



Incidental Benefits

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Incidental Benefits

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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. ^[72] 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. ^[73]

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. ^[74] 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. ^[75] Thus, increased accessibility to the property ^[76] or easy access parking ^[77] 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. ^[78]

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*.

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