

Welcome!

Eminent Domain

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- The **largest business and litigation law firm** headquartered in the Research Triangle area and one of the largest in North Carolina
- We provide a **full range of legal services** to a diverse and dynamic group of **regional, national and international clients**, ranging in size from **large public companies** to **emerging growth businesses**
- Dedicated to furthering clients' interests by providing **intelligent guidance, strategic counsel, solid advice** and **excellent results**



Overview

- What is Eminent Domain?
- Public Use or Benefit
- Who can condemn?
 - Public Condemnors and Private Condemnors
- Condemnation Procedures and Processes
- Just Compensation

What is Eminent Domain?

- Eminent Domain is the right of the Sovereign to take/condemn private property.
- Concept has existed since biblical times and is embodied in the Magna Carta.
- The concept of paying for the property taken began in the late 1700s.

What is Eminent Domain?

- Embodied in the federal and state constitutions
 - Fifth Amendment to the U.S. Constitution
 - Section 19 of the N.C. Constitution
 - Fourteenth Amendment to the U.S. Constitution

What is Eminent Domain?

In NC, legislative action is necessary to specify “occasion, mode, condition, and agencies” for the exercise of eminent domain

- Who has the power to condemn
- Why/when the property can be condemned
- How the property can be condemned

Public Use or Benefit

- Required by federal and state law
- What qualifies as “public use” has been a hot topic since the Kelo v. City of New London case in 2005
- Proposed constitutional amendments

Public Use or Benefit

- N.C. Gen. Stat. § 40A-3
 - Public Purpose, Public Use, Public Benefit
- Delegation of the power of eminent domain is a decision for the Legislature
- Public use or benefit is a question of law for the courts

Public Use or Benefit

- What is “public use”?
- What is “public benefit”?

Who Can Condemn?

- Private Condemnors
- Limitations on Private Condemnors

Who Can Condemn?

- Local Public Condemnors
- DOT

Condemnation Procedures and Processes

- Private Condemnors
 - Special Proceedings Petition
 - 10 days to respond
 - Lis Pendens
 - Response
 - Hearing on Need and Necessity
 - Route, quantity taken, rights taken
 - Arbitrary and capricious

Condemnation Procedures and Processes

- Private Condemnors
 - Commissioners' Hearing
 - Commissioners' Report
 - Condemnor may deposit Report amount
 - Exceptions
 - Hearing on Exceptions
 - Appeal
 - Superior Court trial *de novo*

Condemnation Procedures and Processes

- Local Public Condemnors
 - Must provide notice prior to condemning
 - Deposit made when filing
 - Memorandum of Action
 - “Quick Take”
 - 120 days to respond

Condemnation Procedures and Processes

- Department of Transportation
 - Complaint
 - Declaration of Taking
 - Memorandum of Action
 - Deposit made at time of filing
 - 12 months to answer
 - Takings Map
 - Landowner can request commissioners

Just Compensation

- Constitutions require payment of “just compensation”
- Right to have a jury determine
- Which statute involved determines how “just compensation” is defined
 - Private condemners use Chapter 40A
 - Local public condemners usually use 40A
 - DOT uses Chapter 136

Just Compensation

- Generally, the reduction in “Fair Market Value” is the key
- Reasonable buyer and seller
- Determined as of the date of taking

Just Compensation

- DOT Cases
 - Total take = fair market value
 - Partial take = difference in FMV before and after, including damages to the remainder
 - General Benefits
 - Special Benefits
 - Damages can be \$0

Just Compensation

- Private/Local Public Condemnor Cases
 - Total take = fair market value
 - Partial take = greater of:
 - difference in FMV before and after, including damages to the remainder, or
 - value of the property taken
 - General Benefits ignored
 - Special Benefits considered
 - Damages can be \$0

Just Compensation

- Private/Local Public Condemnor Cases
 - Damages cannot be \$0

Just Compensation

- Highest and Best Use
 - Applies to all condemnations
 - Value based on highest and best use of the property, not necessary the present use
 - Not purely speculative or peculiar to the owner
 - Subdivision issues

Just Compensation

- Price paid by condemnors for other property inadmissible
- Tax value generally inadmissible
- Unaccepted offer or listing generally inadmissible
- Lost profits generally inadmissible
- Mineral deposits
- “Condemnation Blight”

Just Compensation

- Appraisals
 - Three methods:
 - Sales Comparison
 - Income
 - Cost

Just Compensation

- Lay Witnesses
- Expert Witnesses

Just Compensation

- Temporary Easements
 - Value based on fair rental value

Just Compensation

- Inverse Condemnations
 - Property taken without formal proceeding
 - Police power v. taking
 - Zoning
 - Medians
 - Attorneys' fees
 - Transportation Corridor Map Act

Thank you for attending today's webinar!

Don't forget...

- Today's power point presentation and recording will be available by Friday on www.SmithLaw.com/Webinar and all past recorded webinars are available to view and download too.

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