



Condemnation Summit XXXIII



Condemnation Summit XXXIII

Welcome Remarks

Jennifer Cranston | Gallagher & Kennedy
Ashley Mahoney | Nossaman LLP

Today's Agenda

9:00 a.m.	Welcome Remarks
9:15 a.m.	Leveraging Jury Instructions in Condemnation Actions
10:15 a.m.	Morning Networking Break
10:30 a.m.	Eminent Domain Mediation – Beyond the Basics
11:30 a.m.	Networking Break
11:45 a.m.	Right-of-Way and Valuation War Stories
12:45 p.m.	Hosted Lunch
1:45 p.m.	Clerks of the Superior Court
2:45 p.m.	Cookie Break Sponsored by Integra Realty Resources
3:00 p.m.	<i>State v. Foothills</i> – More than Just a Supreme Court Decision
4:30 p.m.	Conclusion



Condemnation Summit XXXIII

Leveraging Jury Instructions in Condemnation Actions

William Fischbach | Wilenchik & Bartness
Hon. John Hinderaker | U.S. District Court
Christopher Kramer | Nossaman

Jury Instruction

- Judicial perspective
- Not just for the jury
- Using instructions to build and organize your case from day 1

RAJIs

- History
- Limitations

TIPS FOR WRITING PROPOSED INSTRUCTIONS

Plaintiff's Proposed Jury Instruction No. 1

PLAINTIFF'S REQUESTED INSTRUCTION NO. 1

The fact, if it is a fact, that an owner is unwilling to sell, or objects to the acquisition of his property by the People of the State of Arizona for the public good, does not affect its market value. All property is held subject to appropriation for public purposes on the payment of just compensation. The measure of compensation in the case of an owner who objects to the sale of his property to the People of the State of Arizona is not different from the measure of compensation in the case of an owner who is willing that his property be acquired for the public use.

Defendant's Proposed Jury Instruction No. 1

INTENT TO SELL

In determining severance damages due to construction delay, you may consider whether the Skywalker Trust intended to sell the Mos Eisley Cantina.

Plaintiff's Proposed Jury Instruction No. 2

PLAINTIFF'S REQUESTED INSTRUCTION NO. 2

A plan which defendant may or may not have had for the improvement of the property adds nothing to its market value. The fact that a plan for improvements, if any, was affected by condemnation, however much a disappointment, is not a matter of compensation.

Defendant's Proposed Jury Instruction No. 2

VARIANCES

There has been testimony about whether or not certain variances may have been granted for the Mos Eisley Cantina. A variance relieves the duty to comply with a zoning ordinance's technical requirements, such as setback lines, frontage requirements, height limitations, lot size requirements, density regulations, and yard requirements.

In determining fair market value, you may consider whether (1) it was reasonably probable a variance or variances would have been granted and (2) a willing buyer would pay a more for that probability. You may not consider the mere possibility or speculation that a variance or variances would have been granted.

Plaintiff's Proposed Jury Instruction No. 3

PLAINTIFF'S REQUESTED INSTRUCTION NO. 3

The term "just compensation" means "just" not only to the party whose property is taken for public use but also "just" to the public which is to pay for it.

Defendant's Proposed Jury Instruction No. 3

VARIANCES II

In determining whether or not it is reasonably probable a variance or variances would have been granted, you must consider whether a variance or variances would have been granted in the reasonably proximate future.

Plaintiff's Proposed Jury Instruction No. 4

PLAINTIFF'S REQUESTED INSTRUCTION NO. 4

You are instructed that damage to the land of the defendants which is not taken will not be presumed and unless a preponderance of the evidence has shown that the value of the remaining land and/or improvements has been diminished by the taking, the compensation will be limited to the value of the land actually taken.

In considering the damages to the remaining land you must also consider whether portions of that land were used separately. That is, was all of the remaining acreage used together as one parcel for one use or was a portion of it retained and used separately. If it was used separately then no damage may be ascribed to that separate portion. If you should find from the evidence that there actually has been damage to the property remaining because of the taking, then such damage must be to the property itself. Neither can you consider a mere infringement of personal pleasure or enjoyment to the owners resulting from the improvements constructed by the State. Merely rendering private property less desirable for certain purposes or even causing personal annoyance or discomfort in its use, will not constitute damage for which the defendants are entitled to such compensation, unless such results in a lessening of the fair market value of the remaining property. You shall not take into consideration such inconveniences and disadvantages, if any, to the defendants as are the consequences of the lawful and proper use of the state highway in question.

Defendant's Proposed Jury Instruction No. 4

PROCESS INFLUENCE AND VARIANCES

In determining fair market value, you cannot consider the influence of the Mos Eisley Spaceport's highway project. Consequently, in determining whether it was reasonably probable that a variance or variances would have been granted for the Mos Eisley Cantina, you must proceed under the factual presumption that the Mos Eisley Spaceport never contemplated its highway project.

Similarly, you must disregard any decrease in market value to the Property caused by the likelihood or possibility of the Mos Eisley Spaceport's highway project.

Plaintiff's Proposed Jury Instruction No. 5

PLAINTIFF'S REQUESTED INSTRUCTION NO. 5

It is obvious that the State has had possession of the property in question for some period of time prior to the date of this trial. In arriving at your judgment, which must be the fair market value of the defendants' property as of the date of value, you must not give any consideration to this fact of possession because the State is obligated to pay interest on any judgment which you award from the date it acquired possession until payment of the judgment is actually made.

Defendant's Proposed Jury Instruction No. 5

DAMAGES; NON-SPECULATIVE

A claim for severance damages that is speculative, remote, or uncertain may not form the basis for your decision.

Thank You



William Fischbach
Partner
Wilenchik & Bartness



Hon. John Hinderaker
U.S. District Court



Christopher Kramer
Partner
Nossaman



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Morning Networking Break

We will resume at 10:30 a.m.



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Eminent Domain Mediation – Beyond the Basics

James Braselton | Dickinson Wright

Hon. Sally Schneider Duncan (retired) | Convergent ADR

Bruce Greenberg | Four Corners Valuations

Benjamin Greenberg | Four Corners Valuations

CONDEMNATION CASE MEDIATION BRIEFS

Threshold Consideration: Should We Exchange?

