

STATE
of ALASKA

MEMORANDUM

#26113

STATE
DEPT. OF
HIGHWAYS

TO: Tom Kouremetis
Interior District R/W Agent
Dept. of Highways
Fairbanks

DATE : November 18, 1974

FROM: Ross Kopperud *RK*
Asst. Attorney General
Dept. of Law
Fairbanks

SUBJECT: The Condemnation Process

I received from Arnold Tornell a list of the various procedural designations used in a condemnation action. The condemnation action may be divided into three stages. The first stage may include such pleadings as the Complaint, Notice of Filing Complaint, Notice of Lis Pendens, Answer, Reply, Motions to Strike Answers, Motions for Authority and Necessity, Memorandum in Support of Motion for Authority and Necessity, and Order of Authority and Necessity. When the Declaration of Taking is filed with the Complaint there will be no filing of a Notice of Lis Pendens. Together with the filing of the Declaration of Taking there is a deposit made into court of the estimated just compensation. The landowner and defendants receive a Notice of Deposit indicating that we have deposited the estimated amount of just compensation into court. Any reference to an amended pleading comes in the first stage of a condemnation action.

Stage two of a condemnation action involves setting the case for the Master or the Court so that the matter of just compensation may be established through a legal proceeding. It is at this stage in the proceeding where we get into various discovery devices such as requests for production, discovery depositions, interrogatories, requests for admissions and various protective orders used to keep various extraneous or prejudicial matters out of the case. In short, stage two of the condemnation action is where the amount of just compensation is decided.

Stage three of a condemnation action is a hodge podge of procedural and administrative pleadings to wind the case up. These may take the form of a final judgment, final order of condemnation, order confirming award of the Master and establishing just compensation or in some cases a jury verdict. A Notice of Dismissal is also classified in the winding up stage of a condemnation action in that the case has been resolved by or through a negotiated settlement with the landowner. Therefore the condemnation action is dismissed. The vast majority of condemnation cases, however, are not disposed of at the Master's hearing, jury trial or through an administrative settlement, but are disposed of by a Stipulation of Settlement. A Stipulation of Settlement may be signed by the parties to the condemnation action disposing of the case at any time before the jury arrives at its verdict.

A fourth stage of a condemnation action involves appellant relief for the Supreme Court. Appellant relief is limited to questions of law which have been decided by the Superior Court and which have been appealed to the Supreme Court for their review as to the application of the law to the facts of the case.

Permiating the entire condemnation from the time that the Complaint is filed to the time the Supreme Court decides a question of law are various procedural issues which do not fit into any particular stage of a condemnation action. For instance, a notice of hearing is simply that one or both of the parties request a hearing on a motion pending before the court. The court establishes what path the condemnation action is to take through the execution of various orders from the court. An order may be based upon the motions and memorandums of the parties or by stipulation of the parties to the court entering an order. For example, the Master is generally appointed by a motion to refer the case to a Master. A memorandum is attached to the motions supporting the request in the motion with factual data, legal data and a suggestion that the Court appoint a certain person to be Master in the case. The court then confirms the motion and memorandum by drafting an order or by having one of the parties draft an order stating that a certain person will hold a Master's hearing on a certain date in a certain place. A sub-topic of the procedural area of a condemnation action involves various motions and memorandums to assess or tax cost, attorney's fees, and interest on the condemnation award that may be due the landowner of the final award exceeds the amount of deposit.

In response to your specific question as to what these various pleadings mean, starting from the top of the list:

ORDER FOR DISBURSEMENT OF FUNDS - any monies that have been deposited into court with a Declaration of Taking or Order of Possession or Final Judgment are hereby disbursed to the various defendants.

REQUEST FOR ANSWER AND PRODUCTION OF PROOF - a procedural device to gain discovery of the State's or landowners' case.

MEMORANDUM - supports a motion or may be used in opposition to a motion and memorandum filed by the opposing party.

MOTION TO WITHDRAW DEPOSIT - filed by the landowner to get the money deposited into court with the Declaration of Taking, Order of Possession, or Final Judgment.

DECLARATION OF TAKING - a power granted the Department of Highways to take from the landowner all right, title and possession to his property. At the time a Declaration of Taking is filed the estimated just compensation is deposited into court.

ORDER FOR AUTHORITY AND NECESSITY - an order stating that the State has the statutory authority to condemn this land and that the property to be acquired is necessary for the highway project.

ANSWER - filed in response to a Complaint. In a condemnation action the landowner is limited to indicating what his interest is and any objection and defenses he may have to the taking. No other pleadings are allowed.

NOTICE OF RE-SETTING MASTER'S HEARING - a procedural device giving all parties notice that the Master's hearing has been re-set for a later date. This usually is the result of a conflict between the original date and the availability of the Masters, the attorneys or the appraisal witnesses or the landowners themselves.

ORDER OF POSSESSION - usually follows the Declaration of Taking or a Motion for an Order of Possession following the Master's hearing.

STIPULATION TO CONTINUE - done prior to a notice of re-setting something. It merely indicates that a matter that was scheduled for a certain date at a certain time and certain place is now re-set for a later date at a later time. All deposits into court of estimates of just compensation are made available to the landowners by serving them with a Notice of Deposit.

