



The Rights of Landowners Under Wisconsin Eminent Domain Law

Procedures Under sec. 32.06 Wisconsin Statutes

FOREWORD

This pamphlet is published by the Wisconsin Department of Commerce in cooperation with the Attorney General, pursuant to sec. 32.26 (6), of Wisconsin statutes. The pamphlet is to be given to property owners or their representatives by the acquiring authority prior to initiation of negotiations for property being acquired for a public project.

The material in this pamphlet provides information on how the condemnation process works in Wisconsin. It should serve as a reference for you, but it is not intended to cover every possible eventuality or every right you may have in individual cases. A further source of information is Chapter 32 of the Wisconsin statutes which contains the law that is summarized in this pamphlet.

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INTRODUCTION

In recent times there has been an increasing demand placed upon government for services in transportation, education, utilities, housing and other areas of public concern. At the same time, the available supply of land for these projects has been shrinking dramatically. Consequently, government has had to resort to its right to acquire private land for public uses even without the consent of private owners -- the eminent domain power.

This power derives from the Wisconsin Constitution, Art. IX, sec. 3. The Legislature has

FEDERAL LAW

When a project is receiving federal financial assistance, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) may provide additional or different protections than those outlined in this pamphlet. You should receive supplemental information from the acquiring authority if federal law applies.

delegated this power by statute to numerous authorities and has specified the purposes for which such power can be used. Generally, departments, municipalities, boards, commissions, public officers, and various public and quasi-public corporations are delegated this power. Some of the purposes for which the Legislature has specified that condemnation can be used are highway construction or improvement, reservoirs, dams, public utility sites, waste treatment facilities, city redevelopment and energy lines.

Wisconsin has long had statutes regulating the exercise of eminent domain power. This pamphlet is intended to give citizens information about Wisconsin's eminent domain procedure, the workings of the condemnation process, and the rights of property owners in this process. It is, by necessity, of a general nature and is not a substitute for legal advice in individual cases, since many

aspects of Wisconsin law cannot be covered in general terms. Another source of information for citizens is the particular authority which is acquiring the property.

The goal is to achieve equality of information for both parties during the negotiation process and to reach satisfactory settlements, equitable to both the property owner and the public, through the statutory process.

THE LANGUAGE OF EMINENT DOMAIN

(This glossary defines terms used in the pamphlet)

Acquiring Authority

A public or quasi-public entity vested with the constitutional or statutory power to acquire private property for a public use.

Additional Items Payable

Persons displaced by the public project are to be fairly compensated by the payment of relocation assistance and assistance in the acquisition of replacement housing.

Appraisal

A written report, by a professional and disinterested person skilled in valuation, describing the property that is to be acquired and reaching a documented conclusion as to the fair market value of such property.

Certificate of Compensation

A document recorded with the register of deeds when a sale is negotiated between the owner and the acquiring authority. It contains the names of persons with a record interest in the property, a legal description, the type of interest acquired, and the amount of compensation. All persons named should be sent a copy and a notice of the right to appeal the amount of compensation.

Condemnation Commission

A group of local residents, appointed by the circuit court of a county for fixed terms, who have the authority to determine just compensation for the property being acquired.

Date of Acquisition

The day the award of the condemnation commission is paid to the property owner or to the circuit court for the benefit of the property owner.

Date of Evaluation

The day on which the lis pendens is recorded in the office of the register of deeds in the county where the land is located. The fair market value of the property on this day is just compensation to the property owner for the acquisition. For negotiated sales, the date of acquisition and the date of evaluation is the date the conveyance is recorded with the register of deeds.

Determination of Necessity

A finding, made by the acquiring authority or the court, that the authority has the right to acquire private land for a specific public use.

Easement

An interest in real property which gives the acquiring authority the legal right to use the property for a specific purpose or to restrict the property owner's use of the land. Ownership and title to the property remain with the property owner.

Eminent Domain

The power of the state to acquire private property for a public use.

Fair Market Value

The amount for which property could be sold in the open market between a willing buyer and a willing seller.

Full Narrative Appraisal

A detailed and comprehensive description of the process an appraiser uses in regard to a certain property to reach an opinion of its fair market value. The opinion must contain the appraiser's rationale for determining value and be documented by market data which supports the appraiser's rationale.

