



## *What Every County Needs To Know About the Two Condemnation Procedures*

—Smitha Chintamani & Nicholas Boerke, von Briesen & Roper, s.c.

With the expanding Wisconsin economy, including the Foxconn Project, and the need to update and repair an aging transportation infrastructure, property acquisition by eminent domain is expected to increase over the next decade.

County governments are most likely aware of the more common “quick-take” procedure for sewer and transportation-related takings under Wis. Stat. § 32.05, but are likely unaware of the more cumbersome “slow-take” procedure required for most other condemnations, namely takings by utilities.

Although the two procedures have many similarities, including the general framework requiring (1) relocation order or a determination of necessity, (2) appraisal requirement, (3) negotiation requirement, (4) offer and (5) jurisdictional offer, the important differences have been described by the Court of Appeals as follows:

The most significant difference between the condemnation procedures set forth in sections 32.05 and 32.06 is this: In the former, governing condemnations for “sewers and transpor-

tation facilities,” if an owner does not accept a jurisdictional offer, the condemnor may proceed to “make an award of damages” that is “at least equal to the amount of the jurisdictional offer,” and it must tender this amount of the award to the owner or the court on or before the “date of taking.” See Wis. Stat. § 32.05(7). If an owner wishes to contest the amount of the award, the owner may appeal within two years of the date of taking by applying “to the judge of the circuit court” for assignment to the county condemnation commission. See § 32.05(9).

By contrast, under § 32.06 . . . when an owner does not accept the condemnor’s jurisdictional offer, it is the condemnor who may petition for proceedings before the condemnation commission. See § 32.06(7). The commission then proceeds to make “the award” of compensation, see § 32.06(8), which the condemnor must then pay in order to acquire title by the date of payment. See § 32.06(9)(b).

*Because eminent domain law and procedure is full of pitfalls and technicalities we recommend that counties always seek assistance from corporation counsel for projects that involve condemnation.*

*ExxonMobil Oil Corp. v. Redevelopment Auth.*, 2005 WI App 193, ¶ 11, n. 3, 287 Wis. 2d 132, 703 N.W.2d 383.

As a result, the procedure under § 32.06 is often referred to as a “slow-take” due to the extra step in the condemnation commission. In the case of a “slow-take”, rather than the condemnor simply being able to record an Award of Damages (which operates much like a deed, transferring title) and deposit what it believes is just compensation into the circuit court, the condemnor must file an action in Circuit Court and have a “mini trial” in front of the county condemnation commission before an award is filed based on the commission’s determination. In both cases, the amount of the award can be challenged by the property owner in a circuit court jury trial, but there is an extra, sometimes long and expensive, step before a condemnor actually obtains title under the slow-take procedure.

The slow-take procedure is most commonly used by utility companies for transmission or distribution lines and pipelines, but because all other condemnations that do not involve sewers or transportation matters must also follow the slow-take procedure, there are many other instances in which condemnors may need to take the long road. For example, in addition

to utilities, the slow take procedure should be utilized when condemning property for public uses such as county or municipal government buildings or facilities, public parks or other public recreation facilities and even blight elimination.

In our practice, we have seen condemnors misapply the required procedures and utilize the § 32.05 quick-take procedure when not authorized to do so. In some instances, counsel for property owners do not object because they also want a quicker and more efficient process, but from a governmental entity’s perspective, following the incorrect procedure could easily invalidate an attempted taking if the property owner mounts a “right-to-take” challenge and potentially jeopardize a multi-million dollar public project.

Because eminent domain law and procedure is full of pitfalls and technicalities, we recommend that counties always seek assistance from corporation counsel for projects that involve condemnation. In some circumstances, it may be helpful to obtain assistance from special counsel experienced with condemnation procedures and law. If you have any questions on how the “quick-take” or “slow-take” procedures work in certain circumstances, or if you have questions surrounding condemnation issues in general, please do not hesitate to contact the authors at 414-287-1515 or 414-287-1460.