NO

Promotes Confidentiality

Allows for Candor

YES

Facilitates Persuasion

Reduces Confidentiality
Concerns for the Mediator

Condemnation Case Mediation Briefs

I. Introduction

- A. Nature and Scope of Taking
- B. Amount in Dispute (spread)

Condemnation Case Mediation Briefs

I. Introduction

II. Subject Property

A. Location

1. Embed area map or aerial photo

B. Characteristics (embed low-level aerial photo)

1. Shape
2. Size
3. Zoning
4. Improvements

Condemnation Case Mediation Briefs

I. Introduction

II. Subject Property

III. Condemnor's Project

A. Impact on Subject Property

Condemnation Case Mediation Briefs

I. Introduction

II. Subject Property

III. Condemnor's Project

IV. Appraisals

A. Identify Appraisers

- Experience
- Certifications/Designations/Licenses

B. Summarize Analyses and Conclusions/Opinions of Each

C. Why ours is correct

D. Why opponent's is wrong

Condemnation Case Mediation Briefs

I. Introduction

II. Subject Property

III. Condemnor's Project

IV. Appraisals

V. Other Evidence (if important)

A. Property owner testimony

B. Other experts

Condemnation Case Mediation Briefs

I. Introduction

II. Subject Property

III. Condemnor's Project

IV. Appraisals

V. Other Evidence (if important)

VI. Key Legal Issues (if any)

- Admissibility of Evidence
- Compensability of Damage Claims

Condemnation Case Mediation Briefs

- I. Introduction
- II. Subject Property
- III. Condemnor's Project
- IV. Appraisals
- V. Other Evidence (if important)
- VI. Key Legal Issues (if any)
- VII. Prior Negotiations (if any)**

Condemnation Case Mediation Briefs

I. Introduction

II. Subject Property

III. Condemnor's Project

IV. Appraisals

V. Other Evidence (if important)

VI. Key Legal Issues (if any)

VII. Prior Negotiations (if any)

VIII.B.S.

A. Examples:

1. Access concerns for remainder
2. Fear of future damages
3. Future liability/maintenance concerns with regard to easement takings
4. Lender approval or claims

Condemnation Case Mediation Briefs

- I. Introduction
- II. Subject Property
- III. Condemnor's Project
- IV. Appraisals
- V. Other Evidence (if important)
- VI. Key Legal Issues (if any)
- VII. Prior Negotiations (if any)

VIII.B.S.

IX. Suggestions

- A. Minimize # of secondary expert reports
 - 1. Appraisals and rebuttal reports by appraisers are almost always important
- B. Minimize deposition transcripts and excerpts therefrom
- C. Minimize motion practice pleadings

LEVERAGING NEUTRAL EXPERTS IN CONDEMNATION: IMPROVING FAIRNESS, COST EFFICIENCY, AND JUDICIAL CLARITY

The Role of Government in Condemnation Disputes

- **Government's Obligation:**
 - Ensure fair compensation while protecting public interest.
- **Challenges Faced by Government Officials:**
 - High litigation costs due to adversarial expert battles.
 - Delays in public projects due to unresolved compensation disputes.
 - Public perception and legal challenges questioning fairness.
- **How Neutral Experts Help:**
 - Provide an independent, data-driven valuation to bridge gaps between conflicting appraisals.
 - Ensure transparency and defensibility in compensation decisions.
 - Reduce litigation by resolving disputes earlier in the process.

Related Article



Valuation Blunders in the Law of
Eminent Domain
PUBLISHED BY: Richard A.
Epstein, Notre Dame Law
Review

The Challenge of Expert Bias in Condemnation Cases

- The issue:
 - Condemning authorities and property owners often rely on experts who advocate for their position.
 - Opposing expert valuations can be millions of dollars apart, leading to prolonged disputes.
 - Judges and mediators struggle to assess credibility when experts present adversarial conclusions.
- Why this matters:
 - Prolonged litigation delays public projects and increases taxpayer costs.
 - Unresolved disputes harm property owners and the government alike.
 - Neutral experts introduce objectivity, balancing fairness and efficiency.

Related Article



What is a Neutral Third Party?
PUBLISHED BY: PON Staff,
2025

How Attorneys Can Leverage Neutral Experts

Government Attorneys:

- Use neutral experts to strengthen the credibility of condemnation cases.
- Ensure that valuations align with legal precedents and withstand judicial scrutiny.
- Improve settlement rates by offering independent assessments to property owners.

Property Owner Attorneys:

- Use neutral experts to validate fair market value and counter biased government appraisals.
- Enhance negotiation leverage by presenting impartial, well-documented valuations.
- Increase chances of favorable pre-trial resolutions through credible expert mediation.

Experts:

- Position yourself as a neutral authority that both sides can trust.
- Develop a methodology that courts and mediators recognize as fair and objective.
- Establish credibility by working within ADR frameworks like mediation and Med-Arb.

Related Article



Arbitration & Dispute Resolution
PUBLISHED BY: National
Association of Realtors

The Role of Neutral Experts in Judicial & Mediation Efficiency

- Judges' & Mediators' Challenges in Condemnation Cases:
 - Experts often present wildly different valuations with conflicting methodologies.
 - Courts and mediators must determine which expert is more credible, which is often subjective.
 - Delays in ruling due to technical complexities and excessive litigation.
- How Neutral Experts Assist the Judiciary & Mediators:
 - Provide an independent, balanced perspective on property valuation.
 - Reduce expert conflicts by serving as a reference point for both sides.
 - Ensure stronger, more consistent case law by reinforcing objective valuation methods.
 - Help mediators facilitate resolution by clarifying the technical complexities in disputes.

Related Article



The Role of Mediation and Arbitration in Resolving Real Estate Disputes
PUBLISHED BY: Peterson Law, LLP, 2024

The Med-Arb Hybrid Approach as a Proactive Solution

- What is Med-Arb?
 - A two-step process where mediation is attempted first.
 - If mediation fails, the neutral expert becomes an arbitrator and issues a binding decision.
- How Governments Can Use Med-Arb to Reduce Litigation:
 - Early resolution saves taxpayer money and prevents delays in public projects.
 - Ensures that all parties feel their concerns were objectively addressed.
 - Limits unnecessary court proceedings by resolving disputes at an earlier stage.

