

The Struggle for Compromise

Eminent Domain: Use and Issues



Presented by B. Allen Garner, City Counselor

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National Association of Clean Water Agencies

November 7-9, 2007





You are bidding on a **ONE POUND BAG OF INDEPENDENCE MISSOURI DIRT** FROM PROPERTY BEING STOLEN FROM US BY WAY OF EMINENT DOMAIN. THIS PROPERTY IS TO BE USED FOR A PRIVATE DEVELOPERS BUSINESS PARK AND IS BEING TAKEN BY THE **ALL AMERICAN CITY OF INDEPENDENCE MISSOURI GOVERNMENT** FOR NOTHING MORE THAN TAX REVENUE GAINS.

This has become a very popular technique that the City of Independence Missouri Government has used over the last several years. **The city finally picked on the wrong people!**

For the whole story visit our website.

<http://www.stolemyland.com/>

THE WINNING BID AMOUNT WILL BE USED TO HELP OFFSET LEGAL FEES TO TEACH THIS ALL AMERICAN CITY GOVERNMENT A LESSON!

Money orders ,cashiers check and paypal accepted at mrtanman@budweiser.com .

Add 3.50 for shipping

GREAT CHRISTMAS PRESENT

*****PLEASE READ THE BELOW*****

INSTEAD OF USING THE WINNING BID AMOUNT TO OFFSET LEGAL FEES. SCOTT, HEWITT & MIZE WILL BE DONATING THE TOTAL WINNING AMOUNT TO A LOCAL INDEPENDENCE MISSOURI CHARITY AND WILL POST THE AMOUNT AND THE CHARITY ON THE <http://www.stolemyland.com/> website when a charity has been decided on.



Winning bid: **US \$102.50**

Ended: Oct-30-05 19:25:27 PST

Start time: Oct-20-05 20:25:27 PDT

History: [59 bids](#) (US \$0.99 starting bid)

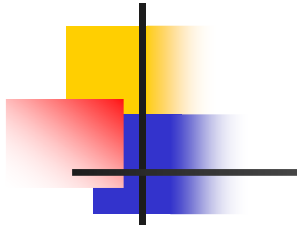
Winning bidder: [specialtkwilter](#) ([68](#))

Item location: Independence, Missouri
United States

Ships to: United States

Shipping costs: US \$3.50 - Expedited shipping service

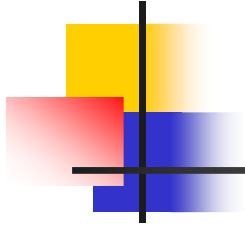
[— shipping, payment details and return policy](#)





What is Eminent Domain?

- Power of the government to acquire private property for public use
- Private rights must yield to public good and common welfare
- 5th Amendment to U.S. Constitution
 - Public use
 - Just compensation



Kelo v. City of New London

- Waterfront Connecticut community
- Decades of economic decline
- 1990 – “Distressed Municipality”
- 1996 – Naval Center - 1,500 jobs lost
- Unemployment - double the state rate
- Population - lowest since 1920



Kelo v. City of New London

- Economic revitalization plan
- Create jobs
- Generate tax revenue
- Make city more attractive
- Create leisure and recreation on waterfront and in park





Kelo v. City of New London

- U.S. Supreme Court: “A city’s exercise of eminent domain power in furtherance of economic development plan satisfied constitutional ‘public use’ requirement.”
- Drew national attention
- Did not change law

