

IC 32-24-4.5

Chapter 4.5. Procedures for Transferring Ownership or Control of Real Property Between Private Persons

IC 32-24-4.5-1

Application of chapter; "public use"

Sec. 1. (a) As used in this section, "public use" means the:

- (1) possession, occupation, and enjoyment of a parcel of real property by the general public or a public agency for the purpose of providing the general public with fundamental services, including the construction, maintenance, and reconstruction of highways, bridges, airports, ports, certified technology parks, intermodal facilities, and parks;
- (2) leasing of a highway, bridge, airport, port, certified technology park, intermodal facility, or park by a public agency that retains ownership of the parcel by written lease with right of forfeiture; or
- (3) use of a parcel of real property to create or operate a public utility, an energy utility (as defined in IC 8-1-2.5-2), or a pipeline company.

The term does not include the public benefit of economic development, including an increase in a tax base, tax revenues, employment, or general economic health.

(b) This chapter applies to a condemnor that exercises the power of eminent domain to acquire a parcel of real property:

- (1) from a private person;
- (2) with the intent of ultimately transferring ownership or control to another private person; and
- (3) for a use that is not a public use.

(c) This chapter does not apply thirty (30) years after the acquisition of the real property.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-2

"Condemnor"

Sec. 2. As used in this chapter, "condemnor" means a person authorized to exercise the power of eminent domain.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-3

"Parcel of real property"

Sec. 3. As used in this chapter, "parcel of real property" means real property that:

- (1) is under common ownership; and
- (2) a condemnor is seeking to acquire.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-4

"Private person"

Sec. 4. As used in this chapter, "private person" means a person other than a public agency.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-5

"Public agency"

Sec. 5. (a) As used in this chapter, "public agency" means:

- (1) a state agency (as defined in IC 4-13-1-1);
- (2) a unit (as defined in IC 36-1-2-23);
- (3) a body corporate and politic created by state statute;
- (4) a school corporation (as defined in IC 20-26-2-4); or
- (5) another governmental unit or district with eminent domain powers.

(b) The term does not include a state educational institution.

As added by P.L.163-2006, SEC.17. Amended by P.L.2-2007, SEC.365.

IC 32-24-4.5-6

"Relocation costs"

Sec. 6. As used in this chapter, "relocation costs" means relocation expenses payable in accordance with the federal Uniform Relocation Assistance Act (42 U.S.C. 4601 through 42 U.S.C. 4655).

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-7

Acquisition of property; conditions

Sec. 7. A condemnor may acquire a parcel of real property by the exercise of eminent domain under this chapter only if all the following conditions are met:

- (1) At least one (1) of the following conditions exists on the parcel of real property:
 - (A) The parcel contains a structure that, because of:
 - (i) physical condition;
 - (ii) use; or
 - (iii) occupancy;constitutes a public nuisance.
 - (B) The parcel contains a structure that is unfit for human habitation or use because the structure:
 - (i) is dilapidated;
 - (ii) is unsanitary;
 - (iii) is unsafe;
 - (iv) is vermin infested; or
 - (v) does not contain the facilities or equipment required by applicable building codes or housing codes.
 - (C) The parcel contains a structure that is:
 - (i) a fire hazard; or
 - (ii) otherwise dangerous to the safety of persons or property.

(D) The parcel contains a structure that is not fit for its intended use because:

- (i) the utilities;
- (ii) the sewerage;
- (iii) the plumbing;
- (iv) the heating; or
- (v) any other similar services or facilities;

have been disconnected, destroyed, removed, or rendered ineffective.

(E) The parcel:

- (i) is located in a substantially developed neighborhood;
- (ii) is vacant or unimproved; and
- (iii) because of neglect or lack of maintenance, has become a place for the accumulation of trash, garbage, or other debris or become infested by rodents or other vermin, and the neglect or lack of maintenance has not been corrected by the owner of the parcel within a reasonable time after the owner receives notice of the accumulation or infestation.

(F) The parcel and any improvements on the parcel are the subject of tax delinquencies that exceed the assessed value of the parcel and its improvements.

(G) The parcel poses a threat to public health or safety because the parcel contains environmental contamination.

(H) The parcel has been abandoned.

(2) The acquisition of the parcel of real property through the exercise of eminent domain is expected to accomplish more than only increasing the property tax base of a government entity.

(3) If the owner files a request for mediation at the time the owner files an objection or exception to an eminent domain proceeding, the mediation occurs as follows:

(A) The court shall appoint a mediator not later than ten (10) days after the request for mediation is filed.

(B) The condemnor shall engage in good faith mediation with the owner, including the consideration of a reasonable alternative to the exercise of eminent domain.

(C) The mediation must be concluded not later than ninety (90) days after the appointment of the mediator.

(D) The condemnor shall pay the costs of the mediator.