Incidental Expenses

Reasonable and necessary amounts, defined by statute, payable to the owner of real property acquired for a public use. Generally, incidental expenses compensate for expenses you may incur in transfer of your property to the acquiring authority. They include recording fees, mortgage prepayment penalties and other items.

Jurisdictional Offer

A written notice given by the acquiring authority to the owner of property and any mortgagee of record which informs the recipients of the proposed public use, what property is being acquired, and the amount of compensation to be paid.

Lis Pendens

A notice filed with the register of deeds when the acquiring authority files a petition with the court seeking a hearing before the condemnation commission. It notifies all interested parties that the property described is in the process of being acquired for a public use. The day the lis pendens is filed is the "date of evaluation," except in the case of an acquisition by a public utility, or a negotiated sale.

Litigation Expenses

The sum of the costs, disbursements and expenses including reasonable attorney, appraisal and engineering fees necessary to prepare for, or participate in, actual or anticipated proceedings before a condemnation commission or any court.

Severance Damages

Damages which may result when only part of a person's property is condemned. Generally, these items of damage compensate for any loss in value of the remaining property due to the acquisition.

Uneconomic Remnant

Any portion of the property remaining after a partial acquisition which is of little value or substantially impaired economic viability due to its size, shape or condition.

PART ONE BEFORE NEGOTIATIONS TO ACQUIRE PROPERTY BEGINS

After you have been contacted by the acquiring authority, you have the right to a **full narrative appraisal** of the property sought to be acquired. This appraisal is done by an appraiser hired or employed by the agency, and the law requires the appraiser to confer with the owner or the owner's representative, if reasonably possible, when making the appraisal. Any and all appraisals made by the acquiring authority must be provided to you.

You have the right to have your own full narrative appraisal of the property made by a qualified appraiser. The reasonable cost of this appraisal may be submitted to the acquiring authority for payment, if the appraisal meets the standards set forth in sec. 32.09 of Wisconsin statutes, but, if you have such an appraisal made and wish to be paid for its cost, it must be submitted to the authority within 60 days after you receive the authority's full narrative appraisal. Your appraisal will be considered during negotiations.

The acquiring authority is required to make a determination of its need for the property. The way this **determination of necessity** is made varies depending on what type of agency is acquiring the property and the purpose for which it is being acquired.

If a public utility seeks your property for an electric generating plant or high-voltage transmission line, it applies to the Public Service Commission for a **certificate of public convenience and necessity**. This application must be filed by the Public Service Commission with the city or town clerk in the area where the facility is located, as well as the main public library in the county. The issuance of the certificate of public convenience and necessity provides the determination of necessity for the acquisition of the needed property.

Most other authorities seeking land for proposed projects make their own determinations of necessity. The statute lists the authorities who have the power to make their own determinations. In all other cases, the circuit court, upon a petition by the acquiring authority, makes the determination. These records are available for public inspection.

If a public project, other than a town highway, involves the acquisition of any interest in any farm operation of more than five acres, the Department of Agriculture, Trade and Consumer Protection (DATCP) may be required to prepare an **agricultural impact statement** prior to the acquisition of any land. Even if the acquisition is less than five acres, DATCP may prepare a statement if the acquisition will have a significant effect on the farm operation.

If an environmental impact statement is required by another statute, the requirements of the agricultural impact statement may be met by the environmental impact statement. Also, if an easement for an electric transmission line, excluding a high voltage line, is being acquired over a farm operation, an agricultural impact statement is not required.

A "farm operation" is defined by law as an activity conducted primarily for the production of commodities for sale or home use in such quantity that the commodities contribute materially to the support of the farm operator.

The acquiring authority may gather the necessary information for the impact statement. DATCP must prepare the statement within 60 days after receiving the information from the acquiring authority. After preparation, the statement must be published by DATCP. For a 30 day period after publication, the acquiring authority is precluded from negotiating with the property owner or making a jurisdictional offer.

The law also requires that the agricultural impact statement be distributed by DATCP to various offices and individuals. You can obtain a copy from your local library or from any local unit of government in the area affected. You may also request a copy directly from DATCP.