Related Article



Dispute Resolution Process:
Combining Mediation and
Arbitration with Med-Arb
PUBLISHED BY: PON Staff,
2024

Thank You



James Braselton
Member
Dickinson Wright



Sally Duncan
Principal
Convergent ADR



Bruce Greenberg
Managing Director
Four Corners Valuations



Benjamin Greenberg
Principal COO
Four Corners Valuations



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Morning Networking Break

We will resume at 11:45 a.m.



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Right-of-Way and Valuation War Stories

George Cardieri | Town of Marana

Angelica Gutierrez | Tierra Right of Way

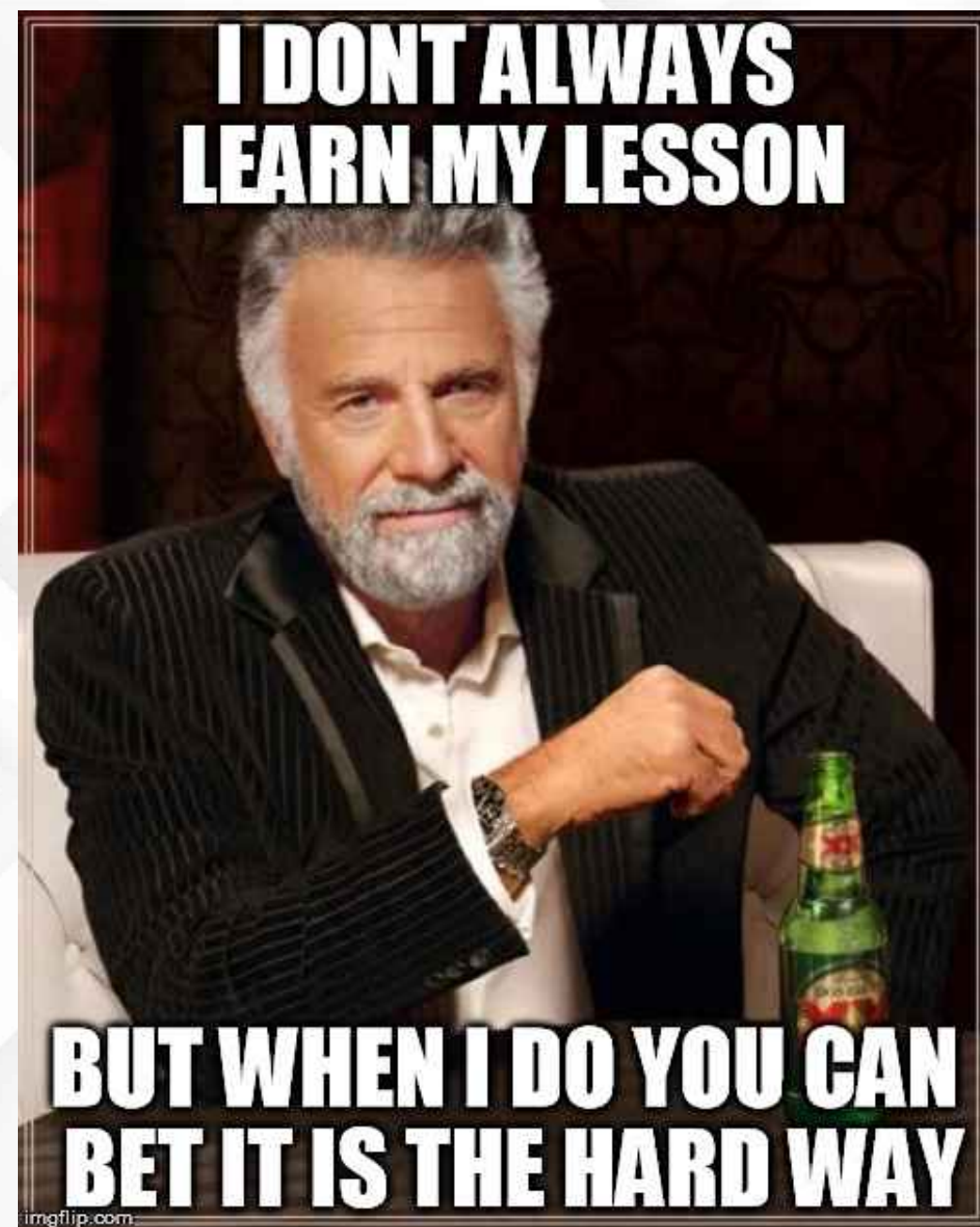
Caroline Tillman Johnson | City of Phoenix