A determination concerning whether a condition described in this section has been met is subject to judicial review in an eminent domain proceeding concerning the parcel of real property. If a court determines that an eminent domain proceeding brought under this chapter is unauthorized because the condemnor did not meet the conditions described in this section, the court shall order the condemnor to reimburse the owner for the owner's reasonable attorney's fees that the court finds were necessary to defend the action.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-8

Compensation for owners of acquired property

Sec. 8. Notwithstanding IC 32-24-1, a condemnor that acquires a parcel of real property through the exercise of eminent domain under this chapter shall compensate the owner of the parcel as follows:

(1) For agricultural land:

(A) either:

(i) payment to the owner equal to one hundred twenty-five percent (125%) of the fair market value of the parcel as determined under IC 32-24-1; or

(ii) upon the request of the owner and if the owner and condemnor both agree, transfer to the owner of an ownership interest in agricultural land that is equal in acreage to the parcel acquired through the exercise of eminent domain;

(B) payment of any other damages determined under IC 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain; and

(C) payment of the owner's relocation costs, if any.

(2) For a parcel of real property occupied by the owner as a residence:

(A) payment to the owner equal to one hundred fifty percent (150%) of the fair market value of the parcel as determined under IC 32-24-1;

(B) payment of any other damages determined under IC 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain; and

(C) payment of the owner's relocation costs, if any.

(3) For a parcel of real property not described in subdivision (1) or (2):

(A) payment to the owner equal to one hundred percent (100%) of the fair market value of the parcel as determined under IC 32-24-1;

(B) payment of any other damages determined under IC 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain; and

(C) payment of the owner's relocation costs, if any.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-9

Offer of settlement

Sec. 9. (a) Not later than forty-five (45) days before a trial involving the issue of compensation, the condemnor shall, and an owner may, file and serve on the other party an offer of settlement. Not more than five (5) days after the date the offer of settlement is served, the party served may respond by filing and serving upon the other party an acceptance or a counter offer of settlement. The offer must state that it is made under this section and specify the amount, exclusive of interest and costs, that the party serving the offer is

willing to accept as just compensation and damages for the property sought to be acquired. The offer or counter offer supersedes any other offer previously made under this chapter by the party.

(b) An offer of settlement is considered rejected unless an acceptance in writing is filed and served on the party making the offer before the trial on the issue of the amount of damages begins.

(c) If the offer is rejected, it may not be referred to for any purpose at the trial but may be considered solely for the purpose of awarding costs and litigation expenses under section 10 of this chapter.

(d) This section does not limit or restrict the right of an owner to payment of any amounts authorized by law in addition to damages for the property taken from the owner.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-10

Costs of proceedings

Sec. 10. (a) Except as provided in subsection (b), the condemnor shall pay the costs of the proceedings.

(b) If there is a trial, the additional costs caused by the trial shall be paid as ordered by the court. However, if there is a trial and the amount of damages awarded to the owner by the judgment, exclusive of interest and costs, is greater than the amount specified in the last offer of settlement made by the condemnor under section 9 of this chapter, the court shall require the condemnor to pay the owner's litigation expenses, including reasonable attorney's fees, in an amount that does not exceed twenty-five percent (25%) of the cost of the acquisition.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-11

Acquisition of property in certain project areas

Sec. 11. (a) This section applies to a parcel of real property located in a project area:

- (1) that is located in only one (1) county;
- (2) that is at least ten (10) acres in size; and
- (3) in which a condemnor or its agents has acquired clear title to at least ninety percent (90%) of the parcels in the project area.

(b) As used in this section, "project area" means an area designated by a condemnor and the legislative body for the condemnor for economic development.

(c) Notwithstanding sections 7 and 8 of this chapter, a condemnor may acquire a parcel of real property by the exercise of eminent domain under this section only if all of the following conditions are met:

- (1) The parcel of real property is not occupied by the owner of the parcel as a residence.
- (2) The legislative body for the condemnor adopts a resolution by a two-thirds (2/3) vote that authorizes the condemnor to exercise eminent domain over a particular parcel of real

property.

(d) A condemnor that acquires a parcel of real property through the exercise of eminent domain under this section shall compensate the owner of the parcel as follows:

(1) Payment to the owner equal to one hundred twenty five percent (125%) of the fair market value of the parcel as determined under IC 32-24-1.

(2) Payment of any other damages as determined under IC 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain.

(3) Payment of the owner's relocation costs, if any.

(e) The condemnor may not acquire a parcel of real property through the exercise of eminent domain under this section if the owner of the parcel demonstrates by clear and convincing evidence that:

(1) the location of the parcel is essential to the viability of the owner's commercial activity; and

(2) the payment of damages and relocation costs cannot adequately compensate the owner of the parcel.

(f) The court shall award the payment of reasonable attorney's fees to the owner of a parcel in accordance with this chapter.

As added by P.L.163-2006, SEC.17.