

ORIGINAL

NO. 00519342009

LOVEJOY INDEPENDENT SCHOOL DISTRICT,
Plaintiff,

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IN THE COUNTY COURT AT LAW

V.

NUMBER 5

CHRISTINE GIBSON, CITY OF LUCAS, TEXAS, COLLIN COUNTY, TEXAS, COLLIN COUNTY COMMUNITY COLLEGE DISTRICT
Defendants.

OF COLLIN COUNTY, TEXAS

LOVEJOY INDEPENDENT SCHOOL DISTRICT'S ORIGINAL PETITION FOR CONDEMNATION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Lovejoy Independent School District, plaintiff herein ("LISD" or "Plaintiff"), files this petition for condemnation pursuant to Tex. Educ. Code § 11.155(a), and would show the court the following:

I.

PARTIES AND SERVICE

1.1 LISD is an independent school district organized and operating according to the laws of the State of Texas, including, but not limited to, the Texas Education Code.

1.2 Christine Gibson, a defendant herein ("Gibson"), is an individual and may be served at her residence, 1555 Estates Parkway, Allen, Texas 75002.

1.3 City of Lucas, Texas, a defendant herein (the "City"), is a city incorporated under the laws of the State of Texas and may be served by serving its Mayor, Secretary, or City Treasurer at 151 Country Club Road, Lucas, Texas 75002.

FILED
COUNTY COURT AT LAW
2009 JUL -9 AM 11:39
STACEY KEMP
COUNTY CLERK
COLLIN COUNTY, TEXAS
BRYAN D. KEMP
DEPUTY

1.4 County of Collin, Texas, a defendant herein (the "County"), is a county incorporated under the laws of the State of Texas and may be served by serving the Honorable County Judge Keith Self at 2300 Bloomdale Road, Suite 4192, McKinney, Texas 75071.

1.5 Collin County Community College District, a defendant herein (the "College"), is a Texas Junior College organized and operating according to the laws of the State of Texas, including, but not limited to, the Texas Education Code, and may be served by serving its President, Cary A. Israel, at 4800 Preston Park Blvd., Plano, Texas 75093.

II.

JURISDICTION AND VENUE

2.1 This Court has jurisdiction over the lawsuit pursuant to Tex. Prop. Code § 21.001.

2.2 Venue for this case in this Court is proper pursuant to Tex. Prop. Code § 21.013(a) and because the real property being sought through this condemnation proceeding is located entirely in Collin County, Texas.

III.

FACTS AND AUTHORITIES

3.1 Pursuant to Tex. Educ. Code § 11.155, LISD, as an independent school district, has the power of eminent domain to acquire the fee simple title to real property for the purpose of securing sites on which to construct school buildings or for any other purpose necessary for the district.

3.2 Gibson is the owner of real property located in Lucas, Collin County, Texas, which property is the subject of this petition (the "Property"). The City, the County, and the College are entities that annually levy taxes on the Property and may possess unknown lien interests in the Property.

3.3 LISD, acting through its Board of Trustees, has determined by resolution that it is necessary to acquire the fee simple of the Property for school purposes. *See* Resolution attached as Exhibit A.

3.4 The Property LISD seeks to condemn is described as follows:

6.516 acres described as ABS A0824 Snider, Jas M., Tracts 21, 35, and 21-9, and more commonly known as 1555 Estates Parkway, Lucas, Collin County, Texas.

3.5 LISD has attempted in good faith to reach an agreement with Gibson on the amount of damages required to compensate her for the acquisition of the Property. Gibson, however, has not responded to LISD's repeated offers to purchase the Property. Accordingly, LISD and Gibson have been unable to agree on damages, and any further negotiations would be futile. Therefore, LISD brings this proceeding.

3.6 On December 2, 2008, LISD, in compliance with Tex. Prop. Code § 21.0112, LISD mailed to Gibson a copy of the Texas Landowner's Bill of Rights. *See* Letter enclosing Landowner's Bill of Rights and green card attached as Exhibit B.

3.7 All other conditions precedent have been performed or have occurred.

IV.

REQUEST FOR APPOINTMENT OF SPECIAL COMMISSIONERS

4.1 LISD requests the Court to appoint three disinterested freeholders who reside in Collin County, Texas, as Special Commissioners to assess the damages of Gibson and the damages of the City, County, and College, if any, for the condemnation of the Property.

