

NO. 13-0053

IN THE SUPREME COURT OF TEXAS

**THE STATE OF TEXAS,
Petitioner**

V.

**CLEAR CHANNEL OUTDOOR, INC.,
Respondents**

**On Petition for Review from the First Court of Appeals in Houston
Cause No. 01-11-00197-CV**

**BRIEF OF AMICI CURIAE IN SUPPORT OF RESPONDENT,
CLEAR CHANNEL OUTDOOR, INC.'S BRIEF ON THE MERITS**

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STATEMENT REGARDING SOURCE OF FEE

The fee for the preparation of this Amici Curiae Brief is being paid by the Outdoor Advertising Association of Texas.

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TO THE HONORABLE SUPREME COURT OF TEXAS:

Amici Curiae, the Outdoor Advertising Association of Texas (“OAAT”) and the Outdoor Advertising Association of America (“OAAA”) submit this brief in support of Respondent, Clear Channel Outdoor, Inc.’s Brief on the Merits and in response to the State’s Brief on the Merits and the Brief of Amici Curiae in Support of the State’s Petition for Review (“Government Amici”).

AMICI’S INTEREST IN THIS PROCEEDING

OAAT is a statewide advocacy association whose members are owners, operators and suppliers in the outdoor advertising industry. OAAT members operate over 60% of the outdoor advertising faces across the state, with the vast majority of the structures' use on private property established by leasehold rights. The association strives to create a business and legal environment that is accommodating to the continued use of outdoor advertising as a primary means of business advertising in this state. With the reliance upon contractual relationships with private landowners to maintain these property interests, decisions of this Court addressing the property interests of lessors and lessees materially affects the property rights of OAAT’s members, and the outdoor advertising industry as a whole.

The Outdoor Advertising Association of America (OAAA) is the lead trade association representing the outdoor advertising industry. The OAAA was founded

in 1891. It has nearly 1,100 member companies and represents more than 90% of industry revenues. The headquarters of the Association is in Washington, D.C. One of OAAA's purposes is to protect the interests of the outdoor advertising industry in the United States. The OAAA urges no special treatment for the industry and no exceptions to established Texas law. Its goal in this case is to simply insure that the owners of outdoor advertising signs are guaranteed the same constitutional guarantee of just compensation as any other property owner and are allowed to use the same methods of valuation as the owners of other income producing properties.

SUMMARY OF THE ARGUMENT

The Texas Constitution guarantees that the owners of private property taken for public use shall receive adequate compensation for their property. The laws and rules that have developed to implement the constitutional mandate are well established, including the rule that improvements on the land are considered as part of the realty in determining compensation to the owner. It is equally established that adequate compensation most often is based on the fair market value of the property taken, that is, the amount a willing buyer would actually pay to a willing seller. The appraisal method that best measures that value for an income-producing property is usually the income-capitalization approach. Contrary to the State's and Government Amici's arguments, there are no factual or legal

reasons to apply different rules to billboard structures than to other types of income producing property. In recognition of this fact, the First Court of Appeals correctly analyzed and applied the substantive and procedural law to the facts of this case.

ARGUMENT & AUTHORITIES

The State and Government Amici represent that the opinion of the First Court of Appeals is a radical departure from Texas law. Nothing could be further from the truth. The truth is that the First Court of Appeals recognized that the Trial Court correctly applied the rules and principles of Texas law of eminent domain applicable to the circumstances of this case. Indeed, it is the State and Government Amici that seek to carve-out an exception from these established rules and principles. The OAAT and OAAA are asking this Court to reject this attempt; thereby, affirming that the protection of the Texas Constitution cannot be applied discriminately as the State chooses.

I. Under Texas law, billboards are property for which adequate compensation must be paid.

The State and Government Amici argue that Clear Channel is not owed compensation because the Signs Structures are merely Clear Channel's non-compensable personal property. They are, however, attempting to make billboard structures an exception to Texas law, which unequivocally holds that "improvements situated upon the portion of the land taken are to be considered as a part of the realty." *State v. Carpenter*, 89 S.W.2d 979, 980 (Tex. 1936). There is

no basis to contend a billboard is not an improvement, and presumably even the State would concede that a billboard, if an improvement to realty, is compensable. Texas law has consistently held billboard structures are sufficiently annexed to the property on which they are located to be considered realty.

A. A billboard is a compensable improvement annexed to real property.

As can be seen in the pictures below¹, a typical billboard is a self-supporting structure likely “to have a concrete foundation weighing several tons, one or more steel supports buried deep in the ground, and a welded superstructure that must meet stringent building code standards to withstand high wind loads.” 8A Nichols on Eminent Domain, § G23.01 (Matthew Bender 2013).



Thus, the engineering and construction of a sign structure necessarily involves the same considerations as any other development of real property. As a result,

¹¹ Photos are courtesy of TWI Construction (www.twiconstruction.com)

multiple courts of appeal in Texas have characterized a sign structure as a permanent improvement because it is sufficiently annexed to the real property given that: (i) a sign structure is significant in size, (ii) the construction of a sign structure is a substantial operation involving the use of heavy equipment, (iii) the foundation of the sign structure is buried deep in the ground, (iv) building permits from the city are needed to construct a sign structure, (v) a sign structure is built to comply with applicable local construction ordinances and regulations (vi) the removal of the sign structure would require heavy construction equipment, such as cranes, and it takes a significant toll on the land, (vii) the removal of the sign structure essentially destroys the sign structure and (viii) the sign structure is intended to be on the land permanently and is built to last forever. *See State v. Moore Outdoor Properties, L.P.*, 416 S.W.3d 237, 244-46 (Tex. App.—El Paso 2013, pet. filed); *State v. Clear Channel Outdoor, Inc.*, 274 S.W.3d 162, 165-66 (Tex. App.—Houston [1st Dist.] 2008, no pet.); *Harris County v. Clear Channel Outdoor, Inc.*, No. 14-07-00226-CV, 2008 Tex. App. LEXIS 3054, *13-14 (Tex. App.—Houston [14th Dist.] 2008, no pet.); *Harris County Flood Control Dist. v. Roberts*, 252 S.W.3d 667, 670-72 (Tex. App.—Houston [14th Dist.] 2008, no pet.); *W.W. Laubach Trust v. The Georgetown Corp.*, 80 S.W.3d 149, 159 (Tex.App.—Austin, 2002, pet. denied); *Connelly v. Art & Gary, Inc.*, 630 S.W.2d 514, 515-16 (Tex. App.—Corpus Christi 1982, writ ref'd n.r.e.); *Stevenson v. Clausel*, 437

S.W.2d 404, 406-07 (Tex.Civ.App.—Houston [14th Dist.] 1969, no writ). Since a sign structure is an improvement to real property that is sufficiently annexed to the land, Texas courts have accordingly held that a sign structure is a compensable real property interest in a condemnation suit. *Moore*, 416 S.W.3d at 245; *Clear Channel*, 274 S.W.3d at 165-66; *Clear Channel*, 2008 WL 1892744 at *4; *Roberts*, 252 S.W.3d at 670-72, n. 6.

The State and Government Amici, however, fail to acknowledge that Texas courts have unequivocally held that improvements, such as Clear Channel's Sign Structures, are considered part of the realty taken in a condemnation case. *See State v. Carpenter*, 89 S.W.2d 979, 980 (Tex. 1936). Rather than address the merits of the Texas cases recognizing that a sign structure is a permanent improvement annexed to real property, the State and Government Amici either completely ignore the cases (*W.W. Laubach Trust v. The Georgetown Corp.*; *Connelly v. Art & Gary, Inc.*; and *Stevenson v. Clausel*), or argue that there is a conflict in the reasoning among the cases holding that sign structures are compensable improvements in condemnation proceedings (*State v. Moore Outdoor Properties*; *State v. Clear Channel Outdoor, Inc.*; *Harris County v. Clear Channel Outdoor, Inc.*; and *Harris County Flood Control Dist. v. Roberts*).

In the present case, the State argues that the First Court of Appeals created a split with the other Courts of Appeal by rejecting the application of the test in

Logan v. Mullis, 686 S.W.2d 605 (Tex. 1985), to the condemnation context based on the State's misunderstanding of the holdings in *Almota Farmers Elevator & Warehouse Co. v. U.S.*, 409 U.S. 470 (1973) and *Brazos River Conservation & Reclamation Dist. v. Adkisson*, 173 S.W.2d 294 (Tex. Civ. App.—Eastland 1943, writ ref'd). See State's Brief at 16-25. Although these Courts of Appeals took different approaches regarding the applicability of the fixture analysis set forth in *Logan v. Mullis* to the condemnation context, the courts were in agreement that the sign structure in each case was sufficiently attached to the real property to be a compensable improvement in condemnation. *Moore*, 416 S.W.3d at 244-45; *Clear Channel*, 274 S.W.3d at 165-66; *Clear Channel*, 2008 WL 1892744 at *4; *Roberts*, 252 S.W.3d at 670-72. Despite the State's protestations, these cases rightly decided that sign structures, such as Clear Channel's Sign Structures, are compensable improvements to real property due to the mode and sufficiency of its annexation to the real property. *Id.* Thus, the State's alleged conflict between the courts of appeal is illusory and without determinative effect in this case.

Furthermore, the only Texas case in which a court did not consider a sign structure an improvement to real property in the condemnation setting is *City of Argyle v. Pierce*, 258 S.W.3d 674, 683-85 (Tex. App.—Ft. Worth 2008, petition dismissed). *Pierce*, however, is a plea to the jurisdiction case that is distinguishable since it only addresses whether an outdoor advertising company pled facts

sufficient to allege an inverse condemnation claim to defeat the city's claim of sovereign immunity. The Court stated that the outdoor advertising company did not allege any facts or provide any evidence of the sign structure's permanent nature or why the sign structure was "property" that was taken. *Id.* at 684. Thus, the *Pierce* court held that it could not assume the sign structure was an improvement and a compensable property interest in the absence of any evidence showing that to be the case. In contrast to the lack of facts pled in *Pierce*, the court cited to *Stevenson v. Clausel* as an example of a case in which sufficient evidence was pled to enable the court to hold that a sign structure was an improvement. *Id.* at 684, n. 7. Accordingly, the opinion in *Pierce* actually confirms that a sign structure can be an improvement to real property in a condemnation case, so long as sufficient facts and evidence are pled.

B. The right to remove or relocate a billboard is irrelevant to whether it is a compensable improvement annexed to real property.

The State and Government Amici argue that Clear Channel's contractual right to remove the billboard at the end of the lease transformed the billboard into "personal property" for which compensation was not required. Following the State's argument, however, would present the sign owner with a proverbial Hobson's Choice. If on the one hand, the sign owner consents in the lease to the billboard becoming part of the real property once it is annexed to the real property,

then the landowner “will reap a windfall as the one compensated for the sign when the land is condemned,” despite the fact the landowner has no rights to possess the billboard during the term of the lease. 8A Nichols on Eminent Domain, § G23.03 n. 90 (Matthew Bender 2013). If on the other hand, the sign owner retains ownership of the sign and the right to remove the sign despite its attachment to the real property, the sign owner runs the risk that the billboard may be considered personal property for which it might not receive compensation when the land is condemned. *Id.* Moreover, if the sign owner is also the owner of either the underlying real property or a perpetual easement on which the billboard stood, then the State and the Government Amici cannot contend that a billboard is non-compensable personal property since there is no right of removal at issue. *See Roberts*, 252 S.W.3d at 670-71; *Adkisson*, 173 S.W.2d at 299. Thus, there is no discernible justification for denying compensation when the sign owner is a lessee with a right of removal as the State and Government Amici contend, but awarding compensation when the sign owner is a landowner or easement owner. 8A Nichols on Eminent Domain, § G23.03.