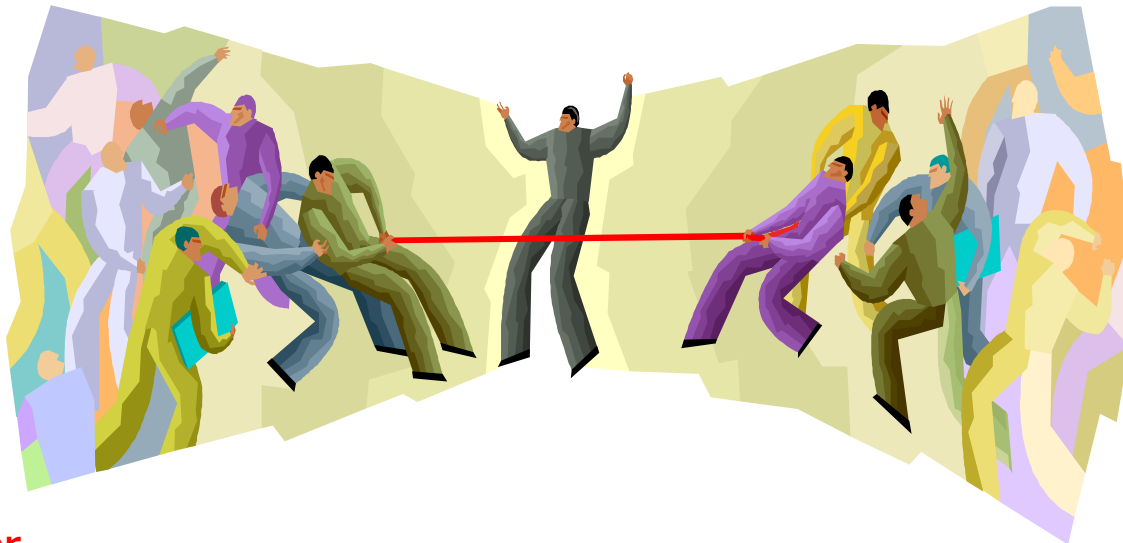


The Struggle for Compromise

Farm
Bureau

Utilities

National
Property
Rights
Groups



Chamber
of Commerce

Government
Officials

Development
Community



Farm Bureau

- Eminent domain as last resort
- Landowner's Bill of Rights
- Early notification
- Just compensation/Heritage value
- Consideration of alternate routes
- Reversion of abandoned easements



Utilities

- Rate payers must pick up added costs and time delays
- Increasingly energy intensive economy
- Need to keep up with rising demand



National Property Rights Groups

- Early Notice
- Just compensation
- Relocation assistance
- Penalize low-ball offers
- No sole economic development



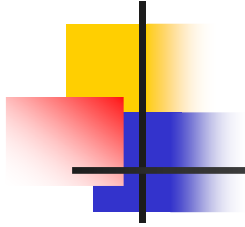
Chamber of Commerce

- Transparency
- Timely judicial review
- Just compensation



Government Officials

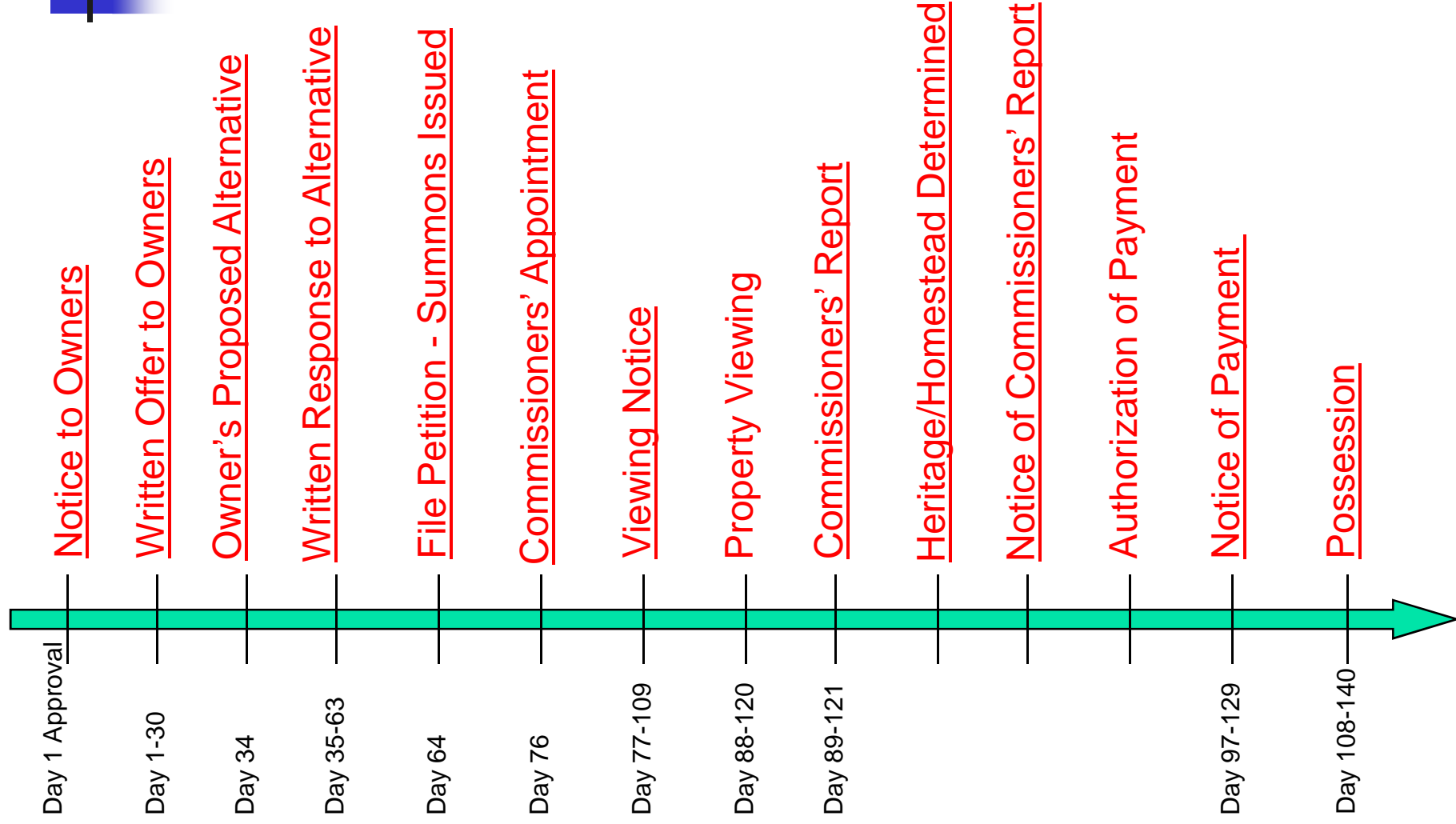
- Preservation of public works projects
- Ability to eliminate blight
- Fairness for constituents
- Timeliness of process
- Affordability



