

ALABAMA

Condemnations for Pipelines

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Alabama has an extensive, and expanding, network of oil and natural gas pipelines designed to accommodate the production of movement of native products as well as the interstate transportation of products. When pipeline companies cannot voluntarily acquire pipeline easements, they will try to condemn these easements. The condemnation action will either be brought in Federal Court or in State Court. The Federal Court condemnation process is the same as in other jurisdictions, so it will not be addressed in this article. The State Court condemnation process is found in the Alabama Eminent Domain Code. CODE OF ALABAMA, §§ 18-1A-1, et seq. Pipeline companies more commonly employ the State Court system, rather than the Federal Court system, even when the Federal Court system is available.

Executive Summary

There is no quick-take procedure in Alabama. To gain the right of possession, the pipeline company must first file a condemnation action in Probate Court, prevail on a merit hearing, participate in a valuation hearing, obtain a judgment of condemnation, pay the condemnation judgment, and possibly post a bond in two times the amount of the judgment. This takes time, and many pipeline companies simply wait too long before starting the condemnation process. Below I will explain the steps in the process and the time involved, but it can easily take four months or longer to obtain the right to construct the pipeline after the condemnation complaint is filed. There are also steps that must be taken prior to filing an action, which can add several more months to the process.

Once the Probate Court process is complete, either or both sides may appeal to Circuit Court to re-litigate whether the pipeline company has the power to condemn and the amount of compensation owed for the taking. Either or both parties on appeal may demand a jury trial on the amount of compensation once the case is in Circuit Court.

Alabama follows the before-and-after valuation rule for partial takings. Most pipeline condemnation actions take only a portion of the property from the landowner and leave some land undisturbed. In Alabama, the valuation rule is to appraise the entire property before the taking, including all improvements and other matters that contribute to value, and then appraise

the remaining property after the taking assuming the pipeline was constructed, and the difference between the before and after values is the amount of compensation the pipeline company owes the landowner. Business losses of the owner are generally not recoverable, and neither are the landowner's attorney's fees or appraisal expenses (except when the pipeline company abandons a condemnation action or fails to acquire the property by condemnation).

Overview of the Condemnation of Property

Pre-Condemnation Entry on Property—Suitability Studies.

Pipeline companies are allowed to go on private property to conduct appraisals, examinations, surveys, and other suitability studies. CODE OF ALABAMA, §§ 18-1A-50 through -54. If the owner resists, the pipeline company can apply for a Circuit Court order allowing entry under certain circumstances. CODE OF ALABAMA, § 18-1A-51.

Pre-Lawsuit Procedures and Conditions Precedent

Once the pipeline company has identified property it needs to acquire, there are several procedural requirements before it can file a condemnation complaint. *See*, CODE OF ALABAMA, § 18-1A-20(a). Because these procedures are mandatory, any deviation from these procedures may constitute a defense to a condemnation action unless waived. CODE OF ALABAMA, § 18-1A-33, Commentary; CODE OF ALABAMA, § 18-1A-31 (waiver of violations).

The first such requirement is to have the property inspected and appraised. The appraiser for the pipeline company must give the owner a reasonable opportunity to accompany the appraiser during the inspection of the property. CODE OF ALABAMA, § 18-1A-21. Once the appraisal has been performed, the pipeline company must use the appraisal to establish an amount which it believes to be just compensation, and it must offer to purchase the property from the owner for the amount of just compensation so determined. CODE OF ALABAMA, § 18-1A-22(a). It is important to note that the amount of the appraisal is not necessarily the amount of the offer. The pipeline company is not required to furnish the owner with a copy of the appraisal, but it is required to submit a written statement and summary of the basis for the amount of the offer. CODE OF ALABAMA, § 18-1A-22(d). Good faith negotiations are not required under Alabama law.

There may be other conditions precedent, such as first obtaining approval from the Alabama Public Service Commission, depending on the project and the statutory grant of the power of eminent domain that the pipeline company is travelling under.

Complaint for Condemnation.