For this reason, Texas courts have consistently held that an agreement for removal made by the parties at another time, for another purpose, and affecting no interests but their own, must be rejected in the condemnation context. *Moore*, 416 S.W.3d at 245; *Clear Channel*, 274 S.W.3d at 165; *Harris County v. Clear*

Channel Outdoor, Inc., No. 14-07-00226-CV, 2008 Tex. App. LEXIS at *11-12 (Tex. App.—Houston [14th Dist.] 2008, no pet.); *Harris County Flood Control Dist. v. Roberts*, 252 S.W.3d 667, 672-73 (Tex. App.—Houston [14th Dist.] 2008, no pet.); *Board of Regents v. Fischer*, 498 S.W.2d 230, 232-33 (Tex. Civ. App.—Austin 1973, writ ref’d n.r.e.); *Texas Pig Stands, Inc. v. Krueger*, 441 S.W.2d 940, 944-45 (Tex. Civ. App.—San Antonio 1969, writ ref’d n.r.e.); *Adkisson*, 173 S.W.2d at 298-300. A court is “not concerned here with the right of parties to arrange for the removal of the improvements from the condemned land by mutual agreement. Those were matters that lay entirely within the discretion of the parties prior to and independent of the judgment of the court.” *State v. Miller*, 92 S.W.2d 1073 (Tex. Civ. App.—Waco 1936, no writ). Thus, an agreement “between landlord and tenant that the tenant shall have the right to remove improvements placed upon the premises by him shall not inure to the benefit of the condemnor.” *Adkisson*, 173 S.W.2d at 300. The State and the Government Amici have cited no authority from Texas holding to the contrary. See State’s Brief at 19-25; Brief of Amici Curiae at 16-18.

Similarly, the United States Supreme Court has recognized that the lessee’s right to remove fixtures, structures, or improvement exists entirely for the protection of the lessee, and cannot be invoked by the condemnor against the lessee. *Almota Farmers Elevator & Warehouse, Co. v. US*, 409 U.S. 470, 478 n. 5

(1973); *U.S. v. General Motors Corp.*, 323 U.S. 373, 383-84 (1945). In addressing the same argument that the State and Government Amici advance in this appeal, the United States Court of Appeals of the District of Columbia stated:

But much the same argument could be made in support of murder, for all that any murderer ever did was to accelerate the debt that every mortal owes to nature. If the structures here in question had been built by the landlord, they would have been taken and paid for by the government without question, as the government concedes they are now part of the realty. Is the tenant's reserved power of removal as against the landlord's termination of the lease to work a forfeiture in favor of the government? We think not. The inherent character of these structures is real estate; no agreement can change that character, though the landlord may waive the right which might otherwise accrue to him from the character of the structures placed upon his land. At the most, that is all that this agreement did."

U.S. v. Seagren, 50 F.2d 333, 335 (D.C. Cir. 1931). Therefore, the lessor and lessee's agreement for the removal of a sign structure "at another time, for another purpose, and affecting no interests but their own, must be rejected here as irrelevant, when set up by the [government] to control its condemnation proceedings against the tenant's interest in the land." *Seagren*, 50 F.2d at 335.

Moreover, the fact that an improvement can be removed from the freehold does not make it personal property even when it is attached to real property. *See Ablin v. Morton Southwest Co.*, 802 S.W.2d 788, 791 (Tex. App.—San Antonio 1990, writ denied); *Fenlon v. Jaffee*, 553 S.W.2d 422, 428, (Tex.Civ.App.—Tyler 1977, writ ref'd n.r.e.); *State v. Miller*, 92 S.W.2d 1073 (Tex. Civ. App.—Waco

1936, no writ). As the Government Amici correctly recognize, no one questions that a building—such as a hospital, house, church or the Newark airport terminal—is considered part of the real property. *See* Brief of Amici Curiae at p. 19. Such buildings, however, can be moved or relocated as demonstrated in the photographs below:



Because such buildings can be removed, the state refused compensation in *Miller* for a house located on property taken for a highway because it “could be removed from the condemned land to another location....” 92 S.W.2d at 1074. The Court of Appeals rejected the state’s position as “intolerable” and held:

[The state] must either take the land with the permanent improvement thereon as it stands and pay for it accordingly, or reject it in toto. It cannot strip the improvements therefrom and

compel the owner to provide other land to receive the salvage, and then rightfully insist that the owner is fully compensated by the payment of the value of the naked land so appropriated.

Id.; see also *Almota Farmers Elevator & Warehouse Co. v. U.S.*, 409 U.S. 470, 473-78 (1973). Thus, the fact that buildings on real property are capable of being moved does not change the characterization of such buildings from realty to personal property. Consequently, whether an improvement is capable of being relocated or moved is not determinative of whether just compensation is owed for the taking of such improvements in a condemnation proceeding.

Similarly, the fact that billboard sign structures may be hypothetically relocated as argued by the State and Government Amici is not determinative of whether a sign structure is a compensable improvement to the property. Although the State and Government Amici repeatedly assert that billboards can be relocated, in actuality the billboard structures themselves are not relocated since removal of the billboard sign structure from the property destroys its structural integrity. See Clear Channel's Brief at 33-34. Rather, it is the permitted right to use the real property as an outdoor advertising sign location which may possibly be relocated to another sign location. If a structurally intact building is still considered a compensable improvement attached to real property even after its removal from the property, then surely a billboard sign structure that is destroyed upon its removal is

likewise a compensable improvement attached to real property. *See Miller*, 92 S.W.2d at 1074.

Additionally, Texas courts have found that property may be considered to be realty for one purpose or in one situation, and personalty in another, depending on what kind of property it is. For example, growing timber is generally regarded as real property. *E.L. Bruce Co. v. Hannon*, 283 S.W. 862 (Tex.Civ.App.—Texarkana 1926, writ ref’d). However, after timber is cut down and removed from the realty, it might be considered to be personal property. *Id.* Another example of this concept is minerals, which may be considered to be realty in one situation and personalty in another. While in place, minerals are considered to be part of the land. *Toledo Soc. for Crippled Children v. Hickok*, 261 S.W.2d 692 (Tex. 1953). But when severed or extracted from the land, minerals are considered to be personal property. *Kelvin Lumber and Supply Co. v. Copper State Mining*, 232 S.W. 858 (Tex.Civ.App.—El Paso 1921, writ dism’d w.o.j.). Although a billboard sign structure is an improvement to real property, especially in the condemnation context, if there is ever a point at which it might be considered personalty, it would be upon severance of the structure from the property. But when a sign structure is attached to the property upon the date of taking, it is considered to be an improvement to real property at that relevant point in time.

In summary, there is no merit to the State's position that the property condemned did not encompass the billboard in light of Texas and federal law. The State only changed its position that billboards are personal property and not real property within the last 10 years. As the court in *Harris County v. Clear Channel* noted:

Prior to December 2004, both TXDOT policy and federal law considered billboards removed for transportation projects to be real property and required that the billboard owners be compensated for the loss of the sign or the cost of relocating the sign. However, in late 2004, for reasons not disclosed in the record, TXDOT initiated changes in the regulations addressing how billboards affected by transportation projects should be handled. These changes, which took effect in December 2004, dictated that billboards affected by transportation projects would no longer be treated as real property and the sign owners would no longer be offered compensation for the loss of the sign. 2008 Tex App. LEXIS at *2.

The fact that the State “wants” to treat billboards as personal property is of no import, because it is the Texas Constitution that ultimately determines compensability of property—not the State or the Government Amici. *State v. Hale*, 146 S.W.2d 731, 736 (1941). Therefore, the State's internal characterization of Clear Channel's Sign Structures as personal property has no bearing on whether the sign structures are compensable improvements under the Federal and Texas Constitutions.

Thus, the State cannot escape its duty to pay just compensation for the taking of Clear Channel's Sign Structures by simply labeling them as personalty.

As the Supreme Court noted in *United States v. Gen. Motors Corp.*:

It is altogether another matter when the Government does not take his entire interest, but by the form of its proceeding chops it into bits, of which it takes only what it wants, however few or minute and leaves him holding the remainder, which may then be altogether useless to him, refusing to pay more than the "market rental value" for the use of the chips so cut off. This is neither the 'taking' nor the 'just compensation' the Fifth Amendment contemplates.

323 U.S. 373, 382 (1945). This Court must reject the State's use of "salami tactics" to reduce the amount of Clear Channel's compensation by labeling billboard sign structures as non-compensable personal property. *See Almota*, 409 U.S. at 480 (Powell, J., concurring). In turn, this Court must affirm traditional Texas law as reflected in the opinion of the First Court of Appeals, which holds that billboard sign structures are compensable improvements affixed to real property.

II. Under Texas law, the fair market value of income-producing real property, such as the billboards here, is correctly determined using the income-capitalization approach.

Since billboard structures—such as Clear Channel's Sign Structures—are considered permanent improvements to realty under Texas law, then such improvements should be valued as all other real property is valued. Specifically, real property that is valued in the market place according to its income producing

potential should be valued in the same manner for condemnation proceedings. The State, however, argues that billboard structures should not be valued as other income producing real property because use of income generated from the rental of the sign faces on the sign structure is prohibited under the State's understanding of this Court's opinion in *State v. Central Expressway Sign Assoc.*, 302 S.W.3d 866 (Tex. 2009). The Court should reject the State's position because it violates the purpose of valuation methodology—to approximate what a willing buyer would pay a willing seller of a billboard structure in the marketplace—by attempting to exclude the criteria by which billboard structures are actually bought and sold in the marketplace.

A. Adequate compensation means fair market value.

When the State condemns real property, the normal measure of damages is the land's market value. *See* Tex. Prop. Code § 21.042(b); *United States v. 50 Acres of Land*, 469 U.S. 24, 29 (1984); *Brunson v. State*, 444 S.W.2d 598, 602 (Tex.1969). “‘Adequate’ compensation means fair market value of the property on the date it was appropriated.” *City of Houston v. Religious of the Sacred Heart of Texas*, 811 S.W.2d 734, 736 (Tex. App. – Houston [1st Dist.] 1991) *aff'd*, 836 S.W.32d 606 (1992), citing *United States v. 564.54 Acres of Land*, 441 U.S. 506, 511, 99 S.Ct. 1854, 1857, 60 L. Ed. 435 (1979). Market value is “the price the property will bring when offered for sale by one who desires to sell, but is not

obliged to sell, and is bought by one who desires to buy, but is under no necessity of buying.” *City of Harlingen v. Sharboneau*, 48 S.W.3d 177, 182 (Tex. 2001). A proper valuation method must “approximate the amount a willing buyer would pay a willing seller for the property.” *State v. Central Expressway Sign Assoc.*, 302 S.W.3d 866, 870 (Tex. 2009). Accordingly, any valuation method that does not produce an amount measured by what a willing buyer would actually pay to a willing seller is not valid. *Sharboneau*, 48 S.W.3d at 183.

