

ROUTE 1 WIDENING PROJECT: THE CONDEMNATION PROCESS

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The New Jersey State Department of Transportation's Route 1 widening project is affecting businesses all along US 1. Whether the State is taking 10 feet from a property owner's land or leveling an entire building, property owners have significant legal rights allowing for monetary compensation.

This article provides a brief outline of the condemnation process.

PRELIMINARY ENTRY

The first contact that a property owner will have with a condemning agency is when the agency is determining the scope of the project and the properties that will have to be acquired to accomplish it. Surveys are frequently necessary to lay out a project for the type of construction proposed. An agency is permitted to make preliminary entry onto land that may potentially be condemned to do surveying, borings, and other engineering studies, as well as an environmental assessment.

APPRAISAL

Once the agency has identified the properties that it intends to acquire, it will engage one or more appraisers to appraise each property. Before the appraiser can make a physical inspection of a property, the agency or the appraiser must advise the property owner that an inspection will be made and invite the property owner to accompany the appraiser and give the appraiser information the owner thinks may be relevant.

The appraisals prepared for the condemning agency will form the basis for its offer to purchase the property. Thus it is important for the property owner, perhaps with his attorney and/or appraiser, to accompany the agency's appraiser during the inspection of the property and present information that may influence the appraisal.

OFFER AND BONA FIDE NEGOTIATIONS

The next step is an offer from the agency to acquire the property. At a minimum, the agency's offer must be equal in amount to its approved appraisal and the property owner must be given 14 days to respond to the offer. During this 14 day period, or such longer period as may result from actual negotiations, the agency must engage in bona fide negotiations with the property owner. Bona fide negotiations require the agency to give the owner any relevant information it has obtained and consider information from the property owner regarding the value of the property.

INSTITUTION OF THE CONDEMNATION ACTION

If an agreement for the acquisition of the property is not reached, the agency may file a condemnation action. All persons known to have interests in the property, such as those identified in a title search and tenants, must be named in the action. A Verified Complaint starts the condemnation action and a Lis Pendens notifies potential purchasers and financiers that the condemnation is pending. Only a filing of a Declaration of Taking transfers title to the property to the agency.

CONTINUED OCCUPANCY AFTER FILING OF CONDEMNATION

When title is transferred, condemning agencies frequently permit property owners or their tenants to continue to occupy the condemned property until the agency is ready to make physical use of it. While sometimes this continued occupancy of the property is handled informally without any payment by the former owner or tenant, a formal lease or occupancy agreement requiring rent may be required.

CHALLENGES TO THE CONDEMNATION

An Order to Show Cause filed when the condemnation action is begun establishes a date for a hearing at which the Court will enter final judgment authorizing the condemnation. Typically, this date is four to six weeks after the condemnation action is filed. Any objection to the condemnation must be made prior to this hearing date. If an objection is asserted, even though a Declaration of Taking may have been filed, the agency may be prohibited from taking possession of the property and engaging in activity on it until the objection is resolved.

CONDEMNATION COMMISSIONERS

The court will appoint Condemnation Commissioners to make an initial determination of the value of the condemned property. Typically, the Condemnation Commissioners will be two lawyers and one realtor from the county in which the property is located.

The Condemnation Commissioners' hearing itself is analogous to non-binding arbitration. It is typically conducted in a conference room, but witnesses are sworn and formal testimony is taken as in a trial. Depending on the complexity of the condemnation, the Commissioners' hearing can last one or more days. A typical hearing, though, takes only one day.

After the completion of the Commissioners' hearing, the Commissioners render an award. The award is simply a lump sum value for the condemned property. The Commissioners do not give an explanation for the award.

TRIAL

Within 20 days of receipt of the Commissioners' award, any party may appeal that award to the Superior Court, Law Division. Unlike traditional appeals, an appeal from a Condemnation Commissioners' award involves a full new trial at which the Commissioners' award may not even be considered. The trial can either be before a jury or a judge without a jury.

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