PRAYER

WHEREFORE, PREMISES CONSIDERED, LISD requests the Court to appoint three disinterested freeholders of Collin County, Texas, as special commissioners to assess the defendants' damages and to file an award reflecting their opinion on the value of the Property; that the special commissioners issue notices, hold a hearing, and assess the amount of compensation and damages to which defendants are entitled as a result of the condemnation; that judgment be rendered in accordance with the findings of the commissioners and that LISD be granted title to the Property; and any other relief to which LISD may show itself to be entitled.

Respectfully submitted,

**SCHWARTZ & EICHELBAUM
WARDELL, MEHL AND HANSEN, P.C.**

By: 

Mark R. Benavides
Bar No. 00783633
4201 West Parmer Lane, Suite A100
Austin, Texas 78727
(Tel.) 512-476-9944
(Fax) 512-472-2599
*Attorneys for Lovejoy Independent
School District*

RESOLUTION AUTHORIZING EMINENT DOMAIN LAWSUIT

WHEREAS, the Board of Trustees of the Lovejoy Independent School District (“LISD”) has found that public necessity requires LISD to acquire certain real property interest for public purposes as set out below; and

WHEREAS, LISD has attempted to purchase the needed real property interest but has been unable to obtain a clear title to the needed interest from the owner;

WHEREAS, on December 2, 2008, LISD sent the owner the Texas Landowner’s Bill of Rights as required by Texas law;

NOW, THEREFORE,

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF LOVEJOY INDEPENDENT SCHOOL DISTRICT:

That the LISD’s general counsel, or other authorized designee, is hereby authorized and directed to file, or cause to be filed, if necessary, a suit in eminent domain on behalf of LISD against the owner now having, or who may acquire, an interest in the real property interest needed by LISD, described and located below, for the public purposes set out below, and to take whatever other action may be deemed appropriate to economically effect the needed acquisition.

LISD’s attorney, or other authorized designee, shall file eminent domain proceedings for:

Owner: Christine Gibson

Intended Purpose: School purposes

Property: 6.516 acres described as ABS A0824 Snider, Jas M., Tracts 21, 35, and 21-9, and more commonly known as 1555 Estates Parkway, Lucas, Collin County, Texas.



Passed by a vote of _____ to _____ on _____, 2009.

President, Board of Trustees

Secretary, Board of Trustees



SCHWARTZ & EICHELBAUM
WARDELL MEHL AND HANSEN, P.C.

4201 W. Parmer Lane, Suite A-100, Austin, Texas 78727
Tel: (512) 476-9944 Fax: (512) 472-2599
(800) 488-9045 • www.edlaw.com

Mark R. Benavides
Senior Associate

December 2, 2008

VIA CERTIFIED MAIL AND FIRST CLASS MAIL

Ms. Christine Gibson
1555 Estates Parkway
Allen, Texas 75002

Re: Property: 1555 Estates Parkway, Lucas, Texas
Document: Landowners' Bill of Rights

Dear Ms. Williams:

I am an attorney who represents the Lovejoy Independent School District concerning the acquisition of property for a new elementary school it will soon construct. As you are probably aware, Lovejoy ISD has made several inquiries to you concerning purchasing your property located at 1555 Estates Parkway, and it is still interested in purchasing the property from you.

Please be advised that as a political subdivision of the State of Texas, Lovejoy ISD has the power of eminent domain and the right to condemn your property. Lovejoy ISD, however, would prefer to simply purchase the property from you instead of going through the condemnation process. In this regard, please contact Dennis Womack, Assistant Superintendent for Operations, at (469) 742-8017 to discuss the possibility of negotiating a sales price for the property.

As required by the Texas Government Code, I have enclosed for your review a copy of the Texas Landowner's Bill of Rights. Again, please contact Mr. Womack as soon as possible, but in the meantime, if you have any questions, please do not hesitate to contact me.

Very truly yours,

SCHWARTZ & EICHELBAUM
WARDELL MEHL AND HANSEN, P.C.

By 
Mark R. Benavides
mbenavides@edlaw.com

/Enclosure

cc: Mr. Dennis Womack (w/o Enclosure)





ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

TEXAS LANDOWNER'S BILL OF RIGHTS

This Bill of Rights applies to any attempt by the government or a private entity to take your property. The contents of this Bill of Rights are prescribed by the Texas Legislature in Texas Government Code Sec. 402.031 and Chapter 21 of the Texas Property Code.

