

# Condemnation Actions: *How Valuable Is Your Evidence of Property Value?*

Prepared by:  
Erica J. Stutman  
*Snell & Wilmer L.L.P.*



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# Condemnation Actions: How Valuable Is Your Evidence of Property Value?

By: Erica Stutman – 10/19/18

When a government condemns (takes) private property for a public use, the property owner is entitled to receive “just compensation” equal to the property’s market value. Value is typically determined by appraisals, but if the parties cannot agree, a judge or jury will determine the amount in a condemnation lawsuit. The parties may seek to present various forms of evidence of value, though it will be admissible only if the evidence is relevant and its value is not substantially outweighed by the risk of causing unfair prejudice, confusion, undue delay or waste of time, does not mislead the jury, and is not needlessly cumulative. See, e.g., Fed. R. Evid. 403.

**Property Owner’s Opinion:** The property owner’s opinion of value is generally admissible evidence because he or she has firsthand familiarity as to what makes the property valuable. However, the testimony is required to be based on the owner’s experience as the property owner. For example, in *City of Tucson v. Tanno*, the Arizona Court of Appeals affirmed the lower court’s ruling that Ms. Tanno could not present portions of her desired testimony. 801 Ariz. Adv. Rep. 4 (Ariz. Ct. App. 2018). Ms. Tanno sought to testify that during negotiations with the City in 1993, both sides agreed the property was



worth \$250,000, and that amount would be worth \$1,065,655 in 2015 if it had been invested in S&P 500 companies. The court found that such testimony of a hypothetical investment was irrelevant and was not connected to the actual value of the property based on Ms. Tanno's experience of owning it.

**Project Influence:** The *Tanno* court also prevented evidence offered under the "project influence doctrine," which provides that a property may not be given a lesser or greater value if the value is affected by the taking itself. Therefore, if the anticipated taking decreases the property's value, the landowner may be entitled to recover damages for the decreased value. In *Tanno*, the owners argued that an Arizona Department of Transportation (ADOT) roadway project in the 1980s decreased their property's value, and the City's current roadway project was merely a continuation of ADOT's project. The court disagreed, finding the projects distinct and thus, any decreased value from the ADOT project was not evidence of project influence from the current taking.

**Highest and Best Use:** To determine fair market value, the property's highest and best use must be considered. Under an "assemblage" theory, the best use of a piece of property may be in combination with others, but the owner must prove that it was reasonably probable at the time of the taking that the property would be assembled with surrounding parcels in the foreseeable future. In *Tanno*, the landowners sought to introduce expert testimony that the property had greater value because of its potential "assemblage"

with nearby properties. The court disallowed the evidence because the Tannos did not establish that assemblage of their property was likely to occur.

*Tanno* is a reminder that property valuation depends on the circumstances of each case. A landowner facing condemnation may want to consider whether the property has any unique aspects that may impact the value, and may be served well by offering evidence that is relevant and will add value to the jury's deliberations.

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