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FREQUENTLY ASKED QUESTIONS

Q: What is “Eminent Domain” or “Condemnation”?

A: The words “Eminent Domain”, “Condemnation,” and “Appropriation” are used to mean the same thing. Eminent Domain is the power of a governmental authority, or of some private companies, such as utilities or pipeline companies, to take a person’s private property for a public use, such as constructing highways, sewers, schools, power lines, and pipelines.

Q: Who has the power of eminent domain?

A: The Federal Government and Ohio state and local governments are provided with the power of eminent domain. Also, utility companies, railroads, power companies, and private corporations such as natural gas and petroleum pipeline companies, have certain eminent domain powers. It should be noted that Ohio law specifies and limits the power of eminent domain for pipeline companies based on the product that is being transported.

Q: If a pipeline company takes part or all of a landowner’s property, what compensation is the landowner entitled to receive? Does the landowner have to accept the offer made by the pipeline negotiator?

A: The landowner is under no obligation to accept any offer made by the pipeline company representative. The landowner has a right to full and just compensation under both the U.S. Constitution, and the Constitution of Ohio.

Article I, Section 19 of the Constitution of Ohio provides in part as follows:

Inviolability of private property. Private property shall ever be held inviolate, but subservient to the public welfare . . . and in all other cases, where private property shall be taken for public use, a

compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

The **5th Amendment to the U.S. Constitution** provides in part as follows:

. . . nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

Q: Does Ohio have any laws that protect the Constitutional guarantees of just compensation?

A: Yes; Under Ohio law the landowner who has all or part of his/her property taken is entitled to compensation for the land and buildings taken plus damages to the remaining property which is not being taken. The remaining property is referred to as “the residue.” Ohio law provides as follows:

Section 163.14, Ohio Revised Code:

(B) The jury, in its verdict, shall assess the compensation for the property appropriated, and damages, if any, to the residue to be paid to the owners.

Q: When part or all of an individual’s land is being taken for a pipeline easement, or pipeline use, what can be considered under Ohio law, in determining the dollar value of the land that is being taken?

A: Under Ohio law, the landowner has the right to have his/her land valued at its highest and best use, regardless of how the land is currently being used. For example, a parcel of land may currently be used for farming, but the highest and best use of the land may be commercial development land. The landowner would be entitled to commercial land values, rather than farmland values.

Q: When only part of a landowner’s property is taken for a pipeline easement, what matters are considered when determining the damages to the residue (remaining property which is not taken)?

A: Under Ohio law, in assessing damages to the remaining property, the residue, the jury is entitled to consider every element that can fairly enter into the question of

value, which an ordinary prudent business person would consider before making a judgment whether to purchase the property. Some of the items that can affect the value of property after the installation of the pipeline are:

- Fear and apprehension related to a buried pipeline;
- Development potential for property lessened as a result of a pipeline on the property;
- The impact of the pipeline close to a business or residence;
- Setback requirements from the pipeline;
- Restriction and limits on use of property;
- Increased insurance costs;
- Increased costs of development;
- Problems with obtaining loans and mortgages on property; and
- Whether the property is in a higher risk zone because of the pipeline.

Every property is unique, and how the residue (remainder) of a property is damaged must be determined in light of the facts and characteristics of each parcel of property. It is advisable for the landowner to have the impact of the taking evaluated by professionals such as an attorney, an appraiser, and other land use consultants.

Q: What other factors are important when considering the damages to the residue, (property not taken)?

A: Typically, when a pipeline company takes a pipeline easement, after the initial installation of the pipe, the easement provides the pipeline company with the right to enter onto the landowner's property to get to the easement area, to perform any maintenance, repair, or other activities that the pipeline company, in its sole discretion, determines that it needs. Also, the pipeline company, in its easement language, typically has the right to enter the easement area to replace the pipelines that have been placed underground, and if the easement allows, to increase the size of the pipeline, to add pipelines, and to change the product being transported through the pipeline. **It is extremely important that all of the current uses and the rights for future uses that are being provided to the pipeline company, be evaluated when the damages to the residue (remainder) are being assessed.**

Q: If the Law Firm of Richard H. Glazer Co., L.P.A. is retained, what type of services will be provided to the landowner in connection with the taking of a pipeline easement by a pipeline company?

A: Although each taking is unique to each person's property, our firm will:

- Meet and negotiate with the pipeline company on all issues related to the taking, the compensation for the taking, and the damages to the residue.
- Analyze the taking and how the taking affects the current use and the future use of the property.
- Hire experts to analyze the taking and the effects of the taking on the landowner's property, and to determine the compensation and damages to which the landowner is entitled.
- Prepare a response to any lawsuit that is filed, and provide complete representation in Court and throughout any trials and other legal proceedings.

Richard H. Glazer, Esq. has over 40 years of experience in eminent domain cases, and is the Ohio Member of Owner's Counsel of America.

More information is available at www.ownerscounsel.com.