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## METRIC CONVERSION FACTORS

### Approximate Conversions to Metric Measures

Symbol	When You Know	Multiply by	To Find	Symbol
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#### LENGTH

in	inches	*2.5	centimeters	cm
ft	feet	30	centimeters	cm
yd	yards	0.9	meters	m
mi	miles	1.6	kilometers	km

#### AREA

in <sup>2</sup>	square inches	6.5	square centimeters	cm <sup>2</sup>
ft <sup>2</sup>	square feet	0.09	square meters	m <sup>2</sup>
yd <sup>2</sup>	square yards	0.8	square meters	m <sup>2</sup>
mi <sup>2</sup>	square miles	2.6	square kilometers	km <sup>2</sup>
	acres	0.4	hectares	ha

#### MASS (weight)

oz	ounces	28	grams	g
lb	pounds	0.45	kilograms	kg
	short tons (2000 lb)	0.9	tonnes	t

#### VOLUME

tsp	teaspoons	5	milliliters	ml
Tbsp	tablespoons	15	milliliters	ml
fl oz	fluid ounces	30	milliliters	ml
c	cups	0.24	liters	l
pt	pints	0.47	liters	l
qt	quarts	0.95	liters	l
gal	gallons	3.8	liters	l
ft <sup>3</sup>	cubic feet	0.03	cubic meters	m <sup>3</sup>
yd <sup>3</sup>	cubic yards	0.76	cubic meters	m <sup>3</sup>

#### TEMPERATURE (exact)

°F	Fahrenheit temperature	5/9 (after subtracting 32)	Celsius temperature	°C
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### Approximate Conversions from Metric Measures

Symbol	When You Know	Multiply by	To Find	Symbol
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#### LENGTH

mm	millimeters	0.04	inches	in
cm	centimeters	0.4	inches	in
m	meters	3.3	feet	ft
m	meters	1.1	yards	yd
km	kilometers	0.6	miles	mi

#### AREA

cm <sup>2</sup>	square centimeters	0.16	square inches	in <sup>2</sup>
m <sup>2</sup>	square meters	1.2	square yards	yd <sup>2</sup>
km <sup>2</sup>	square kilometers	0.4	square miles	mi <sup>2</sup>
ha	hectares (10,000 m <sup>2</sup> )	2.5	acres	

#### MASS (weight)

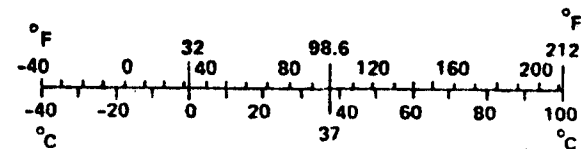
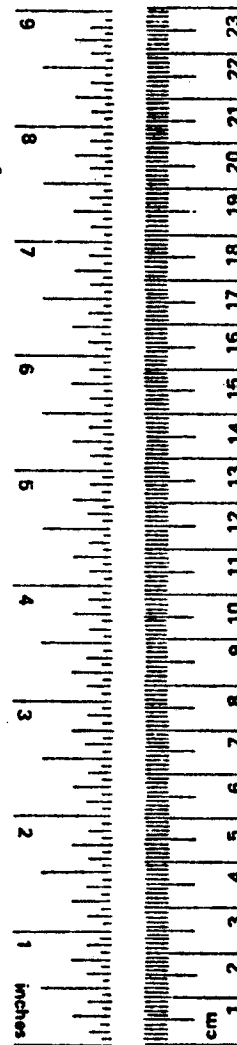
g	grams	0.035	ounces	oz
kg	kilograms	2.2	pounds	lb
t	tonnes (1000 kg)	1.1	short tons	

#### VOLUME

ml	milliliters	0.03	fluid ounces	fl oz
l	liters	2.1	pints	pt
l	liters	1.06	quarts	qt
l	liters	0.26	gallons	gal
m <sup>3</sup>	cubic meters	35	cubic feet	ft <sup>3</sup>
m <sup>3</sup>	cubic meters	1.3	cubic yards	yd <sup>3</sup>

#### TEMPERATURE (exact)

°C	Celsius temperature	9/5 (then add 32)	Fahrenheit temperature	°F
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\* 1 in = 2.54 (exactly). For other exact conversions and more detailed tables, see NBS Misc. Publ. 286, Units of Weights and Measures, Price \$2.25, SD Catalog No. C13.10:286.

MEASURING THE BENEFITS OF INCREASED LAND ACCESSIBILITY  
DUE TO HIGHWAY PROJECTS: LITERATURE REVIEW  
AND SURVEY OF CURRENT PRACTICES

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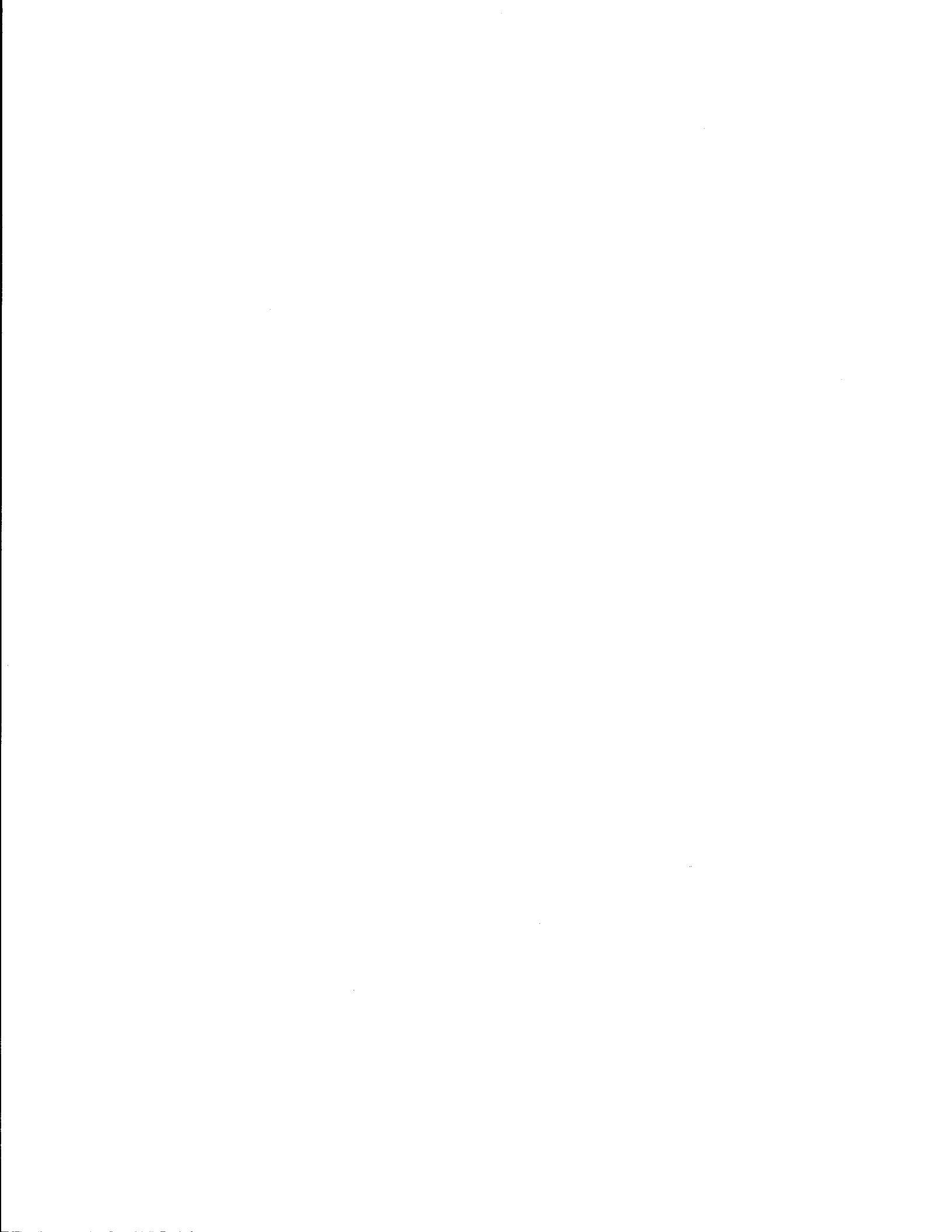
Jesse Buffington, TTI



## ABSTRACT

This report presents a review of the literature and a survey of current practices regarding the use of special benefits to off-set the costs of land acquisition in partial takings for highway improvement projects. The review provides some useful insight into the problem of defining and quantifying special benefits accruing to real property as a result of highway improvements. However, defining and quantifying these special benefits in a manner which can be applied in a uniform, systematic fashion remains a problem. The results of this phase of the research suggest that the development of a standard, general methodology for identifying and quantifying special benefits on a case-by-case basis may avoid many of the potential problems associated with a strict indexing system, while still providing a uniform, systematic approach for incorporating special benefits into the appraisal process.

Keywords: Partial takings, Eminent domain, Land accessibility, Right-of-way acquisition, Right-of-way costs, Right-of-way appraisal, Highway project benefits.





## **IMPLEMENTATION STATEMENT**

Recent revisions to the Texas Property Code allow special benefits accruing to real property as a result of partial takings for highway improvements to be used to offset the cost of the taking. This provision should reduce the State's right-of-way costs by internalizing part of the value of the improved accessibility resulting from highway projects. This study is intended to assist the Texas State Department of Highways and Public Transportation in developing a clear definition of the special benefits accruing to real property as a result of highway improvements.

## **DISCLAIMER**

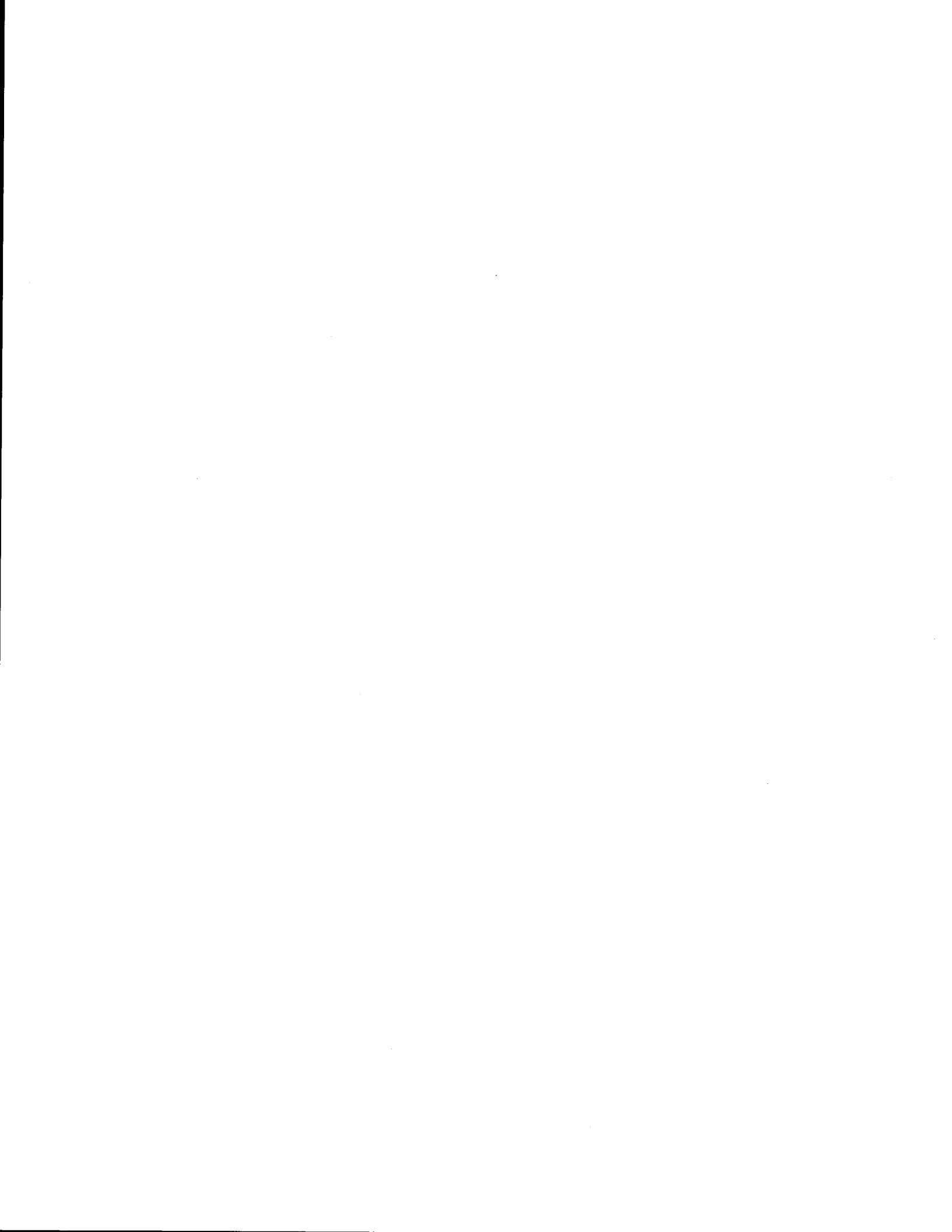
The contents of this report reflect the views of the authors who are responsible for the opinions, findings, and conclusions presented herein. The contents do not necessarily reflect the official views or policies of the Texas State Department of Highways and Public Transportation or the Federal Highway Administration. This report does not constitute a standard, specification, or regulation.



MEASURING THE BENEFITS OF INCREASED LAND ACCESSIBILITY  
DUE TO HIGHWAY PROJECTS: LITERATURE REVIEW AND  
SURVEY OF CURRENT PRACTICES

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## INTRODUCTION

### **BACKGROUND**

The interrelationships between transportation and land use have long been recognized. Commercial, industrial and residential land development generate traffic and require transportation system capacity. When it is added, the additional transportation system capacity improves access to the surrounding area which increases the property value and fosters additional development. These fundamental economic principles clearly are evident in practice as well. Concentration of commercial development along freeway corridors and principal street intersections illustrates the effect of good access on property values. Owners whose property abut the highway benefit from the transportation improvement. It is appropriate that a portion of the property benefit be continued and used to defray the cost of the transportation improvement. The 68th Texas Legislature sought to account for these special benefits in its 1984 amendment to the Property Code. It is required that when real property is condemned for the use, construction, operation or maintenance of the state highway system, special commissioners shall determine the damages to the property owner. In awarding the compensation, the commissioners shall consider any special and direct benefits that arise from the highway improvement that are peculiar to the property owner and that relate to the property owner's ownership, use, or enjoyment of the particular parcel of remaining real property. This provision should reduce the State's right-of-way cost by internalizing part of the value of the improved mobility and access resulting from the project.

The identification of special and direct benefits accruing to the remaining parcel because of the highway project is a complex yet crucial issue in accomplishing the legislative intent of this change in the property code. Distinction between general benefits and specific enhancements conferred on the property require definition for appraisers and attorneys. Moreover, these distinctions must be clear, measurable and useful to field appraisers, and must relate directly to the appraisal process.

Since valuation of special benefits is to be used in offsetting the damages awarded because of the partial taking, an index relating the enhancement by type and location to the type of taking would be useful. This report presents a review of methods currently employed to distinguish between general and special benefits. Subsequent phases of the research will investigate the development of an indexing system relating special benefits to the type and location of the improvement.

### **STUDY OBJECTIVES**

The overall goal of the research is to develop guidelines which will allow the state to take full advantage of the recent changes in the Texas Property Code. Specific study objectives are:

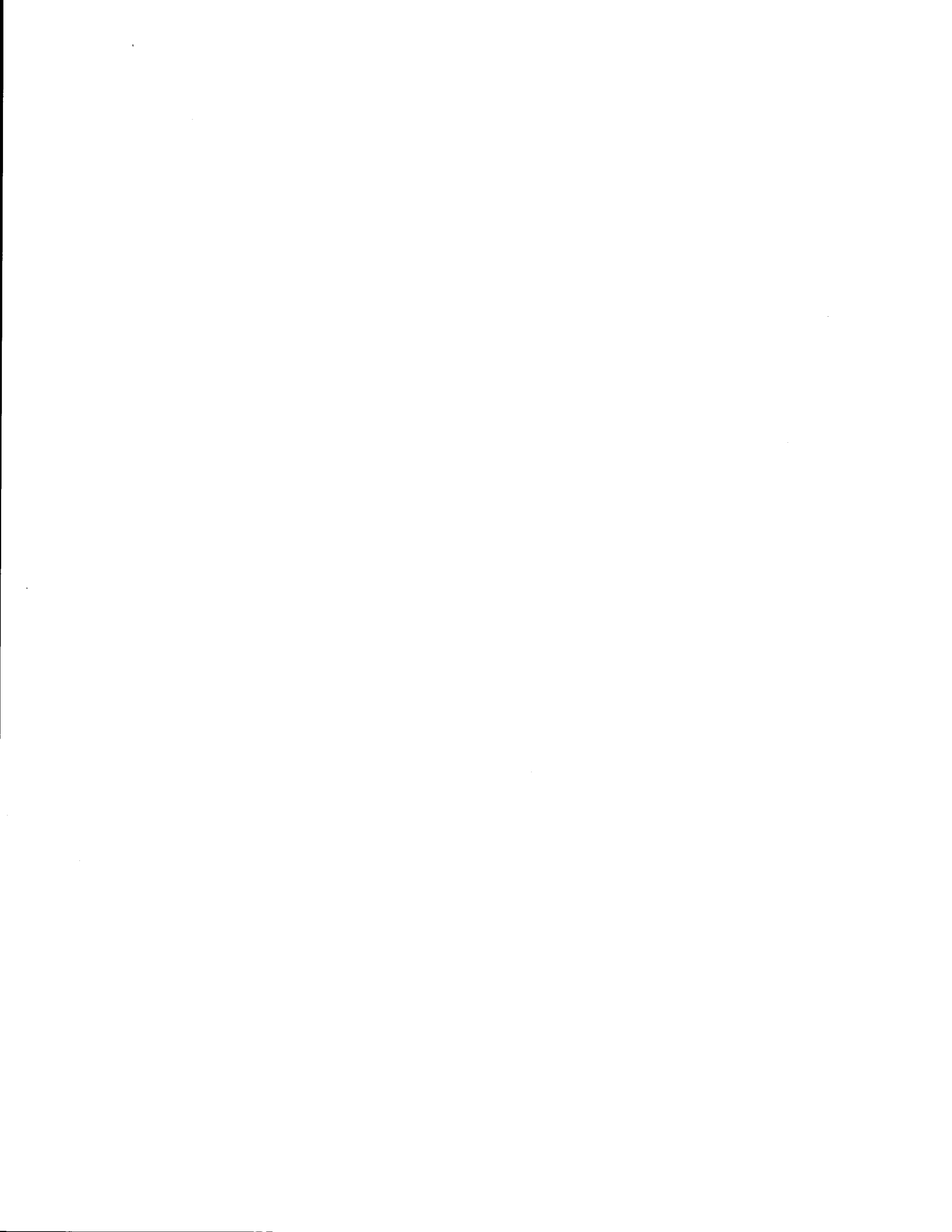
1. To identify practices used in other states to distinguish and measure special benefits and to offset damages in partial takings;
2. To develop criteria to distinguish special and direct benefits from general benefits accruing to real property from highway improvements;
3. To assess financial impacts by location and type enhancement of this new legislation (HB 101) on partial takings; and
4. To investigate the development of an index system, or general guidelines for use by appraisers, to measure quantitatively the special benefit, by locational characteristics and type improvement, that results to real property in partial takings.

### **SCOPE**

This report presents a review of the literature and a survey of current practices regarding the use of special benefits to off-set damages in partial takings. Specifically, this report addresses study objectives 1 and 2. The results of this phase of the research should prove useful in those phases of the study directed at the primary objectives (i.e., objectives 3 and 4).

In addition to this introductory section, the report consists of the following major sections:

- Summary of Findings. This section of the report summarizes key findings pertaining to the distinction between general and special benefits. Current practices in applying these benefits in partial takings are summarized. A brief discussion of the implications of the findings to the current research effort is also presented.
- Annotated Bibliography. An annotated listing of pertinent literature is presented. The bibliography is divided into two subsections: 1) Literature Review; and 2) Case Law Review.
- Glossary. A brief listing of land appraisal terminology is presented. The glossary has been provided for those readers who may not be familiar with the appraisal profession and is intended to supplement the annotated bibliography.





## SUMMARY OF FINDINGS

### **GENERAL AND SPECIAL BENEFITS**

Benefits of partial takings fall under one of two classifications. They are either 1) general or 2) special. Many states have not made a clear distinction between the two and have allowed each case to be determined on its own merits. This practice results in more confusion in an already confusing situation. It is the purpose of this report to seek to define the difference between these benefits and, if possible, to set a value upon them in order to assist appraisers and the courts in determining fair and equitable settlements of partial taking cases.

In general, the literature offers several definitions.

General benefits are those that accrue to an entire neighborhood or community and have a beneficial effect on the values of properties where no taking or damage has occurred as well as the value of properties which have been taken or damaged (Eaton, p. 236).

... general benefits are those which arise from the fulfillment of the public object which justified the taking ... (Taylor v. State, 251, 254).

