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May 18, 2026

Court of Appeals, First District of Texas
c/o Mr. David Chino
Clerk Pro Tempore, First Court of Appeals
301 Fannin Street, Room 208
Houston, Texas 77002-2066

Re: Cause No. 01-25-00029-CV, *HSC Pipeline Partnership, LLC v. Terrance J. Hlavinka, Kenneth Hlavinka, Tres Bayou Farms, LP, & Terrance Hlavinka Cattle Company*, on appeal to the First Court of Appeals, Houston, Texas

LETTER BRIEF OF AMICUS CURIAE
TEXAS LAND & MINERAL OWNERS ASSOCIATION

To the Honorable Justices of the First District Court of Appeals, Houston:

Amicus Curiae Texas Land & Mineral Owners Association ("TLMA") submits this letter brief in support of Petitioners Terrance J. Hlavinka, Kenneth Hlavinka, Tres Bayou Farms, LP, and Terrance Hlavinka Cattle Company (collectively referred to herein as "Hlavinka") in the present appeal.

The Texas Land & Mineral Owners Association ("TLMA") is a statewide advocacy association whose members are farmers, ranchers, and royalty owners. TLMA has over 600 active members representing millions of acres of real property. TLMA advocates for a business and legal environment that promotes the production of oil and gas in a manner that respects the property rights of landowners. TLMA has an interest in this case because appellant attempts to twist the definition of highest and best use in a manner that does not reflect the actual impact of oil and gas pipeline proliferation on real property value. The fees and costs for this brief were paid entirely by Texas Land & Mineral Owners Association.

TLMA writes in support of the jury verdict in this case, which properly awarded the Hlavinkas as landowners fair and just compensation for HSC Pipeline Partnership, LLC's ("HSC") pipeline taking, consistent with established Texas law, including the prior appellate opinions in this very matter. The trial court below properly followed the guidance and precedence from the two prior opinions of this Court and the Texas Supreme Court in its evaluation of the evidence in this case, including the admission of comparable pipeline sales on a per rod basis. The jury weighed the evidence, which it determined favored the Hlavinkas. The jury's determination should be respected and affirmed.

TLMA addresses three issues in this amicus brief: (1) whether there is legally sufficient evidence that the property's highest and best use was for pipeline sales; (2) whether comparable pipeline sales were properly admitted, and (3) whether the trial court properly excluded post-date of taking evidence.

Highest & Best Use

In this case, Hlavinka presented sufficient evidence to support a finding that his property's highest and best use was for pipeline easement sales. To begin, HSC has raised a legal sufficiency challenge, which only requires "some evidence" or a "mere scintilla of evidence" supporting the challenged finding. *See Raymond James & Assocs., Inc. v. Christensen*, 714 S.W.3d 886, 893 (Tex. App.—Houston [1st Dist.] 2025, pet. denied) ("So, when, as here, a party challenges the legal sufficiency of the evidence as to an adverse finding on which it did not bear the burden of proof at trial, the party must show that no competent evidence supports the finding. A legal sufficiency challenge fails if more than a scintilla of evidence supports the challenged finding." (internal citations omitted)). Hlavinka has easily met this burden.

This Court, in its previous opinion in this case, has succinctly laid out the accepted Texas standards of highest and best use:

> In determining the market value of the property, the factfinder may consider the highest and best use to which the land is adapted. Highest and best use is the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately

> supported, financially feasible and results in the highest value. The existing use of the land is its presumed highest and best use. However, the landowner can rebut this presumption by showing a reasonable probability that when the taking occurred, the property was adaptable and needed or would likely be needed in the near future for another use. In determining market value, the jury may consider all uses to which the property is reasonably adaptable and for which it is (or in all reasonable probability will become) available within the foreseeable future.

605 S.W.3d 819, 837 (Tex. App.—Houston [1st Dist.] 2020) (internal citations and quotations omitted).

HSC cobbles a Frankenstein standard of highest and best use that it would hold Hlavinka to: "In other words, the Hlavinkas had to show a reasonable probability that three 10-foot easements would have been sold on the land burdened by the Easement to another pipeline in the near future after the date of taking." HSC's Brief at 14. This is not the standard for highest and best use in Texas, nor is it the standard articulated in the prior opinions of this Court or the Texas Supreme Court. This Court should reject HSC's attempt to raise the bar for highest and best use to a level that is practically impossible for any landowner to meet.[1]

Although the surface acreage in the easement area was currently used for agriculture as of the date of take, there was competent evidence at trial that its highest and best use was for pipeline easement sales. In fact, the actual subsurface use of the whole property, or the existing use, was at least in part for pipeline sales, a more financially productive use. Thus, in this light, there is no presumption of a differing existing use to rebut.