After the pre-filing procedures have been satisfied, then the pipeline company files a Complaint for condemnation in the Probate Court of the county in which the property (or any part thereof) is located. CODE OF ALABAMA, § 18-1A-71. There are specific matters that must be contained in a condemnation complaint, including a map showing a depiction of the landowner's property being taken and their remaining property, if any. The pipeline company will also file a notice of the pendency of the condemnation action (a "*lis pendens*") in the real property records of the Probate Court where the property is located. CODE OF ALABAMA, § 18-1A-75(a). The

Complaint must be served on the defendants as provided in Rule 4 of the Alabama Rules of Civil Procedure. CODE OF ALABAMA, § 18-1A-74(b).

Answer and Preliminary Objections.

An owner must file an Answer to the Complaint if they challenge the right or authority of the pipeline company to take his property (either on constitutional or statutory grounds) or if he disputes the area to be taken or the area which will remain after the proposed taking. CODE OF ALABAMA, §§ 18-1A-90 (Answer); 18-1A-91 (Answer and Preliminary Objections). Well-plead allegations in the Complaint which are not denied in the Answer may be deemed admitted. CODE OF ALABAMA, § 18-1A-91, Commentary.

Preliminary objections are any available grounds for objecting to the condemnation action. CODE OF ALABAMA, § 18-1A-91(b). These could be challenges to the pipeline company's power of eminent domain (based on lack of authority, lack of necessity and/or intended use is private rather than public) or to the condemnation action itself (based on failure to comply with pre-filing procedures, failure to properly plead Complaint, lack of jurisdiction of court over property or defendants, or any other deviations from the Alabama Eminent Domain Code).

Service Hearing.

Some Probate Courts will first hold what is best described as a service hearing where the pipeline company will advise the court of the status of service of process on the defendants. The point of this hearing is to establish a date when the Merit Hearing can be held, which is usually at least 30 days after the date the last defendant was served with service of process.

Merit Hearing.

The Probate Court will hold a merit hearing on the pipeline company's right to take the property. CODE OF ALABAMA, § 18-1A-276. At this hearing, the pipeline company generally has the burden of proof on all issues of fact relating to a preliminary objection. CODE OF ALABAMA, § 18-1A-94(a). The exception to this general rule is that the owner has the burden of proving by clear and convincing evidence all allegations of fraud, corruption, bad faith, and gross abuse of discretion. CODE OF ALABAMA, § 18-1A-94(b).

A fundamental objection to a condemnation complaint by a pipeline company is the delegation of the power to condemn. Natural gas companies engaged in interstate pipelines are governed by the federal Natural Gas Act which allows the Federal Energy Regulatory Commission (FERC) to confer the federal power of eminent domain on interstate natural gas pipeline companies. Oil pipeline companies, and intrastate natural gas pipeline companies, do not have the federal power of eminent domain. If these types of pipeline companies can condemn lands, it is only under a state law delegation.

The State of Alabama, as a sovereign may exercise its power to condemn by authorizing others to condemn for their own purposes. *City of Birmingham v. Brown*, 2 So. 2d 305 (Ala. 1941); *U.S. v. Forbes*, 259 F. 585, affirmed, 268 F. 273 (D.C. Ala. 1919). A grantee of the power of eminent domain can have no greater power than the sovereign granting the power, and it typically has much less power. *2,953 Acres of Land, More or Less, in Russell County, State of Alabama v. U.S.*, 350 F.2d 356 (5th Cir. 1965). To determine if a pipeline company has the

power of eminent domain, the Court must look for a statutory grant by the sovereign of this power. *Florence v. Williams*, 439 So. 2d 83 (Ala. 1983) (power of eminent domain cannot be exercised by another person or entity unless expressly conferred by statute); *City of Huntsville v. Brown*, 611 So. 2d 372 (Ala. Civ. App. 1992) (power of eminent domain does not pass by implication). If there is a statutory grant of the power of eminent domain, then the Court must look to the expressed terms of the grant, or its necessary implication, to determine the scope of the grant. *Berry v. Alabama Power Co.*, 60 So. 2d 681 (Ala. 1952); *City of Huntsville v. Brown*, 611 So. 2d 372 (Ala. Civ. App. 1992). Not only are statutory grants of the power of eminent domain limited to their express terms or necessary implication, they are also strictly construed against the pipeline company and in favor of the owner. *Blanton v. Fagerstrom*, 31 So. 2d 330, 331 (Ala. 1947).

