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

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Today's Post: The Property Owner Rule, the PRPRPA and the Project Influence Rule

[The Property Owner Rule](#)

So, when can a property owner testify in a condemnation action, and what is the disclosure requirement? Can the property owner be compelled to disclose the testimony of its other experts, or does this violate Rule 195 of the Texas Rules of Civil Procedure? These questions were paramount in *In re Edukid, L.P.*, 2020 Tex. App. LEXIS 2230* (Tex. App. – Dallas, Mar. 17, 2020, no pet.).

Generally, a property owner is qualified to testify as to market value, even if not an expert otherwise, and even if they would not be qualified to testify as to the value of some *other* property. The Property Owner Rule is based on the presumption that an owner will be familiar with her own property and know its own value. (Organizations are the same as natural persons under the Property Owner Rule.)

Here, aptly-named Edukid, L.P., runs a Montessori school in Plano, Texas. When the City of Plano condemned Edukid's property, Edukid offered its manager as a testifying witness under the Property Owner Rule. The trial court granted the City's motion to strike, and Edukid sought mandamus relief. In this opinion, the Dallas Court of Appeals conditionally granted Edukid's writ of mandamus. Edukid gave notice that Ms. Saifi would testify under the Property Owner Rule. There is no requirement that her testimony be treated like expert testimony – in fact, it is considered lay testimony under Rule 701 of the Texas Rules of Evidence. The City of Plano's narrow reading of a footnote in *Natural Gas Pipeline v. Justiss*, 397 S.W.3d 150 (Tex. 2012) was insupportable. So, the trial court erred in striking Ms. Saifi before her deposition could be taken – indeed, a deposition could have provided evidence to rebut the Property Owner Rule's presumption and support striking. But even then, Ms. Saifi would have to be deposed as a fact witness only. Also, Ms. Saifi was not required to be "designated as an expert" nor was she required to provide an expert report.

Thus, the trial court abused its discretion in striking her. Striking Ms. Saifi left Edukid without an adequate remedy on appeal – market value evidence is critical in a condemnation action. And, Edukid was entitled to a protective order should the City of Plano once again try to get around Rule 195 and depose Ms. Saifi on the opinions of Edukid's other experts. The way for the City of Plano to obtain testimony regarding Edukid's other experts' opinions was through Rule 194 disclosures, oral deposition of those experts, or by those experts' reports. [Read the entire opinion here.](#)

[The Private Real Property Rights Preservation Act](#)

In *Tex. Gen. Land Office v. La Concha Condo. Ass'n*, No. 13-19-00357-CV, 2020 Tex. App. LEXIS 4010, at *1 (Tex. App.—Corpus Christi May 21, 2020, no pet.), the Court of Appeals held that the trial court erred in denying the Texas General Land Office's (GLO's) motion to dismiss a takings claim arising from construction of a walkway on city-owned land over dunes adjacent to a condominium complex. The owners alleged that the elevated boardwalk obstructed their view of the Gulf of Mexico and created traffic and parking problems on their property. The PRPRPA allows the owner of private real estate to file a contested case with a state agency to determine whether a government action by the agency results in a "taking." This is a condition precedent to a judicial action. If the contested case results in a finding of a taking, then the agency must either rescind the action within 30 days or pay damages for the taking. The prevailing party is entitled to its attorney's fees. Under the Open Beaches Act and the Dune Protection Act, the authority for approving beachfront construction does not rest with the General Land Office; however, the GLO may provide input to these decisions. Because the owners did not allege that the GLO made a comment that could be construed as a taking, the GLO could not be liable under the PRPRPA or the Texas Constitution, making relief under a Rule 91a motion to dismiss proper. The Court of Appeals also clarified that although a jurisdiction-based Rule 91a motion to dismiss is considered a plea to the jurisdiction for purposes of the interlocutory appeal statute, it is not equivalent to a plea to the jurisdiction, and therefore evidence attached to the GLO's response would not be considered. [Read the entire opinion here.](#)

[The Project Influence Rule](#)

Does the Project Influence Rule keep a landowner from discussing efforts by the condemning authority to depress market value? The Project Influence Rule provides that "any change in property value that results from the government manifesting a definite purpose to take property as part of a governmental project must be excluded from the award of adequate compensation" when the State compensates for the taking. In *State v. CC Telge Rd., Ltd. P'ship*, No. 01-18-00416-CV, 2020 Tex. App. LEXIS 4100, at *28-32 (Tex. App.—Houston [1st Dist.] May 28, 2020, no pet.), a developer purchased property in Houston for a high-density residential community, its primary feature being a watershed. Initial schematics showed that State of Texas planned to bisect the property with the Grand Parkway. During negotiations to move the Grand Parkway's location to avoid the watershed, the developer continued permitting efforts with the city and county, but due to the pending road project, switched to high-acreage lots instead. The evidence showed the developer could not proceed with his development without approval of the development plans it had submitted to the city and county, and further, that the State had interfered with the developer's efforts to obtain necessary approval.

Because there is evidence the property experienced diminished market value before the taking, the Project Influence Rule does apply and allows the developer to present evidence to the jury of what the market value would have been without the government's project and its market-hindering effects, along with a jury instruction to disregard the distorting effect of the State's project. This is required because a governmental entity may not allow its project to depress property values and then take advantage of the price depression when it buys the condemned property.

The project influence rule involves a retrospective analysis. Under the holding of *Caffe Ribs*, the jury properly received evidence of the condemnation project's distorting effects on market value, including that the State, interfered in the plan-approval process thereby preventing the development of the property to its highest and best use. This feasibility is determined at the point of State interference, not at the point of the taking when that interference had already destroyed feasibility. [Read the entire opinion here.](#)

Closing Thoughts:

Looking ahead, we wish you all a Happy Father's Day next week. Stay well!

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

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Jim Spivey
Partner
San Antonio Office
(210) 416-3115
[Email](#)



Soledad Valenciano
Partner
Dominion Office
(210) 315-1657
[Email](#)