

City of Austin Planning Commission Meeting
May 10, 2022 ~ City Hall Council Chamber

Comments by Janis Reinken about Item 22, ASMP Amendments

Good afternoon, Chairman, Vice-Chair and Members. I am Janis Reinken, a resident of District 7, where I live near White Rock Drive. In my experience as an attorney, I have worked for a municipality, state agencies, the private sector, and recently a 12-year period of service to Members of the Texas House of Representatives. I serve on the Board of the Allandale Neighborhood Association. Today, I speak on my own behalf. I believe what I have to say accurately reflects the concerns and frustrations of many private property owners in my neighborhood and other sectors of Austin. I would appreciate your close attention.

Here's the problem. This is like pulling a rabbit out of a hat; magically, if the City asserts that the expanded right of way does not constitute a taking of private property now, it certainly lays the foundation for doing that. The City is "marking its territory" on an interactive Internet map that is a puzzle for the public to decipher. It does not properly notify property owners. The strategy of prospectively designating mass ROW changes in the ASMP adversely affects private property rights. It is not just about updating technical corrections to a transportation plan. It is paving the way for a prospective shift in a city-wide land use and re-zoning policy. And, it fails to meet the requirements of the Texas Property Code. [See attachment, provisions from Chapter 21, TEX. PROP. CODE.]

In the interest of honesty and transparency, your recommendation to the City Council should be for the Council to acknowledge in an official Ordinance that these pre-designations of expanded ROW are NOT a basis for any legal or equitable claim by the City (or its agents or employees) to take the ROW now or later; these images on an interactive map are merely graphics to be used as planning tools and not to be used to lay the foundation for claiming or using the ROW, now or later. Such an Ordinance would be a public document on file with the City Clerk and retrievable by the people, unlike an interactive map on an Internet page. Suggestions and statements have been made by city staff that proposed expansion of ROW will not be used for Single-Family zoned properties; see the final 6 pages of the ASMP April 2022 report for the many ways in which this claim of ROW is being disavowed. These staff representations in an obtuse report are not sufficient.¹ Temporary concessions or assurances made now by current City Council Members, Mr. Spillar or other staff would be worthless in future years, when they no longer work for the City.

A City Ordinance is the best and most appropriate vehicle for defining these predictive ROW expansions as a simple graphic tool which create no legal or equitable basis for any claim or taking by the City, now or later.

1. The proposed ASMP amendments concerning designation of prospective Right-of-Way (ROW) are not merely "technical corrections" for a citywide transportation plan. They are substantive changes impacting private real property rights. If they are labeled "technical corrections" a thousand times, they are still substantive changes.
2. The advance designation of prospective ROW is premature and amounts to a "pre-taking" of ROW. This strategy is "marking the territory" to reserve ROW for potential unspecified uses later, in the event of "intentionally vague" land development and zoning changes over an uncertain period of time to facilitate imaginary land development that is not presently formulated or scheduled.² There are "workarounds" that allow developers to avoid "agreed dedication" of ROW under the LDC; this negates transportation goals.
3. This strategy places property owners in an untenable position, putting a blight on private property rights of people who live here and work here. It restricts the use of lot frontage and devalues their properties. It affects placement of water, gas and cable lines, trees and shrubbery, among other things.

¹ "Improvements will be made within the existing ROW using flexible design criteria. ROW dedication may be required from new development and commercial redevelopment through the land development process. Required ROW does not apply to single-family home properties." ASMP interactive map comments 2/28/22, White Rock Dr.

² White Rock Drive is a prime example. White Rock begins between Lamar Middle School and St. John's Methodist Church. Going west toward the railroad track, all White Rock properties are zoned SF and sidewalks line both sides of the street. The current ROW is 60 feet; the proposed future ROW would be 72 feet. There are no indications of any applications pending under the LDC for new development or commercial redevelopment on this street. It is not associated with Project Connect changes. There is no valid purpose in designating future ROW expansion.

4. As applied to this prospective expansion of ROW, the strategic mobility plan amendments would be baked into the Transportation Criteria Manual and Land Development Code. That paves the way for **potential land use rezoning**. This affects hundreds of streets all over Austin.
5. Thousands of private property owners are not merely confused: they are rightfully concerned about the proposed ASMP amendments because the prospective designations of expanded ROW are established on an Internet map, **without proper notice and without a bona fide offer of compensation**. This strategy for establishing ROW is distinct from the “agreed dedication” process for building permits in Chapter 25 of the Land Development Code, and does not meet the requirements of Chapter 21 of the Texas Property Code. It is not clear who gave the directive to include this vague proposal for acquisition of ROW in the ASMP transportation Amendments. That would be helpful for the public to know, in terms of transparency and accountability.
6. **This strategy raises concerns similar to those protested by property owners of Austin regarding CodeNext**, when the City attempted a mass rezoning of private properties without proper notice to the owners. As you know, an injunction was ordered to halt that process, and remains in effect.

