

INVERSE CONDEMNATION: ACCESS ISSUES

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I. INVERSE CONDEMNATION DEFINED AND DESCRIBED

- A. It is a legal procedure initiated by a property owner to commence condemnation proceedings.

Koskey v. Town of Bergen, 237 Wis.2d 284 (App. 2000)

- B. Sec. 32.10 describes the legal procedure from initiation to court decision.
- C. According to Eaton:

“Inverse condemnation should be distinguished from eminent domain. Eminent domain refers to a legal proceeding in which a government asserts its authority to condemn property. Inverse condemnation is a “shorthand description of the manner in which a landowner recovers just compensation for a taking of his property when condemnation proceedings have not been instituted. [Citations omitted].”

- D. Nichols, sec. G 14.02(1) also provides a useful description

II. FUNCTION OF INVERSE CONDEMNATION

- A. It is a substitute method of commencing a condemnation claim for just compensation. It is a parallel proceeding to a direct condemnation proceeding under sec. 32.05 or sec. 32.06.
- B. It is not a substitute method of determining the amount of just compensation. If the inverse condemnation concludes in favor of the petitioning property owner, the matter then proceeds as if the owner had received and failed to accept a jurisdiction offer from the inverse condemnor. Sec. 32.10
- C. An inverse condemnation proceeding is tried to the court. A just compensation claim is tried to a jury.
- D. Occasionally there is a contest between an owner and an entity with condemnation power as to which procedure should be employed. The procedure is governed by who acts first to institute proceedings.

Maxey v. Redevelopment Authority of Racine, 94 Wis.2d 375 (1980)

III. CASE LAW: INVERSE CONDEMNATION

- A. Matters based on Wisconsin Constitution, Article 1, Sec. 13 include cases against the state outside the scope of sec. 32.10.

Zinn v. State, 112 Wis.2d 417 (1983).

- B. Matters based on Sec. 32.10, Wis. Stats.

Zinn

IV. TAKINGS FOR WHICH INVERSE CONDEMNATION CAN BE INVOKED

- A. Permanent takings
- B. Temporary takings

V. RECOVERY OF LITIGATION EXPENSES

- A. Inverse condemnation based on the Wisconsin Constitution does not allow for the recovery of litigation expenses, only statutory costs.
- B. Inverse condemnation based on sec. 32.10 allows for the recovery of litigation expense, sec. 32.28(3)(c), even if the subsequent just compensation proceedings yield no recovery to the property owner.

VI. INVERSE CONDEMNATION APPLICATION IN AN ACCESS SITUATION

- A. When assertion can be made – When a public project is claimed to have an impact on a property's access, but no formal condemnation has occurred.
- B. When claim will be successful – When the access to the property has become “unreasonable” or “not reasonable”.
- C. When claim should be successful – When the change in access has reduced the value of the property.
- D. Applicable to both.
 - 1. Temporary situations
 - 2. Permanent situations

VII. TESTIMONY OF THE IMPACT OF ACCESS CHANGE CAN COME FROM:

- A. Appraiser
- B. Attorney

- C. Broker
- D. Occupant
- E. Owner
- F. Planner
- G. Traffic Engineer

VIII. PROVING THE IMPACT OF ACCESS CHANGE BY:

IX. Measuring Just Compensation When There Is A Compensable Access Change.

- A. Partial taking rules. Sec. 32.09(6)
- B. “Before” highest and best use and value.
- C. “After” highest and best use and value.

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