It is also essential that a valuation method consider all the uses for which the property at issue is reasonably adaptable. “All factors should be considered that would reasonably be given weight in negotiations between a seller and a buyer.” *City of Sugar Land v. Home and Hearth Sugarland, L.P.*, 215 S.W.3d 503, 514 (Tex. App.—Eastland 2007, pet. denied). The condemnee is entitled to be put in “as good a position pecuniarily as if his property had not been taken.” *City of Houston v. Texan Land and Cattle Co.*, 138 S.W.3d 382, 388 (Tex. App. – Houston [14th Dist.] 2004, no pet.). An appraisal method as a whole must be relevant and reliable evidence of market value, and is suspect if it fails to account for basic marketplace realities. *Sharboneau*, 48 S.W.3d at 182-183.

B. The fair market value of an income producing property is determined by the income-capitalization approach.

The three traditional approaches to determining market value of realty are the comparable sales method, the cost method, and the income-capitalization

method. *Central Expressway Sign Assoc.*, 302 S.W.3d at 871; *Sharboneau*, 48 S.W.3d at 182. The income-capitalization approach is “appropriate when property would, in the open market, be priced according to the income that it already generates.” *Sharboneau*, 48 S.W.3d at 183; *see Central Expressway Sign Assoc.*, 302 S.W.3d at 871; *City of Sugar Land*, 215 S.W.3d at 514. The income-capitalization approach “proceeds on the premise that a buyer of income-producing property is primarily interested in the income its property will generate.” *City of San Antonio v. El Dorado Amusement Co., Inc.*, 195 S.W.3d. 238, 248 (Tex. App. – San Antonio 2006, pet. denied). The income-capitalization approach estimates the future income of the property and applies a capitalization rate to that income to determine market value. *Id.*; *City of Dallas v. Redbird Dev. Corp.*, 143 S.W.3d 375, 384 (Tex. App. – Dallas 2004, no pet.).

The income-capitalization approach is recognized by this Court and lower Texas courts as an appropriate method for appraising commercial or income-producing property. *See Central Expressway Sign Assoc.*, 302 S.W.3d at 871 (State’s expert testimony using capitalized income reflected an accepted and reliable method of appraising a condemned easement); *Sharboneau*, 48 S.W.3d at 182 -183; *El Dorado Amusement Co., Inc.*, 195 S.W.3d. at 248; *Redbird Dev. Corp.*, 143 S.W.3d at 385 (Tex. App. – Dallas 2004, no pet.) (expert testimony on income approach to market value of a leasehold on the basis of “net cash income

flow” per square foot is not testimony of lost profits); and *State v. Capitol City Oil Co.*, 494 S.W.2d 268, 270 (Tex. App – Austin 1973, no writ) (State’s expert used income approach to value a service station).

C. In the marketplace, a billboard is valued as an income-producing property.

It is unquestioned that a billboard sign structure, such as Clear Channel’s Sign Structures, is property in which its primary value is as an income-producing property. This was recognized by the State’s own appraiser in the case styled, *State v. Treeline Partners Ltd, et al.*, Cause No. 1016954, Harris County Civil Court at Law No. 3, where he admitted that the income-capitalization approach is appropriate to value a billboard sign structure because it is valued in the marketplace according to its ability to generate revenue. *See* Appendix Tab A at 361:22-362:15, Ex. 44 at 22. Therefore, no justification exists for excluding this category of property from the well-established rules noted above since a billboard sign structure is valued according to its income producing potential in the marketplace.

Appraising a billboard based on its income “is no different than the rule regarding the valuation of income-producing property in condemnation proceedings generally.” 8A Nichols on Eminent Domain, § G23.04[b]. This is consistent with the methodology an appraiser would use in capitalizing the rents generated from other income producing properties, such as office buildings, hotels,

apartments, and self-storage units. In valuing an income producing property, the financial feasibility and income generated by the commercial property is a factor in determining that property's value. *Sharboneau*, 48 S.W.3d at 182-183; *see also State v. Whataburger, Inc.*, 60 S.W.3d 256, 262 (Tex. App.—Houston [14th Dist.] 2001, pet. denied). Therefore, it is an appropriate method for insuring that the billboard owner is put “in as good a position pecuniarily as if [its] property had not been taken.” *Texan Land & Cattle*, 138 S.W.3d at 388.

Although generally rent received from the leasing of property is within the broad category of business profits, it is not subject to any rule excluding business profits from what is compensable in condemnation; after all, unlike other forms of business profits, the rent received is deemed to be derived almost entirely from the property. 5-19 Nichols on Eminent Domain, § 19.02. Accordingly, the value of property may be ascertained under the income method by capitalization of the rent received from the leasing of the property. 4-12B Nichols on Eminent Domain, § 12B.08 [4]. “Rental value and the income approach in general are reliable methods of valuation because they provide an indication of the value the free market placed on the property.” 5-19 Nichols on Eminent Domain, § 19.02. This principle is illustrated in Section 1110 of the Uniform Eminent Domain Code, which provides that a qualified valuation witness may base her opinion of value on “the actual or reasonable net rental income attributable to the property when used for its highest

and best use, capitalized at a fair and reasonable interest rate.” The comment to Section 1110 further states that a valuation witness “may consider either the capitalized actual or reasonable net rental income from the property for its highest and best use, if the property is of a kind which is bought and sold on that basis in the relevant market.”

Evidence of rental income generated by a property can thus normally be used to estimate the fair market value of the condemned property. In the case of outdoor advertising signs, evidence of the income derived from the renting of the sign faces is offered for the purposes of valuing the actual location taken and not for the impact of the loss of such location on the sign company’s overall business. 8A Nichols on Eminent Domain, § G23.04[b]. It is axiomatic that the primary value of property is found in its location—“hence the real estate mantra, ‘location, location, location,’ not ‘management, management, management.’” *SR Int’l Bus. Ins. Co., Ltd. v. World Trade Ctr. Prop., LLC*, 394 F. Supp. 2d 585, 598 (S.D.N.Y. 2005). This is especially true in regards to billboard sign structures because the income from the sign faces and the value of the sign is driven by the location of the sign structure and scarcity of available sign faces, and not by the brand name, management, or reputation of the sign company. See Paul Wright and Jeffrey Wright, ASA, *Billboard Appraisal: The Valuation of Off-Premise Advertising Signs*, 63 (American Society of Appraisers, 2001). As a result, sign structures are

bought and sold based on the value of their location, rather than the seller's brand recognition, management, or advertising contracts. Thus, the value of an outdoor advertising sign is tied to the location. *Id.* Moreover, any value that may be attributable to the sign company's management can be accounted for by deducting the costs of management from the income or rent received. Therefore, use of income or rent from the faces of a sign structure as an economic unit of comparison or variable in the valuation of the sign structure is consistent with traditional and accepted appraisal methods under Texas law.

D. Use of income from a billboard in the income-capitalization approach is not prohibited by this Court's opinion in *Central Expressway Sign Associates*.

The State argues that this Court's opinion in *Central Expressway Sign Associates*, 302 S.W.3d 866 (Tex. 2009) ("*CESA*") excludes all evidence of income generated by an outdoor advertising sign. This is simply an over-extension of this Court's holding in *CESA*. *CESA* involved the condemnation of an easement that was leased to a sign company for the purpose of erecting a billboard and selling advertising space. *Id.* at 869. Unlike this case, the Court specifically noted that *CESA* did not involve "the acquisition of a billboard structure" since the billboard was relocated. *CESA*, 302 S.W.3d at 870. Thus, the Court did not address the valuation of a billboard—such as Clear Channel's Sign Structures—in the *CESA* case.

Rather, this Court only addressed whether the State’s expert was properly struck by the trial court as unreliable for failing to include in his estimate of the fair market value of the lessor’s easement the income generated from advertising sales by the lessee’s billboard. *Id.* at 869. The lease at issue in *CESA* provided that the easement owner (lessor) was to receive as an annual rent payment, the greater of a base rent amount or “twenty-five percent of billboard advertising revenues” after payment of agency commissions. *Id.* The Court specifically noted the state’s appraiser “used the income approach to valuing property” by capitalizing the income—which was a percentage of the billboard advertising revenues—that the sign owner paid to the easement owner as rent under the lease. *Id.* at 870. The Court concluded that the expert’s testimony using capitalized income reflected an accepted and reliable method of appraising the lessor’s condemned easement, and thus, the trial court reversibly erred in excluding the testimony. *Id.* at 874. Therefore, contrary to the State’s position, the Court’s opinion in *CESA* does not mean that the use of billboard advertising revenue is prohibited under any circumstance since the state appraiser’s income method approved by the Court in *CESA* relied on the advertising revenue generated by the billboard to value the easement owner’s interest.

Moreover, the only language in *CESA* expressly limiting the use of advertising income for valuation evidence is in regards to the lay testimony of the

easement owner's opinion of their property's value. *Id.* at 874. Specifically, the Court stated in its remand instructions that the easement owners—who were not valuation experts—should not be allowed to offer valuation evidence that is based on advertising income. *Id.* Rather, the lay testimony of the property owners should be limited to general estimates of market value based on what the property would sell for considering its possible use as a billboard site. *Id.* Accordingly, under the Court's holding in *CESA*, valuation experts may utilize advertising revenue under an accepted income approach to value real property interests, but lay witness testimony on the market value of real property cannot be based on advertising revenue.

The *CESA* opinion, therefore, does not unilaterally prohibit the use of advertising income generated from the rental of the faces of a sign structure to value a sign structure—such as Clear Channel's Sign Structures—in the traditional income approach and the sales comparison approach utilizing an income multiplier. If an appraisal expert is not allowed to consider the advertising rental income from the outdoor advertising sign structure, it would render meaningless the goal of all appraisal methods, which is to determine the amount a willing buyer would pay a willing seller in the marketplace for that particular property interest. *See CESA*, 302 S.W.3d at 871; *Sharboneau*, 48 S.W.3d at 183. The Eighth Court of Appeals correctly realized in the recent case of *State v. Moore Outdoor*

Properties, L.P., 416 S.W.3d 237, 251 (Tex. App.—El Paso 2013, pet. filed) the inherent problem with understanding this Court’s holding in *CESA* as a blanket prohibition on the use of advertising income from a billboard as the basis for determining fair market value of any property taken in condemnation proceeding. If this is indeed the rule of *CESA*, then as the Eighth Court noted, “*Central Expressway’s* rule runs counter to the notion that fair market value is what a willing buyer will pay a willing seller for the property.” *Id.* Furthermore, if the underlying leasehold interest is itself based on the percentage of income produced by the lessee, the rejection of an expert’s opinion valuing the lessee’s property based on such income would be artificial and illusory since such income is even more relevant to the question of value in that instance. *See State Roads Comm’n of Maryland v. Novosel*, 102 A.2d 563, 565 (Md. 1954).

This is the exact position the State is asking the Court to take in this case. The State wants to create a special and unique category of valuation for outdoor advertising signs that does not comport with the realities of how such interests are valued in the marketplace. Any such distinction, however, is illusory and artificial as billboards have all the qualities and similarities of other income producing real property that is valued according to its income producing potential. The Court should reject the State’s attempt to create a separate and unequal class of valuation for outdoor advertising signs, and resolve any lingering confusion in the lower

courts, by confirming that *CESA* does not prohibit an appraisal expert's use of advertising income generated from the rental of a sign structure to value a sign structure according to the traditionally accepted income-capitalization approach and sales comparison approach.