In the context of pipeline companies, there are several different State statutes which give certain types of pipeline companies certain powers of eminent domain. Below is a sample of some of these statutes:

CODE OF ALABAMA, § 9-17-154—Underground Gas Storage Operators
CODE OF ALABAMA, § 10A-1-7.36—Foreign Corporations Generally
CODE OF ALABAMA, § 10A-1-7.37-- Foreign Corporations extending lines, tracks, ways, or works into state
CODE OF ALABAMA, § 10A-20-15.01-- Water Power Companies
CODE OF ALABAMA, § 10A-21-2.01-- Railroads, street railroads, gas or electric works, water companies, power companies, canals, terminals, bridges, viaducts, wharves, piers, telegraph or telephone lines, pipelines or any other work of internal improvement or public utility
CODE OF ALABAMA, § 10A-21-2.04—Mining, manufacturing, industrial, power and quarrying corporation
CODE OF ALABAMA, § 10A-21-2.05—Street railroad companies, telegraph, telephone, water, gas, electric, power, canal, pipeline companies and all other companies formed for constructing, operating or maintaining any work of internal improvement or public utility
CODE OF ALABAMA, § 10A-21-2.07—Waterworks corporations
CODE OF ALABAMA, § 11-50-4; 11-50-31—Municipalities (for water supply)
CODE OF ALABAMA, § 11-50-51—Municipalities (for sewers)
CODE OF ALABAMA, § 11-50-235; 11-50-261; 11-50-267—Waterworks and Sewer Boards
CODE OF ALABAMA, § 11-50-314—Board of Water, Sewer, Gas and Electric Systems
CODE OF ALABAMA, § 11-50-343—Boards of Water and Sewer Commissioners
CODE OF ALABAMA, § 11-50-396; 11-50-397—Gas Districts
CODE OF ALABAMA, § 11-88-7; 11-88-110—Water, Sewer and Fire Protection Authorities
CODE OF ALABAMA, § 11-89-7—Water, Sewer, Solid Waste Disposal, and Fire Districts

A pipeline company may appeal a dismissal of their complaint to Circuit Court for a trial de novo. CODE OF ALABAMA, § 18-1A-286. Alternatively, the pipeline company may re-file a

new condemnation complaint in Probate Court and begin the process anew. *Alabama M. Ry. Co. v. Newton*, 10 So. 89 (Ala. 1891). It is not a defense to a condemnation action that the pipeline company was previously unsuccessful in taking the owner's property.

If the preliminary objections are overruled, then the court will enter an order granting the Complaint, sometimes referred to as a "Right to Take Order." CODE OF ALABAMA, § 18-1A-276.

Writ of Mandamus/Temporary Restraining Order.

An owner cannot appeal from a Right to Take order that is favorable to the pipeline company since it is not a final judgment. CODE OF ALABAMA, § 18-1A-283. An owner may, however, petition the Circuit Court for a writ of mandamus and/or apply to the Circuit Court for a temporary restraining order to try to obtain an early review of a Right to Take Order. *See*, CODE OF ALABAMA, § 12-11-30(4) ("The circuit court shall exercise a general superintendence over all district courts, municipal courts, and probate courts."); *Gober v. Stubbs*, 682 So.2d 430 (Ala. 1996) (review of Probate Court's granting of complaint to condemn land based on public use and other grounds); *State Dept. of Transp. v. McLelland*, 639 So.2d 1370 (Ala. 1994) (review of Probate Court's order dismissing original Commissioner's report as untimely and appointing new Commissioners); *Florence v. Williams*, 439 So.2d 83 (Ala. 1983) (same); *Ex parte Alabama Great Southern R. R.*, 399 So.2d 838 (Ala. 1981); *Brittain v. Southern Railway Co.*, 197 So.2d 453 (Ala. 1967); *Southern Railway v. Todd*, 184 So.2d 341 (Ala. 1966); *Lybrand v. Forman*, 67 So.2d 4 (Ala. 1953); *Gerson v. Howard*, 21 So.2d 693 (Ala. 1945); *State ex rel. Burns v. Phillips*, 33 So.2d 239 (Ala. 1947) (review of Probate Judge's failure to recuse himself).