The Texas Supreme Court and this Court, considering a prior offer of proof very similar to Terrance Hlavinka's testimony in the underlying trial, have

[1] Likewise, to the extent that any charge error was preserved for appeal and not otherwise waived, the trial court also properly rejected HSC's jury instruction on this same basis. The jury charge appropriately and correctly stated the Texas standard on rebutting the existing use as the highest and best use.

determined that such evidence is both admissible and probative on the issue of highest and best use. As this Court has recognized, Terrance Hlavinka would offer testimony—and did at the subsequent trial—that "most of the income generated from the property comes from pipelines" and that "he bought and sold property and negotiated pipeline easements and oil and gas leases for over thirty years, and that the 'main driver' behind the Hlavinkas' purchasing the land in 2001-2002 was the opportunity for pipeline development to generate income." *Id.* at 839. Furthermore, "there were at least twenty-five pipelines located on the property before HSC expressed an interest in acquiring an easement . . . ." *Id.*

And the Texas Supreme Court confirmed in this very case that "[a]rms' length sales to other pipeline companies that were voluntary, contemporary, local, and involve land with similar characteristics are some evidence demonstrating that the highest and best use of the property was as a pipeline easement. That is, Terrance Hlavinka's testimony is some evidence that the easement that HSC condemned could have been granted to another pipeline at a significantly higher price than its agricultural value." 650 S.W.3d 483, 497 (Tex. 2022); *see also id.* at 499 ("Evidence of recent fair market sales to secure easements running across the property that precede the taking are admissible to establish the property's highest and best use, and its market value, at the time of the taking").

At trial on remand, Hlavinka presented the jury evidence of the property's unique location and suitability for pipeline sales, existing pipelines on the property, and evidence of additional pipeline sales. HSC presented its own evidence to discredit Hlavinka's highest and best use claim, which the jury rejected in favor of Hlavinka's evidence. The Texas Supreme Court foresaw this very outcome:

> The evidence in this case . . . of frequent, recent comparable sales, should have been admitted to show a 'reasonable probability' that the easement condemned by HSC would likely have been sold to another pipeline in the near future. The factfinder, as always, is free to disbelieve that evidence or reject the notion that this easement presents such a case.

Id. at 498–99. HSC's shotgun challenges[2] to Hlavinka's highest and best use evidence should not undo the determination of the jury, the sole judge of witness credibility and the weight to be accorded to the evidence presented.

"The objective of the condemnation process is to make the landowner whole." *Enbridge Pipelines (E. Tex.) L.P. v. Avinger Timber, LLC*, 386 S.W.3d 256, 261 (Tex. 2012). The rebuttable presumption of an existing highest and best use prevents landowners from getting shortchanged in condemnation when land is not immediately put to its most objectively profitable use. In this case, even though only a scintilla is required, the great weight and preponderance of the evidence support a finding that the property's existing highest and best use was for pipeline easement sales or that the presumption of a highest and best use of agriculture had been rebutted. It would be a windfall to HSC to value the Hlavinka property as agriculture.

TLMA urges the Court to affirm that legally sufficient evidence supports a highest and best use of pipeline easement sales.

Comparable Pipeline Sales

Hlavinka and his experts appropriately relied on comparable pipeline sales. There is no requirement in the law that comparable sales must be exactly the same as the subject, or comparable sales would never qualify in any condemnation matter. *See Collin Cnty. v. Hixon Family P'ship, Ltd.*, 365 S.W.3d 860, 868–69 (Tex. App.—Dallas 2012, pet. denied) ("Comparable sales are generally admissible unless it should appear that 'reasonable minds cannot differ from the conclusion that the evidence of the other sale lacks probative force because of its dissimilarity' to the condemned property." (quoting *Tex. Elec. Serv. Co. v. Graves*, 488 S.W.2d 135, 139 (Tex. Civ. App.—El Paso 1972, writ ref'd n.r.e.))). Given that comparable sales is

[2] Furthermore, many of HSC's scattershot challenges have already been considered and decided by this Court and the Texas Supreme Court:

- Highest and best use speculative (*see* discussion above)
- "Per rod" calculation (605 S.W.3d at 840)
- Three slots (605 S.W.3d at 841)
- Project enhancement rule (605 S.W.3d at 841) (650 S.W.3d at 497–98)

the preferred valuation method, we know this is not the case. *See City of Harlingen v. Estate of Sharboneau*, 48 S.W.3d 177, 182 (Tex. 2001). Instead, appraisers commonly apply adjustments to comparables to account for differences. Hlavinka's expert, David Bolton, identified four comparable pipeline easement sales, near the property's location in Brazoria County and near the date of value within a few years, and he made adjustments thereto. 6RR129. There is no principled reason why such adjustments can commonly be made to land sales or improved sales but cannot also be made to pipeline easement sales. Again, along the same lines, that the easements have different terms, is not surprising nor is it a reason to exclude all potential easement comparables. These differences in easement terms can be considered and adjusted for.

In this case, the sales Hlavinka and his experts relied on were similar in time, location, and terms to HSC's condemned easement. HSC's oft-repeated complaint that the easement sales did not follow a certain route, *i.e.*, the Ascend Route, is a matter for cross examination, not exclusion. Practically speaking, a landowner has no control over the pipeline company's choice of routing. To hold pipeline sales similarity to such a standard is to allow the pipeline company to choose to reroute to avoid potential unfavorable market impact, which is exactly what HSC attempted to do in this case. The trial court initially has discretion in determining what sales are sufficiently similar so as to be admissible. *See Hixon Family P'ship*, 365 S.W.3d 860 at 869 ("The discretion of the trial court is also very broad in determining whether 'a sale is sufficiently similar to be admissible as a circumstance influencing an expert witness in arriving at his opinion of value.'" (quoting *Tex. Elec. Serv. Co. v. Graves*, 488 S.W.2d 135, 139 (Tex. Civ. App.—El Paso 1972, writ ref'd n.r.e.))). Then the jury ultimately is charged with determining just and adequate compensation, which includes an underlying determination of what sales are truly comparable, what sales should be considered or ignored, and what weight the comparable sales should be given. Similarities between sales are necessarily matters of degree, including routing.

Finally, HSC's unsupported claim that "easement sales are not evidence of the market value of land" must be rejected. HSC's Brief at 35. Of course, an easement sale is the sale of an interest in real property. Easements are frequently valued as a percentage of land value, based on the nature of property rights taken and property rights retained. To hold that comparable sales of easements do not

exist, or are not measures of land value, would ignore reality and put every pipeline company at a further leg up in condemnation, free to conduct private market transactions without ever having to reckon with those values in condemnation proceedings. A market value for condemnation purposes should not wildly differ from private market transactions—if they do, they are not truly market value and are not adequate constitutional compensation. To the extent that such easement sales include additional compensation or considerations, such factors can likewise be considered by appraiser and jurors and adjusted for or otherwise taken into account. And the fact that easement sales prices are not publicly available is no different than that of other Texas real estate transaction, which do not have to be disclosed publicly and typically are not.

TLMA urges the Court to affirm that the trial court did not abuse its discretion in admitting comparable sales of pipeline easements.

Post Date of Taking Evidence

HSC complains that the trial court improperly excluded evidence that no pipeline sales had taken place on the property in the seven and a half years following the date of taking. It would be impossible for a market participant to know that there would be no subsequent pipeline sale on the subject property on the "date of value," the critical date in all condemnation cases. The trial court correctly excluded HSC's non-evidence.

"The market value of property in a condemnation proceeding is determined as of the date of the taking." *Morello v. Seaway Crude Pipeline Co., LLC*, 585 S.W.1d 1, 29 (Tex. App.—Houston [1st Dist.] 2018, pet. denied) (internal citation omitted). "This is the date upon which the condemnor takes actual possession or . . . takes constructively by a deposit of the special commissioners' award." *City of Fort Worth v. Corbin*, 504 S.W.2d 828, 830 (Tex. 1974). Generally speaking, post-date of taking evidence cannot be relevant to what a market participant would buy or sell for on the date of taking. *See, e.g., Nassar v. Houston Indep. School Dist.*, No. 01-03-00832-CV, 2004 WL 1470616 at *3 (Tex. App.—Houston [1st Dist.] July 1, 2004, no pet.) (mem. op.) (concluding trial court did not err in excluding post-date of taking comparable sales). In this vein, the Texas Supreme Court in *Heddin* held that evidence of a post-date of taking pipeline rupture was improperly admitted by

the trial court. *Heddin v. Delhi Gas Pipeline Co.*, 522 S.W.2d 886, 889 (Tex. 1975). In this case, there is even less reason to introduce the post-taking evidence, which is not even a sale or occurrence or transaction, but a lack thereof.