CONCLUSION & PRAYER

The State predicts there will be costly consequences in future condemnation cases if billboards are considered compensable property. Until recently, however, the State afforded billboards the same protection as other private property under the mandate of the Texas (and United States) Constitution to provide just compensation for the State's taking of private property. While the goal of containing government spending is laudable, such an undertaking cannot be allowed to violate the fundamental constitutional guarantee of adequate compensation.

Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding.

Olmstead v. United States, 277 U.S. 438, 479, 48 S.Ct. 564, 572, 72 L.Ed. 944 (1928) (Justice Brandeis, dissenting).

As stated in the opening of this Brief, the Outdoor Advertising Association of Texas and the Outdoor Advertising Association of America only ask that the owners of billboards be afforded the same constitutional rights as all other owners

of private property taken for public use and that the Court reject the campaign by the State to create an exception for one type of property for which it does not want to pay. Amici therefore respectfully pray that this Court affirm the judgment of the First Court of Appeals.

Respectfully submitted,

/s/ J. Allen Smith

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CERTIFICATE OF COMPLIANCE

I certify that this document was produced on a computer using Microsoft Word 2010 and contains 6552 words, as determined by the computer software's word-count function, excluding the sections of the document listed in Texas Rule of Appellate Procedure 9.4(i).

/s/ J. Allen Smith
J. Allen Smith

CERTIFICATE OF SERVICE

I certify that this document was served in accordance with the Texas Rules of Appellate Procedure on May 13, 2014, by the manner indicated upon the following persons:

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NO. 13-0053

IN THE SUPREME COURT OF TEXAS

**THE STATE OF TEXAS,
Petitioner**

V.

**CLEAR CHANNEL OUTDOOR, INC.,
Respondents**

**On Petition for Review from the First Court of Appeals in Houston
Cause No. 01-11-00197-CV**

APPENDIX TO BRIEF OF AMICI CURIAE

- A. Deposition of David Ambrose, MAI in *State v. Treeline Partners Ltd, et al.*, Cause No. 1016954, Harris County Civil Court at Law No. 3 (pp. 361:22-362:15 and exhibit 44)

APPENDIX

TAB A

CAUSE NO. 1016954

THE STATE OF TEXAS)	IN THE COUNTY CIVIL COURT
)	
vs.)	AT LAW NO. 3 OF
)	
TREELINE PARTNERS INC., A)	
TEXAS LIMITED PARTNERSHIP,)	
ET AL.)	HARRIS COUNTY, TEXAS

ORAL VIDEOTAPED DEPOSITION

DAVID AMBROSE, MAI

November 19, 2013

ORAL VIDEOTAPED DEPOSITION OF DAVID AMBROSE, MAI, produced as a witness at the instance of the Defendant Treeline Partners, Inc and duly sworn, was taken in the above-styled and numbered cause on the 19th day of November 2013, from 9:00 a.m. to 7:28 p.m., before Shirlee (Sasi) Romney, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of Ambrose Appraisal Company, 16545 Village Drive, Jersey Village, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Page 6			Page 8		
1	EXHIBITS (cont.)		1	EXHIBITS (cont.)	
2	EXHIBIT DESCRIPTION PAGE		2	EXHIBIT DESCRIPTION PAGE	
3	CBS Exhibit 18 Document entitled	205	3	CBS Exhibit 37 CBS Outdoor, Inc.'s Motion for	184
4	"Informational Notice and			Partial Summary Judgment	
5	Declaration for Advertising		4		
6	Sign Relocation		5	CBS Exhibit 38 Appraisal by The Aguilar Group, Inc.	211
7	CBS Exhibit 19 Document entitled "Section 4617 - Special Permit"	228	6	CBS Exhibit 39 Appraisal by The Aguilar Group	211
8	Exhibit 19 Document entitled "Harris County Appraisal District Real Property Account Information"	272	7	CBS Exhibit 40 Article entitled "Billboard Valuation: Fundamental Asset Allocation Issues"	175
9	CBS Exhibit 20 Document entitled "Section 21.192. Permit for Relocation of Sign"	230	8		
10	Exhibit 20 Cost Approach - Tru Construction Cost Estimate	274	9	CBS Exhibit 41 E-mails dated November 14, 2013 between Philip Arnold and David Ambrose	180
11			10		
12	CBS Exhibit 21 Order Granting Motion for Partial Summary Judgment	184	11	CBS Exhibit 42 E-mail exchange dated June 20 and 21, 2013 between David Ambrose and Philip Arnold	184
13	Exhibit 21 Page from Integral Appraisal	275	12		
14	Exhibit 22 Handwritten Notes	275	13	CBS Exhibit 43 Document entitled "Income Approach - Billboard"	252
15	CBS Exhibit 22 Not Discussed)	367	14		
16	CBS Exhibit 23 Fee Appraiser Work Order	189	15	CBS Exhibit 44 Real Estate Appraisal Report - Texas Department of Transportation dated November 8, 2013	254
17	Exhibit 23 Rental Data	279	16		
18	Exhibit 24 Document entitled "Land for Hotel"	279	17	CBS Exhibit 45 Sales Comparison Approach - Subject Whole	325
19			18		
20	CBS Exhibit 24 (Not Discussed)	367	19		
21	CBS Exhibit 25 Plaintiff's Objections and Response to Defendant CBS's Notice of Intention to Take Deposition of David Ambrose	147	20		
22			21		
23	Exhibit 25 Land Sales	280	22		
24	CBS Exhibit 26 Real Estate Appraisal Report	165	23		
25			24		
			25		
Page 7			Page 9		
1	EXHIBITS (cont.)		1	THE VIDEOGRAPHER: This is the beginning	
2	EXHIBIT DESCRIPTION PAGE		2	of tape No. 1 to the deposition of David Ambrose. The	
3	Exhibit 26 Comparable Rents	280	3	time is 9:00 o'clock. We are on the record. Would the	
4	CBS Exhibit 27 Document entitled "Billboard Site Work 2008-2013"	158	4	court reporter please swear in the witness.	
5			5	DAVID AMBROSE, MAI,	
6	Exhibit 27 Traffic Counts and Site Plans	280	6	having been first duly sworn, testified as follows:	
7			7	EXAMINATION	
8	CBS Exhibit 28 Document with Handwritten Notes "Cap Rates"	215	8	BY MR. WALL:	
9	Exhibit 28 Improved Sales	299	9	Q Could you please state your name for the	
10	CBS Exhibit 29 Confidential Evaluation Report by Osenbaugh & Associates	210	10	record, sir.	
11	Exhibit 29 Comparable Improved Sales	299	11	A David Ambrose.	
12	CBS Exhibit 30 Excerpt from article entitled "Billboard Valuation: Fundamental Asset Allocation Issues"	172	12	Q And how old are you, Mr. Ambrose?	
13			13	A Forty-nine.	
14	Exhibit 30 Work file of David Ambrose, MAI	321	14	Q And what's your address? Your home address.	
15	CBS Exhibit 31 Cost Comparable for Billboard Structure	220	15	A Home address? 17627 Glory Rose Court, Cypress Texas, 77429.	
16	Exhibit 31 Real Estate Appraisal Report - Texas Department of Transportation dated August 1, 2013	320	16		
17			17	Q And how long have you -- how long have you lived in the Houston-Cypress area?	
18	CBS Exhibit 32 Cost Estimate for Billboard	219	18	A Since 1988.	
19			19	Q Okay. And where did you live before that?	
20	CBS Exhibit 33 Design Notes - Billboard	221	20	A I lived in the Copperfield area. It's the northwest part of Houston.	
21	CBS Exhibit 34 Analysis of Income - Parcel 33 Sign Site US Highway 290	222	21	Q Okay. And how long have you been with the --	
22	CBS Exhibit 35 Traffic County Map	223	22	is it the Ambrose Appraisal Company?	
23	CBS Exhibit 36 Summary Appraisal Report - Bolton & Baer, Ltd	211	23	A Yes. I started this company in 1994.	
24			24		
25			25		

3 (Pages 6 to 9)

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<p>1 insurance, taxes, land rent, and any incidentals to get</p> <p>2 the net operating income that you felt confident in</p> <p>3 using for valuation of the billboard under this income</p> <p>4 approach, correct?</p> <p>5 A I think I would answer that to say that I used</p> <p>6 this information to determine what I believed was an</p> <p>7 appropriate expense ratio to apply to the effective</p> <p>8 gross income.</p> <p>9 Q So, you took the effective gross income</p> <p>10 \$135,113 times 65 percent?</p> <p>11 A Fifty-five.</p> <p>12 Q Excuse me. Fifty-five. The expense ratio is</p> <p>13 45 percent, right?</p> <p>14 A That's correct.</p> <p>15 Q So the net operating income would be 55 percent</p> <p>16 times the effective gross income, correct?</p> <p>17 A Yes.</p> <p>18 Q Which was \$74,312, correct?</p> <p>19 A That is correct.</p> <p>20 Q And you said you looked at several different</p> <p>21 expense ratios that went from 36 to 40, but, in your</p> <p>22 opinion, 45 percent was reasonable?</p> <p>23 A Yes.</p> <p>24 MR. ARNOLD: Objection, form.</p> <p>25 Q (By Mr. Rothfelder) Correct?</p>	<p>1 Q Okay. And all that's summarized on page 20 of</p> <p>2 Exhibit 44, correct?</p> <p>3 A Yes, sir.</p> <p>4 Q And then you divide that net operating income,</p> <p>5 \$74,312, by your 8 percent cap rate, and that gave you</p> <p>6 the \$928,900 that you confirmed at the bottom of</p> <p>7 page 20?</p> <p>8 A That's correct.</p> <p>9 Q And then you confirm at the bottom of page 20</p> <p>10 that you have to add in the lease bonus value of</p> <p>11 \$136,098, correct?</p> <p>12 A That's correct.</p> <p>13 Q And you did so with the math on page 21 where</p> <p>14 you rounded it at \$1,065,000?</p> <p>15 A That's correct.</p> <p>16 Q And page 22 of Exhibit 44 is obviously new</p> <p>17 because that's your reconciliation that includes the</p> <p>18 income capitalization approach, correct?</p> <p>19 A That's correct.</p> <p>20 Q So, if you compare page 18 -- page 16 of</p> <p>21 Exhibit 26, the reconciliation page of Exhibit 26, with</p> <p>22 page 22 of Exhibit 44, the first thing that we notice is</p> <p>23 your different reference under income capitalization</p> <p>24 approach, right?</p> <p>25 A Yes. That's correct.</p>
Page 359	Page 361
<p>1 A That's correct.</p> <p>2 Q All right. All right. And then you --</p> <p>3 basically, you did the same thing to determine the cap</p> <p>4 rate for valuation of the billboard that you did in</p> <p>5 determining the cap rate for the valuation of the sign</p> <p>6 site, right?</p> <p>7 A It's a little different. I think these rates</p> <p>8 contain -- represent rates of billboard structures that</p> <p>9 have sold.</p> <p>10 Q Uh-huh.</p> <p>11 A Where with the sites, those are just rates</p> <p>12 of -- I'm sorry --</p> <p>13 Q Well, I -- I mean -- really, I'm just talking</p> <p>14 about methodology. I know you came up with a</p> <p>15 6.25 percent on the sign site, right?</p> <p>16 A Right.</p> <p>17 Q And you came up with 8 percent cap rate on the</p> <p>18 billboard itself --</p> <p>19 A Right.</p> <p>20 Q -- right? But when you determine a cap rate,</p> <p>21 you look at overall rate and investor surveys and sales</p> <p>22 of properties that just happen to be sign sites versus</p> <p>23 billboards was the difference in the determination of</p> <p>24 the cap rates, fair?</p> <p>25 A That's correct.</p>	<p>1 Q Because the -- the first sentence is the same</p> <p>2 on both. You said -- as your first sentence on page 22</p> <p>3 of Exhibit 44 is the first sentence of page 16 on</p> <p>4 Exhibit 26, "all three approaches to value were</p> <p>5 considered in deriving the market value of the subject</p> <p>6 property. The following discussion summarizes the</p> <p>7 conclusions of each approach."</p> <p>8 So, when you say all three values were</p> <p>9 considered, you considered the comparable sales approach</p> <p>10 under both, but because there were no recent or</p> <p>11 comparable sales, you decided that you wouldn't</p> <p>12 calculate a comparable sales approach under either</p> <p>13 appraisal, fair?</p> <p>14 A Yeah, I just don't believe it's a credible</p> <p>15 approach to value.</p> <p>16 Q Now, speaking of credibility, in Exhibit 44,</p> <p>17 under Income Capitalization Approach, you said, "This</p> <p>18 approach is one to which a potential purchaser would</p> <p>19 give a great deal of credence. By use of a direct</p> <p>20 capitalization technique, weight and effect is given to</p> <p>21 the mortgage financing and investor yields. Numerous</p> <p>22 comparables of rentals and expenses give this estimate a</p> <p>23 high degree of confidence. This approach indicates a</p> <p>24 market value of \$1,065,000."</p> <p>25 What do you mean when you said, "A</p>