Commissioners' Hearing on Just Compensation.

Within ten days after entry of the Right to Take Order, the Probate Court must appoint three persons to act as commissioners whose job is to determine the damages and amount of compensation due to the owner. CODE OF ALABAMA, § 18-1A-279. Neither party has the burden of proof on the issue of just compensation. CODE OF ALABAMA, § 18-1A-153. The Commissioners are citizens of the county and act as a jury.

After hearing all the evidence, and usually after visiting the property, the Commissioners will return a report or verdict of just compensation to the Probate Court. CODE OF ALABAMA, § 18-1A-281. This report must be returned within twenty (20) days of the date of the Commissioners' appointment. CODE OF ALABAMA, § 18-1A-282. If the Commissioners will not be able to return its report within this time frame, the probate court usually re-appoints them from time to time as needed.

Judgment of Condemnation.

Once the Commissioners return their verdict to the Probate Court, the Probate Court must, within seven days, issue a Judgment of Condemnation which states that the subject property is condemned upon deposit of the amount of just compensation and damages assessed by the Commissioners. CODE OF ALABAMA, § 18-1A-282. This is the Judgment which can be appealed, so the date of this Judgment is critical to calculating the appeal time.

Payment of Judgment.

If neither party appeals, the pipeline company may pay the judgment at any time within 90 days of the entry of the Judgment. CODE OF ALABAMA, § 18-1A-290. If the pipeline company does not pay the judgment within 90 days, and no appeal is filed, then the owner may move the court to vacate the Judgment and for an award of their damages, including attorney's fees. CODE OF ALABAMA, §§ 18-1A-215 and 18-1A-290.

Appeals from the Probate Court Judgment.

The pipeline company, the owner, or both, may appeal the Probate Court's Judgment of Condemnation to the circuit court. CODE OF ALABAMA, § 18-1A-283. In order to perfect an appeal, a notice of appeal must be filed with the Probate Court within thirty (30) days of the date the Probate Court judge signs the Judgment of Condemnation. CODE OF ALABAMA, § 18-1A-283; *Ex parte State of Alabama*, 988 So.2d 1015 (Ala. 2007). Very strict adherence to this appeal process is required.

The order from which an appeal lies is the one issued pursuant to Section 18-1A-282 which comes immediately after the Commissioners return their report and in which the Probate Court condemns the property contingent upon the payment of the actual dollar amount assessed by the Commissioners. *McCoy v. Garren*, 384 So.2d 1113 (Ala.Civ.App. 1980); *Ex parte Alabama Power Co.*, 435 So.2d 111 (Ala.Civ.App. 1983); *State v. Pettis*, 156 So.2d 137 (Ala. 1963). A notice of appeal filed before the Probate Court issues its Judgment of condemnation does not give the Circuit Court jurisdiction since it is premature. *State v. Disker*, 123 So.2d 145 (Ala. 1960); *McCoy v. Garren*, 384 So.2d 1113 (Ala.Civ.App. 1980); *State v. King*, 122 So.2d 158 (Ala. 1960). A notice of appeal filed more than 30 days after the date of the Probate Court Judgment of condemnation does not give the Circuit Court jurisdiction since it is too late. *Pace v. Utilities Bd. of City of Foley*, 752 So.2d 510 (Ala.Civ.App. 1999) (notice of appeal filed 34 days after order was too late); *Ex parte State of Alabama*, 988 So.2d 1015, 1021 (Ala. 2007) (notice of appeal filed 31 days after order was untimely).

The general rules of civil procedure concerning the time for filing appeals are not applicable to appeals from Probate Court in condemnation actions, therefore post-trial motions may not toll the running of the appeal time. *Ex parte City of Irondale*, 686 So.2d 1127 (Ala. 1996) (appeals from probate court to circuit court in condemnation actions are statutory, and are not governed by the same rules as other appeals); *Puckett v. Alabama Power Co.*, 412 So.2d 1209 (Ala. 1982) (statutory appeal process was not supplemented by Rule 77(d), Ala.R.Civ.P.).

