

Protecting your property

How to address the issue of eminent domain **Interviewed by Chelan David**

Under a process called eminent domain, the government can take possession and ownership of private property for public use. Typically, the acquired property is used to build or widen roads or to install public utilities like water, sewer, gas or electric lines.

“An experienced condemnation lawyer will be able to identify things that you might not think of as you evaluate the offer, such as what your future plans for the property are and what effects the ‘taking’ might have on your continued ability to comply with things like zoning ordinances,” says Thomas Schultz, partner at Secrest Wardle.

Smart Business spoke with Schultz about eminent domain, how property is valued and the importance of fully understanding a proposed project.

What is eminent domain, and how might it affect one’s business?

Eminent domain is the right of a governmental entity to acquire property from its owner even if the owner is unwilling to sell that property voluntarily, subject to the payment of just compensation to the owner. The agency can only acquire the property if it intends to put it to a ‘public use,’ though exactly what that means can depend on a number of variables, not the least of which is the specific agency that is acquiring the property and the property’s location. Here in Michigan, there are fairly stringent rules about what ‘public use’ means, so property cannot be taken for what has been called ‘economic development’ purposes or for turning the property over to other private property owners to put to a different ‘private use’ that the government might like better.

What should a company do if contacted by a condemning agency seeking to acquire some or all of its property?

First, hire a lawyer. Even if you don’t object to the proposed project or improvement, you should know what your rights are and what the obligations or responsi-



Thomas Schultz
Partner
Secrest Wardle

bilities are of the condemning agency. Second, you may also need to contact a real estate appraiser, who can help you understand the value of the land proposed to be taken.

Third, find out all you can about the project and the reason why the agency wants some of your land for this project. The agency will usually explain the project as part of its initial contact with a business, but if the information you get doesn’t seem like it is complete or you don’t think you’re being told everything, there are plenty of places to get additional information. Your local town or city planning department is often a good place to start.

Any other advice for business owners?

Think about what the loss of the property might do to your business, not just right now but 20 years from now. Will it adversely affect accessibility or visibility or expansion plans or the future marketability of the land? Consider whether the offer from the government has taken into consideration all of the information that you have about your property and your business. If not, make sure that such information is proper-

ly conveyed to the agency. Make sure you understand the project and that your voice is heard on whether it should go forward. If you do object, object early in the process to protect your rights as best you can. Also, it is important to pay attention to deadlines contained in paperwork from the condemning agencies. Missing a deadline can have serious consequences on the right to receive proper compensation.

How is property valued in an eminent domain case?

Before contacting a business, a condemning agency is required to come up with a value for the property it intends to acquire, and it has to share that analysis with the property owner. Often, that evaluation process includes a formal real estate appraisal. The agency will at some point make a formal offer to acquire the property and negotiations can then occur. If you reach an agreement on the value of the property, the agency will then usually prepare the necessary paperwork to document the transfer of the property upon payment of that amount.

What type of litigation is typically involved?

If the parties can’t reach an agreement, the agency can then file a lawsuit. Assuming you have no argument that the property isn’t in fact going to be put to a ‘public use’ or shouldn’t be taken from you because it is not necessary to do so, then the agency will usually get the title to the property early in the litigation. After that, the focus of the litigation will usually be the amount of compensation that is owed, the fair market value and/or any damages that might be suffered by a business as a result of the ‘taking.’ <<

THOMAS SCHULTZ is partner at Secrest Wardle. Reach him at (248) 539-2847 or tschultz@secrestwardle.com.

Insights Legal Affairs is brought to you by Secrest Wardle