

While condemnation typically involves the taking of either raw land at one end of the spectrum, or fully improved property on the other, it's become increasingly common to see government acquisitions occurring somewhere in between; property that is neither raw land nor fully improved; property condemned at some point during the course of its development or even construction.

Property acquired in the course of development comprises a marketable package, the value of which exceeds the mere value of raw land plus costs incurred. Recognizing this issue, the courts have developed a measure of full compensation and rules of admissibility to accomplish what is the core of every condemnation action — a practical attempt to make the owner whole. While an owner has no right to a windfall based on a speculative use of his property never contemplated absent the condemnation, he is entitled to be compensated for enhancements that would fairly be given weight in the marketplace. Thus, the real question becomes, how much has the developer enhanced the value of the property through his efforts?

A project's enhancement in value is a factually intensive determination. As with any project, an owner must complete a critical progression of steps, some sequential, others simultaneous, each of which entails elements of time, skill, effort, investment and risk. As the owner completes each task and progresses through the continuum, the time required to complete the development project is shortened, the remaining cost to complete is reduced, effort and work is eliminated, and risk is diminished. During this time, the property is transformed from vacant land into a "packaged project" that includes the benefits of the investments of time, skill, effort and elimination of risks.



EMINENT DOMAIN:

PROPERTY TAKEN IN THE COURSE OF DEVELOPMENT AND CONSTRUCTION

Accordingly, an owner begins earning a reward for his efforts from the start of the project, although not yet realized. In the valuation of a "packaged project," the enhancement, or profit, is treated as an increment in value earned for assembling the economic unit; formed by the three typical agents of production: land, labor and capital (the owner provides a critical fourth agent: coordination). Quite often appraisers and the courts refer to this enhancement as entrepreneurial profit.

The amount of profit earned will correspond to the stage of development, the various levels of risk overcome, and the skill that may be needed at different phases. The rate of which profit is earned at different stages also varies by property type and market. In some instances, the greatest challenge, and thus profit earned, is in getting the requisite approvals. In others, it may be finding a suitable site for a product in high demand.

The development is often profitable, but rarely easy. For this reason, landowners whose property is taken in the course of development should be aware of their right to be fully compensated for the enhancement they create. Because appraisal methodologies and admissibility of evidence in court varies, landowners should take care in hiring an eminent domain attorney familiar with this taking and valuation scenario. Courts in condemnation cases involving partially developed properties have recognized an owner's entitlement to the enhancement in value achieved by his efforts. It is the eminent domain lawyer's responsibility to understand and communicate the extent to

which a property has been improved; the meaningful steps that have been taken; and how they translate into an enhancement over the raw land.

The fair market value of a property is not merely the value of the raw land plus the costs incurred. The owner's investment of time, skill, effort and capital are proper elements to be considered by a jury in determining the fair market value of the property at the time of taking. Upon knowing their rights and securing adequate representation, landowners will be able to ensure that they are being properly compensated for the enhancement of value they have created up to the date of taking. ⚖️



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