PRE-TRIAL MEMORANDUM - a device prior to trial whereby the issues of law in fact are presented to the court for their review prior to the time set for trial.

ORDER CONFIRMING THE AWARD OF THE MASTER AND ESTABLISHING JUST COMPENSATION AND MAKING DISTRIBUTION - usually arises where there has been no appeal from the Master's award and the case is to be disposed of on the amount of just compensation established by the Master.

MASTER'S OATH - sworn oath by the Master that he will hold a Master's hearing at a certain time, place and hear evidence from both parties and that he is impartial.

STIPULATION FOR ADDITION OF CO-COUNSEL - procedural device allowing another attorney into the case.

COMPLAINT - whether it be in condemnation or any other civil action or criminal action merely establishes a claim for which some legal relief may be granted.

AMENDED PLEADINGS - usually refer to amended complaints. Every pleading is served on the defendant and he receives a Notice of Filing Amended Complaint.

NOTICE OF DISMISSAL - is a procedural device whereby the State of Alaska may dismiss any condemnation action prior to acquiring any property through the condemnation action or before any hearing has begun to determine the compensation to be awarded the defendant.

CONSENT TO AUTHORITY AND NECESSITY - usually introduced into the case where the defendant has first objected to the State's authority and necessity to condemn his property and then at some later date withdraws his objection and a Consent to Authority and Necessity is filed.

NOTICE OF HEARING - gives notice to anyone involved in a case of the time and place of a hearing.

OPPOSITION TO MOTION TO STRIKE ANSWER - is a land owners device whereby he wishes to maintain certain matters in his answer to the plaintiff's complaint which the State feels are not properly part of a condemnation action.

NOTICE OF LIS PENDENS - notice to the general public that the State has filed a condemnation action against certain property.

AMENDED NOTICE OF DEPOSIT - indicates that we have filed an additional amount in addition to the original deposit.

ORDER OF FINAL JUDGMENT - the last pleading to be filed in a condemnation action. A final judgment ends the condemnation action.

MASTER'S REPORT - from which the State has 10 days to file an appeal if they do not agree with his estimate of just compensation.

MEMORANDUM AND MOTION FOR ORDER CONFIRMING THE AUTHORITY AND NECESSITY AND POSSESSION - usually filed where the State has filed its Complaint, Notice of Filing Complaint and Declaration of Taking all at the same time. This pleading is filed to give the State authority, necessity and possession in one pleading.

MOTION TO SET CASE FOR TRIAL - can be made by either party to a condemnation action and it merely states that the case is ripe for trial.

STIPULATION - an agreement or contract between the parties which provides that the court may enter an order based on this agreement between the parties. A stipulation takes the place of a motion and memorandum for an order.

RK:so

PARCEL IS PLACED IN CONDEMNATION

Engineering is notified.

Litigation report is ordered from title company.

After receiving Litigation report, following is submitted to District Attorney's office:

- (1) Parcel plat
- (2) Vicinity map
- (3) Legal description
- (4) Diary & Record of Negotiation (xerox copy)
- (5) List of defendants
- (6) Approved appraisal list
- (7) Approved Appraisal (xerox copy)
- (8) Litigation report (xerox copy)
- (9) Highways' title (xerox copy)

From the above info, the D.A. will make up a work sheet. From said work sheet you will make the following documents using Tape 18 or 19 (depending on whether it is an access controlled project):

- (1) Declaration of Taking
- (2) Complaint
- (3) Notice of Filing Complaint
- (4) Directions of Service

If published:

- (5) Affidavit
- (6) Order Designating Newspaper
- (7) Motion for an Order Designating Newspaper

Make description for all condemnations.

The following is then submitted to Juneau (Chitty):

(1) Declaration of Taking (Original & 4 copies)

The original ONLY will have all Schedules attached - you will attach Schedules to copies after it has been approved & returned from Juneau.

(2) Diary & Record of Negotiation (original)

(3) List of defendants

(4) Approved appraisal list

(5) Approved Appraisal (original)

(6) Litigation Report

(7) Updated Highways' title

(8) Purchase Voucher

Hold Complaint, Notice of Filing Complaint, Directions of Service, (if published: Affidavit, Order Designating Newspaper & Motion for an Order Designating Newspaper) until Juneau has approved - all copies are marked for distribution and sent to D.A.'s office. (D.A.'s office will call and tell you when to send them over)

DISTRIBUTION:

DECLARATION OF TAKING

Orig: Court

1 xc: D.A.'s office

1 xc: Hwy, Juneau

1 xc: Hwy, Fairbanks

1 xc: Recording

COMPLAINT

Orig: Court
1 xc: D.A.'s office
1 xc: Hwy, Juneau
1 xc: Hwy, Fairbanks

NOTICE OF FILING COMPLAINT

Orig: Court
1 xc: D.A.'s office
1 xc: Hwy, Juneau
1 xc: Hwy, Fairbanks
1 xc: Publication (if published) - just desc.-no maps are
attached
1 xc: Each Defendant

DIRECTIONS OF SERVICE

Original & 1 copy

AFFIDAVIT

Original & 1 copy

ORDER DESIGNATING NEWSPAPER

Original & 1 copy

MOTION FOR AN ORDER DESIGNATING NEWSPAPER

Original & 1 copy