The time in which to file a notice of appeal begins to run on the actual date the Judgment is signed, even if the Judgment is not recorded or entered in the Probate Court file or sent to the parties until some later date. *Ex parte State of Alabama*, 988 So.2d 1015, 1021 (Ala. 2007). This is different from other types of judgments which must be signed and entered in the record before the appeal time begins to run.

Some Probate Court will enter another order or "Judgment" following the pipeline company's deposit of the first judgment amount, but these orders do not restart or extend the time for taking appeals. See, *Ex parte Alabama Power Co.*, 435 So.2d 111 (the time to file a notice of appeal begins to run from first order confirming the commissioner's verdict, not from any subsequent order following the deposit of judgment); *Ex parte Tanner*, 553 So.2d 598 (Ala. 1989) (same); *State v. Pettis*, 156 So.2d 137 (Ala. 1963) (same).

Trial De Novo in Circuit Court.

The Circuit Court proceedings do not involve a review of the Probate Court proceedings, but rather it conducts a trial *de novo* on all issues. CODE OF ALABAMA, § 18-1A-283.

Right of Entry—Withdrawal of Offer.

Immediately after the Probate Court enters a Judgment of Condemnation, and without regard to whether either party has filed an appeal to Circuit Court, the pipeline company may take steps to gain access to the property. A pipeline company must pay the amount of the Judgment and it must also post a bond equal to two times the amount of the Judgment before it can enter the property. CODE OF ALABAMA, § 18-1A-284.

Just as the pipeline company has a right to enter upon the property, the owner has a corresponding right to withdraw some of the money paid into court. This process is commonly referred to as “drawing down.” The owner is entitled to draw down the amount of the pipeline company’s pre-complaint offer to purchase from the money deposited into court. CODE OF ALABAMA, § 18-1A-110. If the amount of this offer is less than the Probate Court Judgment, then the balance should be invested in an interest earning account. CODE OF ALABAMA, § 18-1A-111.

Circuit Court Trials.

The Circuit Court judge, sitting without a jury, will decide if the pipeline company has the power to condemn the subject property. If contested, this issue will be decided in a bench trial prior to the trial on valuation issues.

If either party requests a jury, a jury trial will determine the amount of compensation the pipeline company owes the landowner. CODE OF ALABAMA, § 18-1A-151; ALABAMA CONSTITUTION, Art. XII, Sec. 235. To be timely, a jury demand must be made by the appealing party within ten (10) days of the date of the filing of the notice of appeal or by the non-appealing party within ten (10) days of the date of service of the notice of appeal. CODE OF ALABAMA, § 18-1A-151; Rule 38(b), Ala. R. Civ. P.; *Crabtree v. Tew*, 485 So.2d 726, 728 (Ala.Civ.App. 1985); *Jefferson County v. Adwell*, 103 So.2d 143 (Ala. 1956).

Discovery in Circuit Court.

Each party is entitled to the full discovery procedures provided for in the Alabama Rules of Civil Procedure, except as limited by the Alabama Eminent Domain Code. CODE OF ALABAMA, § 18-1A-70.

Written appraisal reports prepared in contemplation of the subject condemnation action, however, are specifically exempt from discovery. *Ex Tuscaloosa County*, 825 So.2d 729 (Ala. 2001); *State v. Bragg*, 710 So.2d 417 (Ala. 1917); CODE OF ALABAMA, § 18-1A-130. This prohibition from discovery also extends to the information that would be contained in these reports. *Ex parte Tuscaloosa County*, 825 So.2d 729, 734 (Ala. 2001) (“The County cannot obtain through interrogatories information that it is forbidden to obtain by use of a request for production of documents.”).

Treatment of Various Ownership Interests—Undivided Fee Rule.