Development Community

- Eminent domain is a necessary tool
- Economic development must survive
- Do not jeopardize public works
- No punitive damages

Condemnation Timeline





Statement of Property Owner's Rights

- Right to:
 - Seek legal counsel at owner's expense
 - Make a counteroffer & engage in negotiations
 - Obtain owner's own appraisal of just compensation
 - Have just compensation determined preliminarily by commissioners and ultimately, by a jury
 - Seek assistance from office of ombudsman
 - Contest the right to condemn
 - Request vacation of an abandoned easement



Owner's Proposed Alternative

- Within 30 days of receipt of initial notice
- Proposal in writing
 - Alternative location
 - On same parcel
 - Detailed and clearly defined
- Does not apply to entire parcel takings
- § 523.265



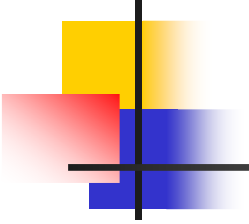
Written Response to Alternative

- What: Brief statement - why rejected or accepted
- When:
 - No time specified
 - *After* consideration of alternative
- To whom: The owner
- Method: Not specified
- § 523.265



Fair Market Value

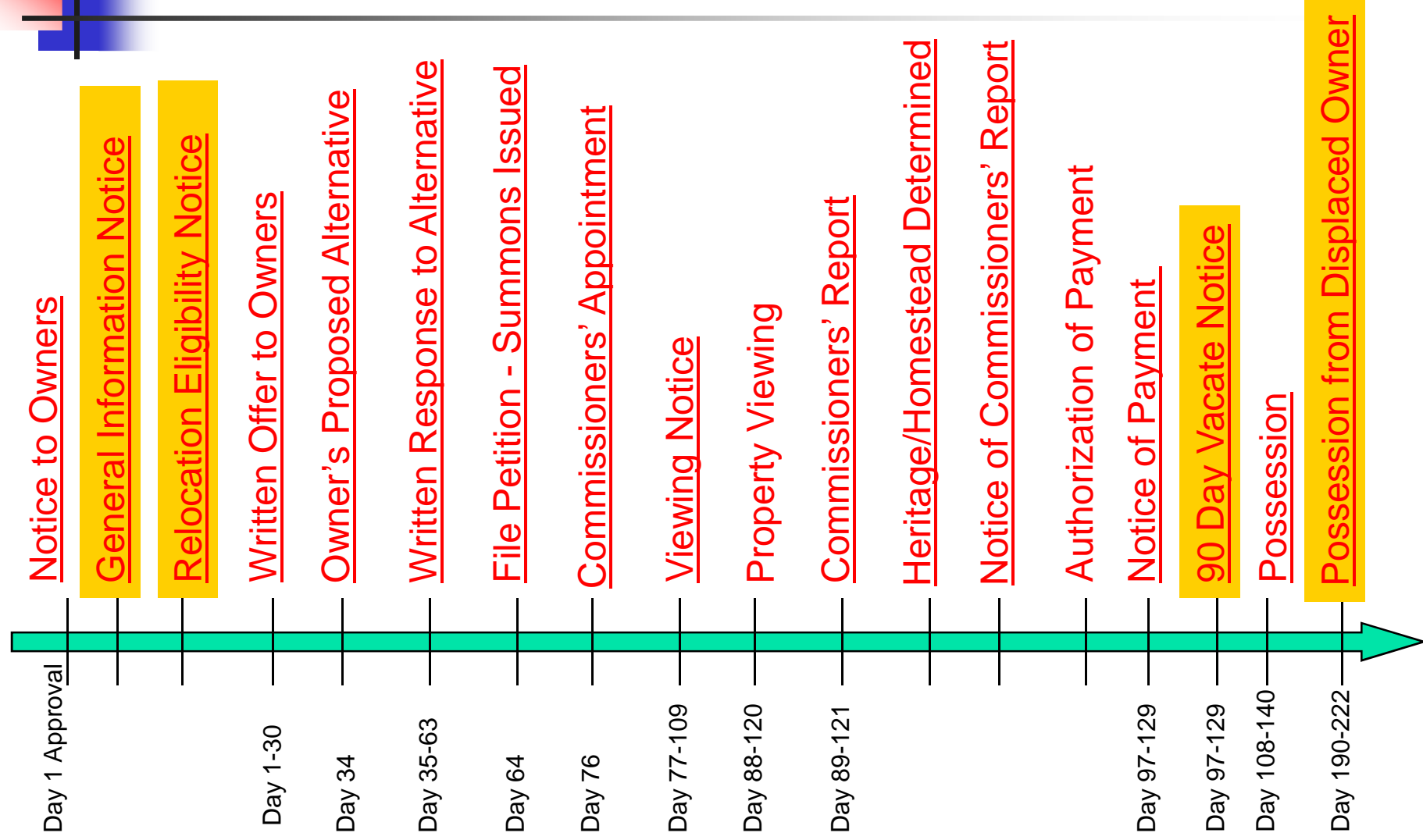
- Comparable sales
- Capitalization of income
- Replacement cost less depreciation
- Singularly or in combination
- Highest and best use
- Generally accepted appraisal practices
- § 523.001(1)



Heritage/Homestead Determined

- determine application
- increase award accordingly

Condemnation Timeline/ Displaced Person





“Displaced Person”

- Person that moves from real property
- permanently and voluntarily
- as a direct result of the acquisition for a public purpose



What did the law do?

- Increased Notice Provisions
- Increased Compensation
- Increased Relocation Benefits
- Bad Faith Penalties



What did the law do?

- Blight Changes
- No Condemnation by Private Developers
- Prohibits solely economic development purposes