Andres “Dre” Rubal | AXIA Appraisers

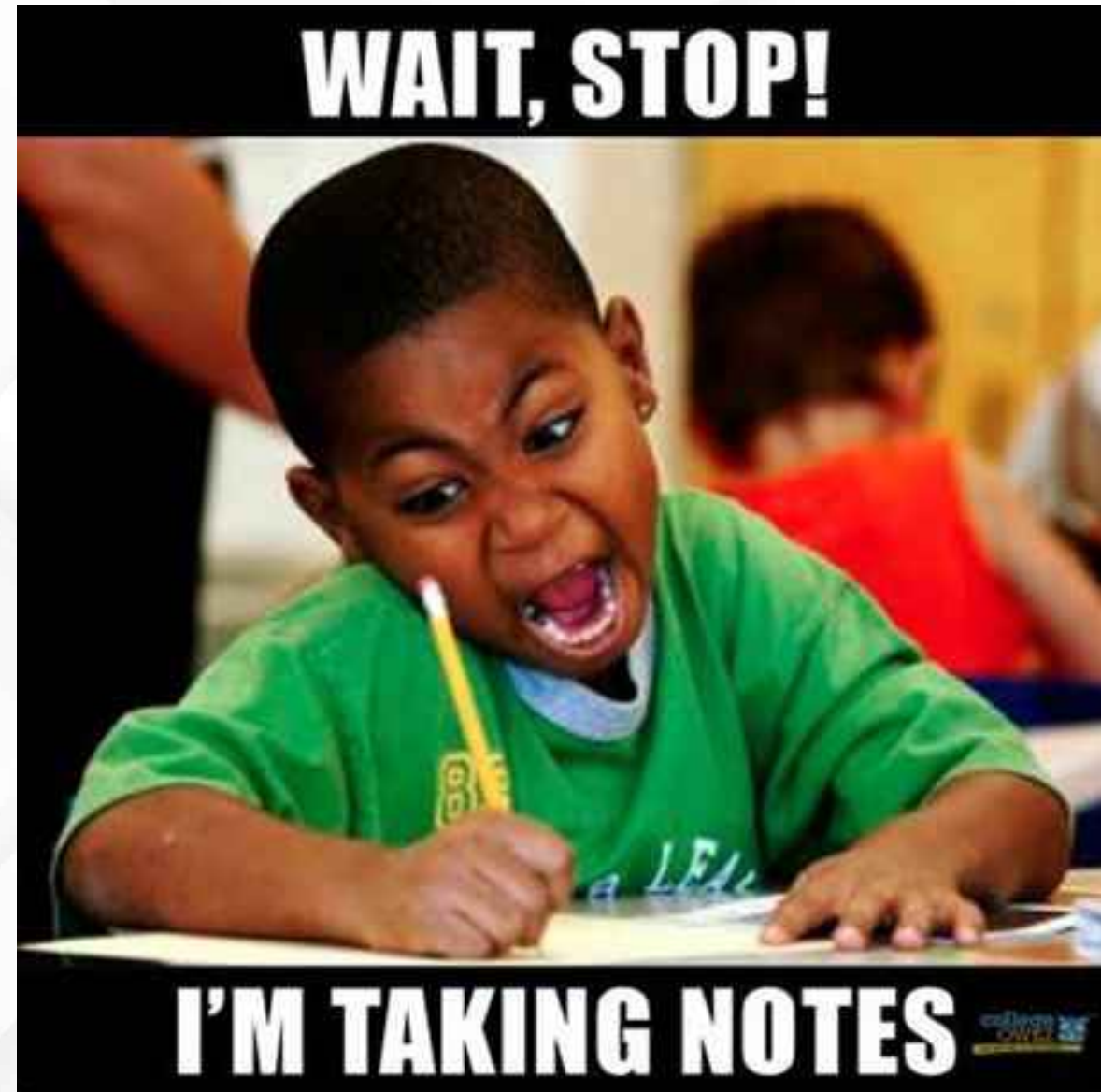
Meet the Panel



Lessons Learned from Property Owner Encounters



Working with Condemnors



The Prize for Most Unique Goes to...



Advice for Newbies



Worst and Best



Thank You



George Cardieri
Real Property Manager
Town of Marana



Angelica Gutierrez
Senior Right of Way Agent
Tierra Right of Way



Caroline Tillman Johnson
Relocation & Section 18/32
Project Manager
City of Phoenix Housing Department



Andres Rubal
Certified General
Real Estate Appraiser
AXIA Appraisers





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Hosted Lunch

We will resume at 1:45 p.m.



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Clerks of the Superior Court

Jeff Fine | Arizona Supreme Court Administrative Office

About Jeff

- Clerk of the Arizona Superior Court in Maricopa County 2019-2025
- 35 Years in Public Service
- Raised in Phoenix Metro Area
- Married to Korena Fine
- Father of Four
- Four Weddings in Two Years
- Rotary Vocational & Goodwill Exchange
- Deployed in Support of the Global War on Terrorism
- COVID Hospitalization



Experience

- Military Police
- Corrections Officer
- Police Officer
- Judicial Enforcement Officer
- Municipal Court Administrator
- Hearing Officer
- Justice of the Peace
- Justice Courts Administrator
- Clerk of the Arizona Superior Court
- Senior Consultant, AZ Supreme Court AOC
- 20+ Years Combined Active & Reserve Military Service



Who We Are

- Support Structure
 - Recordkeeper & Fiduciary
 - Customer Facing Services
 - First & Most Frequent Face
- “Start With People”
 - “We Are Access To Justice”
 - “It’s not just data, documents, and money. It’s people’s lives.”



What We Do

- Intake, distribute, and preserve court documents.
- Provide public access to court records.
- Document the actions of court sessions.
- Maintain a docket outlining case events.
- Collect and disburse fees, fines, and restitution.
- Receipt, manage, and store evidence and exhibits.
- Provide family support services.
- Issue and record marriage licenses.
- Process passport applications.
- 650+ Team Members Across 8 Locations.



Highlights

SERVICE	MONTHLY VOLUME (Approx.)
Documents Filed	225,000
Outgoing Documents	180,000
Financial Transactions Reconciled	160,000
Minute Entries Created	45,000
Phone Calls Received	31,000
Customers Served In-Person	23,000
Exhibits Received & Processed	21,000
Records Requests Fulfilled	8,000



- As of 2024, the Clerk’s Office has over 84 million documents in OnBase.

Leadership Structure

Executive Team

- Clerk
- Executive Director
- Operations Director
- Courtroom Services Director
- Chief Technology & Innovation Officer
- General Counsel & PIO
- HR & Development Director
- Communications Manager
- Internal Communications Officer
- Office Manager



Our Transformational Change

- Broad Stakeholder Input
- Leadership Summit
- Grouping & Prioritizing Input
- 5 Key Areas
- 60+ Initiatives
- Years vs Months, Weeks, and Days
- Accelerated by Pandemic
- 37 Team Awards for Excellence & Innovation Since 2019



