

# Legal Anatomy of a Condemnation

## Preliminary Steps

- Project Design/Needs
- Initial Appraisal
- Pre-Condemnation Negotiations

## Initiating Condemnation

- Notice of Meeting Public Use and Necessity
- Public Meeting on Public Use and Necessity and initiation of Condemnation, and Resolution

## Filing/Post Filing

- Filing Petition in Eminent Domain
- Presentment of Petition
- Public Use and Necessity Hearing
- Immediate Use and Possession demand/possible stipulation
- Discovery
- Mediation/Settlement (maybe)
- 30-day Offer
- Trial
- Money Judgment
- Deposit of Funds with Court
- Decree of Appropriation



## Eminent Domain Timeline/Checklist

### Brief BOCC in Executive Session on matters w/o action

#### **RCW 42.30.110. Executive sessions.**

(1)(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning: . . . .

(ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or

### Draft Notices

#### **RCW 8.25.290. Condemnation final actions—Notice required—“Final action” defined.**

(2)(a)(ii): The notice must contain a general description of the property such as an address, lot number, or parcel number and specify that condemnation of the property will be considered during the final action. The notice must also describe the date, time, and location of the final action at which the potential condemnor will decide whether or not to authorize the condemnation of the property.

### BOCC Authorizes Notice(s) (Resolution) for mailing and Publication

### Mail Notices by Certified Mail 15 days prior to Public Meeting

#### **RCW 8.25.290. Condemnation final actions—Notice required—“Final action” defined.**

(2)(a)(i): Notice of the planned final action shall be mailed by certified mail to each and every property owner of record as indicated on the tax rolls of the county to the address provided on such tax rolls, for each property potentially subject to condemnation, at least fifteen days before the final action. If no address is provided for a property on the tax rolls of the county, the potential condemnor shall conduct a diligent inquiry for the address for each and every property owner of record and send the notice to that address. In case the property sought to be appropriated is school or county land, such notice shall be mailed to the auditor of the county in which the property sought to be acquired and appropriated is situated.

**☐ Notices Published in the Newspaper two successive weeks before Public Meeting.**

**RCW 8.25.290. Condemnation final actions—Notice required—“Final action” defined.**

(2)(b)(i): Notice of a planned final action described in subsection (1) of this section shall also be given by publication in the legal newspaper with the largest circulation in the jurisdiction where such property is located once a week for two successive weeks before the final action. A second publication must also be given in the legal newspaper routinely used by the potential condemnor, where such newspaper does not also have the largest circulation in the jurisdiction. Proof of circulation shall be established by publisher's affidavit filed with the potential condemnor. Such publication shall be deemed sufficient notice in lieu of a certified letter for each property owner of record for the property whose address is unknown and cannot be ascertained after a diligent inquiry.

**☐ Draft presentation and Engineer's Report explaining Necessity of project for County Purposes for Public Meeting.**

*City of Tacoma v. Welcker, 65 Wn.2d 677,684, 399 P.2d 330 (1965).* “Whether the contemplated acquisition is necessary to carry out the proposed public use presents a legislative question, and a declaration of necessity by the appropriate legislative body will, by the courts, be deemed conclusive, in the absence of proof of actual fraud or such arbitrary and capricious conduct as would amount to constructive fraud.

*City of Tacoma v. Welcker, 65 Wn.2d 677,684, 399 P.2d 330 (1965).* “Arbitrary and capricious conduct is willful and unreasoning action, without consideration and regard for facts or circumstances.”

**Hold Public Meeting for “final action” and authorization to proceed to Condemnation.**

**RCW 8.08.010. Condemnation authorized for general county purposes—Petition.**

Every county is hereby authorized and empowered to condemn land and property within the county for public use; whenever the board of county commissioners deems it necessary for county purposes to acquire such land, real estate, premises or other property  
. . . .

**RCW 8.08.005. Condemnation final actions—Notice requirements:** Proceedings under this chapter are subject to the notice requirements of RCW 8.25.290. Compliance with RCW 8.25.290 is required before an action can be filed under this chapter.

**RCW 8.25.290. Condemnation final actions—Notice required—“Final action” defined.**

(1) The condemnor must provide notice as required by this section before: . . . (b) A county or other entity subject to chapter 8.08 RCW takes a final action deeming a specific property to be "for county purposes" as provided in RCW 8.08.010;

(4)(a) For potential condemnors subject to chapter 42.30 RCW, the open public meetings act, "final action" has the same meaning as that provided in RCW 42.30.020.