Please **settle this issue now** by recommending that **these prospective ROW expansions be removed from the ASMP Amendments and map comments**. If you are not willing to do that, then make a recommendation to Council that they pass an Ordinance that protects the interests of the people in an honest, transparent way, and disavows that the predesignated ROW serves as any basis for a legal or equitable claim by the City, either now or later.

Thank you for your time and consideration,

Janis Reinken

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<https://statutes.capitol.texas.gov/Docs/PR/htm/PR.21.htm#21>

PROPERTY CODE

TITLE 4. ACTIONS AND REMEDIES

CHAPTER 21. EMINENT DOMAIN

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SUBCHAPTER B. PROCEDURE

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Sec. 21.0111. DISCLOSURE OF CERTAIN INFORMATION REQUIRED; INITIAL OFFER. (a) An entity with eminent domain authority that wants to acquire real property for a public use shall, by certified mail, return receipt requested, disclose to the property owner at the time an offer to purchase or lease the property is made any and all appraisal reports produced or acquired by the entity relating specifically to the owner's property and prepared in the 10 years preceding the date of the offer.

(a-1) An entity seeking to acquire real property through the use of eminent domain shall, not later than the third business day before the date of a special commissioner's hearing, disclose to the property owner any and all current and existing appraisal reports produced or acquired by the entity relating specifically to the owner's property and used in determining the entity's opinion of value, if an appraisal report is to be used at the hearing.

(b) A property owner shall disclose to the entity seeking to acquire the property any and all current and existing appraisal reports produced or acquired by the property owner relating specifically to the owner's property and used in determining the owner's opinion of value. Such disclosure shall take place not later than the earlier of:

(1) the 10th day after the date of receipt of an appraisal report; or

(2) the third business day before the date of a special commissioner's hearing if an appraisal report is to be used at the hearing.

(c) An entity seeking to acquire property that the entity is authorized to obtain through the use of eminent domain may not include a confidentiality provision in an offer or agreement to acquire the property. The entity shall inform the owner of the property that the owner has the right to:

(1) discuss any offer or agreement regarding the entity's acquisition of the property with others; or

(2) keep the offer or agreement confidential, unless the offer or agreement is subject to Chapter [552](#), Government Code.

(d) A subsequent bona fide purchaser for value from the acquiring entity may conclusively presume that the requirement of this section has been met. This section does not apply to acquisitions of real property for which an entity does not have eminent domain authority.

Added by Acts 1995, 74th Leg., ch. 566, Sec. 1, eff. Aug. 28, 1995.

Amended by: Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. [18](#)), Sec. 7, eff. September 1, 2011. Acts 2021, 87th Leg., R.S., Ch. 54 (S.B. [721](#)), Sec. 1, eff. September 1, 2021.

Sec. 21.0112. PROVISION OF LANDOWNER'S BILL OF RIGHTS STATEMENT REQUIRED. (a) Not later than the seventh day before the date a governmental or private entity with eminent domain authority makes a final offer to a property owner to acquire real property, the entity must send by first-class mail or otherwise provide a landowner's bill of rights statement provided by Section [402.031](#), Government Code, to the last known address of the person in whose name the property is listed on the most recent tax roll of any appropriate taxing unit

authorized by law to levy property taxes against the property. In addition to the other requirements of this subsection, an entity with eminent domain authority shall provide a copy of the landowner's bill of rights statement to a landowner before or at the same time as the entity first represents in any manner to the landowner that the entity possesses eminent domain authority.

(b) The statement must be:

(1) printed in an easily readable font and type size;
and

(2) if the entity is a governmental entity, made available on the Internet website of the entity if technologically feasible.

Added by Acts 2007, 80th Leg., R.S., Ch. 1201 (H.B. [1495](#)), Sec. 3, eff. February 1, 2008.

Amended by: Acts 2009, 81st Leg., R.S., Ch. 1145 (H.B. [2685](#)), Sec. 1, eff. January 15, 2010.

Sec. 21.0113. BONA FIDE OFFER REQUIRED. (a) An entity with eminent domain authority that wants to acquire real property for a public use must make a bona fide offer to acquire the property from the property owner voluntarily.

