



## Just Compensation

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## Just Compensation

**Reference Number:** MTAS-1295

The constitution requires that private property not be taken for public use without payment of just compensation to the property owner <sup>[1]</sup> by the payment of the fair cash value <sup>[2]</sup> or the fair market value of the property on the date of the taking for public use. <sup>[3]</sup> The “fair market value“ of the land is the price that a reasonable buyer would give if he or she were willing to but did not have to purchase and that a willing seller would take if he or she were willing to but did not have to sell the property in question. <sup>[4]</sup> The amount of just compensation to which the property owner is entitled is a question for the jury or court acting as the trier of the facts, <sup>[5]</sup> and the parties have the right to a trial by jury. <sup>[6]</sup> After the condemner’s right to take has been established, the burden of proof shifts to the property owner to show the amount of just compensation to which he or she is entitled for the taking. <sup>[7]</sup>

### Notes:

[1] Tennessee Constitution, Article 1, Section 21.

[2] *Southern Railway Co. v. City of Memphis*, 126 Tenn. 267, 148 S.W. 662 (1912); *Paducah and Memphis Railroad Co. v. Stovall*, 59 Tenn. 1 (1873); *City of Memphis v. Bolton*, 56 Tenn. 508 (1872); *Woodfolk v. Nashville & Chattanooga Railroad Co.*, 32 Tenn. 422 (1852).

[3] *Sevier County v. Waters*, 126 S.W. 3d 913 (Tenn. App. 2003); *Nashville Housing Authority v. Cohen*, 541 S.W.2d 947 (Tenn. 1976); *Alloway v. City of Nashville*, 88 Tenn. 510, 13 S.W. 123 (1890).

[4] *State ex rel. Shaw v. Gorman*, 596 S.W.2d 796 (Tenn. 1980); *Nashville Housing Authority v. Cohen*, supra; *Davidson County Board of Education v. First American National Bank*, 202 Tenn. 9, 301 S.W.2d 905 (1957); *Lewisburg & Northern Railroad Co. v. Hinds*, 134 Tenn. 293, 183 S.W. 985 (1915); *Southern Railway Co. v. City of Memphis*, supra; *Alloway v. City of Nashville*, supra; *Shelby County v. Mid-South Title Co.*, 615 S.W.2d 677 (Tenn. Ct. App. 1980); *Memphis Housing Authority v. Mid-South Title Co.*, 59 Tenn. App. 654, 443 S.W.2d 492 (1968); *Brookside Mills, Inc. v. Moulton*, 55 Tenn. App. 643, 404 S.W.2d 258 (1965).

[5] *Strasser v. City of Nashville*, 207 Tenn. 24, 336 S.W.2d 16 (1960); *Davidson County Board of Education v. First American National Bank*, supra; *State ex rel. Pack v. Hill*, 56 Tenn. App. 410, 408 S.W.2d 213 (1965).

[6] *City of Lafayette v. Hammock*, 1999 WL 346217 (Tenn. App. 1999); *Shook & Fletcher Supply Co. v. City of Nashville*, 47 Tenn. App. 339, 338 S.W.2d 237 (1960).

[7] *Catlett v. State*, 207 Tenn. 1, 336 S.W.2d 8 (1960); *Town of Erin v. Brooks*, 190 Tenn. 407, 230 S.W.2d 397 (1950); *Lebanon and Nashville Turnpike Co. v. Creveling*, 159 Tenn. 147, 17 S.W.2d 22 (1929); *Memphis Housing Authority v. Ryan*, 54 Tenn. App. 557, 393 S.W.2d 3 (1964); *Morgan County v. Jones*, 12 Tenn. App. 197 (1930); *City of Lebanon v. Merryman*, Docket No. 01-A-01-9005-CV-00157 (Tenn. Ct. App. M.S. November 16, 1990). See also T.C.A. § 29-16-118 on the right to open and close the argument before the court and jury.

## Establishing Fair Market Value

**Reference Number:** MTAS-1296

The fair market value of the property taken by the condemner must be established as of the date of the taking. <sup>[8]</sup> Therefore, the enhancement in value or depreciation in value of the property that occurred before the taking in anticipation of the completion of the public improvement may not be considered by the jury. <sup>[9]</sup> This problem usually is encountered when a public improvement is constructed in stages or is enlarged so as to require additional property. If the property increases in value due to its proximity to the construction of the public improvement, and at a later date the condemner decides to acquire additional land for the expansion of the public improvement, the condemner is required to pay for the enhanced value of the property. <sup>[10]</sup>