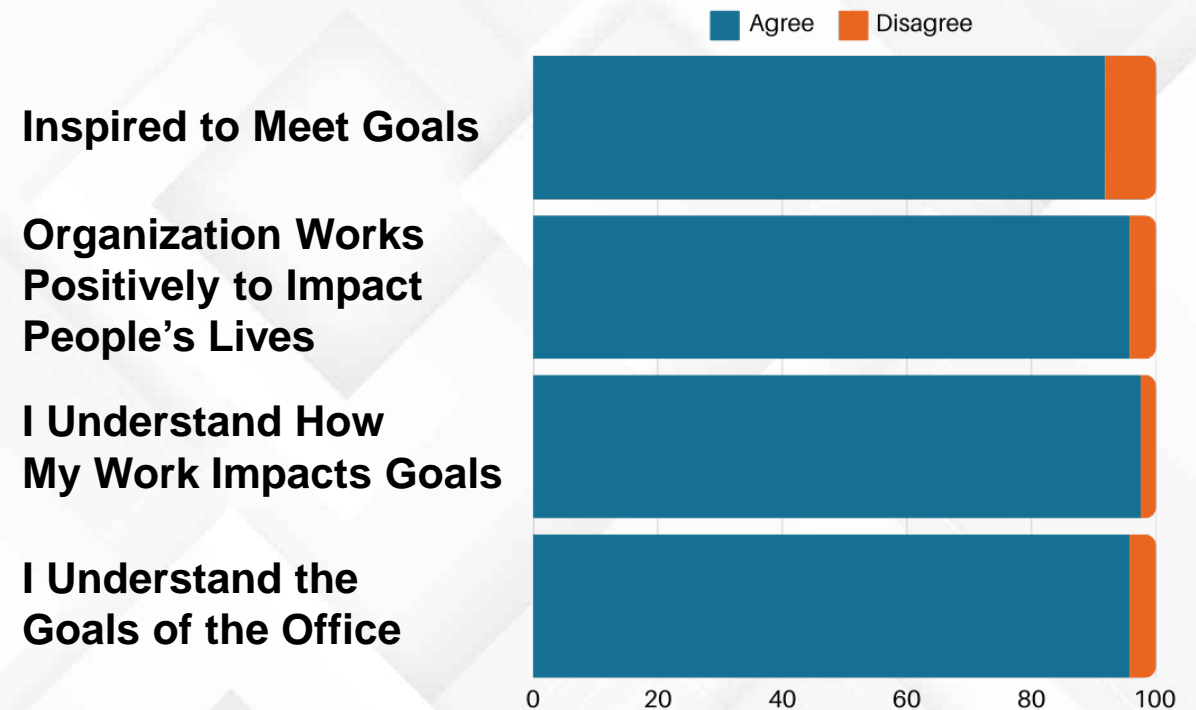
Our Strategic Framework

- We Focus on Customers
- We Leverage Technology & Innovation
- We Partner for Results
- We Invest in People
- We Communicate with Purpose



Our Team Culture

- In the 2024 Employee Survey, which 94% of staff completed, more than 95% of employees feel connected to the Clerk's Office goals, initiatives, and impactful work.



Innovations & Team Awards

- New Finance System
- Juvenile Case eFile
- Online Payment Services
- 24x7 Online Virtual Assistance
- Online Exhibit Portal
- Online Civil Case Initiation
- Court Record Intelligent Capture
- Data Center Modernization
- Family Court eFiling
- Juvenile eFile Case Initiation
- Online App Waiver & Deferral
- Online Marriage License Portal
- Public Webinar Series
- Employment & Training
- Clerk 360 Business Intelligence
- eFile Direct Criminal Complaints
- Digital Workforce
- Factors for Success
- 19 Additional Awards



Challenges

- Resources
- New Employment Landscape
- Increased Turnover in Years 1-3
- Retirements
- Lesser Experience Levels
- Low SRL eFile Utilization



Opportunities

- Probate eFile Rollout
- New Minute Entry System Rollout
- Scan to eFile (100% Digital Pathway)
- Expand Intelligent Capture & RPA to Further Automate Routine Functions
- Expand Virtual Assistance
- Improve Remote Access to Court Records
- Increased Integration & Interoperability of Technology Platforms
- Continue to Leverage Strengths in Recruitment
- Evolve Careers to Align with Tech Advancements
- Self-Help Integration (forms, triage, eFile)



Final Thoughts

- View Services as Seamless
- Relationships
- Focus on Impact
- Reflection, Celebration & Recognition
- Empowerment, 1/650



Thank You



Jeff Fine

Senior Consultant

Arizona Supreme Court Administrative Office



Condemnation Summit XXXIII

Afternoon Networking & Cookie Break

Sponsored by Integra Realty Resources

We will resume at 3:00 p.m.



Condemnation Summit XXXIII

State v. Foothills – **More than Just a Supreme Court Decision**

Michelle Burton | Nossaman

Dale Zeitlin | Zeitlin & Zeitlin

Casandra Markoff Zeitlin | Zeitlin & Zeitlin

Foothills Reserve Aerial 2017



Easements of Enjoyment

ARTICLE III

EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS

3.1 Easements of Enjoyment. Every Owner shall have a nonexclusive easement for the use and enjoyment in and to the Common Areas which nonexclusive easement shall be appurtenant to and shall pass with the title to every Lot. All Residents, other than Owners, shall have a nonexclusive, nontransferable temporary easement to use and enjoy the Common Areas so long as they remain Residents. The foregoing grant and rights are subject, among other things, to the following limitations:

