

Memo

To:

From: Chris McHam

Date: Thursday, December 02, 2010

Re:

You asked that I look into Mr. Smith's issues regarding his properties and leases held in XYZ, Texas.

Mr. Smith has several properties that are affected by the realignment of FM 111. Two lots are being purchased by Mr. Smith under an executory contract or contract for deed that is over $\frac{3}{4}$ completed. The remaining two tracks affected by the realignment appear to be leased by Mr. Smith with an option to purchase at the end of the lease term. The method in which Mr. Smith holds the two sets of lots necessitates a different approach to protecting his interests. Both are discussed separately below.

Contract for Deed

As you know Texas has rather strict laws regarding contracts for deed. The instant contract was signed in 1998 and therefore does not fall under the strictest of regulation, but is still protected.

Specifically the Supreme Court of Texas has held that where legal title does not pass under a contract for sale until delivery of the deed the vendee under the contract, especially where the vendee has gone into possession of the property, holds equitable title from the date of the contract and any increment, advantage or enhancement of the property belongs to him, just as any loss would be borne by him. *City of Austin v. Capitol Livestock Auction Company* 453 S.W.2d 461 at 464.

Therefore, all that should be required to force the State to pay would be filing the contract for deed with the county deed records office and then staying on top of the proceedings.

Lease

When property that is subject to a lease is taken by eminent domain the State is not required to pay any sum to the holder of the lease. Instead the State pays the full value of the property, which is then divided among the interest holders according nature of their prospective claims. This is known as the undivided interest rule. I have not determined the exact method with which the proceeds should be divided between Mr. Smith and Mr. Doe, but I assume that anything they can work out between themselves would be acceptable to the State. If you would like more research on the exact method for splitting the proceeds please let me know.

As for protecting Mr. Smith's rights under the lease, I am afraid there is very little that can be done. The State will pay market value for the property to Mr. Doe who is then required to pay Mr. Smith. Mr. Smith has no right of direct access to the State that I have been able to find.

Chris McHam