If, on the other hand, the public project from the beginning contemplated the acquisition of several parcels of property but only one was acquired initially, the owners of the remaining tracts are not entitled to benefit from any appreciation in value resulting from construction of the project. <sup>[11]</sup> This is known as the “scope of the project” rule. The condemner has the burden of proof in establishing that the property in question was within the scope of the project. <sup>[12]</sup> The condemner need not show that the property was actually specified in the original plans for the project so long as it can be established that during the course of the planning or original construction of the project, it became evident that the property in question would be needed for the project. <sup>[13]</sup> To determine whether the appreciation in value resulted from the proposed public improvement, the trial court must make a preliminary determination on the scope of the project, which will serve as the basis for the admissibility of comparable sales that might reflect the appreciation. <sup>[14]</sup>

In establishing the fair market value of the property being taken, the jury may not consider prices previously offered by prospective buyers of the property. <sup>[15]</sup> The price actually paid several years before the condemnation may also be excluded. <sup>[15A]</sup> The prices at which the property was previously offered for sale also cannot be considered in determining the fair market value of the property. <sup>[16]</sup>

Evidence of environmental contamination, as well as the reasonable cost of remediation, is relevant to the issue of valuation and erroneous exclusion of this evidence warrants a new trial. <sup>[16A]</sup>

All capabilities of the property and all legitimate uses for which it is available and reasonably adapted must be considered in determining the fair market value of the property. <sup>[17]</sup> See also T.C.A. § 29-17-1004. Therefore the probable imminent rezoning of the property may be considered in determining the capabilities and uses for the property. <sup>[18]</sup> Present zoning is only one of several factors to be considered in valuing land that is taken. Zoning is not dispositive because zoning changes may be made to reflect the changing needs and circumstances of the community. This same rule applies to deed restrictions. <sup>[18A]</sup> Also, the capability of the property to be developed for one or more particular uses may be shown so long as the proposed uses are not unfeasible or remote in likelihood or in time given the circumstances and location of the property, and so long as these uses are not overemphasized. <sup>[19]</sup>

Speculative value of property in the hands of a future owner cannot be considered. <sup>[20]</sup> The rental value of the property taken may be considered in estimating the fair market value of the property. <sup>[21]</sup> Ordinarily, the profits of a business located on the property are not relevant to establish the fair market value of the property, but there are exceptions to this rule in circumstances where the property has special value to the owner and there is no other evidence upon which to establish the fair market value of the property. <sup>[22]</sup>

The particular use for which the land is most valuable or to which it is presently adapted may be considered by the jury in determining the fair market value of the property, but it may not be the sole basis for that determination. <sup>[23]</sup> Thus, a witness may not base his or her estimate of the value of the property on its value for a single use such as the “highest and best use.” <sup>[24]</sup> See also T.C.A. § 29-17-1004. A witness may testify that the property has a fair market value of a certain amount and may explain on direct and cross examination the particular qualities of the property and the specific uses to which the property may be adapted, but the witness cannot testify that the property has a value of a certain amount for “building lot purposes” or “for the best use.” <sup>[25]</sup> This rule is designed to avoid overvaluation of the property by preventing the jury from giving excessive weight to the value of the property to the condemner. <sup>[26]</sup>

The value of the land to the owner is not ordinarily relevant if there is a market value for the land. <sup>[27]</sup> A partial exception to this rule may exist when the property has a special value to the owner, without possible like value to others who may acquire it. <sup>[28]</sup> Such a special or peculiar value to the owner may be taken into consideration in determining the fair market value of the property. <sup>[29]</sup>

When title to an entire tax parcel is condemned in fee, the total amount of damages may not be less than the latest valuation used by the assessor of property prior to the taking, less any decrease in value since then. The assessor’s valuation may be introduced and admitted into evidence. T.C.A. § 29-16-203(a)(2).

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**Notes:**

[8] *Love v. Smith*, 566 S.W.2d 876 (Tenn. 1978); *Nashville Housing Authority v. Cohen*, *supra*; *State v. Rascoe*, 181 Tenn. 43, 178 S.W.2d 392 (1944); *Southern Railway Co. v. Michaels*, 126 Tenn. 702, 151 S.W. 53 (1912); *State ex rel. Department of Transportation Bureau of Highways v. Brevard*, 545 S.W.2d 431 (Tenn. Ct. App. 1976); *Memphis Housing Authority v. Mid-South Title Co.*, *supra*; *State v. Chumbley*, 27 Tenn. App. 377, 181 S.W.2d 382 (1944).