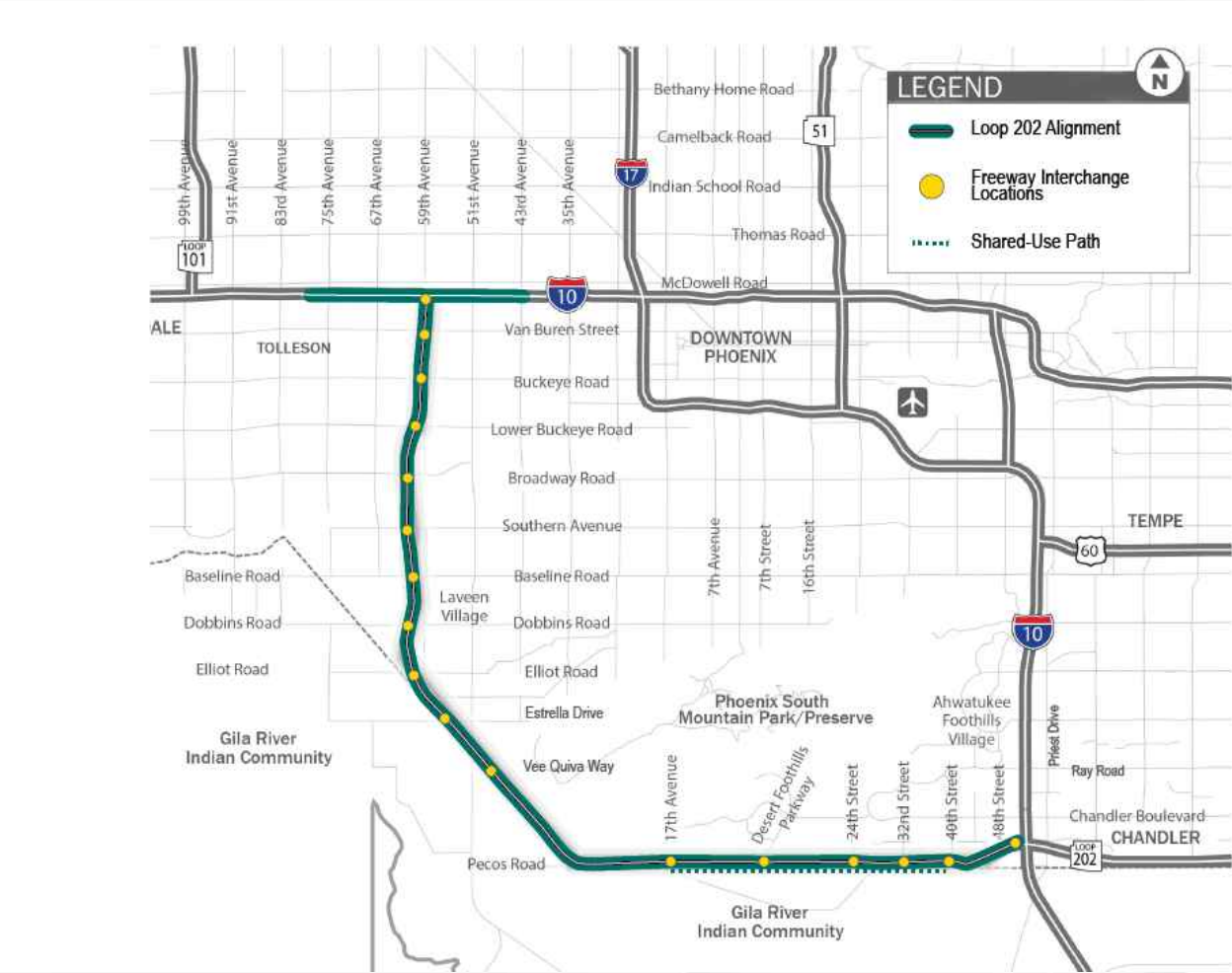
Residential Use Only

4.1.33 General. Lots within Foothills Reserve may be used only for the construction and occupancy of Single Family detached Dwelling Units and typical residential activities incidental thereto, such as the construction and use of private swimming pools, together with common recreational facilities or other common areas or amenities, if any. All Lots shall be used, improved and devoted exclusively to residential uses and no occupation, business, profession, trade or other nonresidential use shall be conducted thereon, except that an Owner or Resident may conduct

Foothills Reserve Aerial 2023



Loop 202 South Mountain Freeway



Questionnaire Response Map

A map showing the location of the 110 responses is provided below.



Foothills Reserve South



Foothills Reserve North



Freeway Lighting from Foothills Reserve South



Sound Wall Bordering Subdivision



Cedarwood Lane Feb. 2020 (Google Street View)

View from Foothills Reserve North



Looking South along 29th Dr

Catalina Authorizes HOA to Represent

CATALINA v. LA PALOMA Opinion of the Court

La Paloma, which holds title to Campo Abierto, along with other common areas, for the benefit of property owners within the subdivision. The Declaration of Covenants, Conditions and Restrictions ("CC&Rs") grants each member, owner and occupant a non-exclusive easement to use the common areas and authorizes La Paloma to represent the interests of the members and all other "interested [p]ersons" in proceedings to condemn any common area.

Board Has Sole Discretion

9.4 Eminent Domain. The term "taking" as used in this Paragraph shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Common Areas, the Owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards made or to be made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of a total or partial taking, the Board may, in its sole discretion, retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Owners and all holders of liens and encumbrances, as their interest may appear of record, at a uniform rate per Membership.

Severance Damages Were Not Contested in *Catalina*

¶22 The District and La Paloma each offered expert testimony about the value of the portion of Campo Abierto taken in the condemnation. The District's expert opined the fair market value of the taken property was \$290,000; La Paloma's expert said it was \$165,665. The jury accepted the higher value. Both sides agreed that as a result of the taking, La Paloma would have to pay \$56,416 to change the landscaping along Campo Abierto and reconstruct a new monument sign; the jury awarded that amount as "cost to cure." By its verdict, the jury impliedly accepted the District's argument that its conveyance of the easement back to La Paloma effectively "cured" any other severance damages because the easement ensured La Paloma and other property owners continued use of the road.

Severance Damage Motion

The homeowners contend that the “larger” parcel consists of, not just the fee interests in the lots, but also each homeowner’s interests in the common area. Therefore, according to the homeowners, the taking of the servient estate entitles the homeowners to compensation. The State, on the other hand, contends that there is no “larger parcel” from which the easement rights were taken, because the common area was owned by the Association. Indeed, during argument the State contended that the damages sought here are not really “severance” damages at all. Rather, the State argued that homeowners should be compensated only for the “lost” easement and restrictive rights.

Severance Damage Motion to the Homeowners

As such, one could certainly argue, as the State does, that the proximity to the freeway is the type of depreciation in value that should not be considered as part of the damage analysis. The Court, however, rejects that premise for a few reasons. First, under a severance damage analysis, it is proper to consider the improvement building built. A.R.S. §12-1122(A)(2). Accordingly, proximity to a freeway is a proper consideration. *State ex rel. Miller v. Wells Fargo Bank*, 194 Ariz. 126, 129 (1998).