**RCW 42.30.020. Definitions.**

(3) . . . . "Final action" means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

**File Petition in Eminent Domain, Motion for an Order Adjudicating Public Use & Necessity, Notice of Presentation of Petition in Eminent Domain, Notice for Hearing on Public Use & Necessity, file *Lis Pendens*.**

**RCW 8.08.010, 8.08.020, 8.08.030,8.08.040, RCW 4.28.320**

- Serve Notice of Presentment of Petition at least 10 days before presentment of petition.**

**RCW 8.08.030 Notice of presentation of petition.** A notice, stating the time and place when and where such petition shall be presented to the court or the judge thereof, together with a copy of such petition, shall be served on each and every person named therein as owner or otherwise interested therein, at least ten days previous to the time designated in such notice for the presentation of such petition. Such notice shall be signed by the prosecuting attorney of the county wherein the real estate or property sought to be taken is situated, and may be served in the same manner as a summons in a civil action in such superior court is authorized by law to be served.

- Presentment of Petition**

**RCW 8.08.030; 8.08.040**

- Send out letter to landowner requesting stipulation to immediate use and possession.**

**RCW 8.25.070. Award of attorney's fees and witness fees to condemnee—Conditions to award.**

(3) Reasonable attorney fees and reasonable expert witness fees authorized by this section shall be awarded only if the condemnee stipulates, if requested to do so in writing by the condemnor, to an order of immediate possession and use of the property being condemned within thirty days after receipt of the written request, or within fifteen days after the entry of an order adjudicating public use whichever is later and thereafter delivers possession of the property to the condemnor upon the deposit in court of a warrant sufficient to pay the amount offered as provided by law. In the event, however, the condemnor does not request the condemnee to stipulate to an order of immediate possession and use prior to trial, the condemnee shall be entitled to an award of reasonable attorney fees and reasonable expert witness fees as authorized by subsections (1) and (2) of this section.

**Public Use and Necessity Hearing** [and possible appeal] [can be at same time as presentment of petition]

**RCW 8.08.040 Hearing—Order Adjudicating public use.** At the time and place appointed for hearing said petition . . . if the court or judge . . . shall be further satisfied by competent proof that the contemplated use for which the lands, real estate, premises, or other property sought to be appropriated is a public use of the county, the court or judge thereof may make and enter an order adjudicating that the contemplated use is really a public use of the county, and which order shall be final unless review thereof to the supreme court or the court of appeals be taken within five days after entry of such order, adjudicating that the contemplated use for which the lands, real estate, premises or other property sought to be appropriated is really a public use of the county. . . .

*Petition of City of Seattle, 104 Wn.2d 621, 623, 707 P.2d 1348 (1985).* “For a proposed condemnation to meet the requirement of article 1, section 16 (amendment 9) the court must make three separate but interrelated findings: (1) the use must be public; (2) the public interest must require it; and (3) the property appropriated is necessary for the purpose.”

**Potential Immediate Use and Possession Stipulation** [or not. . . .]

**RCW 8.25.070(3)** “. . .if the condemnee stipulates. . . .”

**Discovery**

- Interrogatories/Public Records Requests
- Retain Experts/Reports
- Depositions
- Exchange Appraisals

**RCW 8.25.120 Conclusions of appraisers—Order for production and exchange between parties.** After the commencement of a condemnation action, upon motion of either the condemnor or condemnee, the court may order, upon such terms and conditions as are fair and equitable the production and exchange of the written conclusions of all the appraisers of the parties as to just compensation owed to the condemnee, as prepared for the purpose of the condemnation action, and the comparable sales, if any, used by such appraisers. The court shall enter such order only after assurance that there will be mutual, reciprocal and contemporaneous disclosures of similar information between the parties.

**Brief BOCC on Mediation/Possible Settlement/30-day numbers**

- Briefing can be in Executive session—no decisions made

**RCW 42.30.110. Executive sessions.**

(1)(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:

.....

(iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

**Mediation/Or pretrial settlement**

- If settlement:
  - Settlement Agreement → Decree and/or Deeds
  - Resolution

**30-day offer** [Number setting Atty's fees]

**RCW 8.25.010: Pretrial statement of compensation to be paid in event of settlement.** In all actions for the condemnation of property, or any interest therein, at least thirty days prior to the date set for trial of such action the condemnor shall serve a written statement showing the amount of total just compensation to be paid in the event of settlement on each condemnee who has made an appearance in the action.

## Trial

**RCW 8.08.050 Trial—Damages to be found.** The jury selected to hear the evidence and determine the compensation to be paid to the owner or owners of such real estate or property to be appropriated for public use, shall be selected, impaneled and sworn in the same manner that juries in other civil actions are selected, impaneled and sworn, and in case a jury is waived, such compensation or damages shall be ascertained and determined by the court or judge thereof and the proceedings shall be the same as in trial of an issue of fact by the court. Upon the close of the evidence, the court shall instruct the jury as to the matters submitted to them and the law pertaining thereto. Whereupon the jury shall retire and deliberate and determine upon the amount of the compensation of damages and money that shall be paid to the owner or owners of the real estate or property sought to be appropriated, which shall be the amount found by the jury to be the fair and full value of such premises, and when the jury shall have determined upon their verdict, they shall return the same to the court as in other civil actions.



## □ Final Orders

- Judge enters award of damages based on jury verdict
- County deposits sum with Court
- Judge issues Decree of Appropriation

**RCW 8.08.060 Judgment—Decree of appropriation.** Upon the verdict of the jury or upon the determination of the court of the compensation or damages to be paid for the real estate or property appropriated, judgment shall be entered against such county in favor of the owner or owners of the real estate or property so appropriated for the amount found as just compensation therefor, and upon the payment of such amount by such county to the clerk of such court for the use of the owner or owners or the persons interested in the premises sought to be taken, the court shall enter a decree of appropriation of the real estate or property sought to be taken, thereby vesting the title to the same in such county; and a certified copy of such decree of appropriation may be filed in the office of the county auditor of the county wherein the real estate taken is situated and shall be recorded by such auditor like a deed of real estate and with like effect. The money so paid to the clerk of the court shall be by him or her paid to the person or persons entitled thereto upon the order of the court.

*Petition of Southwest Suburban Sewer Dist.*, 61 Wn.2d 199, 201–202, 377 P.2d 431 (1963)(internal quotations omitted): “All of our eminent domain statutes contemplate three separate judgments: (1) A decree of public use and necessity; (2) a judgment fixing the amount to be paid the owner; and (3) a decree of appropriation transferring the title. . . . It is apparent, from the procedural scheme of the condemnation acts, that each, in order, is a condition precedent to the entry of the subsequent judgment or judgments.”

## Attorney Fees

**RCW 8.25.070 Award of attorney's fees and witness fees to condemnee—Conditions to award.** (1) Except as otherwise provided in subsection (3) of this section, if a trial is held for the fixing of the amount of compensation to be awarded to the owner or party having an interest in the property being condemned, the court shall award the condemnee reasonable attorney's fees and reasonable expert witness fees in the event of any of the following:

(a) If condemnor fails to make any written offer in settlement to condemnee at least thirty days prior to commencement of said trial; or

(b) If the judgment awarded as a result of the trial exceeds by ten percent or more the highest written offer in settlement submitted to those condemnees appearing in the action by condemnor in effect thirty days before the trial.

....

(3) Reasonable attorney fees and reasonable expert witness fees authorized by this section shall be awarded only if the condemnee stipulates, if requested to do so in writing by the condemnor, to an order of immediate possession and use of the property being condemned within thirty days after receipt of the written request, or within fifteen days after the entry of an order adjudicating public use whichever is later and thereafter delivers possession of the property to the condemnor upon the deposit in court of a warrant sufficient to pay the amount offered as provided by law. In the event, however, the condemnor does not request the condemnee to stipulate to an order of immediate possession and use prior to trial, the condemnee shall be entitled to an award of reasonable attorney fees and reasonable expert witness fees as authorized by subsections (1) and (2) of this section.

## Record Decree

**RCW 8.08.060 Judgment—Decree of appropriation.** “. . . and a certified copy of such decree of appropriation may be filed in the office of the county auditor of the county wherein the real estate taken is situated and shall be recorded by such auditor like a deed of real estate and with like effect.”