(b) An entity with eminent domain authority has made a bona fide offer if:

(1) an initial offer is made in writing to a property owner that includes:

(A) a copy of the landowner's bill of rights statement prescribed by Section [402.031](#), Government Code, including the addendum prescribed by Section [402.031](#)(c-1), Government Code, if applicable;

(B) a statement, in bold print and a larger font than the other portions of the offer, indicating whether the compensation being offered includes:

(i) damages to the remainder, if any, of the property owner's remaining property; or

(ii) an appraisal of the property, including damages to the remainder, if any, prepared by a certified appraiser certified to practice as a certified general appraiser under Chapter [1103](#), Occupations Code;

(C) an instrument of conveyance, provided that if the entity is a private entity as defined by Section [21.0114](#)(a), the instrument must comply with Section [21.0114](#), as applicable, unless:

(i) the entity has previously provided an instrument complying with Section [21.0114](#);

(ii) the property owner desires to use an instrument different than one complying with Section [21.0114](#) and consents in writing to use a different instrument; or

(iii) the property owner provided the entity with the instrument prior to the issuance of the initial offer; and

(D) the name and telephone number of a representative of the entity who is:

(i) an employee of the entity;

(ii) an employee of an affiliate providing services on behalf of the entity;

(iii) a legal representative of the entity;

or

(iv) if the entity does not have employees, an individual designated to represent the day-to-day operations of the entity;

(2) a final offer is made in writing to the property owner;

(3) the final offer is made on or after the 30th day after the date on which the entity makes a written initial offer to the property owner;

(4) before making a final offer, the entity obtains a written appraisal from a certified appraiser of the value of the property being acquired and the damages, if any, to any of the property owner's remaining property;

(5) the final offer is equal to or greater than the amount of the written appraisal obtained by the entity;

(6) the following items are included with the final offer or have been previously provided to the owner by the entity:

(A) a copy of the written appraisal;

(B) a copy of the deed, easement, or other instrument conveying the property sought to be acquired; and

(C) the landowner's bill of rights statement prescribed by Section [21.0112](#); and

(7) the entity provides the property owner with at least 14 days to respond to the final offer and the property owner does not agree to the terms of the final offer within that period.

Added by Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. [18](#)), Sec. 8, eff. September 1, 2011. Amended by: Acts 2021, 87th Leg., R.S., Ch. 826 (H.B. [2730](#)), Sec. 6, eff. January 1, 2022.

[bold emphasis added.]

TEX LOC GOVT CODE T.8 Subt A. Ch 251 Municipal Rt of Emin Domain

<https://statutes.capitol.texas.gov/Docs/LG/htm/LG.251.htm>

LOCAL GOVERNMENT CODE

TITLE 8. ACQUISITION, SALE, OR LEASE OF PROPERTY

SUBTITLE A. MUNICIPAL ACQUISITION, SALE, OR LEASE OF PROPERTY

CHAPTER 251. MUNICIPAL RIGHT OF EMINENT DOMAIN

Sec. 251.001. RIGHT OF EMINENT DOMAIN. (a) When the governing body of a municipality considers it necessary, the municipality may exercise the right of eminent domain for a public use to acquire public or private property, whether located inside or outside the municipality, for any of the following uses:

(1) the providing, enlarging, or improving of a municipally owned city hall; police station; jail or other law enforcement detention facility; fire station; library; school or other educational facility; academy; auditorium; hospital; sanatorium; market house; slaughterhouse; warehouse; elevator; railroad terminal; airport; ferry; ferry landing; pier; wharf; dock or other shipping facility; loading or unloading facility; alley, street, or other roadway; park, playground, or other recreational facility; square; water works system, including reservoirs, other water supply sources, watersheds, and water storage, drainage, treatment, distribution, transmission, and emptying facilities; sewage system including sewage collection, drainage, treatment, disposal, and emptying facilities; electric or gas power system; cemetery; and crematory;

(2) the determining of riparian rights relative to the municipal water works;

(3) the straightening or improving of the channel of any stream, branch, or drain;

(4) the straightening, widening, or extending of any alley, street, or other roadway; and

(5) any other municipal public use the governing body considers advisable.

(b) A municipality condemning land under this section may take a fee simple title to the property if the governing body expresses the intention to do so.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by: Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. [18](#)), Sec. 3, eff. September 1, 2011.

Sec. 251.002. PROCEDURE. An exercise of the power of eminent domain granted by this chapter is governed by Chapter [21](#) of the Property Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

[bold emphasis added.]