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<p>1 namely, Exhibit 44?</p> <p>2 MR. ARNOLD: Objection, form.</p> <p>3 Q (By Mr. Rothfelder) Correct?</p> <p>4 A No.</p> <p>5 MR. ARNOLD: Objection, form.</p> <p>6 Q (By Mr. Rothfelder) Let me withdraw that and --</p> <p>7 and -- and ask it again.</p> <p>8 So, it is correct that, even as you sit</p> <p>9 here now, you would give emphasis to your valuation of</p> <p>10 the billboard considered as an improvement to the</p> <p>11 leasehold estate, resulting in the \$928,900 valuation,</p> <p>12 correct?</p> <p>13 MR. ARNOLD: Objection, form.</p> <p>14 A It would be based on the assumption that you</p> <p>15 could -- you had permit to lease out the panels of the</p> <p>16 property.</p> <p>17 Q (By Mr. Rothfelder) And, indeed, CBS had such a</p> <p>18 permit and permission to do so in this case?</p> <p>19 A Yes.</p> <p>20 Q So, your assumptions would be consistent with</p> <p>21 reality?</p> <p>22 MR. ARNOLD: Objection, form.</p> <p>23 A In --</p> <p>24 Q (By Mr. Rothfelder) Correct?</p> <p>25 A In this case it would be.</p>	<p>1 CHANGES AND SIGNATURE</p> <p>2 PAGE LINE CHANGE REASON</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 367	Page 369
<p>1 Q So, you meant what you said when you submitted</p> <p>2 your appraisal Exhibit 44 to Mr. Arnold on or about</p> <p>3 November 8, 2013, that that income approach should be</p> <p>4 given emphasis?</p> <p>5 MR. ARNOLD: Objection, form.</p> <p>6 Q (By Mr. Rothfelder) Correct?</p> <p>7 A Based on the scope within this report, that's</p> <p>8 correct.</p> <p>9 Q And then it was after you submitted the report</p> <p>10 and Mr. Arnold told you that you misunderstood the</p> <p>11 scope, that you prepared a new report, Exhibit No. 26,</p> <p>12 including changing that last sentence, correct?</p> <p>13 A That's correct.</p> <p>14 Q And the only other pages that we need to add to</p> <p>15 Exhibit 44 to make it complete would be these pages 23</p> <p>16 and 24 that are also part of Exhibit 45?</p> <p>17 A I believe so.</p> <p>18 MR. ROTHFELDER: Thank you very much. I</p> <p>19 pass the witness.</p> <p>20 MR. ARNOLD: We'll reserve our questions</p> <p>21 for trial.</p> <p>22 THE VIDEOGRAPHER: 7:28. We're off the</p> <p>23 record.</p> <p>24 (Proceedings concluded at 7:28 p.m.)</p> <p>25</p>	<p>1 I, DAVID AMBROSE, MAI, have read the foregoing</p> <p>2 deposition and hereby affix my signature that same is</p> <p>3 true and correct, except as noted above.</p> <p>4</p> <p>5</p> <p>6 DAVID AMBROSE, MAI</p> <p>7</p> <p>8 THE STATE OF _____)</p> <p>9 COUNTY OF _____)</p> <p>10</p> <p>11 Before me, _____, on this day</p> <p>12 personally appeared DAVID AMBROSE, MAI, known to me or</p> <p>13 proved to me on the oath of _____ or through</p> <p>14 _____ (description of identity card</p> <p>15 or other document) to be the person whose name is</p> <p>16 subscribed to the foregoing instrument and acknowledged</p> <p>17 to me that he/she executed the same for the purpose and</p> <p>18 consideration therein expressed.</p> <p>19 Given under my hand and seal of office on this _____</p> <p>20 day of _____, _____.</p> <p>21</p> <p>22</p> <p>23 NOTARY PUBLIC IN AND FOR</p> <p>24 THE STATE OF _____</p> <p>25 My Commission Expires: _____</p>

REAL ESTATE APPRAISAL REPORT - TEXAS DEPARTMENT OF TRANSPORTATION

Address of Property: 10900 1/2 Northwest Freeway, Houston, TX 77092.

Property Owner: Laroca Partners II, LTD

Address of Property Owner: 6363 Woodway Dr., Suite 525, Houston, TX 77057

Occupant's Name: CBS Outdoor Sign

Whole: ☒ Partial: ☐ Acquisition

District: Houston

Parcel: 311

ROW CSI: 0271-14-225

Federal Project No: N/A

Highway: IH 610

County: Harris

Purpose of the Appraisal

The purpose of this appraisal is to estimate the market value of the fee simple and leasehold titles to the real property to be acquired, encumbered by any easements not to be extinguished, less oil, gas and sulphur. If this acquisition is of less than the whole property, then any special benefits and/or damages to the remainder property must be included in accordance with the laws of Texas.

Market Value

Market value is defined as follows: "Market Value is the price which the property would bring when it is offered for sale by one who desires, but is not obliged to sell, and is bought by one who is under no necessity of buying it, taking into consideration all of the uses to which it is reasonably adaptable and for which it either is or in all reasonable probability will become available within the reasonable future."

Certificate of Appraiser

I hereby certify:

That it is my opinion the total compensation for the acquisition of the herein described property is \$1,065,000.00 as of December 3, 2012, based upon my independent appraisal and the exercise of my professional judgment;

That on December 3, 2012 (date)(s), I personally inspected in the field the property herein appraised; that I afforded, the property owner or the representative of the property owner, the opportunity to accompany me at the time of the inspection;

That the comparables relied upon in making said appraisal were as represented by the photographs contained in the appraisal report and were inspected on November 8, 2013 and other dates;

That I have not revealed and will not reveal the findings and results of such appraisal to anyone other than the proper officials of the Texas Department of Transportation or officials of the Federal Highway Administration until authorized by State officials to do so, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified to such findings;

That my compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.

The appraiser has considered access damages in accordance with Section 21.042(d) of the Texas Property Code, as amended by SB18 of the Texas 82nd Regular Legislative Session and finds as follows:

1. Is there a denial of direct access on this parcel? No (yes or no)
2. If so, is the denial of direct access material? N/A (yes, no, or not applicable)
3. The lack of any access denial or the material impairment of direct access on or off the remaining property affects the market value of the remaining property in the sum of \$0.

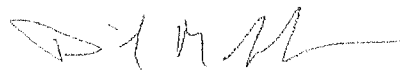
I certify to the best of my knowledge and belief:

That the statements of fact contained in this report are true and correct;

That the reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions;

That I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved;

That my analyses, opinions and conclusions were developed, and this report has been prepared in conformity with the appropriate State laws, regulations, and policies and procedures applicable to the appraisal of right of way for such purposes, and that to the best of my knowledge no portion of the value assigned to such property consists of items which are noncompensable under the established law of said State, and any decrease or increase in the fair market value of subject real property prior to the date of valuation caused by the public improvement for which such property is to be acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to the physical deterioration within the reasonable control of the owner, has been disregarded in estimating the compensation for the property.



Appraiser Signature

TX-1322613-G

Certification Number

November 8, 2013

Date

To the best of my knowledge, the value does not include any items which are not compensable under State law.

Reviewing Appraiser

Date

A SUMMARY APPRAISAL

OF

**A 14' X 48' BACK-TO-BACK V-CONFIGURATION ILLUMINATED BULLETINS
PANEL NOS. 02-3064 AND 02-3065, CBS OUTDOOR SIGN NO. 02-3064, SUPPORTED
BY A STEEL MONOPOLE, 75' OVERALL HEIGHT, LOCATED AT PARCEL NO. 311,
10900 ½ NORTHWEST FREEWAY,
HOUSTON, HARRIS COUNTY, TEXAS 77092**

FOR

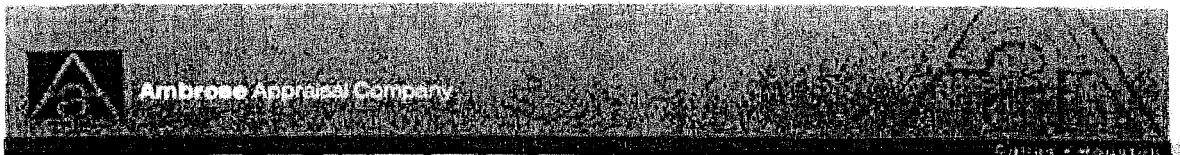
**TEXAS DEPARTMENT OF TRANSPORTATION
C/O PHILLIP ARNOLD
ASSISTANT ATTORNEY GENERAL
300 WEST 15TH STREET
AUSTIN, TEXAS 78701**

BY

**AMBROSE APPRAISAL COMPANY
16545 VILLAGE DRIVE, BUILDING A
JERSEY VILLAGE, TEXAS 77040**

AS OF

DECEMBER 3, 2012



November 8, 2013

Texas Department of Transportation
C/O Phillip Arnold
Assistant Attorney General
300 West 15th Street
Austin, Texas 78701

RE: A Summary Appraisal of a 14' X 48' back-to-back v-configuration illuminated bulletins Panel Nos. 02-3064 and 02-3065, CBS Outdoor Sign No. 02-3064, supported by a steel monopole, 75' overall height, being located at Parcel No. 311, 10900 1/4 Northwest Freeway, Houston, Harris County, Texas 77092

Dear Mr. Arnold:

We understand the referenced property is required by the Texas Department of Transportation for the expansion of the Northwest Freeway. At your request, we have estimated the market value of the property as of December 3, 2012.

Identity of the Client and Intended Users of the Report:

The client is the Texas Department of Transportation.

Intended Use of the Appraisal:

The intended use of the appraisal is to assist the Texas Department of Transportation in valuing the property rights appraised.