General benefits are societal benefits and are usually defined as user or non-user. They can also be divided as to environmental, social, and economic benefits. Examples of each include: wide rights-of-way provide areas for native fauna and flora to flourish undisturbed; increased accessibility breaks down physical barriers to the integration of regions, reduces congestion and travel time, allows for more effective comprehensive land use and transportation planning, and encourages economic development and growth (Gamble and Davinroy, 1978).

In Texas, general benefits are not allowed to offset the compensation or damages due because of a partial taking. On the other hand, special benefits have been allowed to offset any damages claimed for the remainder parcel

after a partial taking. The recent change by the legislature with HB 101 (1984) will allow special benefits accruing to the remaining property to be offset against the compensation paid for the part taken as well. This is a significant step in reducing right-of-way acquisition costs for the public sector and makes the definition and valuation of special benefits even more important than before.

In *Taylor v. State*, the court continued with the following definition of special benefits.

... special benefits are those which arise from the peculiar relation of the land in question to the public improvement.

Another way of stating it is:

special benefits arise or accrue from the property's position or its relationship to the ... improvement (Montano, 1970, p. 1).

Special benefits occur when a particular piece of land is affected in a definite physical or economic way different in kind from the general benefits accruing to every one in the area or the community. Each citizen may benefit from improved access or convenience, but particular pieces of property abutting the improvement may receive a special benefit from increased frontage, for example, that was not available to everyone in the neighborhood or community.

Enfield and Mansfield (1957) indicate several different ways to gain insight as to whether a benefit is general or special. These include:

- 1) market value increases;
- 2) geographical classification (proximity);
- 3) physical benefit vs. economic benefit; and
- 4) precedent in court cases.

The market value of the abutting land may be increased due to increased commercial frontage or improved drainage so that flooding does not occur.

Also, improved access to a piece of property may change the property's highest and best use from agricultural land to land able to be developed as a residential subdivision or commercial business uses.

A "geographical standard" classifies benefits as general or special "depending on the size of the area they affect" (Enfield and Mansfield, 1957, p. 554). This definition, however, may be confusing in that a special benefit is identified with only one individual tract of land. Special benefits of the same nature can accrue to several different parcels of land in the immediate vicinity of the improvement.

A physical benefit is more easily defined as a special benefit. A physical change actually takes place immediately. Table 1 lists several types of improvements that have been considered general and the court case that identified the benefit categorization. Table 2 lists the same information for special benefits. Under certain circumstances some of these benefits can be either general or special and only the individual facts of each case and the court can determine its classification.

Texas law mandates the responsibility of the jury to decide if the benefits are special or general and the amount of compensation for damages and offsetting benefits. The valuation is set through expert testimony. The jury is expected to have some expertise as a result of their own experiences which will enable them to make informed adjustments to the testimony offered.

The establishment of guidelines to assist in defining specific situations where benefits can be defined in a standardized manner could reduce the need for a jury to define benefits on a case-by-case basis. These guidelines would lend much more credibility to the decisions to be handed down.

As previously stated, a myriad of remedies exists, and variations exist from state to state. These remedies are summarized below.

The United States can be grouped under five rules that describe how special and general benefits are handled in partial taking cases. These rules, known as "benefit off set rules" (Eaton, 1982), are:

**Table 1. Typical General Benefits Resulting from Highway Improvements**

Type of Benefit	Legal Precedent
1. Improved Drainage*	Portland, Oregon City Ry. Co. v. Penney (1916) 158 P. 404
2. Improved Road Gravel to Hard Surface*	Cook v. Eastland 260 S.W. 881 (Tex-1924)  Hall v. Wilbarger County 37 S.W. 2d 1041 (Tex-1941)
3. Proximity to New Highway*	State of Texas v. Scarborough (Tex-1964) 383 S.W. 2d 839  State of Missouri v. Parker (1965) 387 S.W. 2d 505  Phoenix Title & Trust v. State of Arizona (1967) 425 P. 2d 434
4. Location of Railroad Depot	International & G.N.R. Co. v. Bell 130 S.W. 634 (Tex-1910)
5. Increased Vehicular Traffic*	Howe v. State Highway Bd. 187 A. 2d 342 (Vermont-62)  Farrell v. State Highway Bd. 194 A. 2d 410 (Vermont-63)  State of Missouri v. Parker 387 S.W. 2d 505 (1965)  Phoenix Title & Trust Co. v. State of Arizona (1967) 425 p. 2d 434
6. Increased Convenience*	City of Corsicana v. Marino (Tex-1955) 282 S.W. 2d 720, 722  Strickland v. City of Friona (Tex-1956) 294 S.W. 2d 254, 258
7. New Access*	Territory of Hawaii v. Mendonca (1962) 375 p. 2d 6

\* Denotes benefits that may also be considered special benefits (see Table 2).

**Table 2. Typical Special Benefits Resulting from Highway Improvements**

Type of Benefit	Legal Precedent
1. Improved Drainage*	<p>State of Missouri v. Cady 400 S.W. 2d 481 (1965)</p> <p>Stappers v. State of Texas 410 S.W. 2d 470 (1966)</p>
2. Fencing-Public Maintained and Built	<p>Isenberg v. Gulf, T&amp;W Ry. 152 S. 233 (Tex-1912)</p> <p>People v. Thomas (Calif.) 239 P. 2d 914 (1952)</p>
3. Increased Frontage - New Road*	<p>State of Missouri v. Jones 155 S.W. 2d 338 (1929)</p> <p>Louisiana Hwy. Comm. v. Grey 2 So. 2d 654 (1941)</p> <p>Hughes v. State of Texas 302 S.W. 2d 747 (1957)</p> <p>Tuttle v. State of Texas 381 S.W. 2d 330 (1964)</p> <p>MacGarrett v. State of Texas 441 S.W. 2d 305 (1969)</p>
4. Proximity to New Highway	<p>Maddox v. State of Texas 373 S.W. 2d 322 (1963)</p> <p>Taylor v. State of Arizona 467 P. 2d 251 (1970)</p>
5. Increased Convenience* (street widened)	<p>City of Dallas v. Firestone Tire and Rubber Co. 66 S.W. 2d 729 (Tex-1933)</p> <p>City of Dallas v. Priolo 242 S.W. 2d 176 (Tex-1951)</p>
<p>6. Creation of lake made rural property more suitable for lakeside cottages</p> <p>Creation of a reservoir ... campsite development</p>	<p>City of Waco v. Craven 54 S.W. 2d 883 (Tex-1932)</p> <p>Tarrant County Water Control &amp; Improvement District No. 1 v. Hubbard 433 S.W. 2d 681 (Tex-1968)</p>

Table 2. (Cont.)

Type of Benefit	Legal Precedent
7. Improved Available Advertising Space	Cuneo v. City of Chicago 81 N.E. 2d 451 (Ill-1948)
8. Increased Vehicular Traffic*	Cuneo v. City of Chicago 81 N.E. 2d 451 (Ill -1948)  Vanech v. State of New York 270 N.Y.S. 2d 357 (NY-1966)
9. Construction of Sanitary Sewer, Storm Sewer, and Water Main	City of St. Louis Park v. Engell 168 N.W. 2d 3 (Minn-1969)
10. New Access - Improved Road	Currie v. Glasscock City 212 S.W. 533 (Tex-1919)
11. Hard Road Improved Market Value*	Dept. of Public Works & Bldgs. v. Keck 161 N.E. 55 (Ill-1928)  Parish of E. Baton Rouge v. Edwards (La-1960) 119 So. 2d 175
12. Availability of Electricity	Arcola Sugar Mills v. Houston Lighting and Power Co. (Tex-1941) 153 S.W. 2d 628  Aycock v. Houston Lighting and Power Co. (Tex-1943) 175 S.W. 2d 710
13. Corner Lot Creation	State of Louisiana, Dept. of Highways v. Mouldous 200 So. 2d 384 (La-1967)
14. Swamp Drainage	Taylor v. State of Arizona 467 P. 2d 251 (Az-1970)
15. Reduced Circuitous Route	MacGarrett v. State of Texas 441 S.W. 2d 305 (1969)
16. Improve Highest and Best use (pasture to farmland)  (farmland to residential)	Kennedy, et al v. Travis County 130 S.W. 844 (Tex-1910)  State of Indiana v. Smith 143 N.E. 2d 666 (1957)

\* Denotes benefits they may also be considered general benefits (See Table 1).

- Rule 1: Benefits, whether special or general, cannot be considered;
- Rule 2: Special benefits only can be offset against damages to the residue, but not against the value of the land taken;
- Rule 3: Special benefits and general benefits can be offset against damages to the residue, but not against the value of the land taken;
- Rule 4: Special benefits can be offset against both the damages to the residue and the value of the land taken; and
- Rule 5: Special and general benefits can be offset against both damages to the residue and value to the land taken (also referred to as "Federal Rule").

Rules 4 and 5 are very similar except the latter holds that both general as well as special benefits may be offset against the taking and damages. This rule does not appear to be applicable in any jurisdiction unless the position of the United States Justice Department prevails in a federal condemnation case.

Prior to the enactment of HB 101, Texas used Rule 3 in partial taking cases. The provisions of HB 101 now allow the state to apply Rule 4 in partial takings.

Table 3 presents a summary of benefit off-set rules currently used in the U.S. As shown in Table 3 only five states disallow consideration of benefits, whether special or general (Rule 1). Twenty-seven states follow Rule 2 which allows special benefits to be off-set against damages to the remainder but not against the value of the part taken. In five states Rule 3 is followed permitting special and general benefits to be offset to the residue, but not against the value of the land taken. Fourteen states follow Rule 4 which allows special benefits to be offset against both damages to the remainder and the value of the part taken. The existence of special benefits is generally measured by an appraiser through market data analysis. The

**Table 3. Summary of Benefit Offset Rules by State**

Jurisdiction	Off-Set Rule Used				Comments
	Rule 1	Rule 2	Rule 3	Rule 4	
Alabama	x				Offset against damages allowed on highways, water conservation districts, and water management districts
Alaska		x			
Arizona		x			Market value support required
Arkansas				x	Case-by-case
California		x			
Colorado		x			Case-by-case
Connecticut				x	
Delaware				x	Case-by-case
Dist. of Columbia				x	
Florida		x			If more than one property involved the benefit becomes general and cannot be offset.
Georgia		x			
Hawaii				x	Setoff against damage only when take is for road widening or realignment. If for new highway can offset damages and value taken.
Idaho		x			
Illinois		x			Special benefits have been defined so broadly that they include general benefits as typically defined.



Table 3. (Cont.)

Jurisdiction	Off-Set Rule Used				Comments
	Rule 1	Rule 2	Rule 3	Rule 4	
Indiana		x			Case-by-case
Iowa	x				
Kansas		x			
Kentucky				x	Case-by-case
Louisiana		x			Case-by-case
Maine				x	
Maryland		x			Constitution requires that state pay for part actually taken.
Massachusetts				x	
Michigan				x	
Minnesota	x				Benefits so narrowly defined, none have been applied in 10 years. Law allows for individual benefits at four corners of interchange.
Mississippi	x				
Missouri				x	Case-by-case
Montana		x			
Nebraska		x			Case-by-case
Nevada		x			Case-by-case
New Hampshire		x			
New Jersey		x			Case-by-case

Table 3. (Cont.)

Jurisdiction	Off-Set Rule Used				Comments
	Rule 1	Rule 2	Rule 3	Rule 4	
New Mexico			x		Administrative settlement is now usual to avoid court case
New York			x		No distinction is made between special and general benefits
North Carolina			x		Strict before and after rule followed. Special and general included.
North Dakota		x			Case-by-case
Ohio		x			Special assessment may be imposed simultaneously with taking in local takings. Interchanges are considered general and benefit must be to one property alone -- not several at same time.
Oklahoma	x				
Oregon		x			
Pennsylvania				x	
Rhode Island		x			
South Carolina				x	Conflict in law exists -- highway cases are treated differently from local authority takings.
South Dakota		x			
Tennessee		x			
Texas				x	Case-by-case
Utah		x			Case-by-case

**Table 3. (Cont.)**

Jurisdiction	Off-Set Rule Used				Comments
	Rule 1	Rule 2	Rule 3	Rule 4	
Vermont		x			Case-by-case
Virginia			x		Strict before and after
Washington				x	Optional deferment of benefits provided.
West Virginia			x		
Wisconsin		x			
Wyoming		x			

Source: Eaton (1982) and TTI Surveys

appraiser may make detailed studies of real estate value trends in areas that are comparable to the area in which the property under appraisal is located, but not under the influence of the public project, in order to develop a sound and supportable basis for his determination. Such conclusions will often depend on the circumstances of the specific case.

#### **IMPLICATIONS FOR CURRENT RESEARCH EFFORT**

The literature review and survey of current practices provide some useful insights into the problem of defining and quantifying special benefits. In this regard, previous work by TTI is particularly noteworthy (see: Buffington and Adkins, 1961; and Franklin and Evans, 1968). However, defining and quantifying these benefits in a manner which can be applied in a uniform, systematic fashion remains a problem. Special benefits, arise from the peculiar (or "special") relation of the land in question to the improvement. Hence, due to their nature, precise definitions of special benefits may have to be made on a case-by-case basis. Likewise, given the

large variety of relationships that may exist between a parcel of land and a highway improvement, it may be very difficult to quantify special benefits in any general manner. In short, the general findings of the literature review suggest a number of issues which have a direct bearing on subsequent phases of the research. Specifically, these issues suggest that research efforts directed at developing an indexing system to measure special benefits may need to be either re-focused or expanded. In addition to the problem of developing an indexing system robust enough to account for the many possible relationships between types and locations of improvements, the legal issues surrounding the use of such a system need to be resolved. For example, in court proceedings, the appraiser may need to validate the index with site-specific information. This validation would be needed to confirm the applicability of the index to the site in question and to gain first-hand knowledge of the use of the index. Such first-hand knowledge may be needed to avoid having the results of applying the index dismissed as "hear say". Hence, at this point in the research, the development of an indexing system to measure special benefits may produce only indirect benefits. The indexing system, for example, could prove helpful in quantifying and defining special benefits in a general way. Those phases of the research directed at developing the improvement index could be useful in developing general guidelines for use by appraisers in assessing special benefits on a case-by-case basis. The development of a standard, general methodology for identifying and quantifying special benefits may avoid many of the problems associated with a strict indexing system, while still providing a uniform, systematic approach for defining and quantifying special benefits.

These issues will be explored in more detail in subsequent phases of the research.

## ANNOTATED BIBLIOGRAPHY

### LITERATURE REVIEW

**Adkins, W.G., and Buffington, Jesse L., An Analysis of Right of Way Appraisal Problems, Research Report No. 100-1F, Texas Transportation Institute, College Station, Texas, October 1967.**

The purpose of this report is to identify both the causes of discrepancies in and between appraisals as well as the difficulties of appraisal reviews. A thorough and proper appraisal review facilitates reliable and accurate estimates, therefore assuring land owners fair market value for their property. Specific objectives are: 1) To identify the types of appraisals and the elements of value which most commonly are associated with appraisal inconsistencies, and; 2) To analyze, in terms of their basic causes, variations in two or more independent appraisals of the same parcel and of highly similar parcels. Data were selected from the Texas Highway Department files for the four major urban areas of the state (Houston, Dallas, Fort Worth and San Antonio) additionally, one project was selected in each of the Tyler, Beaumont and El Paso areas.

"One approach of the study analyzed differences between pairs of appraised values and in turn the final approved value as recorded for eight right of way projects. The principal findings of this endeavor may be briefed as follows:

1. Among the parcels studied, differences between fee appraisals of the same property appear to be relatively large whatever the method of acquisition, type of taking or type of property,

2. There seems to be a strong tendency for the highest of two fee appraisal values to be selected as the approved value regardless of method of acquisition, type of taking and type of property; the major exception was that approved values of whole takings of unimproved land more often favored the lower appraisal but much of this occurred in one right of way project,

3. Partial takings demonstrated larger differences between appraised values than did whole takings,

4. Oddly perhaps, parcels obtained by negotiation appeared to have larger appraisal differences than did those eventually acquired through condemnation proceedings, and

5. Commercial business parcels showed the largest dollar and percentage differences in pairs of appraised values.

The second approach of the study attempted to reveal appraisal and appraisal review difficulties by asking a series of questions to the Texas Highway Department right of way personnel. Generally, these latter findings confirm and extend those of the comparative analysis of appraisal differences. In summary, the major results of the second endeavor are:

1. Review appraisers in various proportions believe that:
  - a. Fee appraisers often are prejudiced in favor of landowners,
  - b. Normal differences of opinion cause much of the disagreement between fee appraisals but unsupported personal opinions (and biases) contribute to differences,
  - c. Low quality appraisals arise from poor documentation, poor adjustment (and perhaps selection) of comparables, insufficient market data and to some extent overt errors,
  - d. Fee appraisers have a tendency to include noncompensable items in their appraisals, and
  - e. Fee appraisers often confuse value in use and market value and have some difficulty with specific versus general benefits; they seldom include personality in appraisals.

2. Review appraisers reveal some of their own problems by:
  - a. Demonstrating some confusion in handling questions regarding the Carpenter Case ruling, and
  - b. Endorsing more training and appraisal experience to improve themselves.

3. Errors in appraisal and appraisal review occur most often through incompleteness and omission, although obvious mathematical and logical errors are sometimes found. Commissions of such errors seem to be somewhat random and best preventable through general improvement programs."

**Allard, J.L., "Is Market Value Just Compensation," The Appraisal Journal, Vol. 35, No. 3, July 1967, pp. 355-359.**

From the Abstract:

"Controversy increases over the difference between verdicts rendered by juries in eminent domain proceedings, and the value estimated of the taking and severance damages to the remainder, based on the fair market value concept. Could it be that market value does not accurately measure just compensation (have appraisers failed as expert witnesses on valuation or is it because the judicial system allows laymen to judge on real estate valuation). It is suggested that compensation value is a more appropriate measure of just compensation."

**Borgman, A.G., "Appraisal Testimony: A View From the Witness Stand," Highway Research Record No. 260, Highway Research Board, Washington, DC, 1969, pp. 55-59.**

From the Abstract:

"Some experiences of an appraisal committee are reviewed in respect to condemnation cases. The following aspects have been found to be important: 1) the preparation of the witness, 2) understanding of the witness to tell

the truth, 3) ascertain the degree of sophistication of the jury or commission that is hearing the case, and 4) explain technical terms or methods so they are readily understood by the layman. Cases cited on comparable sales indicate that any such sale should meet the following four-way test: 1) it must be comparable as to time, 2) comparable as to location, 3) comparable as to character of property, and 4) it must be an open, arm's length sale. The Wisconsin legislature recently passed a new condemnation statute which is unique in that it provides payment of damages for the following items: 1) the cost of moving personal property, 2) the damage caused by loss of favorable financing, 3) loss of rentals, and 4) the loss of plans and specifications rendered useless as a result of a taking. In addition, Wisconsin also decided that damage resulting from the nature of the public improvement was also compensable. The appraiser must now take the proposed improvement into consideration in his valuation of the property remaining after the taking. Two problems that still need resolution are caused by: 1) the cloud of condemnation hanging over a property for a long time, and 2) the lessee's interest in the condemnation of a leased property."

**Broderick, George V., and Thiel, Floyd I., "Highway Severance Damage Studies - Some General Findings," Highway Research Record No. 54, Highway Research Board, Washington, DC, 1964, pp. 68-92.**

From the Abstract:

"It must be emphasized that the findings presented in this paper are not representative of all cases. Although information in the U.S. Bureau of Public Roads bank of cases does not now permit formulas to be developed to predict the experience of remainder parcels, certain tentative observations can be made:

1) The recovery rate for cases in the Bureau's bank is typically more than 100 percent. In fact, in three out of four cases, a land value increment has followed a highway taking. The median recovery rate is now about 13.8 percent.



2) Certain characteristics tend to be associated with a higher-than-average recovery rate: (a) nearness to an interchange, (b) a sale at an extended period of time (e.g., over a year) after the taking, (c) a vacant (rather than, for example, residential) land use before acquisition, (d) a separated (rather than a landlocked) remainder, (e) easy access to the new highway, (f) full visibility of the highway from the remainder, and (g) proximity to a populous urban place.

3) The owner is being made whole (which approximates just compensation) in four out of five cases. Property owners who lost value generally lost very little. Gains, on the other hand, ranged from small gains to very large gains.

4) Owners of residential properties are more likely to experience losses than owners of land in other uses. Losses suffered by residential property owners may be particularly disquieting because such property owners tend to be those least able to bear losses. However, losses have been experienced by only 23 percent of the owners of residential property and, as mentioned previously, these losses have been small.

5) Gains are often associated with vacant remainders. Gains to owners of vacant property are often associated with changes of the land to a higher use. Damage payments made to owners of vacant parcels have been shown to be unrealistically high in many cases. Experience suggests that high damage payments for vacant parcels partially taken should in the future receive close scrutiny.

6) When the simultaneous effect on the recovery rate of several facts acting in combination was studied, the most influential factors were found to be (a) change in land use, (b) time elapsing from acquisition to sale, (c) travel distance to the new highway, (d) type of remainder, and (e) nearness to interchange.

