

Condemnation Proceedings

The Taking or Damaging of Private
Property for a Public Use

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Federal Constitution

- Amendment V to the United States Constitution:
 - “...nor shall private property be taken for public use, without just compensation.”

State Constitution

- Article VI, § 13 of the South Dakota Constitution:
 - “Private property shall not be taken for public use, or damaged, without just compensation...”
 - Fee interest in right of way or other easement remains in landowner

Statutory Provisions

- SDCL chapter 21-35 – Condemnation under the power of eminent domain
 - Applies in all cases where an entity is given the power of eminent domain
- SDCL chapter 31-19 – Acquisition of land and materials
 - Applies specifically to Department of Transportation

Transportation Commission Authorization

- Resolution of necessity

Question for the Commission: Is acquisition of private property necessary for a public purpose.

Transportation Commission Authorization

- The finding of necessity by the Commission “...unless based upon fraud, bad faith, or an abuse of discretion, shall be binding on all persons.” *SDCL 31-19-10.1*

Broad Discretion of Transportation Commission

- Much latitude is given to the corporation vested with the right of acquiring property by eminent domain to determine the extent of the property necessary to be taken. *Basin Electric Power v. Payne.*
- A resolution of necessity is entitled to substantial deference. *City of Freeman v. Salis.*

Fraud

- A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment; A misrepresentation made recklessly without belief in its truth to induce another person to act. *Black's Law Dictionary (7th 3d.)*

Bad Faith

- A condemning authority “...acts in bad faith when it condemns land for a private scheme or for an improper reason, though the superficially stated purpose purports to be valid.” *City of Rapid City v. Finn*.
- Use of eminent domain solely to benefit a private individual or individuals is bad faith and the taking is void. *Id.*

Abuse of Discretion

- “When condemning authorities face competing considerations, they do not abuse their discretion if their choices are reasonable in light of logic and evidence. A choice to condemn must grossly violate fact and logic or be wholly arbitrary to support a finding of abuse of discretion.”
City of Rapid City v. Finn.

City of Rapid City v. Finn

- A lesson in what not to do

Preparation of Court Pleadings

- Summons and Petition
- Notice and Declaration of Taking (quick take)
- Court Deposit of Estimated Compensation
- Notice of Pendency of Proceeding
- Resolution of Necessity included in pleadings

Court Proceedings

- Serve pleadings on landowner and file pleadings in county court where property is located
- Deposit estimated compensation with Clerk of Courts (quick take)
- Necessity hearing or waiver of hearing
- Order Granting Possession
- Release deposit to landowner pending final determination of just compensation

Court Proceedings

- Hearing before court to determine the taking, if the issue is disputed
- Hearing before court on evidentiary issues

Settlement Without Trial

- Negotiated settlement with landowner
 - Execution of real property agreements and deeds or entry of Judgment in Condemnation
 - Can be fee interest or highway use easement
 - Only easement if by Judgment in Condemnation

Jury Trial To Determine Just Compensation

- Fee appraisal by licensed appraiser
- Only issue is amount of just compensation (unless permanency of take is disputed)
- Interest of 4.5% per year on award above court deposit
- Attorney fees and expert witness fees payable where judgment exceeds last offer by 20% or more

Recent Developments in the Law

- When are access rights taken or damaged?
- *Knick v. Township of Scott*

Questions?