[9] *Layne v. Speight*, 529 S.W.2d 209 (Tenn. 1975); *State, Department of Highways v. Urban Estates, Inc.*, 225 Tenn. 193, 465 S.W.2d 357 (1971); *City of Memphis v. Bolton*, *supra*; *Woodfolk v. Nashville & Chattanooga Railroad Co.*, *supra*; *State ex rel. Commissioner, Department of Transportation v. Veglio*, 786 S.W.2d 944 (Tenn. Ct. App. 1989); *State ex rel. Department of Transportation v. Harvey*, 680 S.W.2d 792 (Tenn. Ct. App. 1983); *Memphis Housing Authority v. Newton*, 484 S.W.2d 896 (Tenn. Ct. App. 1972); *State, Department of Highways v. Jennings*, 58 Tenn. App. 594, 435 S.W.2d 481 (1968).

[10] *Metropolitan Government of Nashville & Davidson County v. Overnite Transportation Co.*, 919 S.W.2d 598 (Tenn. App. 1995); *Layne v. Speight*, *supra*; *State ex rel. Commissioner, Department of Transportation v. Veglio*, *supra*; *State v. Hodges*, 552 S.W.2d 400 (Tenn. Ct. App. 1977).

[11] *Layne v. Speight*, *supra*; *State ex rel. Department of Transportation v. Harvey*, *supra*; *State v. Hodges*, *supra*.

[12] *Metro. Govt. of Nashville & Davidson Co. v. Overnite Transportation Co.*, *supra*; *Layne v. Speight*, *supra*.

[13] *Metro. Govt. of Nashville & Davidson Co. v. Overnite Transportation Co.*, *supra*; *State v. Hodges*, *supra*.

[14] *Layne v. Speight*, *supra*; *State ex rel. Commissioner, Department of Transportation v. Veglio*, *supra*.

[15] *Vaulx v. Tennessee Central Railroad Co.*, 120 Tenn. 316, 108 S.W. 1142 (1907); *Board of Mayor and Aldermen, Town of Milan v. Thomas*, 27 Tenn. App. 166, 178 S.W.2d 772 (1943).

[15A] *City of Pigeon Forge v. Loveday*, 2003 WL 358704 (Tenn. App. 2003).

[16] *Lewisburg & Northern Railroad Co. v. Hinds*, *supra*.

[16A] *State v. Brandon*, 898 S.W.2d 224 (Tenn. App. 1994).

[17] *Love v. Smith*, *supra*; *Nashville Housing Authority v. Cohen*, *supra*; *Davidson County Board of Education v. First American National Bank*, *supra*; *McKinney v. City of Nashville*, 102 Tenn. 131, 52 S.W. 781 (1899); *Alloway v. City of Nashville*, *supra*; *State ex rel. Commissioner, Department of Transportation v. Headrick*, 667 S.W.2d 70 (Tenn. Ct. App. 1983); *State v. Parkes*, 557 S.W.2d 504 (Tenn. Ct. App. 1977); *State ex rel. Department of Transportation, Bureau of Highways v. Brevard*, *supra*; *Memphis Housing Authority v. Mid-South Title Co.*, *supra*; *Stroud v. State*, 38 Tenn. App. 654, 279 S.W.2d 82 (1955).

[18] *Nashville Housing Authority v. Cohen*, *supra*; *State ex rel. Commissioner, Department of Transportation v. Veglio*, *supra*; *Shelby County v. Mid-South Title Co.*, *supra*.

[18A] *State ex rel. Commissioner of DOT v. Williams*, 828 S.W.2d 397 (Tenn. App. 1991); *State ex rel. Commissioner of DOT v. Cox*, 840 S.W.2d 357 (Tenn. App. 1991).

[19] *State ex rel. Commissioner, Department of Transportation v. Veglio*, *supra*; *Burchfield v. State*, 774 S.W.2d 178 (Tenn. Ct. App. 1988); *State v. Parkes*, *supra*.

[20] *Southern Railway Co. v. City of Memphis*, *supra*.

[21] *Union Railway Co. v. Hunton*, 114 Tenn. 609, 88 S.W. 182 (1905); *McKinney v. City of Nashville*, *supra*; *State v. Parkes*, *supra*; *State, Department of Highways and Public Works v. Texaco Inc.*, 49 Tenn. App. 278, 354 S.W.2d 792 (1961).

[22] *Shelby County v. Barden*, 527 S.W.2d 124 (Tenn. 1974); *Lebanon and Nashville Turnpike Co. v. Creveling*, *supra*. See also *County of Greene v. Cooper*, Docket No. 130 (Tenn. Ct. App. E.S. February 12, 1990).

[23] *State ex rel. Commissioner of DOT v. Cox*, 840 S.W.2d 357 (Tenn. App. 1991); *Love v. Smith*, *supra*; *State v. Parkes*, *supra*; *State ex rel. Department of Transportation, Bureau of Highways v. Brevard*, *supra*; *Stroud v. State*, *supra*.