- No blanket easements



What did the law do?

- Prohibits expanded use
- Abandonment penalties
- Office of Ombudsman
- State tax benefit



Increased Compensation

- Fair Market Value
- Heritage Value
- Homestead Taking



Fair Market Value

- Comparable sales
- Capitalization of income
- Replacement cost less depreciation
- Singularly or in combination
- Highest and best use
- Generally accepted appraisal practices
- § 523.001(1)



Heritage Value

- In same family for at least fifty years
- 150% fair market value
- Burden of proof on property owner



Homestead Taking

- Owner's primary place of residence
- Property within 300 feet of primary residence that prevents utilization in substantially the same manner
- 125% Fair Market Value



No Condemnation by Private Developers

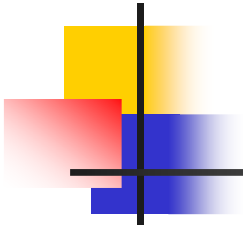
Authority must have:

- Board members appointed by one or more elected officials
- Recourse through the political process
- Accountability by elected officials
- Utilities



Utilities

- As granted by statute
 - Private/public/municipally owned utility
 - Rural electric cooperative
 - Pipeline
 - Railroad
 - Common carrier
- Initial public disclosure required for power generation facility



Project Not Solely Economic

- Project not solely economic if
 - Includes elimination of blighted, substandard, or unsanitary conditions
 - Includes conditions rendering the property a conservation area
 - Public works project



No Blanket Easements

- After December 31, 2006
- Void as against public policy
- Wholly unenforceable
- Must define location and burden



Prohibits Expanded Use

- Acquisitions after August 28, 2006
- Fixed and determined in conveyance
- Expanded use requires new proceedings
- Prevailing property owner may be awarded reasonable attorneys' fees, costs, expenses

End of Slide Show
Thank You