For one of the groups of cases studied, a coefficient of multiple correlation of 0.86 was obtained, indicating that 73 percent of the total variation in the recovery rate was explained by the combined effect of the several independent factors used in the analysis."

**Buffington, Jesse L., and Adkins, William G., Case Studies of Twenty-Five Remainder Parcels Along Interstate Loop 820, Fort Worth, Texas, Bulletin No. 17, E 67-61, Texas Transportation Institute, College Station, Texas, August 1961.**

The overall purpose of this study is to improve the predictability for individual remainders and to lessen the often expensive uncertainty. Additionally, the findings have a ready application in public hearings and will help appraisers to make more complete and accurate appraisals in cases involving partial takings. They also should be of aid in negotiation and in preparation for condemnation proceedings. In connection with comparables and perhaps under other circumstances, case histories may gain admission into condemnation court.

Individual analyses are provided for each case history through the use of an analysis sheet. This sheet consists of four sections: 1) before acquisition, 2) property acquired, 3) after acquisition and 4) conclusions. The before acquisition section includes a brief description of the whole property, the appraisal date, area, and components of value. Property acquired reveals the title company's closing date on the part acquired, the area and improvements acquired, and the amounts paid for land, improvements, and damages. After acquisition includes a summary of the relation of the remainder to the new facility, subsequent remainder sales data, any increase or decrease in the value of the remainder (before damages), the change in the value of the comparable property, and subsequent changes in improvements. Finally, conclusions are made as to whether the remainder is damaged or enhanced and how much.

Aggregate analyses are presented on the case histories measuring enhancements and damages, successions of land uses, and comparisons of remainders selling and not selling as to differences in value, uses, or changes in uses. The purpose of this exercise is to gain perspective when any particular remainder is compared to case history and to consider the representativeness of remainders which have sold.

"Briefly, the principal findings regarding damages, enhancements, and land use changes are as follows:

1. Six remainders experienced land damages as shown by a comparison of their sales prices with the sales prices of comparables. One of these later succeeded to a higher land use.

2. Two other remainders, each involving two sales, seemed to have suffered land damages, but this occurrence was refuted by later sales. Both of these latter remainders succeeded to higher uses.

3. One remainder reflected neither damages nor enhancements to land. For five remainders, selling as improved properties, damages were in evidence, but no conclusions were made as to the extent of land damages. All of these remainders were in their original use.

4. Eleven remainders experienced net enhancements to land. Some of these enhancements were significantly large. Five of such remainders have succeeded to higher uses.

5. Payments for damages to either land or improvements or both were paid in 17 of the 25 partial takings studied. Land damages were paid on 15 remainders. In 13 cases, these land damages were appraised. In two instances, payments for the property acquired were considered by the researchers to have included damages to remainders in view of the excessive amounts paid for what seemingly were inferior portions. Damages to improvements also were paid on seven of the above remainders. For two additional remainders, damages to improvements only were paid.

6. Damages were paid in six instances in which no actual damages occurred. Excessive damages were paid in six additional cases. Out of the eight remainders for which no damages were paid, there should have been a damage payment for only two.

7. Seven remainders moved to higher uses; seven changed from residential to vacant, five remained residential, four remained vacant, one

changed from use as a church site to vacant, and one changed from commercial and residential use to vacant. Five remainders succeeded to residential use and two changed from vacant to commercial use.

8. Generally speaking, the remainders described in this report are considered representative of all remainders in the study area. A comparative study of the remainders selling and not selling revealed few differences of consequence. On the average, the land value of those which sold was the higher. One difference was that, at acquisition, none of those selling were in purely commercial usage, while those not selling had seven in this use. Both groups experienced about the same degree of land use change. However, 15 percent of the remainders selling succeeded to a higher use compared to six percent for the remainders not selling."

**Buffington, Jesse L., and Adkins, William G., A Study of 18 Remainder Parcels Along Houston's Gulf Freeway, Report No. E 21-61, Texas Transportation Institute, College Station, Texas, March 1961.**

This study's intentions are to investigate case histories of remainder parcels to determine a better predictability for individual remainders and to dispel potential and expensive uncertainties. The study area consists of large tracts of land which were mostly unimproved and residential subdivisions located near traffic arteries leading from the center of town. Most of the houses were about 30 years old. Data collection sources include right-of-way maps, independent appraisers, title company records, City of Houston appraisal files, building permits and tax data, and an index of property transfers to yield comparable sales data for the before and after acquisition period.

"Thirty-one remainders which had sold subsequent to right of way acquisition were selected within the study area. Meaningful case histories were developed for 18 of these. Briefly, the principal findings were as follows:

1. One remainder showed damages in the comparison of sales prices; this finding seemingly was refuted since the remainder later succeeded to a higher and better use.

2. All other remainders showed specific enhancements when their sales prices were compared with those of nearby comparables. Some of the enhancements were rather small, but others were significantly large.

3. The acquiring authority, the City of Houston, apparently paid land damages on eight remainders. In two cases, land damages were appraised; in six instances, payments for the part taken were considered to include damages to remainders in view of the amounts paid for what seemingly were inferior portions. Damages to improvements were paid for two additional remainders.

4. Fourteen remainders moved to higher uses; two remained vacant and two changed from residential to vacant.

5. Eleven remainders succeeded to commercial use; one of these was a converted dwelling. Three remainders had multi-unit apartments added.

6. The remainders described in this report cannot be declared to be exactly representative of all remainders in the study area. Some sales did not result in useable case histories, some sales were not studied, and remainders which did not sell are not represented. Nevertheless, it is felt that the findings accurately reflect that enhancements rather than damages were generally experienced."

**Bugge, W.A., Lindas, Leonard I., and Little, George G., "Symposium on Partial Taking and Severance Damage", Highway Research Board Bulletin No. 273, Highway Research Board, Washington, D.C., 1960, pp. 67-82.**

This article reviews land economic studies conducted by the states of Washington, Oregon and Ohio to trace and document the effects on properties brought about by a change in a highway facility. Each has a goal of providing a data base for appraisers' future evaluations as well as to

generate immediate savings in right-of-way cost for similar situations. Specific cases are investigated quantitatively to provide clarity.

"If there is any one major conclusion to be drawn it is that all future appraisals should reflect special benefits. Serious thought must be given by appraisers to this consideration. In Oregon, special benefits may be used to offset damages caused to remaining property brought about by virtue of the acquisition for highway use. Oregon has been very fortunate in having had its Supreme Court hand down an excellent definitive decision on this subject. One of their pronouncements is that special benefits need not be made a part of the pleadings in the case, but can be reflected in the opinion witness's appraisal.

These studies can be used in a court trial in two ways. One is to furnish the appraiser with copies of the studies for his use and edification. Then, when qualifying the witness in a given case, show that in preparation of his appraisal of the property under consideration, he reviewed this study, examined the pertinent properties involved and related them, or considered them, in arriving at his value of the property involved in the case before the court.

In order to make a valid use of these findings throughout the state, studies will have to be made in every area of the state. They are well worthwhile and in the end will bring savings that might stagger the imagination."

**Carlson, R.F., "Use of Economic Evidence in Condemnation Cases," Highway Research Board Special Reports No. 76, Highway Research Board, Washington, DC, 1962, pp. 85-86.**

From the Abstract:

"In California, the use of the following economic data was found pertinent to right-of-way acquisition activities: 1) studies of the rate of absorption of property within a developing area, and 2) studies of the sales of remainders after land for right-of-way purposes has been severed. The use

of this type of evidence in court has been approved. Another economic study deals with the experience that has been recorded when severed remainders were resold on the market following construction of a highway improvement. These data are potentially very useful and these remainder sales studies are conducted in each of our offices. In preparation for a condemnation trial, the appraisal testimony that will be given is reviewed to see where available data may help the appraisers arrive at some definite figure for the benefits that the land will receive. The use of this type of datum in a condemnation trial is dependent on each state's law of evidence. The laws relating to admissibility of economic evidence in right-of-way acquisition cases are discussed."

**Drumm, B.C., "Lessor and Lessee -- Apportionment of Award in Condemnation Proceedings", Highway Research Circular No. 10, Highway Research Board, Washington, DC, Nov. 1965, pp. 39-46.**

From the Abstract:

"The before and after rule is discussed regarding apportionment of the award between the lessor and the lessee. This rule fixes the total damages to the fee, and then apportions that amount between the landlord and the tenant according to their respective interests. Among the alternative approaches, one applies the before and after rule that gives the lease a separate value in determining the damages to the fee. Another alternative compensates the positive interests of each party separately. In these approaches, the apportionment of the award depends upon the extent to which the condemnation contravenes the relative rights and obligations of the lessor and lessee, and depends to a great extent on whether or not there is an abatement of the rent. The Kentucky court of appeals encountered these problems in the case of commonwealth department of highways v. Sherrod. This case involved the partial taking of a leased tract that was used for commercial purposes and the condemnor took part of the leased premises. The court applied the before and after rule and indicated that this rule would be applicable in every condemnation of a lease-hold interest. However, it is pointed out that the before and after rule may place the lessee in an unsatisfactory position as a direct result of the application of the fair

market value concept. Fair market value compensates the condemnee (and lessee) only for the loss of the physical property and does not recompense for the incidental business damages within the framework of the market value concept, that rule seems best which discounts the value of the lease entirely in the initial condemnation award, thus avoiding an unfair burden on the condemning authority."

**Eaton, J.D., Real Estate Valuation in Litigation, American Institute of Real Estate Appraisers, Chicago, Illinois, 1982.**

### **The Larger Parcel**

"This chapter discusses the larger parcel which is a premise unique to eminent domain valuation. The premise asserts that it is the larger parcel which is considered in condemnation valuation, and a parcel must generally possess unity of title, unity of use, and contiguity to be classified as the larger parcel. Court rulings clearly indicate that all three of these elements need not be present in every instance. The courts have been most lax in requiring physical contiguity, but unity of use and unity of title have been almost universally held to be prerequisites of the larger parcel.

The courts in the various jurisdictions disagree as to whether unity of use must be an existing unity or a highest and best unity of use. The latter would appear to be prevalent in the majority of jurisdictions.

Unity of title is generally a legal question. The quality of the title of the various tracts making up the larger parcel need not be identical, but, as a general rule, if the same individual or group of individuals controls the title and future use of all the tracts, unity of title is considered to be present. Physical contiguity, which is generally an engineering determination, is not always necessary, nor does it follow that a whole parcel constitutes the larger parcel just because it possesses the contiguity. Right-of-way maps do not control the determination of the larger parcel and, in fact, they may have no bearing on the question.



Unity of use is an appraisal question and the ultimate determination of the larger parcel is the strict purview of the appraiser. This contention is strongly supported by two court rulings. First:

The method of valuation of the parcels taken, whether as a separate entity or in a relationship to the whole tract, then becomes a matter of opinion of appraisers to be weighed by the jury.

Secondly:

Where the property taken is less than the entire tract, other considerations arise. The highest and best use of the part taken may be as a separate and distinct piece of property unrelated to the entire property endowing such part with a fair cash market value. On the other hand the highest and best use of the part taken may be so related to the entire property that the value of the part taken for its highest and best use is dependent upon the value of the entire tract. Such a relation or dependence may present an issue of fact and either party is entitled to present his theory of independent or dependent valuation.

The various court applications of the larger parcel premise are quite contradictory. It is therefore important that the appraiser fully understand the court's application of this premise in the jurisdiction where the property being appraised is located. Any question regarding the legal permissibility of the appraiser's larger parcel determination must be addressed by legal counsel.

If a question as to the legal acceptability of the appraiser's determination of the larger parcel does exist, the appraiser must obtain legal instructions from the appropriate attorney, with supporting citations as to the legal acceptability of such a determination. If these instructions are contrary to the appraiser's determination of the larger parcel (assuming the legal instructions are reasonable and supported by applicable citations), the appraiser must alter his determination to conform with applicable jurisdictional law. This is the only way the appraiser can fully comply with

his professional obligation. The inclusion of such legal instructions in the appraiser's report has another advantage in that it enables the appraiser to protect his own position." (pp. 48-61)

### Highest and Best Use

"Highest and best use is the most profitable likely use to which a property can be put. The appraiser's estimate of highest and best use is an integral part of the appraisal process because, without an accurate estimate, the appraiser cannot accurately estimate the market value of the property being appraised. In the appraisal of property subject to partial acquisition, two independent highest and best use estimates are made - one in the before situation and one in the after situation.

Many definitions of highest and best use have been promulgated over the years. The appraiser must take care to use the definition that is applicable to the property being appraised in the specific jurisdiction in which it is located.

The highest and best use of a site as vacant may be different from the highest and best use of the property as improved. In such instances, the appraiser may wish to include two sets of computations: the classic appraisal computations, which reflect the obsolescence present in the improvements due to their nonconformity to the highest and best use of the land as if vacant, and another set computing the land value for the property's highest and best use as improved.

Most courts have held that a property should be valued for all available uses, rather than for a specific use. This concept is not in conflict with the appraiser's interpretation of highest and best use; rather, it is an attempt on the part of the courts to eliminate the possibility that the trier of fact will add together the values of the property for several specific uses to arrive at a conclusion of just compensation.

It is improper to value the land for one use and the improvements for another as this violates the consistent use theory and has been soundly

rejected by the courts. There are several methods of estimating the value of improvements for properties which are in transition from one use to another.

The appraiser should be familiar with all these procedures and adopt the methodology that best represents the actions of buyers and sellers in the market.

The fair market value of the property taken, or the entire property if there is a partial taking, does not include an increase or decrease in value before the date of valuation that is caused by (1) the proposed improvement or project for which the property is taken; (2) the reasonable likelihood that the property would be acquired for the improvement or project; or (3) the condemnation action in which the property is taken.

A change in the highest and best use of a property immediately preceding the announcement of a public project and the date of valuation is an indication that condemnation blight and/or project enhancement may have occurred. However, it is sometimes difficult to make a conclusive determination in this regard. Therefore, appraisers may disagree in their conclusions concerning the existence of condemnation blight and/or project enhancement, and this will often have a material impact on their value estimates.

It is implicit in all definitions of highest and best use that the use must be legal. Any estimate of highest and best use must be reasonably probable at the date of the appraisal or in the reasonably near future. An estimate of highest and best use cannot be remote, speculative, or conjectural in nature. The key to determining whether a specific highest and best use can be considered by the appraiser is whether the potential for that use has an effect on market value as of the effective date of the appraisal. If there is a recognized effect due to the potential use of the property in the marketplace, the appraiser not only may, but must, recognize that effect and consider it in the estimate of market value." (pp. 62-82)

## Damages in Partial Taking Cases

"Damage, as used in condemnation, is the loss of value of a remainder property in a partial taking case brought on by the taking and/or the construction and operation of a proposed public improvement. The appraiser is advised to avoid using the terms consequential damages and severance damages because of the existing confusion in regard to their precise definitions. In conjunction with the sovereign's right of eminent domain and its act of condemnation, the appraiser need only segregate damages into categories of compensable damages and noncompensable damages.

The owner is not compensated for what the sovereign plans to do with the land acquired, but, rather, for all damage the condemnor will have a right to inflict on the remainder property. The appraiser must therefore fully understand not only what the condemnor proposes to do with the land taken, but also all of the things it is acquiring a right to do.

Damages are estimated in order to better estimate the market value of a property being appraised in the after situation. Damages are not individual items of consideration and an owner is not entitled to compensation for each on an individual basis. The three most commonly used measures of damage are: 1) damage indicated by analysis of comparable sales, 2) cost to cure, and 3) capitalized rent loss.

To ensure that all elements affecting value are considered, the appraiser must perform the appraisal assignment in a logical progression. The steps to be followed by the appraiser in valuing property in a partial taking are:

- 1) Estimate larger parcel before acquisition.
- 2) Estimate highest and best use before acquisition.
- 3) Estimate market value before acquisition.
- 4) Estimate larger parcel after acquisition.

5) Estimate highest and best use after acquisition.

6) Estimate market value after acquisition.

The possible damages to a remainder parcel are so varied that an all-inclusive list cannot be prepared. Damages are definitely indicated when the highest and best use of the property has been diminished in the after situation from that existing in the before situation. Not all damages to remainder property are compensable; remote and speculative damages have universally been held noncompensable. Many damages have been ruled noncompensable when the damage is not accompanied by a taking, but they are considered compensable when accompanied by a taking. Therefore, the appraiser should not make blanket assumptions regarding the compensability or noncompensability of a particular damage item. The appraiser should ask legal counsel to determine the compensability of any damage item in question." (pp. 175-200)

### **Benefits-General and Special**

"Remainder properties often receive benefits due to the construction of a public improvement. The appraiser must be aware of such potential benefits and how these benefits are classified and treated in various jurisdictions. There is a considerable amount of disparity among the various jurisdictions and, at times, within the same jurisdiction as to how benefits are treated.

Generally, all jurisdictions will fall under one of the following benefit offset rules:

1) Benefits of any type cannot be considered.

2) Special benefits can be offset against damages to the remainder property, but not against the value of the taking.

3) Both special and general benefits can be offset against damage, but not against the value of the land taken.

4) Special benefits can be utilized to offset both the damages to the remainder and the value of the land taken.

5) Both special and general benefits can be used as an offset against both damages to the remainder property and value of the land taken.

Nevertheless, both appraisers and attorneys are advised that there are many exceptions to these rules in the various jurisdictions. For instance, of the 48 jurisdictions that appear to allow benefit offset in one form or another, 12 specifically exclude such offset when the condemnor is other than a municipal corporation.

The existence of benefits is generally measured by the appraiser through the analysis of market data; this is the same procedure used to determine the existence and amount of damages in the after situation.

General benefits are those that benefit the community at large and have a beneficial effect on the value of properties which have not been taken or damaged, as well as on the value of properties which have been directly affected by the taking. Conversely, special benefits are those that arise because of the particular relationship between the remainder parcel and the public improvement. The fact that more than one property receives the benefit from a public project does not mean that the benefit cannot be classified as special; for example, all four properties on the quadrants of a new interchange may receive special benefits.

The types of benefits that can accrue to a remainder parcel are as numerous as the types of damage that can accrue to a remainder parcel. No clear distinction can be made between a special benefit and a general benefit because such a conclusion will often depend upon the circumstances of the specific case. In fact, in several cases, the same benefit has been classified as general in one instance, and special in another.

Because a great number of forces affect real estate values, it is often difficult to differentiate among natural real estate appreciation or decline, project enhancement, general benefits, and special benefits. However,

because the law in some jurisdictions requires such differentiation, the appraiser may be required to make detailed studies of real estate value trends in areas that are comparable to the area in which the property under appraisal is located, but not under the influence of the public project, in order to develop a sound and supportable basis for his determination.

In estimating the after value of a remainder property that will receive an offsetable benefit, it is important that the appraiser determine that their benefit will accrue within the reasonably foreseeable future. If this cannot be done, the appraiser should re-analyze the anticipated benefit in conjunction with legal counsel. It could ultimately be concluded that the anticipated benefit will be realized so far in the future that to consider it would be speculative; or it could be that the future benefit should be discounted to a present worth in light of its distant date of accrual." (pp. 226-253)

**Enfield, Clifton W., and Mansfield, William A., "Special Benefits and Right of Way Acquisition," The Appraisal Journal, Vol. XXV, No. 4 October 1957, pp. 551-556.**

The concept of benefits along with its importance in highway right of way acquisition is examined in a judicial context. A discussion is presented describing the process to qualify a property as benefited land including the three tests for determining if a certain parcel can be classified as part of the remainder. These tests are: 1) Unity of title; 2) Unity of use; and 3) The requirement that the project must necessarily benefit the parcel in question.

Each of the above principles is defined and described citing previously completed court cases as illustrations when possible. Finally, the various classifications of benefits are presented. Benefits are classified as general or special depending on the size of the area they affect. Under this classification a benefit is classified as:

- 1) A community benefit
- 2) A neighborhood benefit
- 3) An individual benefit

Community benefits are normally held to be general, neighborhood benefits are sometimes special and at other times general, and individual benefits are special. Benefits are further classified as physical, which refers to situations in which the benefit physically affects the land, and non-physical which is usually in the form of an increase in the market value of the remaining land.

**Franklin, William D., and Evans, Lynn A., The Effect of Access on Right of Way Cost and the Determination of Special Benefits, Technical Report 82-1F, Texas Transportation Institute, College Station, Texas, October 1968.**

From the Summary:

"General conclusions indicate that the granting of access has the effect of reducing the amount paid for damages connected with property acquisition for highway right of way purposes. In summary, several points may be enumerated:

1. An examination of approximately 3,600 acres of acquisitions for highway right of way indicated that overall the amount paid for damages to those properties granted access was approximately 53 percent less than damages paid to those properties not granted access.

2. An analysis of remainder real estate transactions indicated a net percentage differential increase of approximately 153 percent for unimproved property with access as opposed to such property without access.

3. Agricultural property with access had about a 12 percent differential increase.



4. Residential properties with access had a negative 89 percent differential.

5. Commercial properties with access had a 97 percent increase.

6. Those properties located directly abutting an interchange had an approximate 273 percent increase in value, whereas, those properties located at a greater distance experienced somewhat smaller increases in value.