[24] *Layne v. Speight*, *supra*; *Davidson County Board of Education v. First American National Bank*, *supra*; *Alloway v. City of Nashville*, *supra*; *Memphis Housing Authority v. Mid-South Title Co.*, *supra*.

[25] *City of Cookeville, Tennessee v. Stiles*, 1995 WL 571851 (Tenn. App. 1995); *Davidson County Board of Education v. First American National Bank*, *supra*; *Memphis Housing Authority v. Mid-South Title Co.*, *supra*.

[26] *Davidson County Board of Education v. First American National Bank*, *supra*; *Memphis Housing Authority v. Mid-South Title Co.*, *supra*.

[27] *State ex rel. Smith v. Livingston Limestone Co., Inc.*, 547 S.W.2d 942 (Tenn. 1977).

[28] *Evans v. Wheeler*, 209 Tenn. 40, 348 S.W.2d 500 (1961); *Lebanon and Nashville Turnpike Co. v. Creveling*, *supra*; *Southern Railway Co. v. City of Memphis*, *supra*.

[29] *Lebanon and Nashville Turnpike Co. v. Creveling*, *supra*; *Southern Railway Co. v. City of Memphis*, *supra*; *State ex rel. Department of Transportation, Bureau of Highways v. Brevard*, *supra*; *County of Greene v. Cooper*, *supra*.

## Comparable Sales

**Reference Number:** MTAS-1297

One method of establishing the fair market value of the property being taken is the introduction of sales of similar properties. [30] Whether a sale is sufficiently comparable to be admissible is a preliminary question for the trial court. [31] However, the trial court's discretion is not unlimited, and the appellate courts will reverse the decision of the trial court in the appropriate circumstances. [32]

For a sale to be sufficiently comparable to be admissible, it must have been a voluntary sale, or an arm's length transaction, and cannot have been the result of a compromise. [33] Therefore sales to a condemner, [34] or under the threat of condemnation, [35] are inadmissible, as are sales of property upon which are placed unusually stringent restrictions on the use of the property. [36] Sales that have been affected or influenced by the public project for which the property is being acquired will also be inadmissible. [37]

If the sale was an arm's length transaction, the trial court must next consider whether the properties are similar in nature and near the same location and that the time of the sale was at or about the time of the taking. If the sale was an arm's length transaction, the trial court must next consider whether the properties are similar in nature and near the same location and that the time of the sale was at or about the time of the taking. [38] In making this determination, the trial court will consider the size, [39] the time of the sale, [40] changes in conditions since the time of the sale, [41] the current zoning or any imminent rezoning, [42] the location [43] and vicinity, proximity to existing improvements, improvements existing on the properties, terrain or other geographic features, and all available uses to which the properties are adapted. [44] The sales do not have to be exactly comparable in every respect, and there is no general rule on the degree of similarity required. [45]

After the trial court determines that a sale is comparable and may be admitted into evidence, the weight to be given to the sale is a question for the jury. [46] If a particular sale was made under exceptional circumstances, these circumstances can be shown and the jury can determine the probative force of the sale. [47]

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### Notes:

[30] *Memphis Housing Authority v. Peabody Garage Co.*, 505 S.W.2d 719 (Tenn. 1974); *Lewisburg & Northern Railroad Co. v. Hinds*, *supra*; *Union Railway Co. v. Hunton*, *supra*; *Memphis Housing Authority v. Newton*, *supra*; *Edgington v. Kansas City, Memphis & Birmingham Railroad Co.*, 10 Tenn. App. 685 (1929).

[31] *Layne v. Speight*, *supra*; *Memphis Housing Authority v. Peabody Garage Co.*, *supra*; *Lewisburg & Northern Railroad Co. v. Hinds*, *supra*; *Smith County v. Eatherly*, 820 S.W.2d 366 (Tenn. Ct. App. 1991); *State ex rel. Commissioner, Department of Transportation v. Veglio*, *supra*; *Shelby County v. Stallcup*, 594 S.W.2d 392 (Tenn. Ct. App. 1979); *Memphis Housing Authority v. Newton*, *supra*; *Maryville Housing Authority v. Ramsey*, 484 S.W.2d 73 (Tenn. Ct. App. 1972); *Memphis Housing Authority v. Ryan*, *supra*.

[32] *Memphis Housing Authority v. Peabody Garage Co.*, *supra*; *Lewisburg & Northern Railroad Co. v. Hinds*, *supra*; *Union Railway Co. v. Hunton*, *supra*; *Maryville Housing Authority v. Ramsey*, *supra*.