1. You are entitled to receive adequate compensation if your property is taken for a public use.
2. Your property can only be taken for a public use.
3. Your property can only be taken by a governmental entity or private entity authorized by law to do so.
4. The entity that wants to take your property must notify you about its interest in taking your property.
5. The entity proposing to take your property must provide you with an assessment of the adequate compensation for your property.
6. The entity proposing to take your property must make a good faith offer to buy the property before it files a lawsuit to condemn the property.
7. You may hire an appraiser or other professional to determine the value of your property or to assist you in any condemnation proceeding.
8. You may hire an attorney to negotiate with the condemning entity and to represent you in any legal proceedings involving the condemnation.
9. Before your property is condemned, you are entitled to a hearing before a court-appointed panel that includes three special commissioners. This specialized hearing panel must determine the amount of compensation the condemning entity owes for the taking of your property. The commissioners must also determine what compensation, if any, you are entitled to receive for any reduction in value of your remaining property.
10. If you are unsatisfied with the compensation awarded by the special commissioners, or if you question whether the taking of your property was proper, you have the right to a trial by a judge or jury. If you are dissatisfied with the trial court's judgment, you may appeal that decision.

CONDEMNATION PROCEDURE

Eminent Domain is the ability of certain entities to take private property for a public use. Private property can include land and certain improvements that are on that property.

Private property may only be taken by a governmental entity or private entity authorized by law to do so.

Your property may be taken only for a public use. Eminent domain cannot be used to take your property for economic development purposes, except for limited exceptions provided by law.

Your property cannot be taken without adequate compensation. Adequate compensation includes the market value of the property being taken. It may also include certain damages, if any, to your remaining property caused by the acquisition itself or by the way the condemning entity will use the property.

How the Taking Process Begins

The taking of private property by eminent domain must follow certain procedures. First, the entity that wants to condemn your property must notify you about its interest in acquiring your property. Second, before a condemning entity begins negotiating with you to acquire your property, it must send this Landowner's Bill of Rights statement to the last known address of the person in whose name the property is listed on the most recent tax roll.

Third, the condemning entity must make a good faith offer to purchase the property. The condemning entity's offer must be based on an investigation and an assessment of adequate compensation for the property. At the time the offer is made, the governmental condemning entity must disclose any appraisal reports it used to determine the value of its offer to acquire the property. You have the right to either accept or reject the offer made by the condemning entity.

Condemnation Proceedings

If you and the condemning entity do not agree on the value of the property being taken, the entity may begin condemnation proceedings. Condemnation is the legal process for the taking of private property. It begins with a condemning entity filing a claim for your property in court. If you live in a county where part of the property being condemned is located, the claim must be filed in that county. Otherwise, the claim can be filed in any county where at least part of the property being condemned is located. The claim must describe the property being condemned, the intended public use, the name of the landowner, a statement that the landowner and the condemning entity were unable to agree on the value of the property, and that the condemning entity provided the landowner with the Landowner's Bill of Rights statement.

Special Commissioners' Hearing

After the condemning entity files a claim in court, the judge will appoint three landowners to serve as special commissioners. These special commissioners must live in the county where the condemnation proceeding is filed, and they must take an oath to assess the amount of adequate compensation fairly, impartially, and according to the law. The special commissioners are not authorized to decide whether the condemnation is necessary or if the public use is proper. After being appointed, the special commissioners must schedule a hearing at the earliest practical time and place and provide you written notice of that hearing.

You are required to disclose to the governmental condemning entity, at least ten days before the special commissioners' hearing, any appraisal reports used to determine your opinion about adequate compensation for the property. You may hire an appraiser or real estate professional to help you determine the value of your private property. You may also hire an attorney regarding these proceedings.

At the hearing, the special commissioners will consider evidence on the value of the property, the damages to remaining property, any value added to the remaining property as a result of the project, and the uses to be made of the property being taken.

Special Commissioners' Award

After hearing evidence from all interested parties, the special commissioners will determine the amount of money to be awarded as adequate compensation. You may be responsible for the costs if the Award is less than or equal to the amount the condemning entity offered before the condemnation proceeding began. Otherwise, the condemning entity will be responsible for the costs. The special commissioners will give a written decision to the court that appointed them. That decision is called the "Award." The Award must be filed with the court and the court must send written notice of the Award to all parties.

After the Award is filed, the condemning entity may take possession of the property being condemned, even if either party appeals the Award of the special commissioners. To take possession of the property, the condemning entity must either pay you the amount of the Award or deposit the amount of the Award into the registry of the court. You have the right to withdraw the deposited funds from the registry of the court.

Objection to the Special Commissioners' Award

If either you or the condemning entity is dissatisfied with the amount of the Award, either party can object to the Award by filing a written statement of objection with the court. If neither party timely objects to the Award, the court will adopt the Award as the final judgment of the court. If a party timely objects to the special commissioners' Award, the court will hear the case in the same manner as other civil cases.