7. Price per acre had a pronounced peak at ramp locations. Properties located at a zero distance from an egress ramp had an approximate 205 percent increase in value.

8. An analysis of only the abutting properties that sold in the after or post-construction period indicated that those properties abutting a facility constructed with frontage roads sold for a higher price than did those abutting a facility constructed without frontage roads.

a) Unimproved and property held for future use sold 42 percent higher.

b) Agricultural property sold 69 percent higher.

c) Residential property sold 53 percent higher.

d) Average per acre value declined roughly \$4.43, or .04 percent, per foot of distance away from the interchange within the area of the interchange complex.

There is no doubt that the granting of access in conjunction with property acquisition does reduce the amount paid for damages in connection with highway right of way. An evaluation of remainder property sales in relation to the highway facility further indicates that buyers in the land market place a considerable value on access to individual properties. This value is reflected both in overall increase in property values between the before and after periods of highway construction and their relationship to

frontage road access to the facility and in the obviously higher selling price of properties with access in the post-construction period.

Because special benefits may be used to offset the amount paid for damages in connection with land acquisition for highway right of way purposes in Texas, the distinction between general and special benefits assumes a position of some importance. If special benefits can be acceptably quantified, the amount paid by the state in property damages associated with right-of-way acquisition may be reduced in many instances.

General benefits have been defined as those benefits shared by the community as a whole as a result of constructing a highway facility. These benefits reflect the economic impact of a public improvement upon an area. One measure of this economic effect is the altered structure of property values after the construction of the facility. Because general benefits are of economic value and are reflected in rises in property values in general, they can be estimated through statistical analysis of real estate sales data. This simply means that general benefits can be measured in terms of general increases in property values as a result of construction of the highway. If average property value in the area is higher than before (excluding any increase attributable to general economic factors), then it may be said that general benefits have resulted from the highway.

The methodology for establishing the value of general benefits also may be used for estimating the value of special benefits accruing to individual properties affected by highway location. If general benefits are reflected by the average change in value of all properties in an area affected by a highway, then the change in value of individual parcels of remainder property may be compared to the average change for all properties of the same type and use to ascertain special benefits or damages.

Access rights include the right of ingress to and egress from property that abuts upon a public facility such as a major highway. With the exception of a new facility, constructed where no previous right of access existed, the right of access cannot be denied nor unreasonably restricted,

nor can an owner be deprived of such right, except by due process of law and upon payment of compensation.

The value of an access right is influenced by various conditions. With the advent of right of way purchase for the Federal Interstate System, this factor has assumed a magnitude of significance previously unrealized. The taking of access can be considered a damage to remaining property. On the other hand, the granting of access can be considered an enhancement, or special benefit, offsetting any calculated damages. The variety and complexity of access problems are numerous. In some instances the creation of an outer highway or frontage road can completely offset severance damages."

**Gamble, Hays B. and Davinroy, Thomas B., Beneficial Effects Associated With Freeway Construction - Environmental, Social, and Economic, NCHRP Report 193, Transportation Research Board, Washington, DC. 1978.**

From the Summary:

"The beneficial effects from freeways, as disclosed in the literature and as identified by the researchers, are classified in this report into three main groups: environmental, social, and economic.

Environmental benefits include (1) effects on the physical components, such as improvement of air quality through a reduction of emissions; (2) effects on the biotic components of the environment, such as preservation and diversity of plants as well as food, cover, and range extension of animals; and (3) improvement to the aesthetic quality of the environment. Benefits within the third category occur for both highway users and nonusers, and comprise such effects as improvement of visual access and landscape quality, reduction of glare, provision of open space, modification of land forms, and perceptions of spatial relationships.

Social benefits accruing to individuals, both as users and nonusers, consist of such effects as improved accessibility and freedom of choice, better health and safety, and reduced congestion leading to less irritability and stress. Also included within this group are the beneficial effects of

highways on population distribution and change, as reflected by age, race, and socioeconomic status. Highways have a noticeable impact on public and private community services and strongly affect settlement patterns. Other social benefits are reflected in improved interaction and communication, which serve to strengthen community values, to increase social contacts, to foster better public participation in highway planning, and to improve the effectiveness of comprehensive land use planning.

Economic benefits realized from highway improvements are reflected most strongly in economic growth and development, which are stimulated through improved accessibility (reduced travel time and operating costs), more employment and income, and agglomeration economies and economies of scale. Many of these direct benefits are transferred to highway nonusers in the form of increased land values. Other direct economic benefits include reduction of accidents, injuries, and fatalities and their associated costs. Operational effects of highways are exhibited in the form of bypass and relocation benefits, reduced congestion, and energy savings. Finally, there are the benefits derived from improved efficiency in all kinds of public services and the use of waste materials as substitutes for more valuable resources in highway construction and maintenance.

Literature dealing with all these effects is reviewed, analyzed, and evaluated in this report. Adverse effects, often accompanying beneficial effects, are briefly mentioned for some of the more significant benefits. A beneficial effects is provided that further categorizes the effects as being found primarily in urban or rural areas, of short-run or long-run duration, and of a direct or indirect nature. Extensive bibliographies are included for each of the three principal groups of benefits-environmental, social, and economic."

**Gibson, Sidney K., Eminent Domain - Enhanced Value Due to Project as an Element of Market Value in Texas Condemnation Law, 2 St. Mary's Law Journal 193-218 (1970).**

This 25 page article addresses the element of enhancement to the land being condemned which is due to the project for which it is being taken. The

intent and limitations on the power of eminent domain found in the U.S. Constitution are discussed along with the attendant concept of market value. Guidelines are presented for determining the date of taking in condemnation proceedings. The exclusion of enhancement rule is reviewed, and several exceptions to this rule are introduced that may be imposed by judicial bodies under certain circumstances. These exceptions are referred to as equitable exceptions and are usually applied in delayed takings, separate takings and uncertainty of taking. A method of invoking the equitable exception rule is identified as speculative enhancement. This theory is supported through the analysis of the City of El Paso versus Coffin, and the rationale of community enhancement. The concept of cut-off of enhancement due to project is explored through a series of case studies, most notably the City of Dallas versus Shackelford, and Barshop versus City of Houston.

**Highway Research Board, "Condemnation Compensation and the Courts, Proceedings of a Two Day National Institute", Highway Research Circular No. 100, Highway Research Board, Washington, DC, Sept. 1969, memo 205, p. 3.**

From the Abstract:

"Expanding acquisition activity in the taking of private property by the local, state, and federal governments for public purposes requires greater understanding of the procedures used, the compensation paid to owners, displacement difficulties, and related matters. Contributing to this complex condition are such recent developments as the condominium, joint development projects, the use of air space, partial takings, additives to fair market value, relocation activities, advance acquisition, tax implications, etc. The legal problems arising from the condemnation of private property for a vast variety of public uses were discussed at this institute. The institute probed the valuation aspects of condemnation, trial techniques and strategies which have been found to be effective, taxation implications of condemnation, and the more recent trends and winds of change involving condemnation."

**Highway Research Board, "General Instructions to be Used by the Commissioners Appointed by the Court Under the Provisions of the Tennessee Valley Authority Act to Determine Just Compensation for the Property Condemned by the Government Under Its Constitutional Power of Eminent Domain", Highway Research Circular No. 88, Washington, D.C., December 1968.**

From the Summary:

"The following instructions were offered by the Court under the provisions of the Tennessee Valley Authority Act, to determine just compensation for the property that the Government has condemned under its constitutional power of eminent domain. The Government has the right to take and condemn the property involved herein, and questions relating to the Government's right to take the property does not apply.

The Constitution of the United State provides that private property shall not be taken for a public use without the payment of just compensation.

In general, just compensation means the fair and reasonable market value of the land or interest therein that is taken by the Government, to be determined as of the date of taking.

By fair and reasonable market value is meant the highest price that a piece of property, as enhanced by the improvements thereon, if any, would bring when offered for sale in the market. It is the highest price that those having the ability and occasion to buy would be willing to pay. This does not mean the price that could be realized at a forced sale on short notice, but the price that could be obtained after reasonable and ample time, such as would ordinarily be taken by an owner to make a sale of like property. It does not necessarily mean cash, but it does mean cash or its equivalent, based on such usual terms of cash or credit as are usually agreed upon between buyer and seller, and which ultimately amount to cash. Otherwise stated, fair and reasonable market value means the price that the property would bring when offered for sale by one who wants to sell but is not forced to sell, and bought by one who would like to buy but is not required to buy, with the seller being allowed a reasonable time to find a purchaser.

Just compensation is not to be determined necessarily by the particular use to which a landowner may have put his property, but rather by reference to any and all uses for which it was available at the time of the taking. The landowners are entitled to receive from the Government the full and perfect equivalent in money of the property taken based upon the most advantageous uses to which it might be subjected, and due consideration should be given to the uses to which the property was plainly adapted and for which it was available at the time it was taken. Regard for the situation of the lands and such uses as might reasonably be expected in the near future, so far as appears from the evidence, and so far as these considerations would affect the market value of the property at the time it was taken.

In determining the fair market value, consideration should be given to all elements of value which would affect the market price of the land at the time it was taken, that is to say, all elements and factors which would be taken into consideration by reasonable buyers and sellers in arriving at a price to be paid for the property in arm's-length private negotiations between themselves. An element of value may be defined as anything which would induce a reasonable seller to demand more for the property because of the existence of such element and which would induce a reasonable buyer to give more because of the existence of such element.

Importance should be placed on all elements of value of these lands as shown by the evidence to have existed at the time the lands were taken; but elements affecting value that depend upon events or combinations of occurrences which, while within the realm of possibility, are not fairly shown to be reasonably probable, should be excluded from consideration because to consider them would be to allow speculation and conjecture to become a guide in ascertaining the value of the lands, which should not be done.

You are to consider the value of the land as a whole, as a unit. While in making your award you should consider all elements of value, such as farming value, if any, timber value, if any, or mineral value, if any, you cannot separately value each of these elements and aggregate them to reach the value of the entire tract. This is true because these factors of value

do not exist independently of each other and cannot be realized at the same time.

The value of the property to the government should not be considered, nor any increase or increment of value by virtue of the activities of the Government with reference to the project for which the property is being acquired. For example, a landowner might have underlying his property an abundant amount of stone for which there was no market at the time of the taking but for which a market would be created because of the use which the government was to make of the land and other lands; in that instance you would not take the value of the stone into consideration."

**Horowitz, Alan J., Mulligan, Patricia M., and Hansen, Eric R. Assessment of Land-Use Impacts of Highways in Small Urban Areas, Wisconsin Department of Transportation, Report R85-5, Milwaukee, Wisconsin, July 1985.**

From the Abstract:

"This report evaluates the applicability of existing techniques for assessing the secondary land-use impacts of highway projects in small communities in Wisconsin. Three promising existing techniques -- a structured expert panel evaluation, a Lowry land-use model, and a qualitative checklist approach -- were evaluated by applying them to case study projects in Wausau, Eau Claire, Sheboygan, and Wisconsin Rapids. The report summarizes the advantages and limitations of each approach for forecasting secondary land-use impacts of highways. Each of the techniques are summarized below.

### **Expert Panel Evaluation**

An expert panel was one of the techniques examined and evaluated for usefulness in predicting secondary land-use impacts of highways. A panel, consisting of individuals with backgrounds in different aspects of land use and forecasting, was assembled. This panel of experts was asked to adopt a 1965 frame of mind and to predict changes that had actually occurred over the past twenty years. To aid the panelists in developing such a frame of mind,



a narrative of general societal conditions that existed in 1965 was read to them. They also received information regarding each of the two case study cities, as well as brief descriptions of the projects. The forecasting instrument consisted of a questionnaire to elicit evaluations of thirty-one features of community development and a map for each city. Each feature was rated as to whether an impact would take place, whether the impact was negative or positive, the magnitude of the impact and its importance. On the map, the panelists predicted the areas in which residential, retail, service and industrial impact would occur. The first round of this study was conducted in person while the second round was completed by mail. After the results from the second round were tabulated, they were submitted to a smaller panel in each of the cities for evaluation with respect to accuracy and usefulness.

This technique provides a contrast to other methods investigated in this overall study. An expert panel can handle intangible impacts, such as aesthetics, strength of government authority and attitudes of financial institutions, and extremely localized impacts, such as the development of a regional shopping center. These are not impacts that are easily assessed by mathematical models. In addition, an expert panel evaluation can assess intangible impacts with more comprehensive insight than can be accomplished with simple checklists. A structured expert panel appeared to have the following desirable characteristics: 1) expert knowledge and experienced intuition, 2) time efficiency, and 3) low cost.

### **Mathematical Modeling of Land Use**

A land-use model is a series of mathematical equations that forecast the distribution of activities (e.g., living, working, and shopping) across an urban area. By knowing where activities would occur, the amount of land devoted to each activity can be determined. Land-use models are used primarily to test the impact that a transportation policy, a transportation project, or a land-use policy would have on urban development. If the model suggests that an undesirable distribution of activities would result, then it is possible to introduce mitigation measures before the project or policy is implemented.

The land-use theory that has received the most favorable attention in the last ten years was originally formulated by Ira Lowry of the Rand Corporation (1964). Lowry's theory is appealing because it is conceptually straightforward, it is computationally tractable for large urban areas and it is based on sound, validated principles of transportation and urban economics. Briefly, Lowry's theory states that people will attempt to locate their residences proximate to their workplaces and that services (including retail) will attempt to locate proximate to their markets, i.e., concentrations of population or other businesses. At the minimum, the Lowry Model will forecast the spatial distribution of population and employment in an urban area. Numerous small improvements have been added to Lowry's original model by other researchers in order to make it more computationally efficient, properly introduce the effects of traffic congestion, place the notion of proximate on a stronger theoretical base, and reduce the complexity of data preparation and calibration procedures.

A drawback to the Lowry Model is that the results can be difficult to interpret. It forecasts the end-state of development; in other words, the way in which the city would look at a distant future point in time. Since cities are always in transition and factors that affect development are always changing, forecasted impacts from the Lowry Model are generally larger and more focussed than would be seen in reality.

The most serious open question about a land-use model for a small urban areas is whether it would be properly sensitive to highway projects of varying magnitude. In order to determine if the model results were reasonable, a comparative analysis was conducted on three cases studied: a complete bypass in Wausau, a partial bypass and widening in Wisconsin Rapids, and a widening in Eau Claire. These three projects span the range of projects likely to be constructed by WisDOT over the next 20 years. Since these three projects were completed 15 to 20 years ago, most developmental impacts would have had sufficient time to materialize. Networks and base year data were prepared for each city. Then the Lowry Model was run both with and without the highway projects. Finally, forecasted development was qualitatively compared with actual development.

## Checklists

In evaluating secondary land-use impacts of highway projects, the most fundamental approach is to use a checklist. The advantage of a checklist is to assure that an analysis of impacts will be complete, even though the analysis may not have great depth. Checklists can be as simple as a list of potential impacts. More elaborate checklists could require ratings of impacts, verbal descriptions of the environmental setting, or verbal descriptions of the potential impacts. The principal use of a checklist in assessing land-use impacts of highway projects is to uncover, at a modest cost, significant negative impacts. If a checklist evaluation indicates that significant negative impacts are possible, then one of the more sophisticated evaluation techniques also should be applied.

The two checklists presented in this study are the detailed checklist and the short checklist. The detailed checklist requires short descriptions of all aspects of the project and urban area that could possibly lead to a negative impact. The short checklist is intended for minor projects, which are not expected to have significant impacts".

**Hubbard, Paul H., Eminent Domain-Damages, 44 Texas Law Review 1621-1626 (1966).**

This article focuses on the issue of damages in eminent domain condemnation proceedings. The concept applied to partial takings is reviewed from two perspectives: 1) the affect on valuation of condemned parcels when the right of access is retained by landowners and, 2) the determination of the method of valuation on the condemned parcel. Should it be considered a severed unit, or calculated on a proportionate basis using the entire tract as a denominator? In reference to the first issue the state takes the position that if an owner has access to planned improvements his access rights were not condemned, and retention of access should be a consideration in determining damages. In this context it is revealed that under Texas Law right of access is a property right attached to the remainder. The courts ruled that right of access is relevant only when an owner seeks damages for the remainder and compensation for the partial taking. Other rulings include

a precise method of valuation which considers the value of the land taken plus the difference between the value of the remainder before and after the taking. Additionally, when an owner waives damages to the remainder and seeks compensation only for the taking, the courts will consider only the value of the taking. On the second issue the state contends that the proper method for determining the value of the taking is to consider the land taken as part of the whole tract and the value of the taken parcel should be averaged with the remainder in arriving at a per acre value. This contention was rejected by the courts citing the severed land theory. Rulings handed down in the State versus Carpenter and State versus Meyer are employed as analytical bases by the author.

**Hyde, James V., "Condemnation Appraisals," The Real Estate Appraiser, Vol. 36, No. 4, May-June 1970, pp. 51-55.**

Appraisals are the primary means by which the amount of compensation paid to owners is established in condemnation proceedings. This article outlines sound appraisal principles as applicable to the various condemnation issues. The general topic areas are 1) Just compensation, 2) Partial takings, 3) Before and after approach, 4) Exceptions, and 5) Special purpose properties. The Fifth Amendment to the U.S. Constitution provides valuation under eminent domain and ensures that property taken for public use will be granted just compensation. The fair market value concept has been adopted by the courts as the tool for determining compensation in an accurate and practical manner. In partial takings the acquiring authority is required to pay for the part taken and severance damages to the remaining portion. Severance damages are defined as a loss in value to the remainder of an owners property after a part has been taken, compared with the value of the remainder before the taking. Severance damages to properties commonly result from situations such as: 1) Proximity, 2) Denial or impairment of access, 3) Reduction in size, 4) Severance from a larger parcel, or 5) Consequential damages. Other concepts such as contiguous unit, and unity of use are described. A discussion is presented on the before and after approach to valuation in partial takings. The author advocates this technique as the accepted appraisal procedure for estimating the value of the part to be acquired and the amount of damages to the remainder. Simply stated it

separately determines the fair market value as it exists prior to acquisition and then the fair market value of the remaining parcel after the taking. Illustrations are provided to enhance the readers perception. Small fee takings and easements provide exceptions to the before and after procedure. In these situations only the part taken need be evaluated. The cost-to-cure method is identified as a permissible exception and includes definitions and examples. Special purpose properties such as libraries, schools, parks and other publicly owned properties may exceed the utility of the fair market value concept as a measure of just compensation. Replacing the property "in kind" is acceptable due to the unique nature of ownership.

**Jordan, Jack D. Final Report on Studies of Right-of Way Remainders, Research Report No. 44-F, Prepared by the Right-of-Way Division Texas Highway Department, Austin, Texas, 1963.**

From the Abstract:

"An analysis of three hundred remainder studies was published in May, 1967. A total of 486 remainder studies have been published through April, 1970. If the same type of analyses were applied to the other 186 studies which have been published, the findings set out in our previous report would remain the same as there have been no significant changes in the trends noted in that report. Therefore, no statistical updating of the graphs and charts in the previous report has been made. It is felt that the following conclusions may be drawn from the studies published:

1. There is a real estate market for all types, sizes and shapes of remainders with size apparently playing the most important role in the value of the remainder after acquisition.
2. Some remainders will suffer a diminution in market value, but the loss will not be as great, usually, as was originally estimated. This is true primarily because of changes in use from those envisioned at the time of appraisal.

3. When new facilities are constructed or existing highways are widened there is a considerable amount of evidence that the use of the property will change when the remainder sells.

It is evident that through these studies more has become known about sales and the usage of remainders. It is firmly believed that the studies are an excellent source of information which can be of material assistance to personnel engaged in the appraisal and in the acquisition of required rights of way for highway purposes. Furthermore, if the information is properly utilized, it will aid in the determination of fair and just compensation for such rights of way."

**Kanner, Gideon, "The Legal Angle", The Appraisal Journal, Vol. XLIV, No. 1, American Institute of Real Estate Appraisers, Chicago, Illinois, January 1976, p. 129-143.**

This article describes the complexities of the valuation process in determining just compensation in eminent domain proceedings. The limitations of the comparable sales approach as applied to historic landmarks is reviewed and the role of the professional appraiser within the judicial setting is presented.

Problems at arriving at just compensation for the taking of improved property containing fixtures are explored. Issues relating to this include defining a fixture, determining the value enhancement and treatment of factories and warehouses containing second hand machinery. Historically, fixtures are a piece of personal property physically attached to a building. This definition has been proven to be inadequate and led to the evolution of a three-fold test of annexation intent and adaptability. This test seeks to determine: 1) whether and how it is attached to the realty, 2) whether the party who annexed it intended the annexation to be permanent and 3) whether the annexed item was adaptable to the uses of the entire unit of realty. Further complications arise due to the fact that the annexation need not be physical and the valuation process is influenced by policy considerations mandated by the Constitution. The Pennsylvania courts developed what is known as the assembled economic unit doctrine and assembled industrial plant

doctrine to address many issues. Specific cases are reviewed to document the impact of these approaches.

