *Id.* at 167.

³⁰ 357 S.W.2d 799 (Tex. Civ. App.—Texarkana 1962, writ ref'd n.r.e.).

³¹ *Id.* at 801.

Where it is shown that the sale occurred after the date of taking the burden is upon the party offering the testimony to develop the facts showing whether or not the **price** of the property under consideration was affected by the public improvement causing the condemnation.³²

In *City of Austin v. Bergstrom*,³³ the court held:

There is authority for the admission of evidence of sales of comparable land made subsequent to the date of condemnation where the sales considered involved land that was not benefited by or its market value affected by the public improvement causing the condemnation. . . .

In addition, it is common knowledge that land in the Austin area has been appreciating in value at a steady rate annually irrespective of any city project. Consequently, it would be unfair to seal off this increment at the date of the announcement of the project and declare that any additional value accruing subsequently would be due solely to the announced project.³⁴

As one noted authority has said, a recent sale of the subject property is generally viewed as “one of the most important pieces of evidence in determining its present value.”³⁵ Further, courts have held that “sales subsequent to the filing of a condemnation petition are not for that reason incompetent or rendered dissimilar as a matter of law.”³⁶ Instead, “it makes no difference whether the transaction occurred before or after the date of condemnation so long as it is not too remote a period of time and the land is reasonably comparable, having been neither enhanced or decreased in value by the project or improvement occasioning the taking.”³⁷

The project influence rule is concerned with the evidence that a property owner is going to be able to rely on to prove its compensation claim. The policy served by the project influence rule is the principle of indemnification and its guarantee not only that the property owner will be made whole but also that the government will only have to pay for what it is acquiring and not any enhancements that its own project has generated. The State’s formulations of the project influence rule violate this policy. While purporting to object to transactions under the project influence rule, the State’s arguments for exclusion do not require that the price for the identified transactions be enhanced by the widened highway facility itself, as required by every judicial formulation of the project influence rule. Instead, the State’s version of the project influence rule would require exclusion of the evidence whether or not there was any influence from the project itself. This formulation of the project influence rule, if encountered, must be rejected.

³² 518 S.W.2d at 931-32 (emphasis added).

³³ 448 S.W.2d 246 (Tex. Civ. App.—Austin 1969, writ ref’d n.r.e.).

³⁴ *Id.* at 254.

³⁵ 4 NICHOLS, THE LAW OF EMINENT DOMAIN (3d ed. rev.1998) §12B.04[1].

³⁶ See *Department of Public Works & Bldgs. v. Exchange National Bank*, 31 Ill.App.3d 88, 103, 334 N.E.2d 810 (Ill. App. 1975); *Trustees of Schools v. Chicago City Bank* 126 Ill.App.2d 302, 305, 262 N.E.2d 80 (Ill App. 1970).

³⁷ *State ex rel. State Highway Commission v. Wertz*, 478 S.W.2d 670, 675 (Mo. 1972).