

MISSISSIPPI EMINENT DOMAIN LAW AND PROCEDURE

By:
Paul R. Scott, Esq.
and
Robert E. Quimby, Esq.
Smith, Phillips, Mitchell, Scott & Nowak, LLP
P. O. Box 346, 2545 Caffey Street
Hernando, MS 38632
662-429-5041
pscott@smithphillips.com
rquimby@smithphillips.com
www.smithphillips.com

Pre-Condemnation Requirements

Any person, agency or other entity acquiring real property for any project or program in which public funds are used is required to:

- A. Make every reasonable effort acquire the property expeditiously by negotiation;
- B. Obtain an appraisal of the property before the initiation of negotiations, unless the value of the fair market value of the property is less than \$10,000.00 and the agency has adopted a procedure in compliance with federal regulations to waive the appraisal in cases involving a low fair market value. The property owner has the right to accompany the appraiser during his or her inspection of the property;
- C. Provide the owner of the real property to be acquired with a written statement of, and summary of the basis for, the amount established as just compensation. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

Basic Procedure in Eminent Domain Cases

- A. Direct condemnation proceedings are initiated in Mississippi by the condemning agency filing a complaint in the County or Circuit Court sitting as the Special Court of Eminent Domain.
- B. Discovery is conducted as in any other civil case under the Mississippi Rules of Civil Procedure.
- C. All eminent domain cases in Mississippi are decided by a twelve person jury. The condemning agency has the burden of going forward with proof as to the amount of just compensation due to the property owner. Once a prima facie case is made of the value of the property by the agency, the burden shifts to the property owner to present

evidence that a greater amount of just compensation. The agency then has the opportunity to rebut the evidence presented by the land owner. The case is then submitted to the jury for determination of just compensation.

- D. In almost every eminent domain case, the jury is taken to the property under the supervision of the Court to view the property.

Just Compensation / Damages Recoverable in an Eminent Domain Case

- A. Article 3, Section 17 of the Mississippi Constitution provides that:

“Private property shall not be taken or damaged for public use, except on due compensation being first made to the owner or owners thereof, in a manner to be prescribed by law; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be public shall be a judicial question, and, as such, determined without regard to legislative assertion that the use is public.”

- B. Just Compensation in an eminent domain case includes:

- (i) the fair market value of the property actually taken;
- (ii) if the property taken constitutes only a part of a larger parcel, Just Compensation also includes any damage done to the remaining property resulting from the acquisition and use of the property by the condemning authority;
- (iii) In determining damages to the remaining property, supposed benefits to the property incident to the public use for which the property being taken are not considered.

Key Issues in an Eminent Domain Case

- A. Date of Valuation – Just compensation in eminent domain cases in Mississippi is determined as of the date the complaint is filed by the condemning agency. In all cases this is the date of valuation.
- B. Before and After Rule – In partial taking cases, Just Compensation is determined by use of the Before and After Rule. Under this rule the jury must first determine the fair market value of the entire property before the acquisition. It must then determine the fair market value of the part remaining after the acquisition. The difference between the two is Just Compensation.
- C. Lost Business Profits – Lost business profits are not recoverable in an eminent domain case in Mississippi.

- D. Litigation expenses – Generally, litigation expenses, including attorneys’ fees, are not recoverable in eminent domain actions in Mississippi. The only exceptions are:
- (i) If the Court finds that the agency is not entitled to condemn the property or the condemning agency unilaterally dismisses its suit or fails to pay any judgment entered within ninety days of the date the judgment was rendered, the land owner may recover all reasonable expenses, including attorneys' fees, incurred by him in defending the suit in a separate action brought therefor.
 - (ii) Reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred are recoverable by a successful land owner in an inverse condemnation case.
- E. Interest – Interest accrues at the rate of eight percent (8%) per annum, simple interest from the date the complaint is filed by the condemning agency until the final judgment is paid in full.

Authority to Condemn for Pipelines

Section 11-27-47, Miss. Code provides as follows:

All companies, associations of persons, municipalities, associations of municipalities, public utility districts authorized by and under the laws of the state of Mississippi, or natural gas districts, incorporated or organized for the purpose of building or constructing pipelines and appliances for the conveying and distribution of oil or gas, including carbon dioxide or other gaseous substances for use in connection with secondary or tertiary recovery projects located within the state of Mississippi for the enhanced recovery of liquid or gaseous hydrocarbons, or for the purpose of constructing, maintaining and operating lines for transmitting electricity for lighting, heating and power purposes, or for the purpose of constructing, maintaining and operating lines and appliances, for storing, transmitting and distributing water and for transmitting, treating and disposing of sewage, and hereby empowered to exercise the right of eminent domain in the manner now provided by law, and to build and construct the said pipelines and appliances along or across highways, waters, railroads, canals and public lands, above or below ground, but not in a manner to be dangerous to persons or property, nor to interfere with the common use of such roads, waters, railroads, canals and public lands. The board of supervisors of any county through which any such line may pass shall have the power to regulate, within its respective limits, the manner in which such lines and appliances shall be constructed and maintained on and above the highways and bridges of the county. All such companies, associations of persons, municipalities, associations of municipalities, public utility districts authorized by and under the laws of the state of Mississippi or natural gas districts shall be responsible in damages for any injury caused by such construction or use thereof.