Two questions arise concerning the offset of benefits: 1) is it permissible to offset the benefits to the remainder against both the severance damages and the value of the part taken? Or, to put it another way, is it consistent with the constitutional "just compensation" guarantee to apply strictly the "before-and-after" value if the value of remainder in the "after" condition is the same (or greater) than was the value of the entire property in the "before" condition, thereby giving the owner a monetary award of zero?

Involuntary land dedication occurs when the government insists that a landowner dedicate a piece of his land to public uses as a prerequisite to receiving a re-zoning or permission to develop his land. The issue on this concept is whether the government is reasonable or is this a disguised attempt to acquire private property for the public without just compensation. Many state courts have dealt with this problem.

Environmentalists and property owners have differed for many years concerning the irrevocable disappearance of various natural land conditions caused by human activities. One ongoing issue between the two entities is that of the government forbidding the filling of marshes without compensation to their owners.

**Kendall, F. Russell, Special and Community Damages - A Confusion in Definition, 10 Houston Law Review 282-293 (1973).**

The purpose of this article is to make a distinction between the terms special and community for both damages and benefits. A subordinate goal is to clarify what compensation a land owner can expect to receive. Special and community damages are discussed from the perspective of their origin and distinction.

"To technically meet the constitutional requirement of compensation for a damaging, the courts have created two categories of damages: special and

community. A condemnee may recover for special damages to the remainder but not for community damages. A condemnor may offset special damages to the remainder with special benefits but not with community benefits. The greatest inequity in such a court-defined categorization is that the differences between special and community damages and benefits are often so ambiguous and conflicting as to leave the condemnee of the damaged remainder with little notice of what compensation to expect. If the injury that results to the remainder from condemnation is only that which is suffered by other property in the same community, the damage that has accrued is deemed community damage, and no cause of action for compensation exists. When the condemnation inflicts an injury peculiar to the condemnee's property, however, then that property has suffered special damage, and just compensation is allowed. If a proprietary right has been violated, compensation is allowed even though the proprietary rights of other members of the community have been violated in a similar manner.

In some condemnations the owner of the remainder may receive from the taking benefits that accrue to the community generally. Such community benefits, which are not peculiar to the condemnee's ownership, use, or enjoyment of the remainder, may not be offset against the diminution in the value of his remainder. Offsets are allowed against the diminution in value of the remainder when special benefits to the remainder from the condemnation mitigate the owner's loss."

The basic rules for measuring damages are reviewed through analysis of the classic case State versus Carpenter. A survey of cases attempting to pinpoint the exact characteristics of special and community damages and benefits only offers a few general rules. This is a reflection of the inconsistent judicial determinations which have reduced the power of the Carpenter ruling. The circumstances under which these inconsistencies exist are examined, and are identified as:

- 1) Loss or impairment of access and improved access.
- 2) Damages from dust, noise, and odors caused by activities on condemned premises.



3) Changes in traffic, neighborhood characteristics, and physical interferences.

Various case decisions are used to confirm the author's contentions of non-uniformity of adjudication proceedings and is partially attributed to the Texas Constitutions lack of clarity.

"Results of this study indicate a survey of cases and an attempt to pinpoint the exact characteristics of special and community damages and benefits can at best offer only a few general rules. At least such an exploration does point out the convoluted effort of the courts to qualify and graft exceptions to the constitutionally protected right to compensation in eminent domain proceedings for damages. Glaringly obvious is the fact that the Texas constitution contains no qualifications as to when damages can be given as compensation.

The constitution does not provide that a reduction in the value of a landowner's remainder caused by circuity of travel is noncompensable or that a loss of access, if the degree is insufficient, is noncompensable. Why should dust caused by construction be a compensable damage, yet dust caused by the passage of 100,000 trucks and automobiles be non-compensable? Why should noise amounting to a nuisance be enjoined and compensation paid in a damage suit, yet be noncompensable in a condemnation suit? Such inconsistencies in damage compensation to the remainder are the results of court attempts to modify the constitutional provision. That attempt has only resulted in an unfortunate lack of protection for property rights and the granting of exceptions upon the constitution."

**Montano, Joseph M., and Associates, Recognition of Benefits to Remainder Property in Highway Valuation Cases, NCHRP Report 88, Highway Research Board, Washington, DC, 1970.**

This 24 page report provides an overview of the issues related to the determination of benefits to remainder properties in highway valuation cases. The report defines, and makes a distinction between special and general benefits in chapter one. General benefits are those which increase land

values in the general community. All properties within the range of the improvement receive the value. Special benefits, differ from general benefits in that they arise or accrue from the property's position or its relationship to the highway improvement. The key to special benefits is that the property usually abuts or borders on the new highway. Also, included in this chapter are discussions on the rules for measuring compensation, items of special benefits, items of general benefits, and suggested methods for providing proof of benefits. The rules for set off of benefits vary by jurisdiction, however, five rules have been considered and adopted by various states. These rules are: 1) Benefits, whether special or general, cannot be considered; 2) Special benefits only can be offset against damages to the residue, but not against the value of the land taken; 3) Special benefits and general benefits can be offset against damages to the residue, but not against the value of the land taken; 4) Special benefits can be offset against both the damages to the residue and the value of the land taken; and 5) Special and general benefits can be offset against both damages to the residue and value of the land taken. In an effort to prove that a certain feature resulting from the construction of the public improvement is a special benefit prior cases are often cited. These cases identify items to be considered as special benefits. Examples include: proximity to expressway, fence and restoration, added or new frontage on highway. The author presents examples of situations in which there was a lack of proof, such as filling stations, interchange properties, livestock passes, and residential sites.

Chapter II focuses on methods of ascertaining the actual value of the remainder parcel with the inherent advantages and disadvantages of each approach. Case studies support the authors' judgments on the merits of the employment of the various techniques. The methods reviewed are the comparable sales approach, cost approach, and income approach. The last part of this chapter presents examples of both physical and economic benefits which increased property values resulting from the improvement.

Chapter III discusses the probability of re-zoning after a valuation witness has stated his opinion of the highest and best use of a piece of

property. The issue of highest, and best use is explored in terms of appropriateness and consistency.

Chapter IV provides guidelines for the administration of instructions to the jury. Clarity is emphasized as an essential element. Specific examples of instructions are discussed in addition to some rules of law which should be used and followed when preparing benefit instructions.

The final chapter's discussion focuses on the treatment of special cases such as loss of access as related to the issue of benefits. Other topics reviewed include: 1) the cost of construction of a portion of a public improvement as evidence of benefits; 2) joint ventures between two governmental agencies; 3) benefits to other tracts or parcels - multiple parcels as separate or entire; and 4) benefits derived from previous or subsequent improvements.

**Palmore, John S., "Damages Recoverable In a Partial Taking", Vol. 21, Southwestern Law Journal, Dallas, Texas, 1967, pp. 740-750.**

Various terminology referring to partial takings such as resulting damage, damage to the remainder, and severance damages are often used in a synonymous manner to describe the process of diminishing a persons right to use or dispose of his property as he wishes. The Fifth Amendment of the U.S. Constitution protects individuals from condemnations without just compensation.

Two distinct methods of measuring compensations in partial takings are discussed; 1) the value plus damage rule which involves the separate assessment (in evidence if not verdict) of the value of the portion taken and the damages to the remainder, then adding the two together; 2) The before and after rule whereby the evidence and verdict are directed to the difference in market value between the condemnees land before the taking and immediately thereafter. Variations of these methods are evident from state to state. The primary difference in these approaches stems from the fact that many states' constitutional guarantee of just compensation means compensation in money for the property taken, disregarding compensation in the form of actual

or theoretical enhancement to the value of the remainder tract, based on proposed uses of the condemned portion.

There are four fundamental conditions in which damages may be incurred by property owners. 1) Frontage value damages may occur to the remainder if the loss of direct access to the public thoroughfare is evident. Comparable area sales are usually introduced as support of damages to the landowner. This evidence should not be present in highway condemnation cases unless the plans advocate limited or non-access. There is usually no problem with this element in states using the before and after approach. However, the possibility of landowners receiving payment for something that was not lost exists in states that do not permit the offsetting of benefits to the remainder against the award for the portion taken. 2) Loss of access is a fairly common problem with the interstate highway program, and the lack of uniformity in its interpretation by various states further complicates the matter. The theory of reasonable access is the primary tool of the courts and it functions on the premise that all interferences concerning convenience of access which do not deprive the landowner of that right fall within the police power of the state. The underlying principle is that whatever value a property has by reason of its location to a public highway was accorded to it at public expense and may be terminated without public liability. 3) The subject of inconvenience often stems from new highway construction dividing a tract of land. In cases where farms are divided such that barns and pasture land are left on one side and the water supply on the other, inconvenience is normally considered as an item for damages. The measurement of the loss of market value is the objective of most jurisdictions and has little concern for individuals who show dislike to the readjustment of their boundaries. The test is the degree to which those whose interest will create a market value will accept these circumstances as justification. 4) Fencing and restoration cost are generally allowed as evidence whether as a separately compensable item or as information relevant to the diminution in value of the remainder. One pitfall in using this type of evidence is the opportunity for duplication, particularly in states following the value plus damage rule. Another weakness is possible when the highest and best use of the property changes after the taking.

The undivided fee rule applies to leaseholds and limits total compensation to the market value of the real estate. This differs from the value plus damage rule whereby the different interests are summed.

**Peacock, P. Dexter, The Offset of Benefits Against Losses in Eminent Domain Cases in Texas: A Critical Appraisal, 44 Texas Law Review 1564-1583 (1966).**

This document provides a critical analysis of the law of Texas regarding the offset of benefits against losses in eminent domain cases. It is the author's premise that the state is overly concerned in both theory and application with the protection of individual property rights. The paper is divided into four sections, the first half presents the rationale and historical perspective of the rules governing the offset of benefits in Texas. The latter sections deal with the application of these rules to specific problems.

The historical development includes a discussion of the offset of benefits against the value of land taken. The Texas Constitution of 1845 is reviewed, and the Texas Supreme Court Case of Buffalo Bayou, B. & C.R.R. versus Ferris is cited as a basis for current practices. Section two examines special versus community benefits. Under Texas law only special benefits may be used to off set damages to remainder properties. In some jurisdictions both general and special benefits are allowed to be considered in calculating the amount to be awarded for damages to the remainder. The difference between the theories for and against allowing both general and special benefits in off set revolve around different conceptions of the obligations of a governmental body to its landowners. The argument hinges on two similar points: 1) the inequities of allowing the benefits arising from a new or improved street to be charged against any special damages a landowner might suffer by its construction, because he has already paid for these benefit through taxes, and to allow them as consideration in offset would amount to a double payment; and 2) it is subjective to allow the accidental circumstance that condemnees land lay in the path of a public improvement to deprive him of benefits received free of charge by his neighbor. Also, there is a feeling among the courts that general benefits are less ascertainable and more conjectural than special direct benefits.

Section three defines special benefits and provides examples of five potential problems encountered under this concept. These problems are: 1) The vicinity or neighborhood concept; 2) Transportation and access; 3) Highest and best use; 4) Zoning ordinances as obstacles to a higher use; and 5) The single project-multiple condemnation problem.

**Rams, Edwin M., "Just Compensation in Texas - The Carpenter Case Revisited," Paper presented at the 46th Annual Meeting of the Highway Research Board, Urban Research Associates, Economic and Real Estate Consultants, Washington, D.C., January 1967.**

This paper reviews the circumstances of the landmark case State of Texas versus Carpenter which provided the basis for the "severed land" doctrine in reference to a partial taking of property for public use. Various aspects of the court's reasoning concerning the measurement and adjudication of just compensation in partial takings are examined. Sample case studies are analyzed using the severed land theory including graphic illustrations.

A discussion by Mr. Leonard I. Lindsas of the Nevada State Department of Highways refers to two other cases, The State of California versus Silveira, and The State of Texas versus Meyer in which similar judgments were made by the courts. All three cases are compared and contrasted regarding the theoretical position of the condemning agency. The concept of separate and distinct parcel approach to valuation is examined through the formulas utilized by various states. This examination includes a group of questions relating to possible inequities in the adoption of this approach.

"In conclusion a multitude of uncertainties exist concerning the measurement and adjudication of just compensation. Many states are codifying and simplifying eminent domain statutes in an effort to minimize the time, effort, and unnecessary litigation as related to the many property acquisition programs by public agencies. By far the principal reason has been to insure just compensation to the affected property owners.

In recent years the Carpenter case has evoked many discussions and arguments, generated by highway development, school expansion programs, etc.,

because of the extensive acquisitions of property. Numerous opportunities have occurred to properly frame constitutional issues for an appeal to the Texas Supreme Court.

Regrettably the Meyer case, in the writer's view, only compounded the situation. A full cycle has been reached. The initial Carpenter case adopted the "severed land doctrine" to preclude double damages. Now the Meyer case modified the Carpenter case in a manner permitting double damages. Obviously some correction is in order to preclude further adaptation or expansion of the legal tenets expressed by the Texas Supreme Court in State v. Meyer and State v. Carpenter."

**Rollins, John B., Memmott, Jeffrey L., and Buffington, Jesse L., Effects of Roadway Improvements on Adjacent Land Use: An Aggregative Analysis and the Feasibility of Using Urban Development Models, Texas Transportation Institute, Research Report 225-22, College Station, Texas, 1981.**

From the Abstract:

"The effect of improving existing urban roadways on surrounding land use is an important consideration in highway agency decisions regarding roadway improvements. Such decisions should consider the economic impact of proposed improvements.

In an effort to identify the kinds of effects which urban roadway improvements have on surrounding land use over time, a study has been made of several urban locations experiencing roadway improvements during the past several years.

Land use and related data were collected on eighteen locations in the Bryan-College Station, Dallas-Fort Worth, and Houston metropolitan areas. Following individual analyses of the study sites, data on all eighteen locations were aggregated for the purpose of statistically analyzing relationships between land use and various related factors. Chapter II of this report describes the categorical and regression approaches to the statistical analysis and reports the results thereof.

The results of categorical analysis indicate that several factors are related to land use changes before, during, and after urban roadway improvements. These factors, while associated with land use changes, do not appear to fully explain changing rates of land development before, during, and after improvements. Without control areas, it cannot be ascertained whether or not roadway improvements in and of themselves affect land use patterns. Without examining interactions among the independent variables, it is difficult to readily explain some of the analytical results. Differences among metropolitan areas seem related to single-family residential, commercial, and overall development. But without information on how, e.g. population trends vary within metro areas, specific causes of variation in these land use patterns by metro area are not readily identifiable.

Thus, on the basis of the available information, the results of the categorical analysis appear consistent with the hypothesis that roadway improvements work in conjunction with other factors in accommodating land use changes. This is evidenced particularly by the relationships of multi-family residential and commercial development to location type and of single-family residential development to ADT growth.

Some of the evidence was found to suggest that the installation of raised medians, given the addition of capacity, has a depressing effect on land development. Although based on a relatively small sample, this finding implies that the type of median treatment should be considered in roadway improvements.

The regression analysis gives similar overall results. There are several factors which influence land use development, though the direct effects from roadway improvements seem to be relatively weak. There seems to be an interaction among a number of variables which influence land use changes as a result of roadway improvements. It is difficult to isolate the individual effects. The land use effects from median treatments are relatively weak in this sample.

The results of the study are relevant to SDHPT policy decisions. When considering an urban roadway improvement, the Department should recognize



that the improvement could possibly impact various types of land use in the surrounding areas. Of course, any effects of the improvement on land use would be limited to the extent that other predictive factors, such as metropolitan/regional growth and local zoning ordinances, affect land development.

In addition, the effects of the type of median treatment planned as part of the proposed improvement on land use should be considered. In general, the type of median treatment deployed at a location is determined by local government preference, not by SDHPT. While analytical results regarding the effects of median treatments were comparatively weak, it is recommended that the type of median treatment be taken into account by the policy-determining agency.

A popular approach to forecasting regional urban growth is the use of urban development models. Using information on residential and employment locations, trip origins/destinations, and population and employment projections, these models attempt to predict patterns of future growth in a metropolitan area. Chapter III explores the suitability of urban development models as an alternative approach to modeling the relationship between urban land development and roadway improvements."

**Sackman, Julius L., "Apportionment of Award Between Lessor and Lessee", The Appraisal Journal, Vol. XXXVIII, No. 4, October 1970, pp. 539-553.**

From the Abstract:

"This paper examines guidelines for determining the relative rights of landlord and tenant in an award for the full or partial taking of leased property.

These items may be translated into formulae which are readily usable by an appraiser. These items and related formulae are outlined in general terms below.

1) As to valuation of leased property, the property should be valued as if there were no lease and as if single ownership in unencumbered fee simple absolute prevailed. All appropriate methods of valuation can be utilized - the market data approach, the income approach, and the cost approach. However, if the income approach is used, it must be remembered that rental value, not the reserved rent, should be capitalized.

2) Leasehold value exists only if there is a so-called bonus value to the lease; that is the rental value, or economic rental as it is sometimes called, is in excess of the reserved rental. The leasehold value is, of course, computed by applying the appropriate Inwood coefficients to the annual bonus values for each year of the remainder of the lease term and aggregating the results so obtained.

3) If there is a complete taking the award is apportioned as follows: a) Leasehold value is paid to the lessee; and b) Unencumbered fee value minus leasehold value equal the amount to be paid to the lessor.

4) If there is a partial taking the award is apportioned as follows: a) Leasehold value prior to the taking minus leasehold value of the remainder after the taking equals the amount to be paid to the lessee. The leasehold value of the remainder is computed by subtracting the reserved rent, as abated, from the rental value of the remainder area; and b) the damages computed on the basis of the undivided fee rule, minus the amount found under (a) immediately above equals the amount due to the lessor.

5) If there is a temporary taking of the entire premises for a period shorter than the balance of the leased term, the entire award belongs to the lessee. If, however, the period of the taking is longer than the balance of the leased term and if the taking affects the entire property, the award is apportioned as follows: a) Leasehold value is paid to the lessee; and b) The award for the temporary taking, computed under the undivided fee rule, minus the leasehold value equals the amount to be paid to the lessor.

6) If there is a temporary taking of part of the premises for a period which is shorter than the balance of the leased term, the entire award

belongs to the lessee. In such case, of course, the tenant continues to pay the full rent in unabated amount. If, however, as a result of such temporary partial taking, there is an abatement in the rent, the award should be allocated as follows: a) If the rent reserved, as abated, is equal to or greater than the fair rental value of the property either as a temporary remainder area or as the property subject to a temporary easement, then only the landlord is injured by the temporary taking and he should receive the entire award; and b) If the rent reserved, as abated, is less than the fair rental value of the property either as a temporary remainder area or as property subject to a temporary easement, then the award should be apportioned as follows: 1) The present value of the amount of the rental which has been abated should be paid to the lessor; and 2) The balance of the award should be paid to the lessee because this represents the decline in the bonus value of the lease.

If the temporary taking of part of the demised premises extends beyond the balance of the leased term, the award should be broken down into two parts, the first part being allocable to the leased term and the second part being allocable to the reversionary period. The latter part would be paid to the lessor. The first part would be paid to the lessee or the lessor, or apportioned between them, as set forth with respect to takings which expire prior to the end of the leased term."

**Texas State Department of Highways and Public Transportation, Appraisal and Review Manual - 2nd Edition. Prepared by the Right of Way Division, Austin, Texas, undated.**

The purpose of this manual is to provide to those engaged in right of way appraisal or review work for the State Department of Highways and Public Transportation a flexible guide to the understanding and effect of the existing State and Federal laws and policies as they apply to this field. While it is essential that the reader understand the appraisal process, the manual should be of benefit to both the beginner and experienced right of way appraiser or reviewing appraiser. It is hoped that it will assist the incoming appraiser or reviewing appraiser to learn right of way evaluation techniques and also provide those with more experience a reminder of the

numerous matters which they must consider. The manual is generally organized in the sequence a parcel acquisition is developed. With the salient facts thus brought to the attention of the appraiser or reviewing appraiser, his or her appraisal experience gained over the years may be applied to careful analysis in arriving at a conclusion and recommendation of a property documented value. The manual is divided into the following sections:

- Operating Procedures
- Valuation - Legal and Policy
- Appraisal and Evaluation Forms
- Appraisal Review
- Establishing Right-of-Way Values
- Eminent Domain - State Acquisition
- County and City Acquisition with State Reimbursement
- Establishing Values
- Procedure When County or City Recommends Values
- Procedure When State is to Establish Values
- District's Submission of Recommended Values
- State's Approved Values
- Eminent Domain in County/City Acquisition
- Building, Storage and Material Sites, Surplus Land and Design Appraisals
- Addenda
- Right of Way Policies and Forms

**Worsham, Joseph Irion, Problems Peculiar to a Partial Taking in Condemnation, XIII Southwestern Law Journal 412-424 (1959).**

The majority of litigation concerning eminent domain in the appellate courts today involves partial takings rather than total condemnations. Within this framework the author summarizes the issues related to partial takings. The paper consists of three sections: 1) Statutory provisions, 2) Valuation of part taken, and 3) Damages to the remainder.