When there are several different persons or entities with interests in the subject property, such as landlords and tenants, the “undivided fee” rule is applicable. This rule states that the subject property is to be valued as a whole instead of having different values attached to each of the various interest holders. *Harco Drug, Inc. v. Notsla, Inc.*, 382 So.2d 1 (Ala.1980). Thus, only one sum of money is awarded to compensate all the various interest holders in the property (e.g., tenant and landlord; present interest and reversion interest). Each person owning an interest in the property, however, is allowed to testify as to the value of their interest. *Drummond Coal Co. vs. State of Alabama*, 548 So.2d 430 (Ala. 1989); *E-Z Serve Convenience Store, Inc. vs. State of Alabama*, 686 So.2d 351 (Ala. Civ. App. 1996).

Because only one sum of money is awarded to compensate all the various interest holders in the property (e.g., tenant and landlord; present interest and reversion interest), if there is a dispute between these various interest holders over how to divide the condemnation proceeds, the court will schedule an apportionment hearing to hear evidence on this subject. CODE OF ALABAMA, § 18-1A-291.

Time Line of a Condemnation Action

In most pipeline condemnation actions, time can be a critical factor. Alabama’s process requires certain pre-filing steps and post-filing due process before the pipeline company can gain the right to go on the owner’s property to begin constructing the project. Below is an estimated time line of a typical pipeline condemnation project from the point after the surveys for the route are finalized.

Pipeline Company orders Title Reports of Property Impacted by Taking	30 days
Pipeline Company/Attorney receives and reviews title reports and meets with appraisers on scope of appraisal services to be performed	10 days
Appraiser mails notice to accompany letter to property owners; Appraiser schedules on-site meetings with owners who respond; and Appraiser completes Appraisal Reports.	90 days
Pipeline Company/Attorney review Appraisal Reports; Pipeline Company mails/delivers offer letters to all owners; Pipeline Company negotiates with owners; and Title Company updates title reports.	45 days
COMPANY CLOSES ON VOLUNTARY CONVEYANCES	
Attorney reviews updated title reports and files Condemnation Complaints	25 days
Defendants served with service of process and Attorney schedules and conducts Service Hearings if necessary.	45 days
Attorney schedules and conducts Merit (“Right to Take”) Hearing, Probate Court enters “Right to Take” Order, and Probate Court appoints Commissioners.	55 days
Attorney schedules and conducts Commissioners’ view of property; Appraiser updates effective date of appraisals to reflect Date of Value; Attorney schedules and conducts Commissioners’ evidentiary hearing; Commissioners return their Verdict to Probate Court.	25 days

Probate Court enters Judgment on Commissioners' Verdict; Pipeline Company deposits amount of Probate Court Judgment; Pipeline Company posts surety bond in Probate Court; and Attorney gets surety bond approved by Probate Court Clerk.	14 days
CLIENT ACQUIRES POSSESSION OF CONDEMNED PROPERTY	~340 days

This time line is merely an example of the reasonable time it takes to complete the mandatory steps in Alabama. Some steps may take more time. For example, if there are unknown land owners of heirship property, or if there are owners who cannot be physically served with service of process, the service of process by publication and the appointment of a guardian may be required. This step can easily add another month or so to the time line.

Also, there are several time periods expressly set forth in the Alabama Eminent Domain Code by which certain things must be accomplished in the Probate Court condemnation process. Some of these time limits have been interpreted as mandatory, meaning that if a deadline is missed, the condemnation process may be flawed to the point that the pipeline company may need to back up a step or more or start the process over from the beginning. *See, State v. McLelland*, 639 So.2d 1370 (Ala. 1994). The attorney for the pipeline company needs to be sure the Probate Court is aware of these deadlines and needs to do all in their power to make sure the time periods are met by the Court and by the Commissioners. Below is a chart of some of these deadlines:

TIME	ACTION	STATUTE
Upon filing Complaint in Probate Court	Probate Court "must" enter an Order setting a date for a merit hearing	Sec. 18-1A-74
Within 10 days of the Merit Hearing	Probate Court "shall" enter an Order granting or refusing the Complaint	Sec. 18-1A-276
Within 10 days of granting the Complaint	Probate Court "must" appoint three Commissioners to assess damages	Sec. 18-1A-279
Within 20 days after the Commissioners are appointed	Commissioners "must" hold an evidentiary hearing to determine amount of compensation	Sec. 18-1A-281
	Commissioners "must" make a written report (verdict) to the Probate Court of the compensation due	Sec. 18-1A-282
Within 7 days of receiving the Commissioners' Report	Probate Court "must" enter an Order condemning the property upon payment of the amount of the Commissioners' verdict	Sec. 18-1A-282
Immediately upon issuing the Condemnation Judgment	Probate Court "shall" mail notice of the Condemnation Judgment to owners together with a notice of their right to appeal	Sec. 18-1A-282
Within 30 days of deposit of the Judgment	Probate Court "shall" give notice in writing to each defendant of the deposit of money	Sec. 18-1A-214

Just Compensation - Valuation Issues

Before and After Appraisal Methodology for Partial Takings.

In partial takings, the only acceptable appraisal methodology is to perform a complete before and after appraisal of the entire property. CODE OF ALABAMA, § 18-1A-170(b) (“If there is a partial taking, the valuation rule is the difference between the fair market value of the entire property before the taking and the fair market value of the remainder after the taking.”); *City of Cullman v. Moyer*, 594 So.2d 70, 72 (Ala. 1992) (affirming a trial judge’s exclusion of a witness who did not perform a complete before and after appraisal of the entire property); *see also, Chandler v. State*, 910 So.2d 108, 111 (Ala.Civ.App. 2004) (“[O]nly the ‘before and after’ rule may be ‘used to determine the value of a partial taking.’”). The “value plus damages” and the “strip appraisal” approached are not acceptable or admissible. *Id.*

Evidence.

There are special rules relating to the admission of evidence of value which act to supplement, and in the event of a conflict, supersede, the Alabama Rules of Evidence. CODE OF ALABAMA, § 18-1A-190(a). For example, only certain witnesses are qualified to testify as to the value of the property. The owner of the property is allowed to give his opinion as to the value of the property, and an expert witness may also be allowed to testify about the value of the property before and after the taking. CODE OF ALABAMA, § 18-1A-192(a).

In addition to specifying the persons qualified to give an opinion as to value, the Code also limits these witnesses to considering only certain matters. *See, e.g.*, CODE OF ALABAMA, § 18-1A-195; CODE OF ALABAMA, § 18-1A-196; CODE OF ALABAMA, § 18-1A-193, CODE OF ALABAMA, § 18-1A-194; CODE OF ALABAMA, § 18-1A-197.

Valuation Approaches.

There are three statutorily endorsed approaches to valuation. The first is the Sales Comparison approach which involves consideration of the sales of comparable parcels of property. CODE OF ALABAMA, § 18-1A-196(2). The court decides whether a particular sale is comparable. The Cost approach includes the Sales Comparison approach for vacant land, but uses a reproduction cost new less depreciation methodology for improvements. CODE OF ALABAMA, § 18-1A-196(5). The Income approach focuses on the net rental income of the subject property, which amount is then capitalized. CODE OF ALABAMA, § 18-1A-196(4). The Income approach should not be confused with the capitalized net profit or net income of a business which is operating on the subject property, however. While the net income of the subject property itself is a valid basis for an opinion of value, the net income or net profit of a business being operated on the subject property is not.

The guiding principle is to compensate the owner for the fair market value of his property in an attempt to put the owner in the same position he was in prior to the taking. *Williams vs. Alabama Power Co.*, 730 So.2d 172 (Ala. 1999); CODE OF ALABAMA, §§ 18-1A-172 and 18-1A-176. The market value is the value the property would sell for on the open market in an arm’s length transaction. CODE OF ALABAMA, §§ 18-1A-172 and 18-1A-173(a).

Property is valued at its highest and best use, even if it is not currently used in that manner. CODE OF ALABAMA, § 18-1A-174.

Business Losses.

Generally business losses are not recoverable as such, but business income can be relevant on valuation issues such as the income approach, highest and best use determinations, and other matters. *See, Barber v. State*, 703 So.2d 314, 322 (Ala. 1997); *State v. Woodham*, 264 So.2d 166, 168 (Ala. 1972); *Harco Drug, Inc. v. Notsla, Inc.*, 382 So.2d 1, 4–5 (Ala. 1980).