

# The Role of Real Property Taxes in a Condemnation Action

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If one were to view the complexities of a condemnation suit from a lofty height, the prominent issue would be valuation. Let us say, for example, the landowner has not been persuaded that the condemning authority's price tag was reasonable. Looking closer one might see complicated leasehold questions. Barely discernible would be issues of real property taxes.

Yet in virtually every condemnation action, the County is or should be named as a party. The reason for naming the County as a defendant is elementary. The County Board of Supervisors has the duty to levy taxes on real property located within the County. Such taxes must be levied by the third Monday in August of each year. A.R.S. §§ 42-304 and 310. Once the tax is levied *eo instanti* it becomes a lien on the property. *In re Ecology Paper Products Company*, (Bkrtcy. 1982) 17B.R.281.<sup>1</sup>

Substantively, tax issues are a matter of direct concern for the County and the landowner. The condemning authority is not involved for its interest is in establishing value which of course does not involve

liens. Notwithstanding, the condemnor should be aware of the tax lien problems and the resolution thereof for they surface often without warning during the settlement process which disposes of many cases without the travail of trial. Failure to anticipate tax liens can often endanger a wrought-out settlement that remains fragile at best.

To foresee when the question of tax liens will arise during the course of the action would be helpful for the parties involved. The ubiquitous tax issue surfaces suddenly without warning once the condemnor has circulated a stipulation for the withdrawal of the cash bond.<sup>2</sup>

The failure to include a provision for the payment of delinquent taxes



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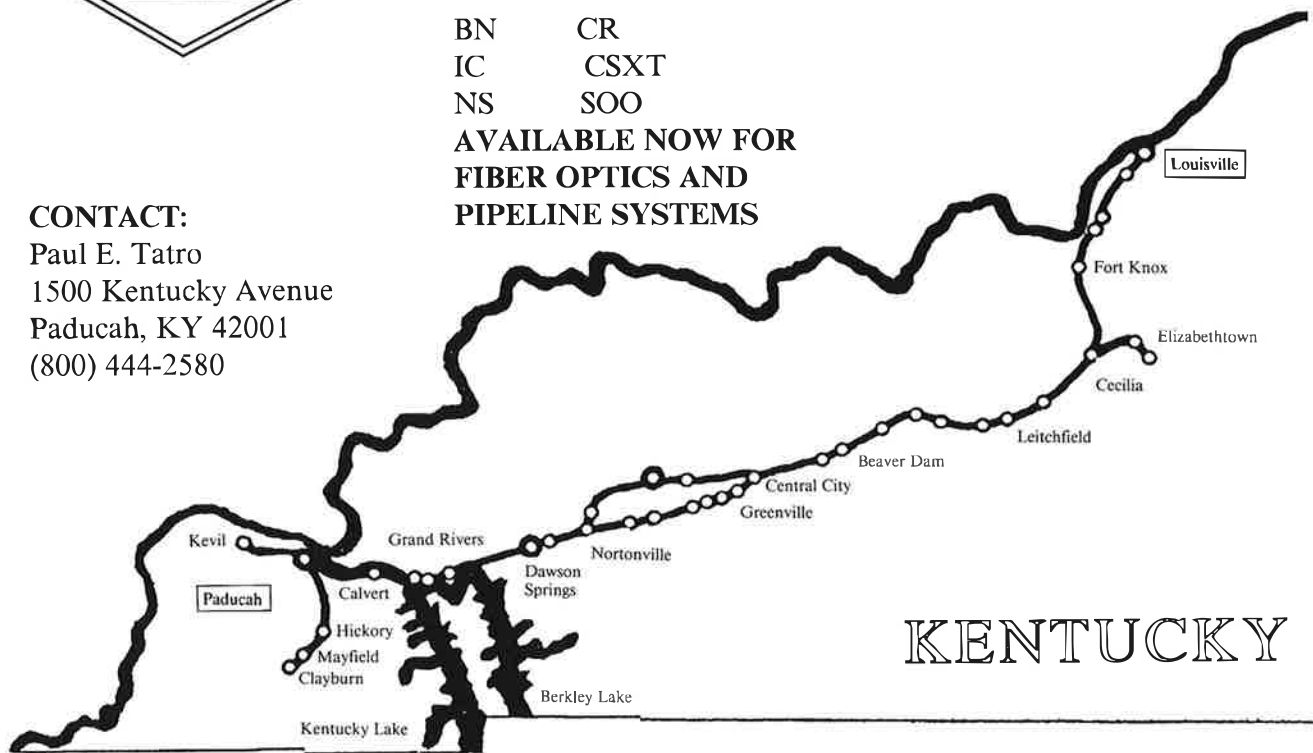
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in the stipulation for withdrawal of funds causes undue delays and at times strains relations.