Section one reiterates the Texas Revised Civil Statutes which states a hearing will be held to determine the value of the condemned property and the damages sustained by the owner, and the benefits that result to the remainder

due to the condemnation proceeding. Statutes are also referenced for community damages and benefits.

Section two provides explanations of the techniques utilized in the determination of the valuation of the part taken. Value instead of worth is emphasized as the key element in the process. Additionally, the part taken must be valued without reference to the future use of the premises. This approach is supported and analyzed through the State V. Carpenter Case. In some cases condemnation proceedings agencies cannot acquire a fee simple title, in these instances similar hearings occur. However, the agency concludes the process with an easement and the arrangement terminates when the use of the condemned property ceases. By virtue of Texas law, the benefits to land owners is not considered in valuing land taken. He is entitled to be compensated for his land in money, not in benefits.

Section three cites the Texas Constitution as the basis for current theories utilized in the determination of damages to the remainder. A fundamental point revolves around whether there is an actual taking of any portion of the land owners property. If a portion is taken, regardless of size, payment is made for that part taken and damages are allowed for the injury suffered by the remainder. Conversely, should no taking occur, the initiative is upon the land owner to bring suit for his damages. Typically in the construction of a public improvement damages are sustained by land owners without compensation because of the absence of a taking. In compliance with the State Constitution common injuries or benefits are not compensable. A jury is reminded to consider two aspects of value theory:

- 1) Any damages sustained by a particular parcel of land, and any benefits which are peculiar to it, and not shared by the community in general should be considered.

- 2) Consideration should be given to the proposed use of the tract taken. This partially determines whether benefits are realized or damages sustained. Existing ambiguities are discussed regarding detrimental effects to the land owner contingent upon the condemnor's post or pre-condemnation acts. The determination of the remainder of such property discusses issues relating to

how much of a defendant's land may be considered damaged and where must it lie to be eligible for consideration. Other pertinent issues are reviewed in a hypothetical context.

## CASE LAW REVIEW

**Archenhold Automobile Supply Co. v. City of Waco 396 S.W. 2d 111 (Tex. 1965).**

### Issues

This is a suit against the City of Waco to recover for damage to plaintiff's property as a result of the construction of a viaduct. There was no physical appropriation of the petitioner's property and the case involves only the impairment of access rights. The primary question for determination is whether access rights have been impaired to an extent which constitutes a damage to property for a public use.

### Court Holding

The court held that Archenhold has not been deprived of reasonable access. Special damages not suffered by the general public were, in fact, sustained. However, as held in Dupuy, this is not sufficient to enforce the compensation provision of the constitution. The judgement of the court of Civil Appeals was affirmed based on the concept of Damnum Absque Injuria or harm without injury.

**Barshop v. City of Houston, 442 S.W. 2d 682 (Tex. Sup. 1969)**

### Issues

Petitioner, Joe Barshop, owned 52.66 acres of land which the City of Houston condemned for its new Houston Jetero Intercontinental Airport. The whole tract was taken on July 7, 1964, and the jury found, in answer to the only issue submitted, that the market value of the tract on that date was \$168,512.00. Houston contended in the court of civil appeals that the trial court improperly admitted evidence which was based upon the enhanced value of the property occasioned by the public facility itself.

The long period of time which elapsed between Houston's initial plans and discussions about a new airport and the date it actually took the Barshop

property, creates the problem. On June 14, 1950, Houston initiated a study of its future airport needs. In 1956 a group of citizens undertook to block up and acquire an airport site in the vicinity of the Barshop tract. The group was incorporated as the Jetero Ranch Company and its purpose was to acquire land for Houston's new airport. On November 6, 1957, Jetero and City of Houston agreed upon the sale and transfer to Houston of some 3,125 acres of land. On April 21, 1958, the City completed the purchase of the Jetero tract, subject to a small outstanding interest. It was generally known, however, that the Jetero tract was not large enough to accommodate the new airport.

The only issue in this case was that of the market value on the date of the taking. Whether the market value properly included enhanced value by reason of the airport development up to the date is the point for debate.

#### Court Holding

The judgement of the court of civil appeals was reversed, and the trial courts affirmed.

Under the rule of the Shackelford case, Barshop was entitled to recover the market value for his property which included enhanced value for, at least, a number of years. For fourteen years, public information was abroad that the Jetero Airport was going to be located in the area of the Barshop tract. Whether the tract would be adjacent to or would actually be included in the airport site was in a continuing state of uncertainty, which only Houston could resolve. Houston did not urge the trial court to exclude evidence of enhanced value after October 11, 1960. It urged that all enhanced value should be excluded.

The trial court was not in error in overruling Houston's objections to all enhanced value evidence, when at least a large part of it was admissible. The jury instruction which Houston requested was not a substantially correct one in view of our holding that enhanced value, at least to some date, was proper for the jury's consideration. If the trial court had given the requested instructions it would have constituted reversible error under the



holding in *City of Dallas v. Shackelford*. We conclude that the trial court did not commit error in refusing the incorrect request. (Rule 273, Texas Rules of Civil Procedure).

We must determine, however, whether some other point before the court of civil appeals will support the judgement which reversed the trial court judgement. Houston asserted a point that the trial court erred in admitting value evidence of a sale to the Southwestern Bell Telephone Company which was not comparable to the Barshop tract. Barshop's value witness testified that a landowner sold a one-acre tract to the Telephone Company for \$16,000.00. The proof showed also that the company was under compulsion by reason of special technical requirements to purchase a small tract which was located at a point no farther than seven-tenths of a mile from the airport's main entrance. The admission of the evidence was in error since it was a sale under compulsion (*Robards v. State*) and there was a disparity in the size of the two properties under comparison.

**Buffalo Bayou, B & C.R.R. v. Ferris, 26 Tex. 588 (1863).**

#### Issues

A railroad company is being sued for trespassing into plaintiff property. However, it is lawful for the company to enter upon and purchase, or otherwise take and hold any land necessary for the purpose of locating, constructing and maintaining the railway, not exceeding fifty yards in width for the road of the railway, and that the company should pay certain compensation to the owner of the lands taken. Also, the owner is entitled to the intrinsic value of the land so taken without reference to the profit or advantage from the construction of the improvement for which it was taken. He is also entitled to such damages, if any, as are occasioned to the remainder of the tract, of which the land taken was a part, by reason of its appropriation for the purpose for which it was taken.

### Court Holding

The owners property taken must be paid for when taken or within a reasonable time thereafter; and the making of the compensation must be absolutely certain as the property is taken.

**Dupuy v. City of Waco, 396 S.W. 2d 103 (Tex. 1965).**

### Issues

The City of Waco constructed a viaduct on South 17th Street in 1962 to improve the movement of vehicular traffic in the city. No property of Petitioner, Leslie C. DuPuy, was physically appropriated by the City but access to his property was impaired by the viaduct. The question in this suit is whether damages for the diminishment in value of Petitioner's property resulting from the impairment of access is recoverable under Article I, Sec. 17, of the Constitution of Texas, which provides: "No person's property shall be taken, damaged or destroyed or applied to public use without adequate compensation being made."

### Court Holding

The trial court rendered judgement for the Petitioner upon the basis of favorable jury findings. The Court of Civil Appeals found that the reasonable market value of the property has been substantially damaged for a public use. However, the Court of Civil Appeals reversed the judgement of the trial court and rendered judgement for the City upon the holding that the construction of the viaduct was a reasonable exercise of the police power, wherefore Petitioner had no cause of action since there was neither a physical taking nor a complete loss of access.

## City of Dallas v. Shackelford, 199 S.W. 2d 503 (Tex. 1947)

### Issues

This is a condemnation proceeding in which the City of Dallas is seeking to condemn the whole of a parcel of land (four adjacent lots) owned by C.M. Shackelford (deceased). The proposed future use of the land is for a municipal public market. The key issue submitted to the jury was: To "find from a preponderance of the evidence the reasonable market value of the property on the date when it conceded the property was taken within the meaning of the law." Also, about four years earlier the city had adopted a resolution stating that on this date the qualified voters of the city authorized the issuance and sale of tax supported bonds for the purpose of acquiring lands to erect and establish a public market. These plans were to be postponed until the conclusion of the war. Although the appellee's property was within the general area described in the resolution it was not to be presently taken for public purposes. During this time span (1941-1945) the city acquired other parcels and the property in question was sold and purchased several times at its enhanced value due to the improvements made previously. From this information two questions of law arise: 1) were the owners entitled to recover the increase in value of their property due to the fact it was located in the ten block area designated in the resolution of 1941? 2) Under the facts, should the trial court have given the special charge requested by the appellant?

### Court Holding

In fixing the value of the appellee's property as of the date it was taken, it was entirely proper for the jury to take into consideration its enhanced value due to the steps taken by the city towards the establishment of a public municipal market. The judgement also disposed of the questions of law answering the first yes and the second no.

**City of Waco v. Texland, 446 S.W. 2d 1 (Tex. 1969).**

Issues

The City of Waco sought to condemn a parcel of land for the construction of a viaduct on a city street. The landowners brought suit against the city for damages to the property. The lower court rendered judgement for the property owners and the defendant (city) appealed. The controversy involves whether or not the construction of the viaduct deprived the owners of the reasonable access to their commercial buildings and entitled the owners to compensation. Another key element to the decision is if impairment of access is proven is this impairment "material and substantial"?

Court Holding

The court of civil appeals ruled that both properties have been damaged for public use under section 17 of article 1 of the Texas Constitution, which provides: "No persons's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made." The question of what constitutes material and substantial impairment of access remains indeterminate and perhaps impossible to resolve.

**City of El Paso v. Coffin, 88 S.W. 502 (Tex. Civ. App. 1905 writ dismiss'd).**

Issues

The city of El Paso passed ordinances to open a certain new street, and to acquire by condemnation the north half of the west half of Campbell's addition. Part of these parcels were to be used as a public park. The city attorney and the landowner were unable to agree on the amount of compensation. The award of the commission was \$3,747.66, and the defendant appealed and was awarded \$19,937.51 by a jury. The taking in this case was all of the land the defendant had in the area. The controversy centers around the following: 1) ascertaining the market value of the property, 2) the date of record provided to the jury for the determination of market value, and 3) the authorization of the jury to take in consideration the

proposed future uses of the property as an element entering into the market value of the property on the date of record.

### Court Holding

The judgement of the trial court was affirmed, stating "that there was no error in the charges on the measure of damages as ordinarily controls in this class of cases. Additionally, the charge of omitting the date of record is not well founded.

### **State V. Carpenter, 89 S.W. 2d 194 (Tex. 1936)**

### Issues

The State of Texas brought condemnation proceedings against R.B. Carpenter seeking to condemn 8.03 acres of land for highway purposes across a tract of 240 acres owned by Carpenter and wife. The trial court rendered a judgement in favor of the Carpenters for \$803 as the value of the 8.03 acres taken for right-of-way, and for \$3,477 as depreciation in the value of the balance of the farm. This judgement was affirmed by the Court of Civil Appeals. The question for determination here pertains to charges of the court in submitting questions as to compensation. Specifically, there are three special issues placed before the jury. These issues are:

- 1) The determination of the reasonable market value of the 8.03 acres taken;
- 2) Has the market value of the remainder of the farm been reduced because of the condemnation of the 8.03 acres taken and;
- 3) How much (dollar value) has the remainder of the farm been reduced in market value as a result of the condemnation of the 8.03 acres of land?

In connection with Special Issue No. 1, a controversy exists regarding the action of the court in giving instructions to the jury to ascertain the value

of parcel taken considering it as part of the whole tract as opposed to severed land.

Another intention of the jury was to determine if the market value of the farm has been increased in the way of special benefits by reason of the condemnation and construction of the road.

### Court Holding

Judgement was issued in favor of the defendants for both the market value of the condemned land, and the depreciation in value to the residual parcel. The court adopted a formula for determining compensation when the part condemned has a special value as constituting part of the whole tract. This formula states that the award should be for the value of the part condemned, as severed land, plus depreciation by reason of severance.

In response to the farm increasing in market value due to the project, the before and after rule is emphasized as follows: "By this rule the damages are to be determined by ascertaining the difference between the market value of the remainder tract immediately before the taking and the market value of the remainder tract immediately after the appropriation, taking into consideration the nature of the improvement, and the use to which the land is to be put".

**State V. Davis, 140 S.W. 2d 861 (Tex. 1940)**

### Issues

The State of Texas sought to condemn a strip of land 100 feet wide through the 120 acre farm of George Davis, situated near Iowa Park, in Wichita County, Texas. The controversy involves objections filed by defendants to the award of damages assessed by the Board of Special Commissioners.

The plaintiff offered the following proposition:

The lower court erred in refusing to permit plaintiff to offer testimony that the construction of a modern concrete highway would enhance the value of the residue of defendants land in a sufficient amount to overcome the losses sustained by them because of additional fences and any inconveniences that might be caused by the location of the road. Additionally, the state contended that the condemnor has a right to offset the defendants claim for damages to the remaining land by evidence that the location of the highway on and adjacent to both sides of the owners land is an advantage and enhances the market value.

#### Court Holding

The appellate court re-affirmed the lower court's decision citing the case of State V. Carpenter as a basis. Following this reasoning it was determined that the benefit accrued was general or community, and offsets were not allowed. Also, there was no evidence presented measuring the parcels value as severed land.

**State V. Meyer, 403 S.W. 2d 366 (Tex. 1966)**

#### Issues

This is a condemnation proceeding brought by the State of Texas to acquire fee simple title to a 14.9456 acre strip of land out of a 103 acre tract belonging to the respondents Frank K. Meyer and wife. The award of the special commissioners was \$208,192. The respondents appealed to the county court for a jury trial. After a trial in which the respondents waived any severance damages to the remainder, the jury found the market value of the strip taken to be \$1,074,199.50. Judgement was issued in favor of the respondents for this amount, granting to the state the fee simple title to the condemned land exclusive of mineral rights. The court of civil appeals affirmed the lower court's decision.

The only issue in this case is the market value of the 14.9456 acres of land condemned for the purpose of highway construction. The petitioner contended the court of civil appeals erred on five points, they are:

- 1) granting the motion in limine;
- 2) and 3) by excluding the opinion testimony of two expert witnesses as to the value of the strip taken because of factors considered and the method by which they arrived at their opinions;
- 4) by excluding the testimony of the supervising and designing engineer for the state highway department as to the improvements to be constructed on the condemned land, and;
- 5) by excluding the state exhibits of highway plans revealing the nature and location of the improvements to be built on the condemned property.

It is the state's argument that there has not been a whole taking in fee simple because the respondents still have remaining land from which they have access to the land taken, upon which a frontage or service road will be constructed. In effect the state has acquired a fee title burdened with an easement for which it should be entitled to pay less than for a fee simple absolute.

#### Court Holding

The Texas Supreme Court upheld the lower court's decision rejecting the state's theory that since the frontage of the highway has merely moved over to the remaining land of respondents, thereby increasing the value of the newly abutting land, in effect, the state has only condemned a composite 14.9456 acres of the whole tract. The court cannot agree with this theory. The post-condemnation increase in value of the respondents' remaining land may occur, but the conclusion is inescapable that such appraisal would result in offsetting the estimated enhanced value of the remainder after the condemnation against the market value of the part taken at the time of the condemnation. It is well settled that "the value of the part taken should be



ascertained by considering such portion alone, and not as a part of the larger tract" and "enhancement in market value of the residue of the land by reason of special benefits is a legitimate offset to damages thereto, but not the value of the part actually taken."

**Texas Electric Service Co. V. Campbell, 328 S.W. 2d 208 (Tex. Civ. App. 1959)**

### Issues

The Texas Electric Service Company brought condemnation proceedings to condemn easement for electric transmission line across 21 1/2 sections of land used for ranching and to condemn right of ingress and egress over condemnee's adjoining land. An award of \$10,155.74 was made by the county court, the utility paid the cost, took possession of the easement, and appealed the award.

The most significant issue was the amount of damages which should be awarded to the defendant. The appellant argued his position through several points of error which were divided into the following three groups:

1) There is a considerable difference of opinion between the expert witnesses as to the value of the remaining lands lying between the two highways before and after the taking.

2) The defendants only witnesses on the value of the lands in question were two former commissioners whom had testified while acting as commissioners in a quasijudicial capacity that the damages accrued in the amount of \$4,680 had changed their figures to an excess of \$300,000.

3) Appellant has complained that the trial court erred in admitting and refusing to strike the testimony of appellee's witnesses, showing the acts of various persons on the defendants lands, which the appellant contends constitutes trespasses against the defendant. This is the subject of an independent action on the part of the land owner for damages, and;

4) The appellant contends that the court erred in permitting direct testimony from the defendant's witnesses, and cross-examination of plaintiff's witnesses, regarding the sales of one and two acre tracts of land, on the grounds that tracts of such size could not be comparable to the defendant's land which were crossed by the transmission line.

#### Court Holding

Having considered each point raised by the appellant, and finding no reversible error, the judgement of the trial court is affirmed. The basis of this decision is presented in the court's response to each point of error raised by the appellant.

1) The amount of damages is always a question of fact for the jury, and unless it is so excessive as to indicate operation of an improper influence in the determination of the amount, the juries will be upheld.

2) An individual who has served as a special commissioner is not disqualified to testify as a witness to land values in the county court.

3) The evidence of trespass was clearly inadmissible, and should have been stricken on the appellant's motion, however, the jury found that there had been no depreciation in land values or damages.

4) The land taken was a part of the larger tract and was comparable to the remainder in every respect except size. It was in error to admit testimony relating to particular sales on direct examination, there was no objection made to the testimony on this ground; appellants only ground being that the sales were not sales of land comparable to the 21 1/2 sections contained in appellee's ranch.

**Hietpas V. State, 130 N.W. 2d 248 (Wis. 1964)**

Issues

In this highway condemnation case the state took 15.5 acres out of a 79 acre dairy farm for the relocation of U.S. Highway 41, a non-access highway. In doing so, the grade of an intersecting highway was changed which resulted in the destruction of its access to about three quarters of the border of the plaintiffs' farm. The plaintiff testified that after the taking he has stopped farming. All the plaintiffs' witness thought that the land prior to the taking and grade change has potential value for residential purposes. Additionally, each witness testified that the before value was reduced after the taking by an average of about \$17,000. Conversely, the state's expert witnesses testified that the before and after values were the same. Comparable sales were introduced by the current and former supervisors of right-of-way acquisition for the state highway commission. The former supervisors' testimony was generally concerning the increase of the value of land in interchange quadrants on no access highways. The current supervisors' testimony concerned the commercial use and possibilities of re-zoning as in past situations. The jury found the value of the Hietpas farm before the taking to be \$28,000 and the value after the taking to be \$21,000. The plaintiffs appeal this ruling on three issues.

1) Are benefits, if any, resulting to the Hietpas property by reason of the construction of the interchange general or special benefits?

2) Was it prejudicial error to admit testimony of value for commercial use without showing a reasonable probability that zoning would be changed so as to permit that use?

3) Was it prejudicial error to admit testimony concerning increase of value in properties constituting the quadrants of interchanges in other areas because they were not comparable to the area in question?

### Court Holding

The lower court's judgement was affirmed as the plaintiff's real complaint was that the before taking is too low. The improper testimony as to special benefits contemplating the completion of the improvement could not have affected the jury's determination of the before taking value. The errors in admission of testimony were not prejudicial to the plaintiffs.

**Dick V. United States, 169 F. Supp. 491 (1959)**

### Issues

Landowners brought action against the United States for just compensation for the taking of an easement of flight over the landowner's land. The land (107.61 acres) was located near an air force base, and was primarily used as farm land, and partly as a trailer court.

### Court Holding

Judgement was issued for \$15,000 plus interest representing just compensation for the diminution in value of the property resulting from the taking of the easement of flight, over and above the enhancement in its value due to the proximity of the air force base. The plaintiff is ordered to execute a deed in fee simple conveying the easement to the defendant. The theory utilized leading to this decision includes: 1) the proximity of the base tended to enhance the value of the other property whose best use is for commercial purposes; 2) the detriment to the value of the commercial property by the passage of planes over it is approximately offset by the enhancement in its value by the proximity of the field.

**City of Beaumont V. Marks, 443 S.W. 2d 253 (1969)**

### Issues

The respondent, A.B. Marks, brought his suit in the District Court of Jefferson County, Texas, against the City of Beaumont, Texas, Southern

Pacific Company, Missouri Pacific Lines and Kansas City Southern Railway Company, seeking compensation for diminution in value to his leasehold interest in real estate. The landowner and a sub-lessee were not made parties. The respondent alleged that such diminution was due to impairment of reasonable access resulting from construction of a railroad grade separation project, which was begun December 31, 1963, and completed in the latter part of June, 1965. Trial was to a jury, which found the value of plaintiff's leasehold before and after construction. These findings resulted in finding of damages in favor of the respondent against the petitioners for \$46,000.00, the difference between such values.

There are four points of error which afford this basis for reversing the lower court's judgement.

