



The basics of acquiring property through eminent domain in Ohio

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Public entities are often faced with the challenging issue of acquiring property for construction projects. Acquiring property can be a lengthy process depending on property owners' disposition with regard to selling property.

Some property owners may outright refuse to sell property, while others may learn of a public entity seeking property and see big dollar signs. In any case, it is important for a public entity to be prepared to follow the statutory eminent domain process. Even when the initial interactions with a property owner look promising, property owners can change their minds well into the negotiation process.

The eminent domain process has many steps and time periods to consider when planning to acquire specific property. Acquiring property for a construction project is not an issue a public entity should wait until the last minute to address. Instead, the process to acquire property should be initiated as early in the planning process as possible.

This article will not dive into the details that are specific to each type of public entity in Ohio. There are, however, many steps in the statutory eminent domain process that are common for all public entities, which are discussed here.

Authorization to acquire property by eminent domain

The Ohio Constitution, Article I, Section 19 provides, in part, that “[p]rivate property shall ever be held inviolate, but subservient to the public welfare” (emphasis added). This is strong language, but it is not a license for a public entity to take property whenever it feels the desire to do so.

A public entity's specific authority to acquire property is provided by the legislature through the Ohio Revised Code and can be unique to each public entity. For example, the Ohio Revised Code gives school district boards of education the ability to acquire property through appropriation when determined to be necessary to "procure or enlarge... any site for a building to be used for public school purposes whether as classrooms, auditorium, or for technical training, administrative, storage, or other educational purposes," among other more unique situations. Identifying a public entity's express statutory authorization to acquire property is important to justify the public need to acquire property and to defend actions when faced with a challenge to a public entity's right to appropriate.

Most public entities will also, at some time in the process, pass what is termed a "resolution of necessity." The details of the resolution's content, timing of its passage and other considerations should be addressed with the public entity's legal counsel.

Valuation

A public entity does not typically obtain property for free — and certainly not in an eminent domain situation. In Ohio, an owner is entitled to "just compensation" for the property. Just compensation is defined as the fair market value of the property, defined as what a willing seller would pay and a willing buyer would accept for the property. If less than all the fee property is taken, then the owner may also be entitled to damages to the residue property (if any). A public entity typically makes an initial determination of just compensation through an appraisal.

A public entity has a statutory right to enter the property for the purpose of appraising, surveying or examining the property, after providing the property owner at least 48 hours (but no more than 30 days) notice. After examining the property to determine the suitability of the site for the intended public purpose and having the property appraised, the public entity will determine if it is still interested in acquiring the property.

Notice to property owner

Once the appraisal is complete and the public entity determines to move forward with the acquisition, the public entity presents the property owner with a notice of intent to acquire that must be in a form provided by statute. This notice also typically includes the required written good faith offer, which must be an amount no less than the appraisal amount (the owner must be provided with a copy of the appraisal).

The property owner may accept or reject the good faith offer (or provide a counter or not respond at all). If no agreement is reached — and while negotiations may certainly continue — the public entity can now file an eminent domain action. The court process (and general timing) is further detailed below.

Possession of the property

There are limited circumstances in which a public entity may take possession of the needed property before just compensation is determined. This process is known as "quick take" and applies for certain projects such as public road projects. This article will not expand upon the details of the quick take process. For most public entities, however, possession of the property needed for the project may not occur until a jury or trier of fact determines just compensation, and the public entity pays or deposits the award. Because the court process can take time to resolve, it is important that the public entity plan accordingly — and that the court action is filed early enough in the project timeline — so the project is not stalled due to the pending court action.

Court action: Petition to appropriate property

If the property owner does not accept the good faith offer and the parties cannot agree on the purchase of the property, the public entity should prepare to file a petition with the court to appropriate the property. The petition may be filed as early as 30 days after the property owner receives the notice of intent and good faith offer.

Mediation is always an option to resolve any dispute. If the property owner or public entity requests it, mediation must be held and completed within 50 days of the date the property owner answers the petition.

If the matter is not settled, litigation proceeds. Since the main issue is fair market value, the case often comes down to a battle of the experts, the appraisers. An owner is also permitted to testify as to the owner's opinion of the fair market value of the property. Once the verdict setting forth the just compensation award is filed and the public entity pays the owner the amount of the award (or deposits it with the court), the public entity may take possession of the property.

Conclusion

The eminent domain process in Ohio is complicated and can take many twists and turns, depending on the facts and circumstances a public entity faces. It is important to communicate early and often with property owners.

The time required to navigate the eminent domain process could be a matter of months or well over a year before the property is acquired. The length of time can be even longer if the statutory process is initiated late in the project's timeline. Most property acquisitions are resolved through negotiation. But following a systematic process that complies with the statutory eminent domain process will help the public entity acquire the property in the least amount of time, at a fair price and in a lawful manner.

Authors

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