[33] *Memphis Housing Authority v. Peabody Garage Co.*, *supra*; *Lewisburg & Northern Railroad Co. v. Hinds*, *supra*; *Croate v. Memphis Railroad Terminal Co.*, 120 Tenn. 525, 111 S.W. 923 (1908); *Memphis Housing Authority v. Newton*, *supra*; *Memphis Housing Authority v. Ryan*, *supra*.

[34] *Croate v. Memphis Railroad Terminal Co.*, *supra*.

[35] *Memphis Housing Authority v. Newton*, *supra*.

[36] *Memphis Housing Authority v. Ryan*, *supra*.

[37] *Layne v. Speight*, *supra*; *Memphis Housing Authority v. Newton*, *supra*; *State, Department of Highways v. Jennings*, *supra*.

[38] *Lewisburg & Northern Railroad Co. v. Hinds*, *supra*; *Union Railway Co. v. Hunton*, *supra*; *Memphis Housing Authority v. Newton*, *supra*; *Maryville Housing Authority v. Ramsey*, *supra*; *Memphis Housing Authority v. Ryan*, *supra*; *Edgington v. Kansas City, Memphis & Birmingham Railroad Co.*, *supra*.

[39] *Memphis Housing Authority v. Ryan*, *supra*.

[40] *Maryville Housing Authority v. Ramsey*, *supra*; *Edgington v. Kansas City, Memphis & Birmingham Railroad Co.*, *supra*.

[41] *Lewisburg & Northern Railroad Co. v. Hinds*, *supra*.

[42] *Shelby County v. Mid-South Title Co., Inc.*, *supra*.

[43] *Memphis Housing Authority v. Mid-South Title Co.*, *supra*.

[44] Sackman and Rohan, 5 Nichols' The Law of Eminent Domain, § 21.31 (Rev. 3d Ed. 1991).

[45] *Maryville Housing Authority v. Ramsey*, *supra*; *Memphis Housing Authority v. Ryan*, *supra*.

[46] *Shelby County v. Mid-South Title Co., Inc.*, *supra*; *Memphis Housing Authority v. Newton*, *supra*.

[47] *Union Railway Co. v. Hunton*, *supra*; *Memphis Housing Authority v. Newton*, *supra*.

## Options as to Value

**Reference Number:** MTAS-1298

In addition to using comparable sales to determine the fair market value of the property taken by the condemner, and any incidental damages and incidental benefits to the remainder of the property, lay<sup>[48]</sup> and expert witnesses<sup>[49]</sup> can give opinion evidence on the value of the property being taken. Thus, the owner can give an opinion as to the fair market value of the property, but that opinion will be given little weight when founded on pure speculation.<sup>[50]</sup>

The trial court has wide discretion in the admission of expert testimony on the value of real property.<sup>[51]</sup> Nevertheless, the court cannot permit an expert to give an opinion as to the value of real property for a particular purpose, but should require the expert to base his or her opinion on the fair market value for all legitimate uses for which the property is available and reasonably adapted.<sup>[52]</sup>

The expert witness may state his or her opinion as to the value of the property and the basis on which he or she arrived at that opinion.<sup>[53]</sup> The answers given by the expert on cross examination may be considered by the court and jury in evaluating the opinion of the expert witness.<sup>[54]</sup>

Neither the court nor the jury is bound by the opinion of the expert witness.<sup>[55]</sup>

**Notes:**

[48] *State ex rel. Smith v. Livingston Limestone Co.*, *supra*; *Airline Construction, Inc. v. Barr*, 807 S.W.2d 247 (Tenn. Ct. App. 1990); *Hill v. U.S. Life Title Insurance Co. of New York*, 731 S.W.2d 910 (Tenn. Ct. App. 1986); *State ex rel. Moulton v. Blake*, 49 Tenn. App. 624, 357 S.W.2d 836 (1961).

[49] *Memphis Housing Authority v. Mid-South Title Co.*, *supra*.

[50] *Airline Construction, Inc. v. Barr*, *supra*.

[51] *Smith County v. Eatherly*, 820 S.W.2d 366 (Tenn. App. 1991); *State v. Rascoe*, *supra*; *State ex rel. Commissioner, Department of Transportation v. Veglio*, *supra*; *State ex rel. Moulton v. Blake*, *supra*.

[52] *Love v. Smith* *supra*; *Davidson County Board of Education v. First American National Bank*, *supra*; *Alloway v. City of Nashville*, *supra*; *Memphis Housing Authority v. Mid-South Title Co.*, *supra*.

[53] *State ex rel. Department of Transportation v. Brevard*, *supra*.

[54] *State ex rel. Department of Transportation v. Brevard*, *supra*.

