

when the condemnor takes actual possession or constructive possession by depositing the special commissioner's award. *City of Fort Worth v. Corbin*, 504 S.W.2d 828, 830 (Tex. 1974). Market value is the price the property would bring "when it is offered for sale by one who desires, but is not obligated to sell, and is bought by one who is under no necessity of buying it." *State v. Windham*, 837 S.W.2d 73, 77 (Tex. 1992) .

This Court has held that courts should admit as market-value evidence such matters as suitability, adaptability, surroundings, conditions before and after, and all circumstances which tend to increase or diminish the property's market value. *State v. Carpenter*, 126 Tex. 604, 89 S.W.2d 194, 200 (1936). Also, the jury may consider all "the uses to which [the property] is reasonably adaptable and for which it either is or in all reasonable probability will become available within the reasonable future." *City of Austin v. Cannizzo*, 267 S.W.2d 808, 815 (Tex. 1954). But this Court has also held that courts should exclude evidence "relating to remote, speculative, and conjectural uses . . . which are not reflected in the present market value of the property." *Carpenter*, 89 S.W.2d at 200. And it has recognized that "[a]s hard as it is to determine the value of property as it exists, it is harder still to determine its value as it might be." *State v. Schmidt*, 867 S.W.2d 769, 781 (Tex. 1993); *see also Melton v. State*, 395 S.W.2d 426, 429 (Tex. Civ. App.—Tyler 1965, writ ref'd n.r.e.) ("[M]arket value . . . should be based upon a reasonable cash value and a reasonable use for reasonable adaptability, and not upon some speculative, contemplated, [sic] use to be made of the land."). As a result, evidence in condemnation cases that "takes the inquiry away from the issue to be determined and raises an entirely collateral issue" is excluded. *State v. Chavers*, 454 S.W.2d 395, 397 (Tex. 1970) (holding that landowner could not value unimproved condemned land by comparing it to recently sold property including a house).

Because speculative evidence may lead to jury confusion and inaccurate damages awards, this Court has recognized only three appraisal techniques as acceptable for determining market value in condemnation actions: (1) the comparable-sales method, (2) the cost method, and (3) the income method. *See Religious of the Sacred Heart v. City of Houston*, 836 S.W.2d 606, 615-17, n.14 (Tex. 1992). Appeals courts have likewise consistently applied these three methods, often recognizing that the best market-value evidence is comparable land sales in the condemned property's area. *See, e.g., Bauer v. Lavaca-Navidad River Auth.*, 704 S.W.2d 107, 110 (Tex. App.—Corpus Christi 1985, writ ref'd n.r.e.); *Southwestern Bell Tel. Co. v. Ramsey*, 542 S.W.2d 466, 474 (Tex. Civ. App.—Tyler 1976, writ ref'd n.r.e.); *County of Bexar v. Cooper*, 351 S.W.2d 956, 958 (Tex. Civ. App.—San Antonio 1961, no writ).

Texas courts closely scrutinize and often reject appraisal techniques differing from the traditional methods. For example, this Court, citing Texas cases dating back to 1897, has recognized:

It has long been held in this state that even though a tract of land is adaptable to subdivision for commercial and residential lots[,] one seeking to prove the value of such a tract of land may not show what the price of the lots would be if subdivided, or show the price for which already subdivided lots were selling.

State v. Willey, 360 S.W.2d 524, 525 (Tex. 1962) (citations omitted). This is because the “value of nonexistent lots in a hypothetical subdivision is too speculative to be admitted as direct evidence of market value” and the sales price of individual, improved lots does not meet the test of similarity. *Cannizzo*, 267 S.W.2d at 816. Moreover, such evidence tends to cause the jury to value the land as lots, presumably at a higher market value. *Boswell v. Brazos Elec. Power Coop., Inc.*, 910 S.W.2d 593, 601 (Tex. App.—Fort Worth 1995, writ denied).

Courts of appeals have applied the *Willey* rule to exclude hypothetical subdivision appraisal evidence, particularly when the condemned land was raw, unimproved acreage. *See, e.g., Boswell*, 910 S.W.2d at 601 (“The general rule in condemnation cases . . . is that when the property condemned is raw acreage . . . it is improper to admit evidence of hypothetical, nonexistent subdivisions.”); *Kaufman Northwest, Inc. v. Bi-Stone Fuel Co.*, 529 S.W.2d 281, 288 (Tex. Civ. App.—Tyler 1975, writ ref’d n.r.e.) (“Where the property condemned is raw acreage it is not proper to admit in evidence hypothetical plats of nonexistent subdivisions, for the reason that they tend to cause the jury to value the land as lots in an established subdivision where none exists.”); *Lower Nueces River Water Supply Dist. v. Collins*, 357 S.W.2d 449, 452 (Tex. Civ. App.—San Antonio 1962, writ ref’d n.r.e.) (“The introduction of these [hypothetical] plats would cause the jury to value this property by lot rather than what the entire tract would sell for under the market value rule.”).

The only exception to this rule is hypothetical plats may be admissible when “they are relevant to prove some issue in the case and are limited to that purpose.” *Collins*, 357 S.W.2d at 452; *see also Boswell*, 910 S.W.2d at 601; *Delhi Gas Pipeline Corp. v. Richards*, 659 S.W.2d 861, 864 (Tex. App.—Tyler 1983, no writ). Thus, the jury may consider condemned property’s adaptability to subdivision as a factor in determining market value. *Cannizzo*, 267 S.W.2d at 816. But the jury cannot consider individual lots’ sales prices as comparable to the condemned property’s market value as though the land were already subdivided and improved. *Minyard v. Texas Power & Light Co.*, 271 S.W.2d 957, 959 (Tex. Civ. App.—Fort Worth 1954, writ ref’d n.r.e.).

