Property Rights, Right of Ways, and Eminent Domain

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Overview

- Property Rights
- Right of Ways
- Eminent Domain
Overview

• Property Rights
• Right of Ways
• Eminent Domain

Property Rights
Bundle of Rights

• Right to control or use
• Right to benefit
• Right to destroy
• Right to exclude
• Right to transfer
Property Rights
Right to Exclude

• Generally unlawful to enter another’s real property without consent of owner
• Trespasser:
  • Enter without consent or privilege
• Criminal Trespasser:
  • Trespass where clearly marked by signs or fence

Property Rights
Right to Exclude

• Generally, landowner may exclude
• But, may not be “willful, wanton, or reckless”
Property Rights
Must allow entry (PA)

• PA (if authorized to use eminent domain)
  • Surveys, test, soundings, and appraisals
  • Notification 10 days prior to entry
  • Pay for damages

Overview

• Property Rights
• Right of Ways
• Eminent Domain
Right of Ways
Definition

• Right use or control another person’s land, or an area above or below it, for a specific limited purpose
• Also known as an easement

Right of Ways
Considerations

• Freedom of contract
• Clearly indicate location of right-of-way
• Maintenance rights?
• Damages during installation or maintenance
Right of Ways
Considerations

• Authority to grant
  • Already given away?
• Surface estate v. mineral estate
  • Are the interests split?

Right of Ways
Considerations

• Current leases
  • Obligation to agricultural tenant?
• Problems with existing conservation plans
• Environmental issues
Right of Ways Considerations

• Views
• Price?
  • Value of property
  • Just compensation

• Effect on soil and yield
• Damage outside of easement area
• Reimbursement of costs
  • Surveys, appraisals, attorneys fees
Right of Ways
Considerations

• Contact Person
• Violations of agreements settled by courts (PA)
• THINK LONG TERM!!!

Right of Ways
Considerations: Example

• 2003 major power outage in Northeast U.S.
• Transmission Vegetation Management Act
• Required standards for utility companies
  • Trim trees and bushes or herbicides
  • Specify!!!
Right of Ways
Utility Considerations (PA)

• May not negotiate until 5 days after formal notice
• May contact prior to notice to determine owner of record or to request survey

Right of Ways
Limited Reimbursement (PA)

• Not forced to accept any offer
• If land can be taken by eminent domain
  • Generally up to $4,000 reimbursement
  • Actual expense for appraisals, engineers, and attorneys fees (26 Pa.C.S.A. § 710)
Overview

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Eminent Domain

Definition

- Governmental takes private property for public use
- Must pay just compensation for the taking
Eminent Domain
U.S. Const. 5th Amend.

“No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

Eminent Domain
PA Const. Art. I Sec. 10

“[P]rivate property [shall not] be taken or applied to public use, without authority of law and without just compensation being first made or secured.”
Eminent Domain
Just Compensation (PA)

• Fair market value before condemnation – fair market value after condemnation

Eminent Domain
Fair Market Value (PA)

• Present use
• Highest and best reasonably available use
• Machinery, equipment, and fixtures
Eminent Domain
Legal Standard

• Does the taking serve the public interest?

Eminent Domain
Public Use

• Highways
• Schools
• Hospitals
• Utilities
Eminent Domain
Public Use

• *Kelo v City of New London* (2005)
  • Suzette Kelo purchased home (1997)
  • Pfizer announces plans to develop neighborhood
  • Connecticut law gave power of ED to facilitate

Eminent Domain
Public Use

• *Kelo v City of New London* (2005)
  • U.S. Supreme Court ruled “economic development” satisfied public use
  • Majority said 5th Amendment did not require “literal” public use
Eminent Domain
Kelo Aftermath

• 44 states have enacted legislation or passed ballot measures
• High courts in 3 of 6 have increased protection
• Only AR, NY, MA have not

Eminent Domain
Private Entity (PA)

• May not be used to take private land to enhance private enterprise
  • Unless exception applies
Eminent Domain
Authority to Condemn (PA)

- Commonwealth
- Political subdivision
- Public utility
- Private entity

Eminent Domain
Private Entity (PA)

- Power transferred to utility or common carrier
- Eliminate public nuisance
  - Excludes farming operations protected under RTFA
- Blight
- Abandonment
- Urban low income development
**Eminence Domain**
Power Transferred to Utility (PA)

- Private company receives Certificate of Public Convenience from Pennsylvania Utility Commission
- Company acquires eminent domain authority

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**Eminence Domain**
Interstate Pipelines

- Federal Energy Regulatory Commission (FERC)
- Regulates interstate transmission of electricity, natural gas, and oil
- Authority over construction of interstate pipelines
Eminent Domain
Interstate Pipelines

- Company obtains Certificate of Public Convenience from FERC
- Receives authority to use eminent domain
- Preempts state or local law
- Parties may file in state or federal court

Eminent Domain
Electric Transmission Lines

- States have authority over construction
- Often through state public utility commission
Eminent Domain
Procedure (PA)

- Utility company applies to PUC for certificate of condemnation
  - Necessary or proper for the service, accommodation, convenience, or safety to the public

Eminent Domain
Procedure (PA)

- Agricultural Area Security
  - May not condemn in ASA unless approved by Agricultural Land Condemnation Approval Board
  - Does not apply to underground utility facility
Eminent Domain  
Procedure (PA)

• PUC will hold a public hearing
• Landowner may participate in hearing and may have legal representation

Eminent Domain  
Procedure

• PUC will not determine if compensation is just
  • Only issues decided by PUC is whether condemnation serves the public interest
• If certification approved, utility company files condemnation proceeding in court
**Eminent Domain**
Condemnation Proceeding

- PA Court of Common Pleas
- Located in county of condemn land
- Right to a jury

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**Eminent Domain**
Condemnation Proceeding

- Raise challenges
- Just compensation and damages
  - Battle of experts (appraisers)
- Right to appeal
Conclusion

• Property rights:
  • May exclude until certification

• Right of Way:
  • Contract between parties

• Eminent Domain:
  • Power to take with just compensation

Resources

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The Center for Agricultural and Shale Law
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