[55] *State ex rel. Department of Transportation v. Brevard*, *supra*; *State ex rel. Moulton v. Blake*, *supra*.

## Incidental Damages

**Reference Number:** MTAS-1299

When the condemner takes a part but not all of a parcel of property, the condemnation statutes permit the property owner to recover incidental damages for any injury to the remainder resulting from the taking. T.C.A. §§ 29-16-203; 29-17-910. The payment of incidental damages is not required by the Tennessee Constitution, but rather is provided by statute.<sup>[56]</sup> Incidental damages are properly measured by the decline in the fair market value of the remainder of the property by virtue of the taking.<sup>[57]</sup> The landowner in an eminent domain proceeding is not entitled to a jury trial on what kinds of damages are to be included in an incidental damages award.<sup>[57A]</sup>

The award of incidental damages is limited to property owners whose property is actually taken by the condemner.<sup>[58]</sup> Adjacent property owners whose land is not condemned but is nevertheless adversely affected by construction of the public improvement cannot recover incidental damages under these statutes.<sup>[59]</sup>

Where a portion of the property has been taken, the property owner may recover incidental damages only upon a showing of some specific injury to the remainder, or its value, which is the direct result of the taking.<sup>[60]</sup> A railroad can recover neither depreciation costs nor damages for increased exposure to liability from additional crossings required by a taking for a street crossing a railroad right of way.<sup>[60A]</sup> The injury must be more than an inconvenience shared by all members of the public; rather, it must specifically affect the remainder of the property that was taken.<sup>[61]</sup> This does not result in an injury becoming non-compensable merely because other property owners are similarly affected.<sup>[62]</sup> If the property owner can establish that exceptional circumstances attend the taking and use of the property by the condemner that result in a special injury to the remainder of the property, the property owner may recover incidental damages even if the special injury is common to all property in the area.<sup>[63]</sup>

Whether flooding to the remainder of a land owner's property due to road construction was incidental damage and whether the land owner was stopped from recovering for inverse condemnation under a deed provision stating that compensation paid by the city included "payment for any and all incidental damages to the remainder compensable under eminent domain" was an issue for the jury.<sup>[63A]</sup>

In addition to diminution in the fair market value of the remainder, the condemnation statutes include as incidental damages:

- Reasonable expenses incurred for removing, relocating, and reinstalling furniture, household belongings, fixtures, equipment, machinery, or stock in trade to another location not more than 50 miles distant;
- The costs of any necessary disconnection, dismounting, or disassembling and loading and drayage of the chattels;

- Recording fees, transfer taxes, and other similar expenses incidental to conveying the property to the condemner;
- Mortgage pre-payment penalties; and
- The proration of real property taxes. T.C.A. § 29-16-203.

The property owner can recover only moving expenses that have been actually incurred at the date of trial or that can be shown to be reasonably necessary in the future and can be accurately estimated by witnesses. <sup>[64]</sup> The landowner is entitled to an average hourly wage for labor costs related to relocation but not the “burden rate” added for the cost of utilities, health insurance, and retirement. <sup>[64A]</sup> These incidental damages cannot be recovered if the chattels to be moved are destroyed by fire before moving. <sup>[65]</sup> Also, moving or relocation expenses cannot be recovered for the removal of equipment, fixtures, or other chattels that were not located on the land taken by the condemner. <sup>[66]</sup>

Although not specifically set out by statute, the following have also been found to constitute incidental damages to the extent they reduced the fair market value of the remainder of the property:

- Noise, soot, and inconvenience created by the operation of a railroad; <sup>[67]</sup>
- Obstruction of view by a highway embankment; <sup>[68]</sup>
- Reasonable apprehension of danger from the public improvement; <sup>[69]</sup>
- Changes in drainage; <sup>[70]</sup>
- Loss of access to an abutting street; <sup>[71]</sup> and
- A decrease in business. <sup>[71A]</sup>

**Notes:**

[56] *Lewisburg & Northern Railroad Co. v. Hinds, supra; Vaulx v. Tennessee Central Railroad, supra; Wray v. Knoxville, LaFollette & Jellico Railroad Co.*, 113 Tenn. 544, 82 S.W. 471 (1904); *Paducah and Memphis Railroad Co. v. Stovall, supra; Woodfolk v. Nashville & Chattanooga Railroad Co., supra; Knoxville Housing Authority, Inc. v. Bush*, 56 Tenn. App. 464, 408 S.W.2d 408 (1966).