The railroads and the city contend that it was harmful error to allow the jury, over objection, to determine the amount of damages it assessed based partly upon evidence of the diversion of traffic under the underpass. The witnesses who gave their opinion as to market value of plaintiff's property after the construction of the project considered the construction of the "New" Orleans Street and the diversion of traffic to the new street as well as "circuitry of travel" to reach plaintiff's property in arriving at their opinion as to market value after construction. In this connection, the only special issues submitted simply inquired of the jury the value of the plaintiff's property before and after construction. Generally, the matter of what may be considered by the jury and what may not be considered will be best determined by the trial court in the admission and exclusion of testimony rather than by instruction to the jury. However, we think a special instruction would have been more appropriate in this instance.

The railroads and the city next contend, that it was harmful error for the trial court to permit the introduction of an instrument, designated as the "Primary Agreement", between the four railroads (one, the Sante Fe - not a party to this suit) and the city. The contention is made that the error was compounded when the court permitted the attorney for plaintiff to argue to the jury the contents of the agreement. The railroads and the city objected to the introduction of the "Primary Agreement" and the argument to

the jury on the grounds that the agreement was immaterial to any jury issue which would be submitted for determination.

On the question of the market value of the plaintiff's leasehold interest, before and after the project, the railroads' expert witness testified that the value before construction was \$35,500 and the value after construction was \$9,000; the plaintiff's expert witness testified that the value before the construction was \$55,302, and after, \$6,892. The jury found that the market value before the project was \$55,000; after the project, \$9,000. The plaintiff's expert arrived at the figure \$55,302 by appraising the property, by use of the income approach, at \$74,430. He felt that this figure more nearly represented the market value of the property than did the figures he got by using the cost approach (\$80,000) or the market or comparable approach (\$75,000). Next he determined the market value of the interest of the landowner (\$14,585) and of the sub-lessee (\$4,513), and subtracted the total of the latter two (\$19,098) from \$74,400 to arrive at the market value of the plaintiffs' interest, \$55,302. The railroads' expert witness also felt that the income approach reflected the market value better than the cost or market approach. Using the income approach, he found the market value of the property to be \$48,000, and the market value of the leasehold, plaintiffs' interest, \$35,500.

Finally, the railroads' point that the court of civil appeals erred in affirming the judgement of the trial court in its holding that the railroads were jointly and severally liable with the city to plaintiff for the damages occasioned by the construction of the project.

#### Court Holding

The judgments of the trial court and the court of civil appeals were both reversed and judgement is rendered that the cause be remanded to the trial court for a new trial. Both the petitioners and respondent filed motions for a rehearing. All motions were overruled.

**City of Houston V. Fox, 429, S.W. 2d 201 (Tex. Civ. App. 1968)**

Issues

The landowners sued to recover the loss in value of certain real property occasioned by the construction of an underpass at the intersection of the two streets on which the property abutted. After a trial without a jury, damages were awarded.

In the original opinion the court held that the appellee's access rights were impaired to such an extent as to constitute damage to property for public use under the Texas constitution, and there was evidence to support the courts finding of a reduction in market value. The supreme court reversed this decision and remanded the case to the lower court in order for it to consider the other counter points raised by appellee. The only point presented by the appellant's brief is that the trial court erred in awarding any monetary damages to the landowner, since all of the alleged and proved damages are losses which do not give rise to damage actions.

Court Holding

The District court of Harris County entered judgement for the landowner and the city appealed. The court of civil appeals affirmed the judgement, and the city brought error. The supreme court reversed and remanded the prior decision. On remand, the court of civil appeals held that where construction on the center line of the street of railroad track which had been entirely on the north side previously, and raising the grade of the railway denied the abutting landowner the use of the northerly half of the street and the construction of a highway underpass physically restricted a landowner of his uses of a private easement in dedication of right-of-way, there was a violation of legal rights distinct from the claimed denial of right to ingress and egress, and the landowner was entitled to recover the lands reduction in value.

**Hays V. State, 342 S.W. 2d 167 (Tex. 1960)**

Issues

This is a condemnation suit brought by the State of Texas and County of Dallas against the appellants Edward L. Hays and wife, for the taking of three parcels of land totaling approximately 2.2 acres with improvements, for the widening of U.S. Highway 175. The landowners appealed from a judgement awarding to them the sum of \$17,250, entered by the country court of Dallas.

The first point of appeal complains of the action of the trial court in refusing to permit landowners to introduce evidence of the prices at which other tracts of land sold. Appellants also question the action of the court in refusing to permit an engineer-witness to testify as to the quantity of dirt necessary to fill the dog training tank or pond and the cost.

Court Holding

It is the court's opinion that the cumulative effect of the errors in excluding all evidence of the sales prior of other lands, probably did cause the jury to give answers it did to all issues which support the entry of an improper judgement for the value of the lands taken for damages to the remainder in an amount less than that testified to by an expert witness. The market price is best proved by the sale of comparable lands. All other points of appeal have been considered and are overruled.

**Manlius Center Road Corp. V. State, 370 N.Y.S. 2d 750 (1975)**

Issues

Proceeding was brought claiming damages in connection with the appropriation of land for relocating a highway. The court of claims entered judgement and the state appealed challenging only the award for consequential damages in the amount of \$14,150. After the direct taking there remained 2.41 acres which the court held would be damaged by a change in elevation resulting from a relocation of a state highway. The state urges that the



trial court erred in basing its award for damages upon its finding that the state highway will be relocated and constructed in a manner that require the elevation of the road fronting a portion of condemnee's property. The exact location found the proposed bridge was unknown according to the appraiser's testimony, however, he indicated that a grade change was imminent. The state also contended that the failure of definite proof in reference to the location of the bridge, and the uncertainty as to when, if ever, the bridge will be erected, made an intelligent finding of change of grade impossible.

### Court Holding

The supreme court appellate division affirmed the lower court's decision, on the basis that evidence supported finding that highway would be relocated and constructed in a manner that would require elevation of the road in an area fronting a portion of condemnee's remaining property after appropriation for relocation and that the trial court was required to consider the effect of proposed construction on the remainder of claimants property.

**Mitchell V. Texas Electric Service Co., 299 S.W. 2d 183 (Tex. Civ. App. 1957)**

### Issues

In this condemnation case the Texas Electric Service Company, plaintiff, obtained an easement over 2.02 acres out of a tract of 50 acres belonging to the defendants, J.B. Mitchell and wife.

The jury found: 1) the market value of the 2.02 acre tract immediately before condemnation as \$1,500 per acre; 2) the 2.02 acre tract had no market value after the condemnation; 3) exclusive of the 2.02 acre tract, 32 acres of the remaining land were reduced in market value by reason of the easement; 4) the value of the 32 acres was \$1,500 average per acre immediately before the condemnation; and 5) immediately after the taking had an average market value of \$1,155 per acre.

Judgement was entered on the verdict on June 25, 1956, awarding the Mitchells \$14,070, that sum being the amount found by the jury to be the value of the 2.02 acres and the diminution of the remaining 32 acres.

The plaintiff filed a motion for new trial. At the hearing thereon, June 29, 1956, the court, apparently on its own motion, entered what was entitled "Order for Remittitur" but was in a reality of modified judgement reducing the amount of the June 25th judgement to \$7,553.

After the entry of the judgement as modified, defendants requested findings of fact and conclusions of law.

The court found that the finding in answer to issue No. 2, that the 2.02 acre tract had no market value after the taking was not supported by the evidence, but that the credible testimony showed such tract to have a value of \$100 per acre after the taking. The court found that the jury's finding that 32 acres of the defendants' remaining land were diminished in value was not based on any credible testimony; that the credible testimony showed the highest amount of remaining acreage damaged was 5.4 acres, and the amount of reduction in market value for said 5.4 acres was \$875 per acre.

The defendants contend the court erred in setting aside the jury's finding in answer to issue No. 2 and substituting the court's finding that the 2.02 acres had a market value of \$100 per acre after the taking of the easement.

#### Court Holding

The court of civil appeals, Renfro, J., held that court properly increased value of land subject to easement to \$100 per acre based on evidence most favorable to condemnee, but that weight of testimony as to reduction in value of adjacent land was for jury, and trial court was not justified in substituting its own judgement on basis that testimony was not credible.

Judgement reformed by restoring it to amount originally entered by trial court for diminution of value of adjacent land, and affirmed as to amount of recovery for land on which easement was condemned.

**Routh V. Texas Traction Co., 148 S.W. 1152 (Tex. Civ. App. 1912)**

### Issues

This suit was brought by Appellee to condemn a certain strip of land owned by the Appellants for right-of-way of its interurban railroad track. The county judge appointed commissioners to assess the damage and they awarded the sum of \$900, to which the appellants objected for the reason that the award was too small. A trial was held on the issues, and the jury rendered a verdict for \$861.70. From this judgement the owners of the land appealed.

The appellant's appeal is based on the following contentions:

a) the weight of the evidence shows that the land sought to be condemned was worth approximately \$100 per acre, and the defendants were damaged to the extend of \$1,100.

b) the undisputed evidence shows that the operation and construction of plaintiff's interurban road through defendant's land at the place in question caused many inconveniences which greatly diminished the value of the remainder of the tract of land, and the jury did not allow any damage for these special injuries, which were established by undisputed testimony.

c) The evidence shows that the defendants did not receive any special benefit from the construction and operation of plaintiff's road through their land which would offset in whole or in part any special injuries sustained.

d) The verdict of the jury is contrary to all the evidence in the case, and is not supported by any evidence in the case in so far as the amount is concerned. The damage awarded being entirely too little and not supported by any evidence.

### Court Holding

The judgement of the lower courts is reversed and remanded. The court's decision is reversed for the following reasons:

1) The jury's finding of enhancement accruing to the subject property is reversed because in order to offset damages brought on by condemnation proceedings, the benefits conferred by the road construction must apply to the particular property damaged, and not such benefits as are generally shared in by other property in the neighborhood.

2) There was no error in holding that the measure of damages of the land taken was its market value at the date of the trial.

3) The charge that the jury should not have been instructed to value the condemned parcel by itself but as a part of whole parcel is a correct principle of law.

**Southwestern Bell Telephone Co. V. Ramsey, 542 S.W. 2d 466 (Tex. Civ. App. 1976)**

### Issues

In this eminent domain proceeding the appellant, Southwestern Bell Telephone Company, condemned an easement lying on the east side of the appellees 154 acre tract of land for the purpose of laying an underground communication cable. The condemned tract was 10 feet wide and 3,515 feet long and covered approximately 35,153 square feet or 0.807 of an acre. The appellee agrees that the telephone company had a right to condemn the easement, and that all jurisdictional requirements had been met and the only controversial matter was the issue of damages.

The telephone company complains of the following points of error:

The action of the trial court in permitting appellee's expert witness to testify as to the market value of the 10 foot easement taken. Appellant

objected on the ground that the 10 foot easement taken was not a self-sufficient economic unit and as such it had no independent value. The telephone company contends that under the holding of similar cases, the method of valuing a long, narrow strip such as this was to take the average per acre value of the entire 320 acres owned by appellee and then apply such average value per acre to the 10 foot easement as a proportionate part of the whole. The trial court also erred in permitting the landowner to waive severance damages to the remainder of his 320 acre tract of land, except for the arbitrarily designated 240 foot strip adjacent to the 10 foot easement condemned. Appellant complains of the trial court's action in admitting, over its objection, appellee's exhibit No. 1. Appellant contends that the exhibit misrepresented to the jury that the appellee owned only a 240 foot strip of land adjoining the 10 foot easement, whereas appellee admitted he owned 320 acres of land. Next, the appellant complains of the action of the trial court in refusing to strike the testimony of appellee's value witness, E.P. Curry, because he had no reason as to why or how the 240 foot strip adjacent to the easement suffered severance damages. Appellant next contends that the trial court erred in denying its motion for judgement notwithstanding the verdict on the ground that there was insufficient evidence to support the jury's answer to special issue No. 4 finding that the value of the 240 foot strip after taking was 4 cents per square foot. The appellant's final contention is that the court erred in submitting the four special issues requiring the jury to find the value on a square foot basis and in refusing the appellants requested special issues seeking a finding of value on an acreage basis.

#### Court Holding

The court of civil appeals affirmed the trial court's decision, holding that the judgement was proper in all respects. The appellate court's response to each point of error follows:

- The fact that the 10 foot easement taken was not economically self-sufficient is not relevant to the issue of value. The question of whether the tract taken is or is not economically self-sufficient is a matter to be considered only in determining whether or not the

landowner may claim severance damages to the remainder of his land. The mere fact that the 10 foot easement taken was not economically self-sufficient would not require it to be valued as a part of the whole. We perceive no error in the action of the court in overruling the objections or in refusing to strike the testimony valuing the easement taken as if it stood alone as severed land.

- The court has been unable to find any authority, and have been cited none, denying a landowner the right to waive severance damages to a part of his remaining land, nor have we found any authority which would require a landowner to claim severance damages only to a specified part of his land adjacent to the part taken. Appellant's point is overruled.
- Appellee's Exhibit No. 1 consists of nothing more than a map or a plat showing Highway 34 with the easement colored in dark red and the 240 foot strip colored in light red. In view of our conclusion that a land owner is authorized to waive severance damages to a part of his remainder, the exhibit showing nothing more than that part of the remainder on which severance damages was claimed was clearly admissible.
- The court finds no merit in appellant's points contending that it was in error for the court to submit the four special issues requiring the jury to find the value on a square-foot basis and also that the court erred in refusing appellant's requested special issues seeking a finding of value on an acreage basis.

**State V. Gordy, 322 So. 2d 418 (La. App. 1976)**

### Issues

This is an expropriation suit instituted by the state of Louisiana, through the Department of Highways, under LSA-R.S. 48::4451 et seq. The defendants are J.W. Gordy and his wife, Merle Clack Blackman Gordy. Plaintiff deposited \$1,682.00 as its estimated value of the property taken

and damages. Defendants answered demanding an award of more than the amount deposited. Judgement was rendered by the trial court awarding defendants \$29,695.87, less the amount of the deposit, and fixing the fees of the two expert appraisers called by defendants at \$3,355.75 and \$3,173.30, respectively. Plaintiff appealed.

The issues presented are: 1) whether the award made for the property taken is excessive; 2) whether the defendants sustained severance damages, and if so, whether the amount awarded as such should be reduced; and 3) whether the fees allowed defendant's expert appraisers are excessive.

### Court Holding

Each issue was reviewed by the court and opinions rendered as follows:

I. Value of the Land. As to the land itself, the trial court concluded that defendants' entire tract is correctly valued at \$1.00 per square foot on the basis of a comparable sale of adjoining property to the south. However, since the property taken consisted of frontage on a major highway five feet in depth and 248.85 feet long, the trial court gave it a higher value of \$2.00 per square foot. The trial court multiplied the total area taken, 1244.25 square feet, by \$2.00 to arrive at a value of \$2,488.50 for the land. I find no error in the trial court's award of a higher value for the front portion of defendants property, since it in fact had a higher market value.

II. Severance Damages. The trial court held that the motel had lost parking space and had been damaged by loss thereof. The estimate of appraiser Jimerson was relied on to award \$26,500.00 for severance damages.

The Redwood now has less legal parking than it had prior to the taking. The sole testimony to the contrary is that of appraiser Willet, yet his appraisal includes a report by Lloyd J. Rockhold, a Baton Rouge construction consultant, who found a loss of legal parking. The evidence establishes, in my opinion that defendants' property suffered a loss of parking. The majority reverses this factual finding by the trial court when there is ample evidence (a preponderance, I believe) to support it.

Having found a loss of parking I would adopt the incisive reasoning of the Second Circuit, which said:

"It seems clear to us that there was some decrease in the value of the remaining property after the taking. Surely, the reduction in already limited parking spaces would adversely affect the value. The opinion of defendants expert that the value of the property, one economic unit, was decreased by more than the value of the property taken is reasonable and convincing."

Therefore, their conclusion is obvious, to me, that defendants' property sustained severance damages.

However, I find the theory of calculating damages used by plaintiff's experts to be unconvincing. I would remand for a new trial on that issue.

III. Expert Witness Fees. Concerning the expert witness fees, I find it necessary to refer to State Department of Highways V. Ross Continental M.L., Inc., 315 So. 2d 151 (La. App. 3 Cir. 1975). There, the fees of the same experts, Jimerson and Holmes, were fixed at \$3,355.75 for Holmes. The comparable sales utilized are identical in both instances. In Ross, this court found the fees allowed excessive and unreasonable and reduced them by 50%. In view of the fact that a great deal of the work here repeats that previously done in Ross, I would cut these fees by 50%, I see no justification for reducing them to \$750.00 each, as does the majority.

**State V. Wilson, 439 S.W. 2d 134 (Tex. 1969)**

### Issues

In this condemnation case the appeal is from a judgement issued by the county court of Gregg County, Texas. The condemnation proceedings were brought to acquire fee simple title to a triangular shaped tract of land containing 31 square feet from the landowners in connection with the construction of a state highway. A jury trial was held and the verdict was returned awarding the condemnees \$75.00 for the land taken and \$1,490.00 for



damages to the remainder. After a motion for a new trial was overruled the State appealed.

The question to be determined by the court is whether there is sufficient evidence of damage to the market value of the remainder parcel, excluding any decrease that was common to the community in general and not peculiar to the remaining portion of the condemnee's property.

#### Court Holding

The court of civil appeals held that the evidence was insufficient to show that owners of a 150 by 150 foot residential land lot from which a triangular shaped 31 square foot parcel was taken had suffered any damage to remainder of lot which was not in common with the general community. The judgement of the trial court was reversed and the case remanded for further proceedings.

**Taylor V. State, 467 P. 2d 251 (Ariz. 1970)**

#### Issues

This case involves the issue of whether or not the jury in a condemnation action should have been instructed as to special benefits.

The appellee, State of Arizona, instituted an action to condemn the property located on both sides of Arizona Highway 84 approximately one and one half miles southeast of Gila Bend. In the before situation, the property had frontage of 2,000.04 feet on the easterly side and 2,600 feet on the westerly side. The taking was required for construction of a portion of interstate 8, a controlled access highway connecting Casa Grande and Yuma. As a result of the construction, two small triangles of land were taken on the southeasterly and southwesterly corners of the appellants property, comprising 3.1 acres, and an interchange was constructed which utilized the Old Highway 84 as an access road to and from the freeway. In the after situation both eastbound and westbound traffic on Interstate 8 could reach the property via the newly constructed interchange. As a result of the

construction, appellant's property abutting the interchange was restricted from access to Old Highway 84 for a distance of 515 feet on the westerly side and 697 feet on the easterly side.

The state's two appraisers testified that the property would receive special benefits as a result of the condemnation because the creation of the interchange adjacent to it raised the highest and best use of the property from that of a speculative desert property to commercial purposes. A jury found the damages for the property taken to be \$950.00 and severance damages to be \$28,600. It found the property specially benefitted in the sum of \$25,100 which it subtracted from the severance damages arriving at the total sum of \$3,500.

The appellant supported his contentions through three points:

- 1) A gray area exists when distinguishing between special and general benefits.
- 2) The evidence in the case as to special benefits is speculative and remote, therefore not offsettable.
- 3) The landowner argued that special benefits must be restricted to actual physical improvements of the land.

#### Court Holding

The burden of establishing special benefits rests upon the condemning authority. The court believes that the evidence in this case as to special benefits was within the realm of a reasonable probability. The state sustained its burden of proof and the trial court was correct in submitting the issue of special benefits to the jury. The trial courts judgement is affirmed. The court addressed each of the appellant's points as follows:

- 1) We believe that the following benefits are special benefits, therefore, offsettable:

- The unique benefit - a benefit not shared by any other parcel, and
- The special benefit - a benefit which may be shared by other parcels along the roadway similarly situated.

We would classify as non-offsetable or general benefits the following:

- The local or neighborhood benefit - a benefit shared with other parcels not abutting the road but in the near vicinity, and
- The general or community benefit - a benefit shared with other parcels in the community arising from the fulfillment of the public object which justified the taking.

2) One of the appellee's witnesses testified that special benefits would accrue to the subject property because it was the first property fronting on the Northerly access point of the new interchange. Another witness testified that other interchanges in the state had increased business activity and land values. Also, in the before situation the subject property had one commercial site. In the after situation an additional commercial site was found on the west side of the highway.

3) In this case part of the property was located on one quadrant of the interchange as a result of the taking. The witness for the state thought that prior to the taking there was little residential potential but that afterward the land located on the interchange had commercial value. The court rejected the argument of the landowner and reiterated the proposition that enhanced value because of more advantageous adaptability of use can cause a special benefit.

**Territory of Hawaii V. Mendonca, 375 P. 2d 6 (1962)**

### Issues

This is an appeal from the judgement entered in the circuit court of the first circuit in an eminent domain proceeding brought by the plaintiff-

appellee, herein referred to as the Territory, to acquire a parcel of land owned by appellants, herein referred to as the Mendonca Estate, for the construction of the Kalihi Valley Road, Federal Aid Secondary Project No. S-0630(1), known as Likelike Highway. Under its petition, filed on September 8, 1954, the territory sought to condemn a 118,073 square foot strip through a larger tract of land owned by the Mendonca Estate, thus cutting the remaining land into two parts, together with all of those certain abutter's rights or easements of vehicle access appurtenant to the remaining lands. One of the findings of fact made by the trial judge was that the highway contemplated by said condemnation in this action is, and will be, a limited access highway, that is to say; access to said highway will be limited to such cross streets or entrances as shall be designated by the territorial highway department, pursuant to law, and, in the case of the remaining lands of defendants, the only vehicular access of right of ingress and egress to and from said highway now contemplated by said improvement from or to any portion of said remaining lands will be confined or limited to the entrances delineated on said map, Exhibit A, where Valley View Drive intersections said highway.

