

Environmental Issues in Condemnation



Assuring the condemnor the same environmental information as the ordinary real estate buyer

By Mary B. Bonacorsi



The current economic climate has spawned a host of municipal development projects, ranging from public works to urban redevelopment projects in partnership with private enterprise. Over the past several years, Missouri cities have undertaken scores of development projects and the pace of development is continuing.

Virtually all such development involves land acquisition from private parties. Most of the time, the parties reach agreement on price and other terms. Understandably, affected landowners sometimes may balk at the price, at the project, or both. Then the use of eminent domain is necessary to ensure that the project moves forward.

When the municipality and the affected landowner reach agreement on land acquisition, it is an ordinary real estate transaction. The parties discuss and agree to allocate the environmental risks of the acquisition. Their goal is to quantify their relative potential exposure and liability under the constantly growing maze of environmental law and regulation.

In private transactions, the seller will provide the buyer with information such as site history, copies of permits, location of underground tanks and other pertinent environmental information. Typically, the real estate contract permits the buyer to conduct environmental testing before closing and conditions closing upon a favorable environmental report. If testing discloses environmental

problems, the buyer can walk away or the parties may renegotiate price and other terms. This article discusses how a municipality can assure itself the same options as a real estate buyer when the use of eminent domain is necessary.¹

A condemnor must have at least the same environmental reports on the property as an ordinary real estate buyer and the same opportunity to abandon the transaction, or reestablish price if the property proves to be contaminated. Without timely knowledge of environmental problems the condemnor bears the risk of acquiring contaminated property. Dealing with attendant cleanup issues may substantially increase the project's cost for land and delay construction while environmental issues and liabilities are sorted out.

For these purposes, a key distinction between condemnation and an ordinary real estate transaction is that, by definition, condemnation is the last resort. Missouri law requires the condemnor to make a good faith effort to acquire the property by contract. It permits exercise of the power of eminent domain only when the condemnor

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