[57] *Tennessee Dept. of Transportation v. Wheeler*, 2002 WL 31302889 (Tenn. App. 2002); *City of Memphis v. Hood*, 208 Tenn. 319, 345 S.W.2d 887 (1961); *Shelby County v. Kingsway Greens of America, Inc.*, 706 S.W.2d 634 (Tenn. Ct. App. 1985); *State v. Parkes, supra*.

[57A] *Metropolitan Development and Housing Agency v. Trinity Marine Nashville, Inc.*, 40 S.W.3d 73 (Tenn. App. 2000).

[58] *Ledbetter v. Beach*, 220 Tenn. 623, 421 S.W.2d 814 (1967); *State v. Rascoe, supra; Lewisburg & Northern Railroad Co. v. Hinds, supra*.

[59] *Ledbetter v. Beach, supra; State v. Rascoe, supra; Lewisburg & Northern Railroad Co. v. Hinds, supra*.

[60] *Ledbetter v. Beach, supra; State v. Rascoe, supra; Lewisburg & Northern Railroad v. Hinds, supra*.

[60A] *Town of Collierville v. Norfolk Southern Railway Co.*, 2003 WL 21026936 (Tenn. App. 2003).

[61] *State v. Rascoe, supra; Lewisburg & Northern Railroad Co. v. Dudley*, 161 Tenn. 546, 30 S.W.2d 278 (1930); *Lewisburg & Northern Railroad Co. v. Hinds, supra*.

[62] *State v. Rascoe, supra; Lewisburg & Northern Railroad Co. v. Dudley, supra*.

[63] *State v. Rascoe, supra; Lewisburg & Northern Railroad Co. v. Dudley, supra; Illinois Central Railroad Co. v. Moriarity*, 135 Tenn. 446, 186 S.W. 1053 (1916); *Alloway v. City of Nashville, supra*.

[63A] *Leonard v. Knox County*, 146 S.W. 3d 589 (Tenn. App. 2004).

[64] *State ex rel. Smith v. Overstreet*, 533 S.W.2d 283 (Tenn. 1976); *Memphis Housing Authority v. Memphis Steam Laundry-Cleaner, Inc.*, 225 Tenn. 46, 463 S.W.2d 677 (1971).

[64A] *Metropolitan Development and Housing Agency v. Trinity Marine Nashville, Inc.*, 40 S.W.3d 73 (Tenn. App. 2000).

[65] *State ex rel. Commissioner of Transportation v. Edmonds*, 614 S.W.2d 381 (Tenn. Ct. App. 1981).

[66] *Commissioner of Department of Transportation v. Ben Lomand Telephone Co-Op, Inc.*, 617 S.W.2d 146 (Tenn. Ct. App. 1981).

[67] *Lewisburg & Northern Railroad Co. v. Hinds*, *supra*; But see *Lewisburg & Northern Railroad Co. v. Dudley*, *supra*.

[68] *State ex rel. Commissioner, Department of Transportation v. Veglio*, *supra*; *Pack v. Boyer*, 59 Tenn. App. 141, 438 S.W.2d 754 (1968).

[69] *State v. Rascoe*, *supra*; *Alloway v. City of Nashville*, *supra*.

[70] *State v. Rascoe*, *supra*.

[71] *State v. Rascoe*, *supra*; *Lewisburg & Northern Railroad Co. v. Hinds*, *supra*; *Vaulx v. Tennessee Central Railroad Co.*, *supra*; *Union Railway Co. v. Raine*, 114 Tenn. 569, 86 S.W. 857 (1905); *Shelby County v. Kingsway Greens of America, Inc.*, *supra*; *Speight v. Lockhart*, 524 S.W.2d 249 (Tenn. Ct. App. 1975); *Speight v. Gibbs*, 486 S.W.2d 922 (Tenn. Ct. App. 1972). See Inverse Condemnation [1] on loss of access as a taking as opposed to merely incidental damages.

[71A] *State ex rel. Commissioner of the DOT v. Goodwin*, 2003 WL 21026937 (Tenn. App. 2003).

## Incidental Benefits

**Reference Number:** MTAS-1300

The condemner is entitled to have the amount of incidental damages reduced by the amount of incidental benefits that accrue to the remainder as the result of the construction of the public improvement. T.C.A. §§ 29-16-203; 29-17-910. Like incidental damages, incidental benefits are determined independently of the just compensation required by the Tennessee Constitution.<sup>[72]</sup> Therefore, incidental benefits cannot be considered in determining the amount of just compensation to which the property owner is entitled for the portion of the property taken by the condemner.<sup>[73]</sup>