However, even if there was some minimal relevance to the post-date of taking evidence (there is not), that evidence would be substantially more prejudicial than probative. *See United States v. 9.345 Acres of Land*, 248 F. Supp. 3d 772, 779 (M.D. La. 2017) ("[T]he Court excludes the post-taking evidence because the jury will likely be disproportionately rely on it to determine value, and this problem cannot be cured by a jury instruction."). Indeed, HSC argues that the lack of sales post taking "confirmed that such a [highest and best] use" was unreasonable "as of the date of take." HSC's Brief at 48. A date of value exists as a reason, to prevent the Monday morning quarterbacking that HSC attempts in this case. The fact that HSC argues that this evidence is more or less conclusive of the highest and best use issue indicates that such evidence is highly prejudicial, and given its limited to non-existent probative value as to market value as of the date of taking, it should also be excluded under Texas Rule of Evidence 403.

The seven-year period—the period between the date of value and the retrial in this case after the previous series of appeals—highlights the impropriety of such evidence. Under HSC's worldview, a condemnor (or alternatively a landowner) would be able to potentially benefit from larger market changes in a random period of time post the relevant date of taking time period. Parties to eminent domain deserve more predictability, and the relevant facts of a condemnation case should not change based on an extended appellate timetable. Nor should any party be rewarded for dragging on an appeal for its own benefit in a later retrial with the same date of taking. As a matter of judicial economy and public policy, there should be no potential benefit to litigation delay tactics.

Finally, the exclusion of post-taking evidence did not prevent HSC from arguing that there was no reasonable probability that Hlavinka would likely have sold the condemned easement to another pipeline in the near future. HSC simply had to make that case based on relevant and admissible evidence, particularly evidence that would have been available to a market participant on the date of

taking.[3] Certainly the trial court did not abuse its discretion in holding HSC to the date of taking in this case.

TLMA urges the Court to affirm the trial court's exclusion of evidence of the absence of pipeline sales after the date of taking.

Conclusion

This Court has long held that a landowner is entitled to be paid in a condemnation case based on the "market value" of his or her property. *City of Austin v. Cannizzo*, 267 S.W.2d 808, 812 (Tex. 1954) "'[M]arket value' in all such issues being defined in terms of what the land would bring in a transaction between a willing seller and a willing buyer." *Id.*

Over the years, however, precedent from this Court and intermediate Texas appellate courts has created obstacles and hurdles to the introduction of valuation evidence that would most certainly be considered in any real world or non-eminent domain situation. The goal of a condemnation proceeding is to mirror the market and the market for pipeline sales should be treated like any other real estate market.

TLMA submits that the Appellate Courts got it right in their prior holdings concerning highest and best use and pipeline sales, particularly as they actual impact market value. Hlavinka, with great care and awareness of the Courts' prior rulings, presented trial evidence that the jury believed to be credible and made a fair award of compensation on the basis thereof.

TLMA urges the Court's to affirm the trial court's rulings and jury's verdict, bringing the parties one step closer to a final resolution in this protracted legal dispute.

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[3] HSC has admitted in its briefing that "HSC did, in fact, controvert [evidence of a reasonable probability of a future pipeline sale] with testimony from its experts and the Hlavinka's experts of the historic lack of pipeline easement sales along the tract burdened by the Easement pre-taking." HSC's Reply Brief at 13. That the jury did not find this evidence credible is no reason to allow in otherwise inadmissible evidence.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 9.4(i)(3) of the Texas Rules of Appellate Procedure, the undersigned certifies that this filing complies with the word limits of Rule 9.4(i)(2)(D) because, exclusive of the parts exempted by Rule 9.4(i)(1), it contains 3,477 words.

/s/ *Nicholas P. Laurent*
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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2026, a true and correct copy of the foregoing Amicus Curiae Letter Brief of the Texas Land & Mineral Owners Association was served on all parties of record indicated below in accordance with the Texas Rules of Appellate Procedure through electronic service by the electronic filing manager.

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Envelope ID: 115022794
Filing Code Description: Other Brief
Filing Description: LETTER BRIEF OF AMICUS CURIAE TEXAS LAND & MINERAL OWNERS ASSOCIATION
Status as of 5/18/2026 1:04 PM CST

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