Competency Rule:

The report contained herein was completed by David M. Ambrose, MAI. Mr. Ambrose is a state certified general appraiser in the State of Texas. Mr. Ambrose was awarded the MAI designation by the Appraisal Institute in 1991. Mr. Ambrose has the knowledge and experience appraising properties similar to the subject, appraising properties within the subject's market area, and applying the approach to value utilized.



Ambrose Appraisal Company



Ambrose Appraisal Company

Ambrose Property Tax Consulting

Dallas
8500 Greenville Avenue, Suite 100
Dallas, Texas 75206
T (980) 210 5408
P (214) 382 2276 F (214) 382 2277

Houston
16545 Village Drive, Building 4
Jersey Village, Texas 77040
T (980) 210 5408
P (713) 688 7733 F (713) 688 1117

Identity of the Property:

A 14' X 48' back-to-back v-configuration illuminated bulletins Panel Nos. 02-3064 and 02-3065, CBS Outdoor Sign No. 02-3064, supported by a steel monopole, 75' overall height, being located at Parcel No. 311, 10900 ½ Northwest Freeway, Houston, Harris County, Texas 77092.

Property Rights Appraised:

The property rights being appraised in this report consist of a fee simple and Leasehold estates. Fee simple estate is defined by The Dictionary of Real Estate Appraisal, Fifth Edition, page 78, published 2010, by the Appraisal Institute as being:

"Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat."

Leasehold interest is defined by The Dictionary of Real Estate Appraisal, Fifth Edition, published by the Appraisal Institute, page 252, as being:

"The interest which a tenant or lessee (the tenant or renter) acquires under a lease, including rights of use and occupancy for a stated term under certain conditions."

We have also referenced the Appraisal of Real Estate, Thirteenth Edition, published by the Appraisal Institute. An excerpt follows:

"The leasehold estate is the lessee's, or tenant's estate. When a lease is created, the tenant usually acquires the rights to possess the property for the lease period, to sublease the property (if this is allowed by the lease and desired by the tenant), and perhaps to improve the property under the restrictions specified in the lease. In return, the tenant is obligated to pay rent, surrender possession of the property at the termination of the lease, remove any improvements the lessee has modified or constructed (if specified), and abide by the lease provisions. The most important obligation of a tenant is to pay rent."

"The relationship between contract and market rent greatly affects the value of a leasehold interest. A leasehold interest may have value if contract rent is less than market rent, creating a rental advantage for the tenant."

Definition of Market Value:

"Market value," as used herein, is defined as:

...the price which the property would bring when it is offered for sale by one who desires, but is not obliged to sell, and is bought by one who is under no necessity of buying it, taking into consideration all of the uses to which it is reasonably adaptable and for which it either is or in all reasonable probability will become available within the reasonable future.¹

The market value estimate set forth herein is stated in terms of cash or financing terms equivalent to cash.

Effective Date of the Appraisal:

The effective date of the appraisal is December 3, 2012.

Date of the Report:

The date of the report is November 8, 2013.

Scope of Work:

According to The Dictionary of Real Estate Appraisal, Fifth Edition, copyright 2010, by the Appraisal Institute, "scope of work" is defined as being:

"The amount and type of information researched and the analysis applied in an assignment."

The scope of work is based upon the purpose of the appraisal and its intended use as previously discussed within this report. The appraisal development process completed by the Ambrose Appraisal Company consisted of the items listed below.

1. Physically identified and visited the subject property and reviewed appraisal reports of the subject property, as well as other similar properties. I also reviewed Billboard Appraisal – The Valuation of Off-Premise Advertising Signs and a May/June 2005 publication by the International Right of Way Association titled "Billboard Valuation – Fundamental Asset Allocation Issues."
2. Researched and collected data related to market conditions and market activity, and considered those characteristics which have a legal, physical, or economic impact on the subject property. The sources of data used within this report included: public records, real estate brokers, property management companies, national real estate data collection services, and knowledgeable individuals in the real estate market.

¹ *City of Austin vs. Cannizzo*, 267 S.W. 2d 808, 815 (Tex. 1954)

3. Determined the Highest and Best use of the subject as vacant and as improved, based on the data gathered and considering the legally permissible, physically possible, financially feasible, and most profitable use of the property.

4. Analyzed the data gathered through the use of appropriate and acceptable appraisal methodology in order to develop a value indication from each applicable approach to value.

- A. Income Capitalization Approach. Developing this approach to value involved gathering comparable rental data. This data has been identified by the Ambrose Appraisal Company. Capitalization rates were analyzed from comparable sales data, the Band of Investments Technique, as well as national surveys. The Fee Simple value indication was derived from the Direct Capitalization Method. The net positive cash flow to the Leasehold interest was developed by calculating the difference between the contract and market rental rate, then discounting it over the remaining terms of the lease. *leasehold*
- B. Sales Comparison Approach. Due to the lack of recent and comparable data, the Sales Comparison Approach to value was not utilized in this report. The omission of this approach does not reduce the reliability of the conclusions in this report.
- C. Cost Approach. This approach is derived by estimating the current cost to construct a replacement or reproduction of the structure. Any accrued depreciation is then deducted from the estimated cost of the reproduction or replacement. Finally, the net positive cash flow to the Leasehold interest was considered.

5. Reconciled the results from the applicable approaches to value into a reasonable value conclusion.

6. Estimated a reasonable exposure time and marketing time associated with the developed opinion of value.

The appraisal of the subject property is presented in the form of a Summary Appraisal Report, and is intended to comply with the reporting requirements set forth under Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice.

Jurisdictional Exception Rule:

If any part of the Uniform Standards of Professional Appraisal Practice is contrary to the law or public policy of any jurisdiction, only that part shall be void and of no force or effect in that jurisdiction. We shall disregard any decrease or increase in market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within reasonable control of the owner.

Marketing/Exposure Time: Assuming adequate exposure and normal marketing efforts, the estimated exposure time (i.e., the length of time the proposed subject property would have been exposed for sale in the market had it sold at the market value concluded to in this analysis as of

the date of this valuation) would have been within twelve months; the estimated marketing time (i.e. the amount of time it would probably take to sell the subject property if exposed in the market beginning on the date of this valuation) is estimated to be within about twelve months. Based on the analysis of the real estate market and discussions with brokers and other knowledgeable individuals in this industry, we believe a reasonable period of time to market the subject property at the previously derived market value is approximately twelve months.

Site Description/Improvement Analysis:

Property Description/Location: The subject is described as a 14' X 48' back-to-back v-configuration illuminated bulletins Panel Nos. 02-3064 and 02-3065, CBS Outdoor Sign No. 02-3064, supported by a steel monopole, 75' overall height, being located at Parcel No. 311, 10900 1/4 Northwest Freeway, Houston, Harris County, Texas 77092. The subject is located along the northeast line of the Northwest Freeway, just southeast of West 34th Street.

Legal Description: The subject located in Parcel #311 which is legally described as 3.181 acres (138,564 square feet) of land being Reserves A, B, C, and D, Two Ninety-Thirty Fourth Center, John Flowers Survey, Abstract 269, Houston, Harris County, Texas.

Flood Plain: According to The Federal Emergency Management Agency (FEMA) map panel number 48201C0655L, dated June 18, 2007 the subject whole property is located in Zone X, an area outside of the 100-year floodplain. However, we are not surveyors, and we make no guarantee regarding this determination.

Off-Site Improvements: West 34th Street, is a four-lane, concrete paved roadway with concrete curbs and gutters at the subject property. The Northwest Freeway feeder road, is a three-lane, concrete paved roadway with concrete curbs and gutters at the subject property.

Utilities: Utilities available to the subject include electricity and telephone. The subject property has access to public water and sewer services provided by the City of Houston.

Easements: The subject has standard utility easements. However, these easements are not believed to impact the overall development of the entire property.

Statement of Environmental Issues: The appraisers made no special effort to discover any adverse environmental conditions and we accept no responsibility for such discovery. If any adverse environmental conditions are discovered, the appraisers should be notified, as the opinion of market value will likely require modification. As noted in the Assumptions and Limiting Conditions contained within this report, we have no special expertise regarding environmental hazards, and this report must not be considered as an environmental assessment of the property.

Development Restrictions: The subject whole property is located within the City of Houston, which does not subscribe to zoning. There are no other significant legal constraints which would restrict development of the subject property.

Statement of Ownership and History:

The current owner of the subject whole (Lessor) is Laroca Partners II, LTD. Laroca Partners II, LTD purchased the subject property from Treeline Partners, LTD in March, 2009. Information regarding this transaction was not made available. The owner receives additional income from a 14' X 48' billboard ground lease located at the south eastern portion of the tract. CBS Outdoor signed the lease in January 2008. The lease is for 20 years with an initial lease rate of \$20,000.00 per year. The lease escalates to \$22,000 in 2011, \$24,000 in 2014, \$26,000 in 2018, and \$30,000 in 2023.

We were provided an appraisal of the subject property from our client. The appraisal included operating history for the billboard from September, 2008 to August 2011. This information is summarized below.

Panel No 02-3064. The effective gross income (net of vacancy, rent loss, and agency commissions) for the year ending 2009, 2010, and 2011 were \$40,025.39, \$45,633.94, and \$63,111.43, respectively. Thus, the average from September 2009 to August 2011 was \$49,590.25, or \$3,814.63 per period.

Panel No 02-3065. The effective gross income (net of vacancy, rent loss, and agency commissions) for the year ending 2009, 2010, and 2011 were \$99,071.45, \$99,071.44, and \$99,071.47, respectively. Thus, the average from September 2009 to August 2011 was \$99,071.45, or \$7,620.88 per period.

Highest and Best Use Analysis

The subject property must be appraised in terms of its highest and best use. According to The Dictionary of Real Estate Appraisal, Fifth Edition, by the Appraisal Institute, page 135, highest and best use is defined as:

"The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability."

Legally Permissible. Private (deed) restrictions, zoning regulations, building codes, historic district controls, and environmental regulations can often preclude many possible highest and best uses.

Physically Possible. Size, terrain, and utility availability are generally considered the most important factors in determining uses to which land may be developed. The size of a tract of land is important for determination of possible uses because some small tracts, due to limited size, can reach their optimum use only as part of an assemblage of several tracts. Large tracts, on the other hand, are not restricted by size and have a much wider range of possible uses.

Financially Feasible. From a financial standpoint, any property use which is expected to produce a positive rate of return is regarded as being feasible. Factors dictating which property uses are feasible include those which determine the possible and legal uses as well as other important factors such as: the shape, frontage, and location of the tract; access to the tract;

adjacent property uses (in the interest of conformity); and the general neighborhood characteristics.

Maximum Profitable. The maximum profitable use is the judgment about which of the financially feasible uses generates the highest residual land value. The use that generates the highest residual land value is the highest and best use of the site.

In determining the highest and best use of the subject property, careful consideration was given to the economic, legal and social factors which motivate investors to develop, manage, own, buy, sell, and lease real estate. The definition of highest and best use indicates there are two considerations. The first consideration is the highest and best use for a site as though vacant. The second is the highest and best use of a property as improved. The subject site will be analyzed as vacant, followed by an analysis of the property as improved when applicable.

Highest and Best Use - As Vacant. After considering the legal, possible, and feasible uses, it is our opinion that the highest and best use of the sign site, as vacant, is for an outdoor advertising sign.

Highest and Best Use as Improved. The billboard site is improved with a 14' X 48' back-to-back v-configuration illuminated bulletins supported by a steel monopole, 75' overall height which is a legal use of the site. The subject's improvements represent a feasible use of the site as vacant and provide an adequate financial return to the property. The improvements also represent the maximum profitable use of the site. The highest and best use of the subject property, as improved, is a continuation of its existing use.