Incidental benefits include only those benefits special to the remainder of the property owner's property as opposed to the general benefits of a public improvement shared by the public at large.<sup>[74]</sup> However, incidental benefits are not prevented from being special by the fact that other properties abutting the public improvement are similarly benefitted where those benefits are not common to all the properties in the vicinity.<sup>[75]</sup> Thus, increased accessibility to the property<sup>[76]</sup> or easy access parking<sup>[77]</sup> may still constitute incidental benefits even though property owners on the same street have also gained better access or parking. On the other hand, a general increase in property value experienced by all area residents as a result of street improvements does not constitute an incidental benefit that may be set off against incidental damages.<sup>[78]</sup>

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### Notes:

[72] *Wray v. Knoxville, LaFollette & Jellico Railroad Co.*, *supra*; *Paducah and Memphis Railroad Co. v. Stovall*, *supra*; *East Tennessee and Virginia Railroad Co. v. Love*, 40 Tenn. 63 (1859).

[73] *Wray v. Knoxville, LaFollette & Jellico Railroad Co.*, *supra*; *City of Memphis v. Bolton*, *supra*.

[74] *Evans v. Wheeler*, *supra*; *Newberry v. Hamblen County*, 157 Tenn. 491, 9 S.W.2d 700 (1928); *Faulkner v. City of Nashville*, 154 Tenn. 145, 285 S.W. 39 (1926); *Maryville Housing Authority v. Williams*, 63 Tenn. App. 673, 478 S.W.2d 66 (1971); *Department of Highways & Public Works v. Templeton*, 5 Tenn. App. 485 (1927).

[75] *Newberry v. Hamblen County*, *supra*; *Faulkner v. City of Nashville*, *supra*; *Brookside Mills, Inc. v. Moulton*, *supra*; *Maryville Housing Authority v. Williams*, *supra*; *Department of Highways & Public Works v. Templeton*, *supra*.

[76] *Newberry v. Hamblen County*, *supra*; *Faulkner v. City of Nashville*, *supra*; *Brookside Mills, Inc. v. Moulton*, *supra*; *Department of Highways & Public Works v. Templeton*, *supra*.

[77] *Maryville Housing Authority v. Williams*, *supra*.

[78] *City of Knoxville v. Barton*, 128 Tenn. 177, 159 S.W. 837 (1913); *Paducah and Memphis Railroad Co. v. Stovall*, *supra*.

## Procedural Issues (Just Compensation)

**Reference Number:** MTAS-1301

### ***Procedural Issues (Just Compensation)***

The general rule is that incidental damages and incidental benefits are to be estimated as of the date of the taking. <sup>[79]</sup> However, since incidental damages and incidental benefits are premised on the impact to the remainder of the property resulting from construction of the public improvement, proof showing the damage or benefits occurring after the taking has been permitted in instances where the trial occurs long after the public improvement has been completed<sup>[80]</sup>. Property owners whose property is being acquired for street, road, highway, freeway, or parkway purposes are entitled to obtain a continuance of the condemnation case until the public improvement is completed to eliminate uncertainty as to the incidental damages or incidental benefits that may occur as the result of the construction. T.C.A. § 29-17-1001. If the condemnation case is tried before the project is completed, maps, drawings, and photographs of the land may be introduced at trial as long as the evidence would not be misleading. T.C.A. § 29-17-1002.

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#### **Notes:**

[79] *State v. Rascoe, supra*; But see *City of Parsons v. Goff*, (Tenn. Ct. App. W.S. August 4, 1982); *Smith, Commissioner v. Paducah*, (Tenn. Ct. App. W.S. August 20 1976).

[80] *State v. Rascoe, supra*; *City of Parsons v. Goff, supra*; *Smith, Commissioner v. Paducah, supra*.

## Interest (Just Compensation)

**Reference Number:** MTAS-1302

Interest at two percentage points greater than the prime loan rate established, as of the date of the taking, by the Federal Reserve System of the United States must be paid by the condemner on any judgment obtained by the property owner. T.C.A. § 29-17-913. This interest is allowed from the date of the taking on the amount in excess of the amount deposited with the clerk of the court. <sup>[81]</sup>  
Post-judgment interest accrues at the rate of 10 percent per year. <sup>[82]</sup>

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#### **Notes:**

[81] *State, Department of Highways v. Urban Estates, Inc., supra*; *Sullivan County v. Pope*, 223 Tenn. 575, 448 S.W.2d 666 (1969); *Snowden v. Shelby County*, 118 Tenn. 725, 102 S.W. 90 (1907); *State v. Harr*, 24 Tenn. App. 298, 143 S.W.2d 893 (1940).

[82] *Sevier Co. v. Waters*, 126 S.W. 3d 913 (Tenn. App. 2003).

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#### **Links:**

[1] <https://www.mtas.tennessee.edu/reference/inverse-condemnation>

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