

Dear Colleagues, Clients and Friends of the Firm,

Welcome to another issue of **Eminent Domain Plus+**.

Our mission is to deliver information that you find relevant, interesting and helpful.

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Billboards are Vexing!

Billboard companies certainly have their work cut out for them in Texas when it comes to public projects. Is there a remedy when a sign is blocked from view by a new off-ramp's support beams? Are relocation benefits available? What about a sign relocation permit? Two recent Texas appellate courts looked at these issues.

In *Lamar Advantage Outdoor Co., L.P. v. Tex. DOT*, the sign owner (Lamar) had a lease on land that was negatively impacted by the I-30/SH 360 Interchange Project – namely the new off ramp's support beams blocked the sign from view. However, the land that Lamar leased was not being condemned as a result of the project. Lamar alleged the taking was invalid because TxDOT failed to prepare a Takings Impact Assessment under the Private Real Property Rights Preservation Act (the Act). The Fort Worth Court of Appeals held that Lamar, who only had a leasehold interest to the land, had no standing because it did not own the land on which the project was built and therefore, was not an "owner" under the Act. Had Lamar satisfied the definition of owner, it would have still had to allege a constitutional taking, which it did not. Loss of visibility is noncompensable.

In *John Gannon, Inc. v. Tex. DOT*, a billboard owner (JGI) challenged an internal TxDOT memorandum that addressed how TxDOT would treat billboard owners in eminent domain (condemnation) actions. Billboard owners are joined in condemnation actions due to their leasehold interests. Before 2004, if the State condemned the property on which a billboard was located, the billboard owner may have been eligible to receive relocation benefits and a sign relocation permit pursuant to TxDOT's former Rule 21.160 if the sign was "designated by the owner as personal property." In 2004, TxDOT amended Rule 21.160 to clarify that billboards are personal property, not real property. In 2015, a dispute between the State and a billboard owner (Clear Channel Outdoor) arising out of a condemnation proceeding reached the Texas Supreme Court. See *State v. Clear Channel Outdoor, Inc.*, 463 S.W.3d 488 (Tex. 2015). There, the State argued that the condemnation of land did not take the billboards on that land because billboards are personalty, not fixtures. The Texas Supreme Court disagreed, and stated Clear Channel's billboard – but necessarily all sign structures – was a fixture. This prompted a memorandum by the director of TxDOT's right of way division which provided "guidance" on the treatment of billboards. The guidance was amended on June 9, 2016, and the amendment addressed the ability to receive relocation benefits and apply for a sign relocation permit.

JGI challenged the Amended Guidance as an invalid rule that eliminated rights under "State and Federal authorities" that allegedly guarantee billboard owners reimbursement of reasonable moving expenses when signs are relocated to accommodate a highway project. Second, JGI claimed that the Amended Guidance is voidable because it was not adopted in substantial compliance with the Administrative Procedures Act (the APA). In response, TxDOT filed a plea to the jurisdiction. JGI raised three issues on appeal: whether the Amended Guidance constitutes a rule, whether sovereign immunity applies to its APA and Uniform Declaratory Judgments Act claims, and whether JGI should have been afforded the right to conduct discovery. Because Section 2001.038 of the Texas Government Code permits a rule challenge "if it is alleged that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff," which JGI alleged, a live controversy existed between JGI and TxDOT as to these issues that concern the validity and applicability of the Amended Guidance as a rule, and thus the APA Claim is not moot. Therefore, the Austin Court of Appeals reversed the trial court's order as to the dismissal of the APA Claim, affirmed as to the dismissal of the UDJA Claim given it was a redundant remedy, reversed the order as to the denial of the motion for protection from discovery, and remanded the case back to the trial court.

John Gannon, Inc. v. Tex. DOT, is definitely a case that [SPIVAL](#) will be watching.

Webinar with Jim Spivey and Texas Farm Bureau

We are excited to provide you the link to Jim's Webinar with the Texas Farm Bureau where the topic was "Eminent Domain: Negotiating a Fair Deal." Moderated by Firm Friend, Tiffany Dowell Lashmet and Jim Spivey, this Webinar was well attended and chock full of great landowner questions. Click here to watch the webinar.



Congratulations to Jim Spivey!

Jim has once again been honored by **Best Lawyers** in the field of Commercial Litigation. Jim has been honored in this category since the 16th edition (2010) consecutively to the 27th edition (2021).



Soledad Valenciano Joins LEAD Steering Committee

Soledad Valenciano has joined the Bexar County Women's Bar Foundation's LEAD Academy's Steering Committee. The LEAD Academy is focused on empowering women attorneys to develop their leadership potential and build robust industry connections. Learn more [here](#).



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About SPIVEY VALENCIANO, PLLC

SPIVEY VALENCIANO, PLLC is a litigation boutique that represents property owners across the the State of Texas in complex eminent domain matters. The firm also represents property owners with significant holdings or affiliated property owners in contested PUC electric transmission line routing cases (CCN Applications). The firm also represents clients in select litigation matters and is frequently engaged to serve as trial co-counsel in pending jury trials. The firm provides complimentary case reviews for prospective eminent domain clients, which may be scheduled by contacting Jim or Soledad via email.

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