Even if this valuation did not involve a “pure” severance analysis, the Court still believes that the proximity to the freeway is a relevant consideration. There is no dispute that the loss of the right to a common area with open views and vistas is a compensable loss. Therefore, the loss of the open views and vistas is an appropriate valuation consideration. It does not appear to the Court to be practical to consider the loss of the right to have open views and vistas, yet ignore the freeway that ended up being placed on or near the common area.

Motion Re: Traffic Flow

The State claims that the homeowners here should not be allowed to claim damages for changes in traffic flow resulting from the freeway in question. The homeowners, on the other hand, claim they are entitled to “severance damages for the taking of the private easement of access to the intersection of Chandler Boulevard and Pecos Road.” Those claimed damages could include compensation for changes in “traffic flow.”

Traffic Flow Motion Goes to the State

The homeowners here have no special injury. The prior interchange did not abut the homeowners' properties. The homeowners still have access to the system of streets. Accordingly, the homeowners are not entitled to compensation due to the loss of access to the Chandler Boulevard and Pecos Road intersection. The State's Motion for Summary is granted and the homeowners' Motion for Summary Judgment is denied.

Appraisal Instructions

The damage claims to the 590 homes are guided by the Superior Court's (Judge Thomason) ruling on June 28, 2019, that all homeowners within the Foothills Reserve subdivision own an easement in the 10.18 acre common areas taken by ADOT. Hence, Judge Thomason ruled that the 590 homeowners have the right to receive just compensation for the diminution of their homes caused by the taking of their easement rights, including any damages caused by the construction of the South Mountain Freeway from such things as noise, environmental and visual pollution, and the like (proximity damages). Judge Thomason stated, "The damage analysis is to focus on the 'lost' easement rights and restrictive covenants...The easement rights consisted of the right to access and use the common area. The homeowners are entitled to compensation for loss of any right to limit use of the common area to open space...Damages due to proximity to the freeway must be considered."

Larger Parcel Definition

ADOT's taking of a portion of the common areas, took property rights owned by the 590 remaining homes within the Foothills Reserve subdivision. These rights are set forth in the Declaration of Covenants, Conditions, and Restrictions and Easements (the "CC&Rs").

Consequently, the Court has ruled that the Larger Parcel consists of not just the fee interests in the lots, but also each homeowner's property interest in the common area. Therefore, the taking of the servient estate entitles the homeowners' to compensation.

Based on this ruling, the Larger Parcel consists of 590 separate lots within Foothills Reserve. As each lot is improved with a single-family residence and owned separately, each lot is viewed as a Larger Parcel and will be valued separately. However, for reference purposes throughout this report, the term "Larger Parcel" may be used interchangeably to refer to each lot/home individually or all 590 lots/homes collectively. In either case, the Larger Parcel includes the rights appurtenant to the Common Areas within Foothills Reserve.

Part Taken by ADOT

As discussed in the Part Taken section of this report, the areas acquired by ADOT had unmanaged desert vegetation and a walking path, but no vertical improvements other than a block wall (near the southeast corner of the subdivision). Collectively, only 6.2% of the common area within Foothills Reserve was acquired by ADOT.

After Analysis Value Loss

AFTER ANALYSIS - VALUE LOSS



NJ Baseball Arbitration Pilot Program



SELF-REPRESENTED ATTORNEYS NJMCDIRECT JURORS COURTS PUBLIC

What exactly is “baseball arbitration,” and how is the Pilot Program a variation of it?

[Home](#) / What Exactly Is “baseball Arbitration,” And How Is The Pilot Program A Variation Of It?

▼ What exactly is “baseball arbitration,” and how is the Pilot Program a variation of it?

The term “baseball arbitration” refers to the format for arbitrating players’ salaries in Major League Baseball in which the player and team each submit a single number representing the player’s proposed salary for the upcoming season to a panel of three arbitrators. At the hearing, the two sides submit a signed and executed agreement with a blank space left for the salary figure. The player and team each also have the opportunity to present its case and a rebuttal, after which the arbitrators choose one of the two numbers as the player’s salary. The Pilot Program simply applies the baseball arbitration format to non-auto personal injury cases under Rule 4:21A. The arbitrator will receive final offers from the parties and then make an award limited to the offer of the party that is closest to the amount that the arbitrator decides is appropriate.

Easements Are Property

¶18 Neither party disputes that “property” subject to condemnation in Arizona includes nonpossessory interests in land, like easements, and we agree. See §§ 12-1113(1), -1114(6); see also *State ex rel. Morrison v. Thelberg*, 87 Ariz. 318, 324, 350 P.2d 988 (1960) (describing a positive easement as “a property right”); *S. Cal. Edison Co. v. Bourgerie*, 9 Cal.3d 169, 107 Cal.Rptr. 76, 507 P.2d 964, 965–66 (1973) (noting that a majority of jurisdictions hold that negative easements “constitute property rights for purposes of eminent domain”); 73 C.J.S. *Property* § 6 (2024) (describing easements and hereditaments as “property”). Notably, for purposes of “Eminent Domain for Public Works,” see A.R.S. title 12, chapter 8, article 3, “real property” and “property” are explicitly defined as including “all easements and hereditaments” and “every estate, interest and right, legal or equitable, in lands.”³ See § 12-1141(6); see also *State ex rel. Larson v. Farley*, 106 Ariz. 119, 122, 471 P.2d 731, 734 (1970) (stating that related statutes “must be construed as one system governed by one spirit and policy”).

Meaning of Parcel

¶19 By using the words “part of a larger parcel,” the statute implies that the “property sought to be condemned” must be a smaller parcel. See Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012) (“The expression of one thing implies the exclusion of others”). And the word “parcel” means a parcel of land. Indeed, related provisions in the eminent domain article clarify that a “parcel” is a “parcel of land.” See [A.R.S. § 12-1144](#) (“Any number of *parcels of land*, whether owned by the same or different persons and whether contiguous or not, may be included and condemned in one action, if the parcels are to be used for a single public works project.”) (emphasis added); [A.R.S. § 12-1116\(H\)](#) (using “parcel of land” and “parcel” interchangeably). We presume a word or phrase “to bear the same meaning throughout a text.” Scalia & Garner, *Reading Law* at 170.