PROPERTY VALUATION SUMMARY

Whole: ☒Part to be Acquired: ☐Remainder After: ☐

HIGHEST AND BEST USE ANALYSIS: (The *Highest and Best Use* analysis should consider the reasonably probable and legal use of vacant land or improved property considering legally permissible, physically possible, financially feasible, and maximally productive.)

VALUATION APPROACHES

Insert value estimate, then describe, analyze, and support each approach as required.

Cost Approach.....	\$ 225,543.00
Sales Comparison Approach (Land Only)	N/A
Sales Comparison Approach (Land & Improvements)	N/A
Income Approach	1,065,000.00

Reconciliation of Approaches to Value: Based on an analysis of the concluded values of the subject property whole, we believe a market value of \$1,035,000.00 for the subject property is appropriate.

Contributory Value of Improvements	
Billboard	
Fee Simple Value	\$ 928,900.00
Plus: Value of Leasehold	\$ 136,098.00
Value of Subject	\$ 1,064,998.00
Rounded	\$ 1,065,000.00

Reconciled Final Value \$ 1,065,000.00

Each approach developed follows this page and is sequenced as shown below.

Land Value,

pg

Cost Approach,

pg

Sales Comparison Approach,

pg

Income Approach,

pg

SALES COMPARISON APPROACHWhole: ☒
Land: ☒Part to be Acquired: ☐
Improved: ☐Remainder After: ☐**SUBJECT WHOLE****VALUATION GRID****Representative Comparable Sales**

	Subject	Comp. No. 1	Comp. No. 2	Comp. No. 3	Comp. No. 4
Grantor					
Grantee					
Date of Sale					
Unit Price					
Relative Location					
Financing					
Conditions of Sale	December 3, 2012				
Market Conditions					
Physical Characteristics					
Size					
Location					
Corner/Frontage					
Flood					
	Indicated Unit Value				

Due to the lack of recent and comparable data, the Sales Comparison Approach to value was not utilized in this report. The omission of this approach does not reduce the reliability of the conclusions in this report.

COST APPROACH

Whole: ☒

Part to be Acquired: ☐

Remainder After: ☐

Cost Approach

Construction Costs:	\$57,050.00	
<u>Plus:</u> Site Procurement Costs:	<u>\$10,000.00</u>	
Total Direct Costs:		\$ 67,050.00
<u>Plus:</u> Indirect Costs (45%):		<u>\$ 30,173.00</u>
Total:		\$ 97,223.00
<u>Plus:</u> Entrepreneurial Incentive:		<u>\$ 14,583.00</u>
Total:		\$111,806.00
<u>Less:</u> Deprecation (20%):		<u><\$22,361.00></u>
Depreciated Cost of Improvements:		\$ 89,445.00

Cost Approach

The Cost Approach is one of the three approaches used to derive market value. It is defined in The Dictionary of Real Estate Appraisal, Fifth Edition, published by the Appraisal Institute in 2010, pages 47 and 244, as follows:

"A set of procedures through which a value indication is derived for the fee simple interest in a property by estimating the current cost to construct a reproduction of, or replacement for, the existing structure; including an entrepreneurial incentive, deducting depreciation from the total cost; and adding the estimated land value.

Cost New. Construction costs used in this report were based on several resources including: cost estimates of similar billboards and a cost estimate from Houston Sign and Service, Inc. According to the construction estimate provided, the total construction cost for the project is estimated at \$57,050, which is considered reasonable.

Site Procurement Cost. Other direct costs include site procurement costs. These costs are attributable to identifying a location and negotiating a lease agreement with the owner. This cost has been estimated at \$5,000 per face for a total of \$10,000. Thus, the total direct costs are \$67,050.

Indirect Costs. This item includes legal costs, plans and drawings, permits, and other professional fees. These costs typically range from 35 to 50 percent of the total direct costs. The indirect costs have been estimated at 45 percent of total indirect costs, or \$30,173.00.

Entrepreneurial incentive typically ranges from 10 to 15 percent. For the purpose of or analysis we estimated entrepreneurial incentive at 15 percent of total direct and indirect costs. Thus, it is calculated at \$14,583.00 $[(\$67,050 + \$30,173) \times 0.15]$.

Depreciation. Accrued depreciation is any loss in value from all sources. Traditionally, appraisers use three sources: physical deterioration, functional obsolescence, and external obsolescence.

Physical Deterioration. This category is actual wear and tear on the improvements. It can be long lived, curable or incurable.

Curable Physical Deterioration (Deferred Maintenance). This is the amount required to repair or replace parts of an improvement which is completely worn or used up, as of the appraisal date, if such repair or replacement will result in added utility or value which is equal to the cost of repair or replacement. This amount is deducted due to the premise of: "How much less will an informed and prudent buyer pay for the property with this condition?" Upon inspection of the property, the subject did not suffer any significant items of deferred maintenance.

Physical Deterioration Incurable. This category is actual wear and tear on the improvements. Based on our view of the billboard, it appears to be in good condition. The improvements are considered to be adequate and functional in design. Based on the overall condition of the billboard we have estimated the total depreciation at 20 percent, or \$22,361.00.

Functional Obsolescence. This category deals with inefficiencies applicable to the improvements such as outdated design, lack of parking, etc. It can be curable or incurable. The subject does not suffer from this form of depreciation.

External Obsolescence. This type of depreciation is a loss from cost new as of the date of the appraisal due to causes external to the property. Since real estate is fixed in location, it is dependent on its economic market. Therefore, any change in the surrounding environment that has a negative impact on the value of the property is shared by the components of that property: site and improvements. This type of depreciation is always incurable, since it is not feasible or practical for the property owner to remove the negative influences. Based on our analysis of the market, this does not appear to have affected the properties in the subject's immediate vicinity. As such, no external obsolescence is believed to exist.

In order to determine the total value via the Cost Approach any benefit (lease bonus) from the corresponding ground lease would need to be added to the previously derived value. This benefit is calculated by discounting the difference between the subject's Market Rate and Contract Rate per the lease agreement.

CBS Outdoor signed the lease in January 2008. The lease is for 20 years with an initial lease rate of \$20,000.00 per year. The lease escalates to \$22,000 in 2011, \$24,000 in 2014, \$26,000 in 2018, and \$30,000 in 2023.

We have analyzed the following comparable billboard sites in order to determine the Market Rental Rate for the subject's billboard site. Please see the following chart.

BILLBOARD SITE COMPARABLES			
No.	Address	Rate	Average Traffic Count
1	11150 Northwest Freeway	\$25,200	206,000 - 239,000
2	14655 Northwest Freeway	\$20,309	211,000
3	1255 West Loop North	\$30,000	285,000
4	15815 Northwest Freeway	\$37,440	211,000
5	18177 Gulf Freeway	\$25,000 - \$28,000	161,000 - 183,000
Subj.	11120 Northwest Freeway	\$22,000	206,000 - 239,000

After a review of the comparable rentals we believe the subject's billboard site has a market rental rate of \$35,000 per year. The billboard site is considered to have a positive leasehold value. In order to calculate the net positive cash flow to the Leasehold interest, we calculated the difference between the contract and market rental rate, and then discounted it over the remaining term of the lease. We applied a three percent growth factor to the market rental rate (\$35,000) beginning in Year 2. We believe a discount rate of 8 percent is considered reasonable over the remaining lease period. By multiplying the present value interest factor of annuity by the annual loss of income, the present value of the total positive cash flow to the Leasehold interest can be derived. The subject's Leasehold value is calculated in the chart on the following page.

Leasehold Analysis

		<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>
Market Rate		\$35,000	\$36,050	\$37,132	\$38,245	\$39,393	\$40,575	\$41,792	\$43,046	\$44,337	\$45,667	\$47,037	\$48,448	\$49,902	\$51,399	\$52,941
Contract Rate		<u>\$22,000</u>	<u>\$24,000</u>	<u>\$24,000</u>	<u>\$24,000</u>	<u>\$24,000</u>	<u>\$26,000</u>	<u>\$26,000</u>	<u>\$26,000</u>	<u>\$26,000</u>	<u>\$26,000</u>	<u>\$30,000</u>	<u>\$30,000</u>	<u>\$30,000</u>	<u>\$30,000</u>	<u>\$30,000</u>
		\$13,000	\$12,050	\$13,132	14245	15393	14575	15792	\$17,046	\$18,337	\$19,667	17037	18448	19902	21399	22941
Discount Rate	8.00%	<u>0.9259</u>	<u>0.8573</u>	<u>0.7938</u>	<u>0.7350</u>	<u>0.6806</u>	<u>0.6302</u>	<u>0.5835</u>	<u>0.5403</u>	<u>0.5002</u>	<u>0.4632</u>	<u>0.4289</u>	<u>0.3971</u>	<u>0.3677</u>	<u>0.3405</u>	<u>0.3152</u>
		\$12,037	\$10,331	\$10,424	\$10,471	\$10,476	\$9,184	\$9,214	\$9,209	\$9,173	\$9,110	\$7,307	\$7,326	\$7,318	\$7,285	\$7,232
Value to the Leasehold Interest		<u>\$136,098</u>														

As shown on the previous page, the subject has a lease benefit (leasehold value) of \$136,098. This must be added to the previously derived value in order to obtain the total value via the Cost Approach. Thus, the value is as follows.

Depreciated Cost of Improvements:	\$ 89,445.00
<u>Plus: Value of Leasehold:</u>	<u>\$136,098.00</u>
Value Cost Approach:	\$225,543.00

INCOME APPROACH

Whole: ☒Part to be Acquired: ☐Remainder After: ☐

BILLBOARD

Gross Income		\$				174,200.00
Vacancy	7 %	\$				(12,194.00)
Effective Gross Income less Vacancy and collection Loss						\$ 162,006.00
Sales Commissions (16.6%)						(26,893.00)
Effective Gross Income						\$ 135,113.00
Expenses:	45 Percent					(60,801.00)
Net Operating Income					\$ 74,312.00
Income Capitalized @	8.0	%			
Estimated Value by Income Approach						\$ 928,900.00

The subject has a lease benefit of \$136,098. This must be added to the previously derived value in order to obtain the total value via the Income Capitalization Approach. Thus, the value is as follows.

Previously derived value:	\$ 928,900.00
Plus: Value of Leasehold:	\$ 136,098.00
Value Income Approach:	\$1,064,998.00

Rounded, \$1,065,000.00

Income Capitalization Approach:

The Income Capitalization Approach to Value consists of methods, techniques, and mathematical procedures that an appraiser uses to analyze a property's capacity of generate benefits and convert these benefits into an indication of present value. The appraisal principles reflected in the Income Capitalization Approach include the principles of anticipation and change as well as supply and demand. In order to properly utilize the Income Capitalization Approach, the appraiser researches rents, occupancies, and operating expenses from competing properties and creates an Operating Statement for the subject. At that point, the appropriate capitalization technique is selected and applied to the subject's income stream. The following discussion will demonstrate this procedure as it applies to the subject property.

Market Rent. Market rent, as used in this report, is defined by The Appraisal of Real Estate, Thirteenth Edition, by the Appraisal Institute, as follows:

"The rental income that a property would probably command in the open market indicated by the current rents that are either paid or asked for comparable space as of the dated of the appraisal."