The County, a person in interest, is a necessary party to that stipulation. A.R.S. § 12-1116(H) (2). Not obtaining the approval of all interested parties to the stipulation blocks the rapid disbursement of funds. What is then required is an application for withdrawal of funds. What is then re-

inherent in recirculating a stipulation containing an inaccurate tax provision, renewed communication with the County before the stipulation is circulated is worth the effort.

Although the procedure touched upon for drafting an acceptable stipulation for the withdrawal of funds may seem to be unnecessary or not worthy of close attention, those negatives pale when compared to the

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quired is an application for withdrawal which is filed, objections thereto are raised, and then oral argument is calendared. With heightened anticipation for the release of funds, the application procedure is interminable.

To avoid the time-consuming practice of filing an application, one would have to redraft the stipulation to include the omitted provision for taxes and then embark on the dreaded voyage of recirculation for approval. When time is of the essence, that procedure always seems to raise the proverbial questions: Do you have the stipulation or who has it now?

An attending problem to an incomplete stipulation is one that does not state an accurate amount of accumulated interest. Interest accrues at the rate of sixteen percent per year prorated monthly as of the first day of each month. A.R.S. § 42-342.

What often happens is that the correct amount of accrued interest is obtained as of a certain month, but all too often unforeseen problems arise and the stipulation is put aside pending resolution of those problems. When it is propitious to circulate the stipulation, the tax data is likely to be outdated and the accrued interest almost certainly has become so. To avoid the confusion and delays

outrage, frustration, and last minute rush which invariably ensue in the effort to obtain correct tax information and the immediate signatures of all parties. Such turmoil is expected because large sums are being withheld for no apparent justifiable reason or a substantial amount of potential daily interest is lost because the funds deposited with the Clerk of the County do not bear interest.

In other words, knowledge of when the tax issue will arise and how to deal with it effectively and efficiently will eliminate one of the myriad problems encountered in a condemnation case. By disposing of the tax issue early in the case, there will be one less area to cause distraction from the paramount concerns of the remaining litigants.

A second nettling problem area has to do with the misconception of

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proration of taxes. In a sale between consenting parties, the prevailing practice is for the buyer and the seller to prorate the current year's taxes as of the close of escrow. Such a voluntary agreement fits within the normal concepts of being fair and reasonable.

The full tax assessment is paid to the County and the parties are only paying for that portion of the tax year that they have actual possession.

In a condemnation case the landowner expects that the consensual apportionment practice will continue to prevail. When the landowner vacates the property after the condemning authority has obtained an order for immediate possession (§ 12-1116), he quite naturally objects to the payment of taxes on property that he no longer possesses. The wistful assumption is that there exists some mandatory mechanism for proration or that the amount accruing after he has vacated will be abated by the County.

On the other hand, the condemning authority, a tax-exempt entity such as the State, County, or City, often takes the position that proration is not applicable because tax-exempt entities do not pay taxes. Of course that theory is generally true but not always so.<sup>3</sup> The condemnor does not want to shoulder any tax load which also is an understandable and reasonable position.

In litigation, the position of the County is that there is no statutory basis for apportionment of the tax and the County has no authority to forgive the tax for the abatement statute is not applicable. A.R.S. § 42-521. The taxes are a lien on the property. For the condemnor to

obtain clear title, those tax liens as well as any other encumbrances must be discharged by payment which comes from the final award. Since the landowner is entitled to the award less the amount of all encumbrances,

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