

LAND ACQUISITION THROUGH JUDICIAL PROCEEDINGS

May, 2014
City of Colorado Springs

LEGAL PREREQUISITES FOR CONDEMNATION

- Power to condemn
- Public purpose for acquisition
- Legislative finding by governing body (City Council) of:
 - need for acquisition
 - necessity for specific property
- City “Real Estate Manual”
 - Council approval of condemnation action
- “Good Faith Negotiations”

STATUTORY REQUIREMENTS

- Colorado Revised Statutes Title 38, Article 1
- Notice of Intent to Acquire (C.R.S. 38-1-121)
 - Written notice – *all* parties with recorded interest
 - “*As soon as* condemning authority determines that it intends to acquire an interest in property...” (emphasis added)
 - Final written offer prior to valuation trial

PRE-LITIGATION STEPS AND TIMING

- Project planning – potentially multi-year EIS process
- Legislative determination of need and necessity – public meeting
- Appraisal or value finding
- Notice of intent to acquire
- Written offer – based on appraisal or value finding
- Period of negotiation

IMMEDIATE POSSESSION

TIMING & PROCEDURES C.R.S. 38-1-105(6)

- Must first file lawsuit (only after meeting all prior requirements)
- Must personally serve all parties
- Must set hearing on Court's calendar and notify all parties
- All interested parties have right to appear and contest all prerequisites to condemnation
- Condemnor must prove all prerequisites:
 - Power to condemn; public purpose; need and necessity; good faith negotiations; immediacy of need; amount for deposit
- No possession until 30 days after personal service, unless owner consents (38-1-105(6)(c))
- Deposit required – amount set by Court

DURATION – EXISTING LAW

- Project planning, permitting, internal planning per Real Estate Manual
 - Years
- Formal notice of intent, initial written offer, negotiations (assuming appraisal complete)
 - 2 -3 months
- Prepare and file lawsuit, serve parties, set immediate possession hearing
 - minimum 30 days from service to possession
 - 2 - 3 months

ADDITIONAL PROCEDURES

NEW ORDINANCE

- Pre-condemnation disclosure discussions
 - 30 to 60 days (?)
 - [compare to C.R.S. 38-1-121 immediate notice requirement]
- Special Meeting
 - 30 to 60 days prior notice
- Approval by ordinance
- Vote – next regular meeting
 - At least 30 days after Special Meeting
 - Second reading and approval required – minimum 14 days later

EXAMPLE

- EXISTING LAW
 - Road project
 - Notice to proceed – anticipated June 1
- Initial statutory notices and offer – mid January
 - Negotiations often continue
- NEW ORDINANCE
 - Pre-condemnation discussions/special meeting/voting meeting must precede statutory notices
- Initial discussions before disclosure of condemnation
 - Labor Day – or – mid summer
- Impact on negotiations and settlement?

CURRENT FLEXIBILITY

EXISTING CITY PROJECT EXAMPLES

- Woodmen Road – Phase I

- All land had to be under control before contract could be signed
- Construction contract had to be signed for project to be “shovel ready”
- Project had to be “shovel ready” in early September, 2009
- \$35 Million at stake

- I-25 Bore

- Boring machine on way to project
- Significant costs per day if machine and contractor sat idle
- Property at issue near front of tunnel where boring to start

TEMPORARY CONSTRUCTION EASEMENTS

- Use of property temporarily to allow for construction
 - E.g., additional width for initial utility line installation
 - Often last for one or two years
 - Often included as part of condemnation and owner is compensated through that same process
- Proposed ordinance - Prohibition on transfer to private person
- Would a temporary use of property with title going back to landowner violate this provision?
- If temporary use is prohibited, City must acquire more land and increase impact to owner and taxpayer unnecessarily

VALUATION TRIAL

- Commission of 3 –or- Jury
 - Property owner gets to choose which type of trial
 - Commissioners/jurors must also be landowners
- Issue is value of acquisition and any damages to remainder
- Trial set at a time convenient for all parties and with sufficient time for preparation

CLARIFICATION RECOMMENDATION 1:

What Is/Is Not Permitted Use?

YES	????	NO
Streets	Railways and facilities, safety crossings	Open Space
Highways	Bus and multi-modal transit facilities	Trails
Muni. Airport	Public parking facilities	Parks
Utilities—electric, gas, water, sanitary sewer	Public buildings for police, fire, public works, parks, recreation, general muni. administration, Muni. Courts, hospitals	Private economic development*
Abandoned property	Other utilities (telecom, drainage, storm sewer, stormwater detention)	Incidental public benefit (taxes)*
Blighted property	Public access ways and sidewalks	
	Slope stability and retaining walls	
	Traffic equipment and safety measures	
	Fire, public safety measures/facilities	
	Privacy or sound walls	
	Temporary property interests	

*Colorado law already prohibits the use of eminent domain for private economic development and enhancement of tax revenue. C.R.S. § 38-1-101(1)(b)(I)

CLARIFICATION RECOMMENDATION 2:

Abandoned & Blighted Property

Police Power

- To protect health, safety, welfare
- City Code § 6.12.601+, RBC 112: Unfit, dilapidated, abandoned buildings
- Authority to abate nuisance property; property ownership doesn't change.
- Owner pays City for costs of inspections, rehabilitation, demolition, etc.

New Ordinance: ED Power

- To acquire property for public use
- “Blighted” and “Abandoned” Property defined; overlap with City & RB Code
- Authority to take property to remediate nuisance; ownership transfer to City.
- City pays owner fair market value for blighted/abandoned property, pays for remediation, demolition, etc.

Clarify: How can City abate nuisance property?

Choice of police power and eminent domain?

Or only eminent domain?

ALERT: Change In Process

Current

- Resolution (1 reading)
- Majority of quorum (3-5 votes)

New

- Ordinance (2 readings)
- Supermajority (6 votes)

Supermajority Vote currently reserved for 3 items:

- Override mayoral vetoes
- Go into executive session
- Approve special district indebtedness to exceed the aggregate 10 percent of total assessed valuation of taxable property within the district



QUESTIONS