The parties stipulated that the value of the 188,073 square foot strip of land taken by condemnation was \$28,435. They have also stipulated that there was no severance damage to the remaining lands of the Mendonca Estate. The evidence was conclusive that the value of benefit to the remaining lands was in excess of \$28,435. The trial court found this benefit to be special and entered its judgement on June 24, 1959. That it having found by uncontradicted evidence that the taking of said parcel and access rights for the construction of proposed public improvement caused the market value of the remaining portions of the tract of land not taken by Plaintiff to have a greater aggregate market value after the taking than the value of the entire tract before the taking, said defendants are not entitled to any compensation for the taking of said parcel and access rights. On this appeal, the Mendonca Estate contends that all of the benefit was general, rather than special, and, as such, not properly deductible from or to be offset against the value of the land taken.

## Court Holding

The lower court's decision was reversed and remanded for judgement for defendants in the sum of \$28,435, which is stipulated value of the land taken, including interest at a rate of five per cent, per annum from the date of possession on July 10, 1955.

**Texas Electric Service Co. V. West, 560 S.W. 2d 769 (Tex. Civ. App. 1978)**

## Issues

In May of 1975 Texas Electric Service Company (TESCO) acquired an easement by condemnation across Floyd West's farm for a railroad to be built in conjunction with its nuclear powered generating plant. TESCO does not complain of the jury's finding that the 2.044 acre easement had a value of about \$1700.00. It does complain of the diminution in value of the remaining acreage. From the trial court's judgement that the 185 acres remaining after TESCO's taking of the easement were damaged in market value in the amount of \$250.00 per acre, TESCO has brought appeal.

TESCO contends that the trial court erred in overruling its motion for a new trial, because the evidence is insufficient to support the jury's answers to special issues Nos. 3 and 4 regarding the reasonable market value of the remainder immediately before and after its taking of the railroad right of way easement. In its answer to special issues Nos. 3 and 4 the jury found that the before taking value of the 185 acre tract was \$850.00 per acre, while the value immediately after the taking was \$600.00 per acre.

Additionally, TESCO contends that the trial court erred in overruling its objection to the testimony of Mr. West's witness, Joe Evans, concerning the alleged diminution in market value, because of fear of an accident in the transportation of nuclear waste. The point of error stated that such testimony was incompetent, prejudicial, without foundation, and constituted no evidence which could have aided the jury in the performance of its fact finding function. TESCO's final point of error is that the trial court erred in overruling its objection to the closing argument of Mr. West's attorney

concerning the alleged diminution in market value because of fear of a nuclear accident in the transportation of nuclear waste.

### Court Holding

The court of civil appeals, held that: 1) evidence supported finding as to diminution in value of remainder, but 2) in as much as there was an absence of the proper predicate, trial courts error in overruling electric company's objection to testimony of landowner's witness, a licensed real estate broker, concerning alleged diminution in market value of remaining property because of fear of an accident in transportation of nuclear waste and trial court's error in overruling electric company's objection to closing argument of landowner's attorney concerning same fear required reversal and remand found new trial as to diminution in value, if any, of remaining property, since it could not be assumed that jury did not consider such fear.

The end result is the lower court's decision was affirmed in part and reversed and remanded in part.

**Tuttle V. State, 381 S.W. 2d 330 (Tex. 1964)**

### Issues

In this consolidated condemnation proceeding the county court of Gregg County awarded damages for the part taken to the condemnees for taking one 12.410 acre strip and a 8.697 acre strip for road right of way and a 2.247 acre strip for a drainage easement in connection with the road construction. The county court did not award damages for alleged damage to the remaining land and the condemnees appealed.

Special issues were submitted as follows:

Special Issue No. 1: From a preponderance of the evidence, what do you find was the market value of the strips of land belonging to A.J. Tuttle and

wife, condemned by the State and County for highway purpose at the time it was condemned, considered as several lands?

Answer in dollars and cents: \$14,280.00

Special Issue No. 2: From a preponderance of the evidence, what do you find was the market value of Defendant's tracts of land, exclusive of the strips of land condemned immediately before the strips were taken for highway purposes?

Answer in dollars and cents: \$151,950.83

Special issues were submitted as follows:

Special Issue No. 1: From a preponderance of the evidence, what do you find was the market value of the strips of land belonging to A.J. Tuttle and wife, condemned by the State and County for highway purpose at the time it was condemned, considered as several lands?

Answer in dollars and cents: \$14,280.00

Special Issue No. 2: From a preponderance of the evidence, what do you find was the market value of Defendant's tracts of land, exclusive of the strips of land condemned immediately before the strips were taken for highway purposes?

Answer in dollars and cents: \$151,950.83

Special Issue No. 3: Excluding increase in value, if any, and decrease in value, if any, by reason of benefits or injuries received by defendants in common with the community generally, and not peculiar to them, and connected with their ownership, use and enjoyment of the particular tracts of land across which the strips of land have been condemned, taking into consideration the uses to which the condemned strips are to be subjected, what do you find from a preponderance of the evidence was the market value of

the remainder of defendants' tracts of land immediately after the taking of the strips condemned for highway purposes?

Answer in dollars and cents: \$177,815.00

The appellants dispute centered around the jury's answers to special issues Nos. 2 and 3.

Appellees presented two expert witnesses and appellants presented one expert witness. Other witnesses testified and numerous pictures, maps and exhibits were placed in evidence. However, as usual in cases of this character, the experts differed on the question of values. Likewise the testimony of appellant's other witnesses tended to show damages to the remaining lands, such as showing lack of unity of use, difficulty of access to the severed land, siltation of a pool from dirt and dust occasioned by the construction, various cuts and fills as shown by maps and pictures, and other matters. Appellees' witnesses attempted to counter the damages claimed.

#### Court Holding

The Appellate court found no reversible error in the record, the judgement of the trial court was upheld based on the following interpretations:

1) Appellants' contentions to the effect that there is no evidence to support the jury findings to special issues Nos. 2 and 3 are overruled. The jury's answers to special issues 2 and 3 are within the limits of testimony adduced. It has been held that in a condemnation case of this kind the jury, when considering the value of the condemnees remaining property immediately after condemnation is restricted only by the lowest figure testified to, and a jury is at liberty to reach its conclusion by blending all of the evidence admitted before them, aided by their own experience and knowledge of the subject of inquiry, and jurors are not compelled to credit all of the testimony of any witness or to reject it all; also opinion evidence is not conclusive, a jury may consider and accept or reject such opinions or it may

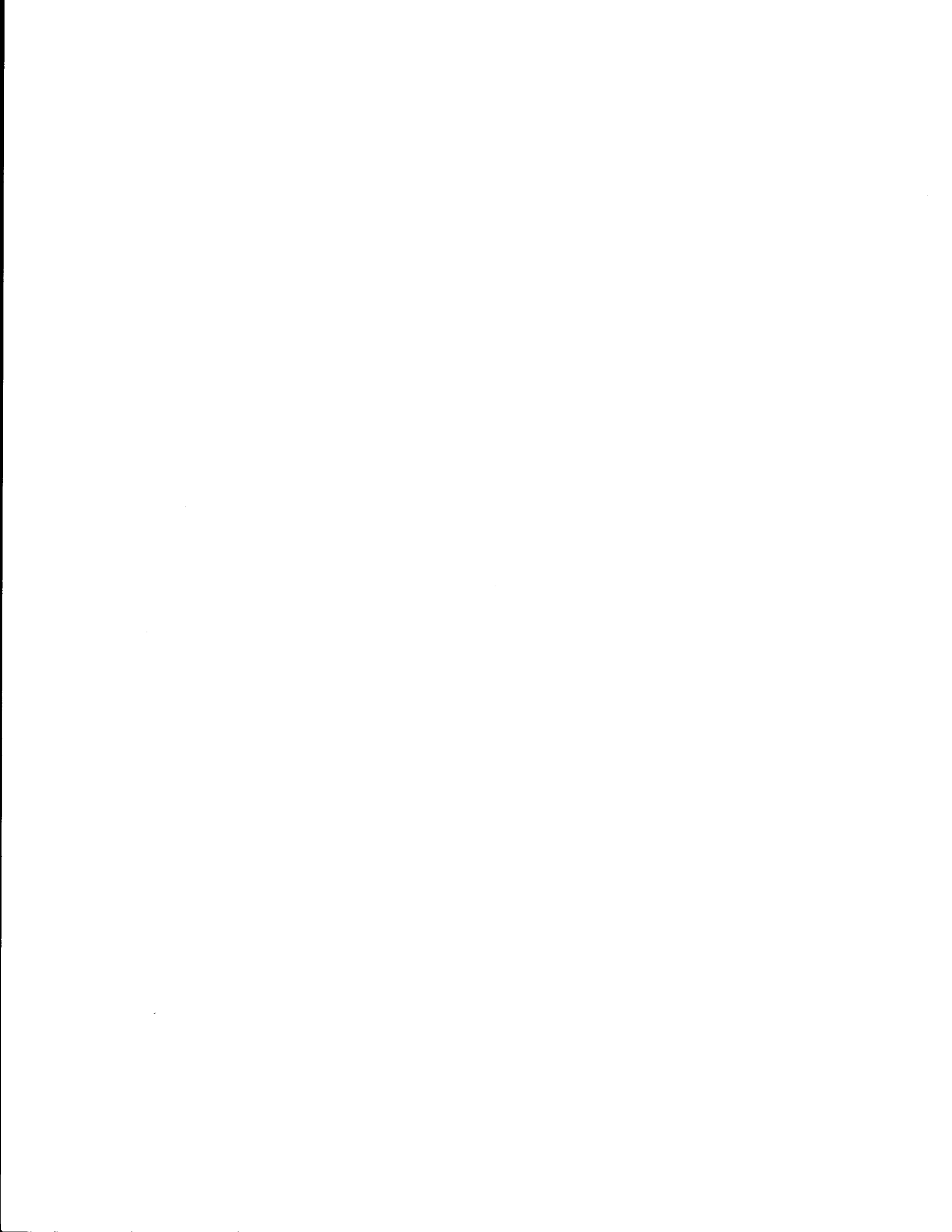


find its own opinion from evidence and by utilizing its own experience in matters of common knowledge.

Viewing the evidence most favorably against appellants on the contentions of no evidence, as we are required to do, we are of the opinion that we cannot say that there was no evidence to supports the jury's findings to special issues nos. 1 and 3, and appellants' contentions to that effect are overruled.

2) The jury heard the extensive evidence adduced and by their answers to issues Nos. 2 and 3 found in effect that appellants' remaining lands had not decreased in value but has increased in value and finding in effect that plaintiffs remaining lands were not damaged. After carefully examining the entire record in this case it is our best judgement that the jury's answers to special issues Nos. 2 and 3, and the failure of the jury thereby to find any damages to appellants remaining lands, were within the reasonable exercise of the function of the jury, and that such findings were not so contrary to the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Appellants' contentions to the contrary are overruled.

3) The court has examined the proffered evidence of the alleged comparable sales, and have reached the conclusion that this record does not show that the trial court abused its discretion in excluding such proffered evidence. Appellants contentions to the contrary are overruled.



## GLOSSARY\*

**Access** - The path by which a property is approached through a neighborhood; the means of physical entrance into or upon a property.

**Accessibility** - The relative degree of effort, i.e., time and cost, required to reach a site; indicates ease of entrance into or upon a property.

**Access Rights** - The right of ingress to and egress from a property that abuts an existing street or highway; an easement in the street that adjoins abutting property; a private right, as distinguished from public rights; and the right of a riparian owner to pass to and from the waters on which the premises border.

**Ad Valorem Tax** - A real estate tax based on property value.

**Assessment** - The identification of property to be valued for ad valorem taxation; the official valuation of property for ad valorem taxation; a single charge levied against a parcel of real estate to defray the cost of a public improvement that presumably will benefit only the properties it serves; e.g., assessment for the installation of sidewalks, curbs, sewer or water lines; and an official determination of the amount to be paid by or to the owners of real estate to defray the cost of a public improvement that is presumed to benefit the properties it serves in an amount at least equal to the cost of the improvement; e.g., assessment of benefits and damages for public sewer or water lines.

**Assessment/Sales Ratio** - The number derived by dividing the assessed value by the selling price; used as a measure of the relationship between an assessment and market value.

\*Source: Dictionary of Real Estate Appraisal, American Institute of Real Estate Appraisers, 1984.

**Before-and-After Rule** - In eminent domain valuation, a procedure in which just compensation is measured as the difference between the value of the entire property before the taking and the value of the remainder after the taking.

**Benefits** - In eminent domain valuation, the advantageous factors that arise from a public improvement for which private property has been taken in condemnation.

**Bundle of Rights Theory** - The concept that compares property ownership to a bundle of sticks with each stick representing a distinct and separate right of the property owner, e.g., the right to use real estate, to sell it, to lease it, or to give it away, or to choose to exercise all or none of these rights.

**Capture Rate** - The estimated percentage of the total potential market for a type of property, e.g., office space, retail sales, single-family homes, that is currently absorbed by existing facilities or is forecast to be absorbed by proposed facilities.

**Condemnation Blight** - The diminution in the market value of a property due to pending condemnations action, this most often occurs when public projects are announced long before property acquisition is actually commenced or when the acquisition program is not completed in a timely manner.

**Consequential Damages** - A damage to property caused by taking or construction on other lands; compensability varies from state to state.

**Cost Approach** - A set of procedures in which an appraiser derives a value indication by estimating the current cost to reproduce or replace the existing structure, deducting for all accrued depreciation in the property, and adding the estimated land value.

**Damages** - In condemnation, the loss in value to the remainder in a partial taking of a property. Generally, the difference between the value of the whole property before the taking and the value of the remainder after the taking is the measure of the value of the part taken and the damages to the remainder. Two types of damages are recognized; consequential and severance.

**Eminent Domain** - The right of the government to take property for public use upon the payment of just compensation.

**Fee Simple** - An absolute fee; a fee without limitations to any particular class of heirs or restrictions, but subject to the limitations of eminent domain, escheat, police power, and taxation. An inheritable estate.

**General Benefits** - In eminent domain takings, the benefits that accrue to the community at large, to the area adjacent to the improvement, or to other property situated near the taken property.

**Hearsay Evidence** - Testimony as to an event or fact about which the witness does not have firsthand knowledge; he or she relates what was report by a person purporting to have direct knowledge.

**Highest and Best Use** - The reasonable and probable use that supports the highest present value of vacant land or improved property, as defined, as of the date of appraisal; the reasonably probable and legal use of land or sites as though vacant, found to be physically possible, appropriately supported, financially feasible, and that results in the highest present land value; and the most profitable use. Implied in these definitions is that the determination of highest and best use taken into account the contribution of a specific use to the community and community development goals as well as the benefits of that use to individual property owners. Hence, in certain situations the highest and best use of land may be for parks, greenbelts, preservation, conservation, wildlife habitats, and the like.

**Highway Easement** - A right granted or taken for the construction, maintenance, and operation of a highway; in the case of a public thoroughfare, the abutting landholders are ordinarily assumed to own the fee to the center line of the right-of-way.

**Hold Harmless Agreement** - A legally binding agreement in which the liability of one party is assumed by another.

**Inwood Coefficient** - A factor that reflects the present worth of \$1 per period for a given number of periods, discounted at a given discount rate; obtained by calculation or from standard compound interest tables; one of the six functions of \$1.

**Just Compensation** - In condemnation, the amount of loss for which a property owner is compensated when his or her property is taken; should put the owner in as good a position pecuniarily as he or she would be if the property had not been taken; generally held to be market value, but courts have refused to rule that it is always equivalent to market value.

**Land Residual Technique** - A capitalization technique in which the net operating income attributable to the land is isolated and capitalized to indicate the land's contribution to total property value.

**Larger Parcel** - In condemnation, the portion of a property that has unity of ownership, contiguity, and unity of use, the three conditions that establish the larger parcel for the consideration of severance damages in most states. In federal and some state cases, however, contiguity is sometimes subordinated to unitary use.

**Leasehold Value** - The value of a leasehold interest; the right to the use, enjoyment, and profit existing by virtue of the rights granted under a lease instrument. The value of a leasehold interest is the present (discounted) worth of the rent saving, when contractual rent at the time of appraisal is less than the current market rent. If land is improved by the lessee, then the value of the leasehold interest is the present value of the saving in ground rent, if any, in addition to the value (not cost) of the improvements

of the lessee. If the contractual rent is greater than the currently established market rent, the present worth of the difference is subtracted from the value of the improvements.

**Legal Access** - The right of an adjacent owner whose property abuts a highway to use the highway for property ingress and egress.

**Loss of Access** - Depriving an abutting owner of the inherent rights of ingress to and egress from the highway or street.

**Market Value** - Market value is the major focus of most real property appraisal assignments. Both economic and legal definitions of market value have been developed and refined. Continual refinement is essential to the growth of the appraisal profession. The current economic definition of market value can be stated as follows: The most probable price in cash, terms equivalent to cash, or in other precisely revealed terms, for which the appraised property will sell in a competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress. Fundamental assumptions and conditions presumed in this definition are: 1) Buyer and seller are motivated by self-interest, 2) Buyer and seller are well informed and are acting prudently, 3) The property is exposed for a reasonable time on the open market, 4) Payment is made in cash, its equivalent, or in specified financing terms, 5) Specified financing, if any, may be the financing actually in place or on terms generally available for the property type in its locale on the effective appraisal date, and 6) The effect, if any, on the amount of market value of atypical financing, services, or fees shall be clearly and precisely revealed in the appraisal report.

**Parcel** - A piece of land of any size that is in one ownership.

**Partial Taking** - The taking of part of any real property interest for public use under the power of eminent domain; requires the payment of compensation.

**Police Power** - The right of government under which property is regulated to protect public safety, health, morals, and general welfare; usually no compensation is provided for property owners whose property is affected.

**Property Residual Technique** - A capitalization technique in which the net operating income is attributed to the property as a whole, not to separate land and building components. In yield capitalization, the present value of the income stream is computed and added to the present value of the reversion at the assumed termination of the investment.

**Real Estate Taxation Appraisal** - An appraisal that is performed to estimate the value of real estate for taxation. Also called ad valorem appraisal.

**Real Property** - All interests, benefits, and rights inherent in the ownership of physical real estate.

**Recovery Rate** - A ratio of the per acre (or square foot) sales value and the per acre (or square foot) value at the time of the taking.

**Remainder** - 1) A future possessory interest in real estate that is given to a third party and matures upon the termination of a limited or determinable fee; e.g., A gives B a life estate in A's farm for B's lifetime. A also gives C an interest in the farm to take effect upon B's demise. C has a remainder interest. 2) Property remaining in possession of the owner after a partial taking in eminent domain.

**Remnant** - A remainder that has negligible economic utility or value due to its size, shape, or other detrimental characteristics. Also called uneconomic remnants.

**Rental Value** - The monetary amount reasonably expectable for the right to the agreed use of real estate. It may be expressed as an amount per month or other period of time; per dollar of sales; or per room, per front foot, or other unit of property. Usually, it is established by competitive conditions.



**Residual** - The quantity left over; used to describe capitalization procedures that develop the value of a property component based on its residual income.

**Sales Comparison Approach** - A set of procedures in which an appraiser derives a value indication by comparing the property being appraised to similar properties that have been sold recently, applying appropriate units of comparison, and making adjustments, based on the elements of comparison, to the sale prices of the comparables.

**Set-Off Rule** - In eminent domain, a rule governing the setting off of special benefits. Federal courts and some state courts allow benefits to be set off against both the value of the land taken and the damages to the remainder; in other jurisdictions, benefits are set off against damages to the remainder only.

**Severance** - 1) The act of removing anything attached or affixed to land, or a part of the land itself, that causes a change of its character from real property to personal property, 2) the separation of mineral ownership from land ownership; a conveyance of land in which mineral rights are excepted are reserved and 3) The termination of a joint tenancy or a tenancy in common.

**Severance Damages** - In a partial taking, a decline in the market value of the remainder that arises as a result of the taking and/or the construction of the proposed improvement.

**Special Benefits** - Specific, i.e., not general, benefits that accrue to the property remaining after a partial taking.

**Tract** - A parcel of land; an area of real estate that is frequently subdivided into smaller parcels.

**Undivided Fee Rule** - In condemnation appraisal, a rule that states that property is to be valued as if the title were held by a single entity even if the real estate is divided into more than one estate owned by more than one individual or entity.

**Value After the Taking** - In condemnation, the market value of the remainder parcel in a partial taking.

**Value Before the Taking** - In condemnation, the market value of the whole property affected by the taking.

**Value for Other Use** - A means of valuing a corridor of real estate, used particularly in valuing railroad corridors.

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