

# 6 Key Considerations for Condemning Authorities

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## I. Pre-Petition

### 1. Accurate title/due diligence

#### a. Title work/title review

##### i. Preliminary title review for negotiation purposes

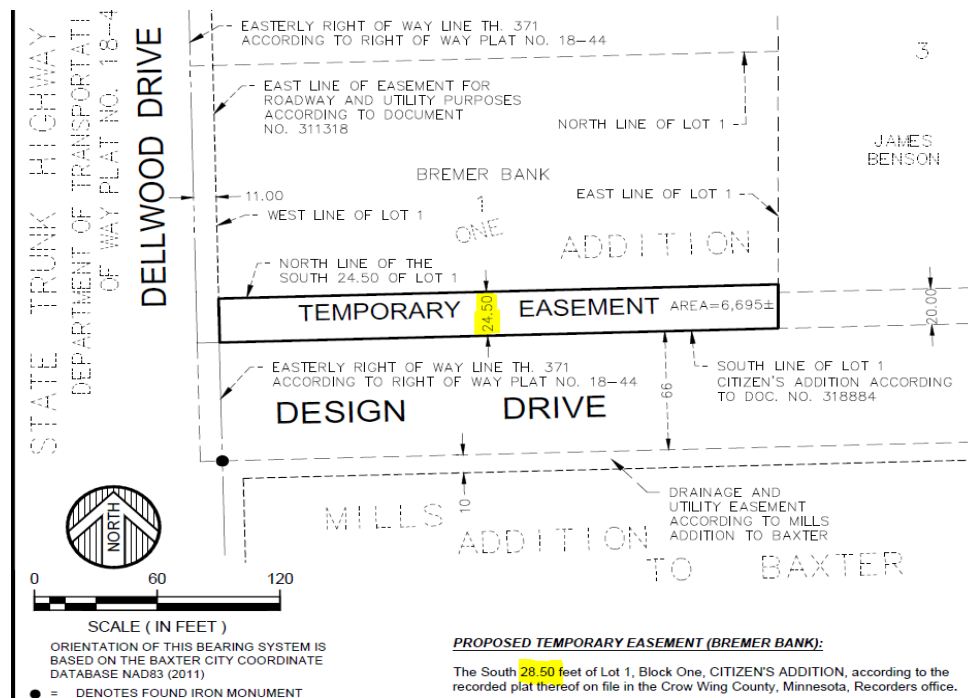
1. Make sure the condemning agency is communicating and negotiating with the rightful owner.

##### ii. Formal title review

1. This is an absolute requirement that should be conducted by someone with extensive experience in title review.
2. Get title commitments or something similar, along with all the supporting title work.
  - a. Review the title work in conjunction with the title commitment because commitments can be wrong.

##### iii. Title insurance for parcels acquired in fee

#### b. Legal description verification. Map it out and compare it to the sketch!



2. Statutory-compliant negotiation and appraisal disclosure
  - a. Consider having the attorney involved in hiring the appraiser. It will be the attorney and the appraiser in the commissioner hearing, if necessary.
    - i. Condemning authorities may hire more than 1 appraiser if the project is large or involves different types of properties (commercial, residential agricultural, etc)
  - b. Minn. Stat. 117.036 negotiation requirements:
    - i. Condemning authority must obtain an appraisal (or MDA for acquisitions under \$25,000) and must attempt to “confer” with one or more of the owners of the property. Minn. Stat. 117.036 Subd. 2.
      1. This appraisal data would otherwise be confidential data if not for an exception to Minn. Stat. 13.44 mentioned in 117.036 which requires the condemning agency to provide a copy of the appraisal to an “owner” which includes fee owner, contract purchaser or business lessee entitled to compensation under a lease.

**Practice Pointer** – The appraisal should therefore not be given to any business or person not identified as an “owner” otherwise it’s a data practices violation. However, the appraisal’s data classification switches to public upon the occurrence of the appraisal being provided to condemnation commissioners, presented in court proceedings, or the parties enter into a settlement agreement. See Minn. Stat. 13.44 Subd. 3.

- ii. Condemning authority must provide the appraisal at the time the offer to purchase is made and no later than 60 days before petition hearing.
- iii. Condemning authority must inform the owner of their right to obtain an appraisal and that the owner is entitled to reimbursement for it, up to \$1,500 for 1 and 2 family residential properties and MDAs, and up to \$5,000 for all other types of properties.
  1. Owner must give the condemning authority a copy of the full report at least 5 days before the hearing in order to get reimbursed.
  2. Condemning authority must pay invoice within 30 days of receipt of it.
- iv. Condemning authority must make “a good faith attempt to negotiate personally with the owner of the property in order to acquire the property by direct purchase instead of the use of eminent domain proceedings.” Minn. Stat. 117.036 Subd. 3.
- v. An appraisal from either condemning authority or landowner must be disclosed at least 5 days before a commissioners’ hearing in order to be used at the hearing. Minn. Stat. 117.036 Subd. 4.

**Practice Pointer** – Be absolutely sure of your appraisal disclosure timeline. Some condemning agencies request, and courts grant, orders that extend this timeline beyond 5 days.

3. Last written offers. LWOs are used by condemning agencies to protect against paying mandatory attorneys fees. Minn. Stat. 117.031.
  - a. 20%
  - b. 40%

## II. Post-Petition

4. Petition hearing preparation
  - a. Public need legal threshold
  - b. Have your witnesses prepped and ready to testify
  - c. Work with opposing counsel ahead of the hearing to agree upon the Order and appointment of commissioners.
    - i. Statutory change in 2021 requires that commissioners reside in Minnesota (Minn. Stat. 117.075 Subd. 2(b)).

**Practice Pointer** – I’ve had much more success getting orders returned timely if the parties agree to the form of the order ahead of time. Bonus points from the judge if you can agree upon commissioners.

5. Acting as a project manager for commissioner appointments & oaths, commissioner viewing, and commissioner scheduling
  - a. Pursuant to Minn. Stat. 117.085, the commissioners “shall” inspect the acquisitions.
    - i. Sometimes there isn’t a lot of extra time between title & possession and when constructions starts. That small window of time is when you want to have the commissioners viewing.
    - ii. The condemning agency attorney is responsible for getting the viewings scheduled.
  - b. Commissioner appointments are for a specific term and oftentimes expire before all hearings are held.
    - i. Motion to extend commissioner appointments
6. Intersection of condemning authority approval and settlement
  - a. Resolution from agency outlining offer amounts (usually based upon approved appraised value).
  - b. Authorization from condemning agency for amounts above resolution.
    - i. Varies by agency.
    - ii. Utilize closed sessions under Minn. Stat. §13D.05 Subd. 3