If you object to the Award and ask the court to hear the matter, you have the right to a trial by judge or jury. The allocation of costs is handled in the same manner as with the special commissioners' Award. After that trial, either party may appeal any judgment entered by the court.

Dismissal of the Condemnation Action

A condemning entity may file a motion to dismiss the condemnation proceeding if it decides it no longer needs your property. If the court grants the motion to dismiss, the case is over and you are entitled to recover reasonable and necessary fees for attorneys, appraisers, photographers, and for other expenses incurred to the date of the hearing on the motion to dismiss.

You may also file a motion to dismiss the condemnation proceeding on the ground that the condemning entity did not have the right to condemn the property, including a challenge as to whether the property is being taken for a public use. If the court grants your motion, the court may award you reasonable and necessary fees for attorneys, appraisers, photographers, and for other expenses incurred to the date of the hearing or judgment.

Relocation Costs

If you are displaced from a residence or place of business, you may be entitled to reimbursement for reasonable expenses incurred while moving personal property from the residence or relocating the business to a new site. You are not entitled to these relocation costs if they are recoverable under another law. If you are entitled to these costs, they cannot exceed the market value of the property being moved and can only be reimbursed for moving distances within 50 miles.

Reclamation Options

If private property was condemned by a governmental entity, and the purpose for which the property was acquired is canceled before the 10th anniversary of the date of the acquisition, you may have the right to seek to repurchase the property for the fair market value of the property at the time the public use was canceled. This provision does not apply to property acquired by a county, a municipality, or the Texas Department of Transportation.

Disclaimer

The information in this statement is intended to be a summary of the applicable portions of Texas state law as required by HB 1495, enacted by the 80th Texas Legislature, Regular Session. This statement is not legal advice and is not a substitute for legal counsel.

Additional Resources

Further information regarding the procedures, timelines and requirements outlined in this document can be found in Chapter 21 of the Texas Property Code.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

*Ms. Christine Gibson
1555 Estates Parkway
Dallas, TX 75002*

2. Article Number

Lovejoy Gibson 12-2-08
(Transfer from service label)

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Christine Gibson

Agent

Addressee

B. Received by (Printed Name)

Christine Gibson

C. Date of Delivery

D. Is delivery address different from item 1?
If YES, enter delivery address below:

Yes

No

3. Service Type

Certified Mail

Express Mail

Registered

Return Receipt for Merchandise

Insured Mail

C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

91 7108 2133 3932 8315 2775

102595-02-M-1540

Domestic Return Receipt



SCHWARTZ & EICHELBAUM
WARDELL MEHL AND HANSEN, P.C.

4201 W. Parmer Lane, Suite A-100, Austin, Texas 78727

Tel: (512) 476-9944 Fax: (512) 472-2599

(800) 488-9045 • www.edlaw.com

Mark R. Benavides
Senior Associate

July 7, 2009

Stacey Kemp
County Court at Law Clerk
University Drive Courts Facility
1800 N. Graves Street
Suite 110
McKinney, TX 75069

Re: Cause No. _____; *Lovejoy ISD v. Christine Gibson, City of Lucas, Texas, Collin County, Texas Collin County Community College District*; In the ____ County Court at Law Number _____ of Collin County, Texas

Dear Ms. Kemp:

Enclosed are the original and five copies of Plaintiff Lovejoy Independent School District's *Original Petition for Condemnation* for filing in the above-referenced matter/project name "Gibson Estates Parkway". I have enclosed is a check for \$468.00 for the following:

1. Filing fee for original petition (\$232.00)
2. Four citations issued to: (\$16.00)
 - 1) Christine Gibson; Precinct 1
 - 2) City of Lucas, Texas; Precinct 3
 - 3) County of Collin, Texas; Precinct 1 and
 - 4) Collin County Community College District; Precinct 4
3. In County Service fee of \$55.00 for all four above (\$220.00)

I have also included an Order Appointing Special Commissioners for filing with the court and an extra copy.

Please return the file-stamped petitions and Order Appointing Special Commissioners to me in the enclosed envelope.

If you have any questions, please do not hesitate to call.

FILED
 COUNTY COURT AT LAW
 2009 JUL -9 AM 11:39
 STACEY KEMP
 COUNTY CLERK
 COLLIN COUNTY, TEXAS
 BY: [Signature] DEPUTY



SCHWARTZ & EICHELBAUM
WARDELL MEHL AND HANSEN, P.C.

Sincerely,

SCHWARTZ & EICHELBAUM
WARDELL MEHL AND HANSEN, P.C.

By  _____

Adriana G. Cardenas
Assistant to Mark R. Benavides

/Enclosures

cc: Mr. Ted Moore