¶20 That interpretation is confirmed by popular dictionaries. “Words are to be understood in their ordinary, everyday meanings.” Scalia & Garner, *Reading Law* at 69. According to Black’s Law Dictionary, a “larger parcel” means “[a] portion of land that is not a complete parcel, but is the greater part of a bigger tract,” while a “parcel” is defined as “a continuous tract or plot of land in one possession.” See Black’s Law Dictionary (11th ed. 2019). According to the American Heritage Dictionary, the word “parcel” means “a plot of land, usually a division of a larger area.” See American Heritage Dictionary (5th ed. 2020).

Easements Are Not Parcels of Land

4 5 6 ¶21 Applied here, the homeowners are not entitled to proximity damages because their easements were not parcels of land. A positive easement creates “a nonpossessory right to enter and use land in the possession of another and obligates the possessor not to interfere with the uses authorized by the easement.” [Restatement \(Third\) of Property \(Servitudes\) § 1.2 \(2000\)](#). A negative easement is a restrictive covenant, which “limits permissible uses of land.” [Restatement \(Third\) of Property \(Servitudes\) § 1.3\(3\) \(2000\)](#). Because an easement is not a parcel of land, the homeowners were not entitled to severance damages. See [State ex rel. Ordway v. Buchanan, 154 Ariz. 159, 164, 741 P.2d 292, 297 \(1987\)](#) (“Severance damages are proper when the *land* condemned is part of a larger parcel”) (emphasis added).








No Severance Damages When No Land Is Taken

7 8 ¶23 The homeowners next argue that severance damages are available because their homes were severed from the Common Areas, which represented a “larger parcel” and caused a partial taking. But severance damages are available only if the claimant owns the larger parcel from which a smaller parcel is condemned. See [Wells Fargo Bank, 194 Ariz. at 129–30, ¶¶ 16–17, 978 P.2d at 106–07](#) (explaining that homeowners cannot obtain severance damages when none of their land is taken). Here, the HOA owned the Common Areas, not the individual homeowners. The homeowners possessed no title to or ownership interest in the Common Areas. Instead, they owned only two easements—one positive and one negative—giving them a right to use or limit development of the Common Areas. See [Restatement \(Third\) of Property \(Servitudes\) § 1.2 \(2000\)](#); [Restatement \(Third\) of Property \(Servitudes\) § 1.3\(3\) \(2000\)](#).

Supreme Court Issue

¶14 The issue here is whether proximity damages are available under [§ 12-1122\(A\)\(2\)](#) when the condemned property is an appurtenant easement rather than land. Our resolution turns on whether “the property sought ^{*872} to be condemned”—the appurtenant easements—was “part of a larger parcel” owned by the Homeowners. See [§ 12-1122\(A\)\(2\)](#). If so, [§ 12-1122\(A\)\(2\)](#) applies and the HOA prevails. If not, [§ 12-1122\(A\)\(2\)](#) does not apply and the State prevails.

Definition of Property Sought to be Condemned

¶19 The court of appeals applied a different definition for “property sought to be condemned” as used in § 12-1122(A)(2). See  *Foothills Rsrvc. Master Owners Ass'n*, 256 Ariz. at 479 ¶ 21, 540 P.3d at 1239. The court interpreted the term there as referring only to “land” and excluding nonpossessory interests like easements. See  *id.* It grounded its analysis on the interpretive canon *expressio*  *unius est exclusio alterius* (the “negative-implication canon”), which provides that “[t]he expression of one thing implies the exclusion of others.” See  *id.* ¶ 19 (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012)). According to the court, by using the words, “part of a larger parcel,” § 12-1122(A)(2) implies that the “property sought to be condemned” must be a “smaller parcel.” See  *id.* The court then relied on dictionary definitions and eminent domain statutes referring to “parcels of land” to conclude that “parcel” in § 12-1122(A)(2) means a parcel of land. See  *id.* ¶¶ 19–20. The court ultimately concluded that because easements are not parcels of land, they cannot be “part of a larger parcel,” and § 12-1122(A)(2) therefore does not authorize proximity damages for the Homeowners. See  *id.* ¶ 21.

Supreme Court Meaning of Parcel

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¶23 We agree with the HOA that nonpossessory property interests, like easements, may form part of a “parcel.” First, the ordinary meaning of “parcel” supports this conclusion. See [Barriga v. Ariz. Dep't of Econ. Sec., 256 Ariz. 543, 547 ¶ 13, 541 P.3d 1159, 1163 \(2024\)](#) (stating that to interpret statutes “we look first to the text itself, applying common and ordinary meanings”). “Parcel,” as it relates to real property, means “[a] tract of land.” *Parcel*, Black's Law Dictionary (12th ed. 2024); see *Silverman*, 257 Ariz. at 362 ¶ 14, 549 P.3d at 188 (explaining that dictionary definitions ascribe ordinary meaning to terms). “Land,” in turn, is defined, in relevant part, as both “[a]n immovable and indestructible three-dimensional area consisting of a portion of the earth's surface,” and “[a]n estate or interest in real property.” *Land*, Black's Law Dictionary (12th ed. 2024). Putting these definitions together, the term “parcel” broadly includes all estates and interests in property, including nonpossessory interests, like easements.

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Easement and Estate Are Unified Entity

29 ¶42 We see no reason to consider an appurtenant easement as part of the dominant estate for purposes of property tax but not eminent domain. Indeed, the fact that an appurtenant easement adds value to the dominant estate for tax purposes logically supports the conclusion that the dominant estate and appurtenant easement must be considered a unified entity that is subject to injury when one part is severed from the other. We therefore conclude that an appurtenant easement is part of the dominant estate.

3. The easements here were severed from a “larger parcel.”

30 ¶43 Because the State condemned the Homeowners’ easements, and they were part of the dominant estate, they were necessarily “part of a larger parcel.” Consequently, the Homeowners are entitled to severance damages under § 12-1122(A)(2) for any damages inflicted on the portion of the “larger parcel” remaining.

Thank You



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Save-the-Date for October 24, 2025