The chart below summarizes the income characteristics of billboards which are considered to be comparable to the subject.

Location	Panel - Avg.	Panel - Avg.	Annual Revenue	Avg. per Period	Avg. per Period per Face
E/S Loop 610, S. of Hempstead Hwy.	\$7,421	\$5,144	\$163,353	\$12,566	\$6,283
N/S Hwy. 290, W. of Ladino	\$6,900	\$7,838	\$187,700	\$14,438	\$7,219
W/S of Loop 610, N. of Post Oak	\$3,027	\$10,659	\$177,930	\$13,687	\$6,843
14655 Northwest Freeway	N/A	N/A	\$125,753	\$9,673	\$4,837
1255 West Loop North	\$2,632	\$5,738	\$108,818	\$8,371	\$4,185
Hempstead Highway and Loop 610	\$7,812	\$5,415	\$171,951	\$13,227	\$6,614
Average	\$5,558	\$6,959	\$155,918	\$11,994	\$5,997


We were provided operating history for the billboard from September, 2008 to August 2011. This information is summarized below.

Panel No 02-3064. The effective gross income (net of vacancy and rent loss) for the year ending 2009, 2010, and 2011 were \$40,025.39, \$45,633.94, and \$63,111.43, respectively. Thus, the average from September 2009 to August 2011 was \$49,590.25, or \$3,814.63 per period. Based, on an analysis of the data, we believe an Effective Net Annual Income for this panel of \$63,000.00 is reasonable.

Panel No 02-3065. The effective gross income (net of vacancy and rent loss) for the year ending 2009, 2010, and 2011 were \$99,071.45, \$99,071.44, and \$99,071.47, respectively. Thus, the average from September 2009 to August 2011 was \$99,071.45, or \$7,620.88 per period. Based, on an analysis of the data, we believe an Effective Net Annual Income for this panel of \$99,000.00 is reasonable.


Thus, the Effective Net Annual Income for this subject is estimated at \$162,000 (\$99,000 + \$63,000). Given a 7 percent vacancy factor the Gross Annual Income is approximately \$174,200, or \$6,700 per panel per for 13 periods, is the market rental rate. Based upon a comparison to the chart on the previous page the Gross Income less vacancy and collection loss is considered reasonable.

Sales commissions of 16.6 percent (\$26,893) have been deducted from the Gross Income less vacancy and collection loss (\$162,006). Thus, the effective gross income is \$135,113.

Expenses. The expenses include legal, sign painting, electrical, insurance, taxes, land rent, and any incidentals necessary for the operation of the sign. We reviewed multiple reports and publications regarding operating expenses for billboards. Operating expenses for a billboard company can vary widely. According to the book Billboard Appraisal – The Valuation of Off-Premise Advertising Signs, operating expenses can range from 30 to 80 percent (excluding reserves) as a percentage of effective gross income. From the previous appraisal the “CBS Outdoor Act PEBITDA/OI Detail YTD” for CBS Outdoor Houston (2009 and 2010) showed an operating expense range of 36 to 40 percent (excluding reserves) as a percentage of effective gross income. Finally a publication by the International Right of Way Association in the May/June 2005 titled “Billboard Valuation – Fundamental Asset Allocation Issues” stated that expenses typically range between 50 to 65 percent. Based on an analysis of 192 advertising companies the average expense rate was 61.7 percent. Based on our review of the data, an expense ratio of 45 percent of effective gross income is considered reasonable. 

Net Operating Income. Thus, the Net Operating Income is calculated at \$74,312 (\$135,113 X 0.55).

Overall Rate. The overall rate (OAR) is used to convert an estimate of net annual income into an option of market value. This rate provides for both return on and of capital.

For the purposes of this report we have considered overall rates from comparable sales and the Band of Investments Technique. The overall rates of nine comparable sales comparable sales (retained in our files) range from 5.24 to 12.38 percent, with an average of 8.55 percent. 

The Band of Investment technique presumes that financing plays a major role in determining the overall rate. In this technique, the overall rate consists of two components. These are the

mortgage contribution and the equity contribution. The mortgage contribution is developed by multiplying the mortgage-to-value ratio by the mortgage rate. The equity contribution is developed by multiplying the equity dividend rate (cash flow rate) by the equity-to-value ratio. All of the data used is market derived.

It is our opinion that a prudent purchaser would attempt to buy the subject property by means of financing. Bankers have indicated the most probable situation would be an 80 percent loan for 20 years. Therefore, the equity contribution would be 20 percent. Based on conversations with local lenders, we believe the appropriate financing would be an 80 percent mortgage at 5.00 percent interest amortized over 20 years. The mortgage constant is a rate that reflects the relationship between debt service and the principle amount of the mortgage loan. In this instance, it is calculated to be 0.0792.

The equity dividend rate represents the relationship between a single year's cash flow and the equity investment. The equity dividend rate is considered a return to the equity investment of a project, which would include the returns increasing proportion of equity as debt is retired. According to the RERC Survey, Corporate Bonds (Aaa) are receiving a 3.9 percent yield and Corporate Bonds (Baa) are receiving a 4.8 percent yield. When considering the yields of these bonds as well as the risk associated with real estate investments at this time a 10.0 percent equity dividend rate is considered appropriate. The overall rate of capitalization is thus calculated below.

$$\begin{aligned} \text{Loan Ratio X Mortgage Constant} &= \text{Mortgage Contribution} \\ \text{Equity Ratio X Equity Dividend Rate} &= \frac{\text{Equity Contribution}}{\text{OAR}} \end{aligned}$$

$$\begin{array}{rclcl} .80 & \text{X} & 0.0792 & = & 0.0634 \\ .20 & \text{X} & 0.1000 & = & \underline{0.0200} \\ & & & & 0.0834 \end{array}$$

Rounded to, 8.35% Overall Rate

We believe an overall rate of 8.0 percent is appropriate to apply to the stabilized net operating income due to the current vacancy level in the market, typical investment criteria of real estate investors, and the location of the subject. The value of the subject via the Direct Capitalization Approach is shown below.

"As Is" Market Value

$$\begin{array}{rcl} \frac{\text{Net Operating Income}}{\text{Overall Rate}} & = & \text{Value} \\ \frac{\$74,312.00}{0.08} & = & \$928,900.00 \end{array}$$

As previously shown, the subject has a lease benefit of \$136,098. This must be added to the previously derived value in order to obtain the total value via the Income Capitalization Approach. Thus, the value is shown on the following page.

Previously derived value:	\$ 928,900.00
<u>Plus: Value of Leasehold:</u>	<u>\$ 136,098.00</u>
Value Income Approach:	\$1,064,998.00
Rounded,	\$1,065,000.00

Reconciliation:

All three approaches to value were considered in deriving the market value of the subject property. The following discussion summarizes the conclusions of each approach.

Income Capitalization Approach. This approach is one to which a potential purchaser would give a great deal of credence. By the use of the Direct Capitalization technique, weight and effect is given to mortgage financing and investor yields. Numerous comparables of rentals and expenses give this estimate a high degree of confidence. This approach indicates a market value as follows:

\$1,065,000.00

Sales Comparison Approach. Developing this approach to value involved the collection of comparable improved sales provided from our client. Due to the lack of recent and comparable data, the Sales Comparison Approach to value was not utilized in this report. The omission of this approach does not reduce the reliability of the conclusions in this report.

Cost Approach. This approach is derived by estimating the current cost to construct a replacement or reproduction of the structure. Any accrued depreciation is then deducted from the estimated cost of the reproduction or replacement. Finally, the net positive cash flow to the Leasehold interest was considered. The indicated value via the Cost Approach is as follows:

\$225,543.00

Final Opinion of Value. Although two approaches to value were utilized, the final opinion of value must be based upon that confirmation of the available market data and analysis which is most appropriate.

Due to the characteristics of the property, emphasis was placed on the Income Capitalization Approach. Thus, the final opinion of value for the subject, as of December 3, 2012, is as follows:

\$1,065,000.00

Assumptions and Limiting Conditions:

That the date of value to which the opinions expressed in this report apply is set forth in the Letter of Transmittal. The appraiser assumes no responsibility for economic or physical factors occurring at some later date which may affect the opinions herein stated.

That no opinions are intended to be expressed for legal matters or that would require specialized investigation or knowledge beyond that ordinarily employed by real estate appraisers, although such matters may be discussed in this report.

That no opinion as to title is rendered. Name of ownership and the legal description were obtained from sources generally considered reliable. Title is assumed to be marketable and free and clear of all liens, encumbrances, easements, and restrictions except those specifically discussed in this report. The property is appraised assuming it to be under responsible ownership and competent management and available for its highest and best use.

That no engineering survey has been made by the appraiser. Except as specifically stated, data relative to size and area were taken from sources considered reliable and no encroachment or real property improvement is assumed to exist.

That maps, plats, and exhibits included herein are for illustration only, as an aid in visualizing matters discussed within this report. They should not be considered as surveys or relied upon for any other purpose.

That no detailed soil studies covering the subject property were available to the appraiser. Therefore, premises as to soil qualities employed in this report are not conclusive, but have been considered consistent with information available to the appraiser.

The property is appraised as though free and clear, under responsible ownership, and competent management. All existing liens and encumbrances have been disregarded.

Unless otherwise stated herein, all of the improvements previously described were considered operational and in good condition.

Unless stated otherwise in this report, no presence of hazardous materials on or in the property was observed by the appraiser. The appraiser has no information on the existence of such materials and is not qualified to detect same. The presence of such materials on or in the property could affect the appraiser's opinion of market value. However, the value stated herein is based on the assumption that no hazardous materials are present on or in the property, and the appraiser accepts no responsibility for determining such condition. The client is urged to retain an expert in this field if there is any question as to the existence of hazardous material.

Any information furnished to us by others is believed to be reliable, but we assume no responsibility for its accuracy.

Possession of this report, or a copy thereof, does not carry with it the right to publication, nor may it be used for any purpose, by anyone other the applicant, without the previous written consent of the appraiser or the applicant and, in any event, only in its entirety.

This appraisal does not require us to give testimony in court or attend on its behalf unless arrangements have been previously made therefore.

The distribution of the total valuation in this report between land and improvements applied only under the existing programs of utilization. The separate valuations for land and building must not be used in conjunction with any other appraisal and are invalid if so used.

The value is reported in dollars on the basis of the currency prevailing at the date of this appraisal.

We have no present or contemplated interest in the property appraised.

Our compensation for making this appraisal is in no manner contingent upon the value reported.

That the appraiser assumes no responsibility for determining if the property lies within a flood hazard area and its consequences to the property. It is advised that a Topographic Survey be obtained and local officials be contacted.

This appraisal has been made in accordance with the Code of Professional Ethics of the Appraisal Institute and the Uniform Standards of Professional Appraisal Practice of the Appraisal Institute.

To the best of our understanding, this report conforms to the requirements of Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) and the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation and the Appraisal Institute.

The Americans with Disabilities Act (ADA) became effective January 26, 1992. We have not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requires of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the DA, could reveal that the property is not in compliance with one or more requirements to the act. If so, this fact could have a negative impact upon the value of the property. However, since we have no direct evidence relating to the issue of compliance, we did not consider possible noncompliance with requirements of ADA in estimating the value of the property.

This appraisal is presented in a summary report format. Much of the supporting documentation has been retained in our files.

There are no other limiting conditions contained in this report other than the ones listed above.