PENDER & COWARD
ATTORNEYS AND COUNSELLORS AT LAW

PRACTICE AREA

PROPERTY VALUATION

Our attorneys understand that the core of most eminent domain cases is property valuation, from putting together the bona fide offer, to negotiations, to the condemnation trial if necessary. The eminent domain process usually requires that both sides attempt to value an involuntary property acquisition as if it were a hypothetical voluntary transaction under various, often highly nuanced, rules, statutes, case law, and legal fictions which can vary widely depending on the process and jurisdiction involved. Condemnation counsel should be intimately familiar with both appraisal methodology and the applicable law to interface between the client, the appraiser, and the courts in order to assure as smooth and predictable an outcome as possible in what can be a very contentious process. The condemning authority must have counsel who are well-versed in these often very obscure issues in order to know how much it has or may have to pay for a particular acquisition or project.

Understanding the Eminent Domain Process

It is relatively easy to summarize a generalized hypothetical eminent domain process. The condemning authority determines that a project is necessary, determines what property is necessary for the project, prepares offers to acquire that property, negotiates those offers, and if all of the parcels involved cannot be settled voluntarily, then those that cannot be settled voluntarily are litigated in order to determine just compensation.

Knowing that general outline may be somewhat helpful but the devil is, as always and here more than most, in the details. Different states and jurisdictions have different rules, regulations, statutes, and case law. Within the same jurisdiction, the nature of the power available and the process for its use can vary dramatically depending on the condemning authority involved. Just because another entity was able to accomplish something in a particular way does not necessarily mean that your entity can do the same. In Virginia, there are two main condemnation codes, not counting alternate procedures specified for certain entities or available by charter, while in North Carolina there are at three different main condemnation codes with the particular one you would need to use depending on the type of condemning authority involved. One of the main procedural items to be determined at the outset for any condemnation is whether or not the condemning authority has what is often called “quick take” power, and if that power is available, whether it is mandatory or optional and whether you would like to use it or proceed under what is often referred to as a “slow take” procedure. In a very general sense, under a quick take procedure, the condemning authority obtains title to the land immediately, usually based on a deposit of estimated just compensation, while under a slow take procedure, the condemning authority often has to go to trial and have just compensation determined and paid before it can take title to the property. However, to complicate the matter, sometimes there are procedures in the middle where technically the matter is a slow take but immediate possession of the property can be awarded to the condemning authority, often based on a court ruling on a motion for such possession.

If this is already starting to sound very complicated, it is. That is where we come in. Our eminent domain and right

of way attorneys are working through these processes for clients every day, and can boil all of that down into what you need to know to get your right of way project cleared and completed. Whether you work for a condemning authority that has cleared innumerable parcels and we come in to provide additional expertise and bench strength to leverage your institutional knowledge, or whether your entity has never condemned a property before and you need help standing up a compliant and efficient condemnation process, or anywhere in between, we have done it, and can help you with it.

Methods for Valuing Property in Eminent Domain Cases

Once one gets through all of the procedural hurdles in eminent domain, one still has to deal with the complexities of property valuation in eminent domain matters. The usual measure of value of the property in eminent domain cases is the fair market value of the property, where fair market value is generally thought of as the price that a willing buyer would pay a willing seller in a voluntary transaction. The front-line personnel on valuation issues are often appraisers, but appraisers often work across multiple states and may not be up to speed on all the potential legal nuances that may affect appraisals for a particular project or jurisdiction. The condemning authority generally has an appraiser determine an opinion of fair market value that the condemning authority then uses, and appraisers commonly use one or more of the following three methods in arriving at their opinion of fair market value:

Sales comparison approach – this method compares the property being acquired to similar properties that have recently sold in the same area.

Cost approach – this method calculates the value of the property by determining the cost to replace the property, less depreciation.

Income approach – this method determines the value of the property by analyzing the income generated by the property.

However, even where these standard approaches are used, which ones to use, when, and how can be the basis for significant disputes and differences in valuation. Our attorneys are very familiar working with valuation experts to clearly explain these issues to the finder of fact or third party neutral.

Challenging Property Valuation in Eminent Domain Cases

Eminent domain cases are in essence each side challenging the other's property valuation. Property owners generally can challenge the ultimate valuation of their property in eminent domain cases. Our attorneys have extensive experience representing the condemning authority in these sorts of challenges. We are used to helping select the best available experts and working with them to put on your case. Mr. Arnold and Mr. Greene together have over thirty years of combined experience coordinating with outside appraisal, transportation, and related

experts in eminent domain litigation. Mr. Hull has also been working in this area since he joined the firm's Eminent Domain / Right of Way Practice Group. The attorneys in this Eminent Domain / Right of Way Practice Group pride themselves on being able to identify and work with the correct experts for each right-of-way matter, recognizing that each property is unique, and that specialized subject matter experts in addition to appraisers are often required for particular eminent domain matters.

Severance Damages and Business Losses

In eminent domain and property valuation there is a theory that a property may be reduced in value generally by the acquisition of a portion of the property. This is often referred to in some jurisdictions as "severance damages" although in Virginia and North Carolina it is more commonly referred to as damage to the remainder. Similarly, in Virginia and North Carolina the concept of business losses is often referred to as "lost profits." While Virginia allows this concept by statute as a result of a constitutional amendment, North Carolina generally does not. When lost profits are part of a condemnation case, they can make the case dramatically more expensive and complicated. Our attorneys have experience fighting severance damage / damage to the remainder and business loss / lost profits claims.

For many years the attorneys in this practice group have committed themselves to mastering the full spectrum of the right-of-way process, and property valuation is the core of that process. We know how to work with appraisers and all of the unique complexities that come with each different parcel and matter. However, we do not offer these to you to explain how long we need to work on a particular matter. Our "big picture" success is client satisfaction rather than number of tasks performed or hours billed. We view our role as outside counsel as having two core functions: 1) assisting the client by leveraging the client's institutional knowledge and our in-depth subject matter experience in certain complex or specialized areas of the law and 2) providing substantial additional depth of exceptional legal services, on demand. If you have any questions about property valuation in your eminent domain or right of way project, including but not limited to questions about severance damages or business losses, feel free to reach out to our attorneys and see if we can assist you.