II. ANALYSIS

A. THE SUBDIVISION DEVELOPMENT APPRAISAL METHOD

The subdivision development method values undeveloped land by calculating what a landowner could expect to realize from selling individual lots, taking into account development costs and discounting future revenues to present value. ___ S.W.3d at ___. The Court notes that the Appraisal Institute’s approach involves the same analysis: “estimate the gross sales of lots from a hypothetical subdivision of the subject land, subtract the costs of marketing and development, and discount the cash flow to arrive at the present value of the property to a willing developer-buyer.” ___ S.W.3d at ___ n.1. In describing Patterson’s appraisal technique, the Court acknowledges that Patterson applied the subdivision development method but then claims that his method is only “broadly similar” to the Appraisal Institute’s approach. ___ S.W.3d at ___, n.1. However, the Court does not explain how the Appraisal Institute’s approach is any different than Patterson’s approach. Rather, the only distinguishing factor is the Court’s referring to Patterson’s approach as “Patterson’s subdivision development analysis.”

In any event, any approach to the subdivision development method uses evidence about the actual sales of individual lots to establish raw, unimproved condemned land’s market value. Thus, the subdivision development method is significantly distinguishable from Texas’ traditional appraisal methods. As the Court notes, the subdivision development method differs from the comparable sales method because it requires the appraiser to examine ready-to-build, subdivided lots—lots that are not comparable to the landowner’s larger, unsubdivided condemned property. ___ S.W.3d at ___. Further, as the Court explains, the subdivision development method is unlike the income method, because it is based solely on the speculative piecemeal sale of unimproved property. ___ S.W.3d at ___.

**B. THE SUBDIVISION DEVELOPMENT METHOD IS IRRELEVANT
UNDER TEXAS CONDEMNATION LAW**

In holding that Patterson’s subdivision development analysis (*i.e.*, the subdivision development method) was not competent market-value evidence, the Court focuses on the flawed methodology and thus the unreliability of Patterson’s appraisal. The Court concludes that Patterson’s appraisal did not demonstrate what a willing buyer would pay to a willing seller in the relevant market. ___ S.W.3d at ___. However, the Court asks and answers the wrong question and does not answer the real question in this case—whether the subdivision development method is relevant to establish the market value of raw, unimproved land in condemnation cases. The answer under established Texas condemnation law is “no.” But, without further explanation, the Court leaves the door open and opines that in some condemnation cases involving undeveloped land, the subdivision development method may be reliable, relevant, and admissible. ___ S.W.3d at ___.

The Court concedes that, for over a century, Texas courts have refused to admit hypothetical subdivision evidence to determine raw land’s market value. *See, e.g., Willey*, 360 S.W.2d at 525; *Cannizzo*, 267 S.W.2d at 815; *Silliman v. Gano*, 39 S.W. 559, 563-64 (Tex. 1897); *Boswell*, 910 S.W.2d at 601; *Kaufman Northwest, Inc.*, 529 S.W.2d at 288; *Collins*, 357 S.W.2d at 452; *Denison & P.S. Ry. Co. v. Scholz*, 44 S.W. 560, 561-62 (Tex. Civ. App. 1898, no writ). But it persists in arguing that these cases do not apply here, and presumably in any condemnation case using the subdivision development method, because considering individual lots’ estimated values is only a single step in the expert’s mental process. The Court also claims that under this appraisal technique, the evidence of individual lot sales is not offered as comparable to the undivided property.

The Court's reasoning entirely ignores Texas law that condemned property's value must be based on the land's condition at the time of the taking. *See* TEX. PROP. CODE § 21.042(b); *Corbin*, 504 S.W.2d at 830. Further, contrary to the Court's cursory conclusion, the subdivision development method *does* require that the expert use individual lot sales as comparable to the undivided land. And, in fact, this is exactly what happened here. As the Court explains, "Patterson reviewed recent sales of three *comparable*, unimproved residential lots in one nearby subdivision." __S.W.3d at __ (emphasis added). Simply because the subdivision development method also requires that the expert take additional steps and consider other factors before arriving at a final dollar figure does not mean the method is any more relevant. Rather, this appraisal method's underlying premise—that the sale price of lots in subdivided areas is comparable to raw, unimproved condemned property—is precisely what the Court rejected in *Willey*. 360 S.W.2d at 525.

III. CONCLUSION

In leaving the door open for courts to allow parties to use the subdivision development method as evidence of raw, unimproved property's market value in condemnation actions, the Court ignores established Texas law to the contrary. While condemned land's adaptability to subdivision is relevant to show the land's highest and best use and thus is a factor for the jury's consideration, this cannot be used as the basis for the market-value appraisal. The underlying approach to the subdivision development method is fundamentally flawed under Texas condemnation law, because evidence about actual individual lots' value is irrelevant to show raw, unimproved condemned property's market value on the condemnation date. Because the subdivision development method raises the same concerns as it has for over one

hundred years, the Court should adhere to Texas law and hold that this appraisal method is irrelevant and inadmissible to show raw, unimproved property's market value in condemnation cases. Accordingly, I concur in the Court's judgment only.

James A. Baker, Justice

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