
Indiana Farm Bureau
Agricultural Land Use & Zoning School

Eminent Domain 101

March 7, 2024

Alan S. Townsend

**BOSE
McKINNEY
& EVANS LLP**

ATTORNEYS AT LAW

BOSE MEANS BUSINESSSM

Alan Townsend

Alan is a partner in the Litigation Group at Bose McKinney & Evans LLP. He has served as counsel for many municipalities to work on eminent domain projects. Alan also represents landowners on eminent domain projects adverse to the State of Indiana.

Alan graduated from Purdue University in 1987 with a degree in Agricultural Economics. Alan also graduated from the Indiana University School of Law (Bloomington) in 1992. He joined Bose McKinney & Evans LLP in May of 1992 and has practiced there ever since.

Condemnation = Eminent Domain

Black's Law Dictionary:

Eminent domain is the power to take private property for public use by the state, municipalities, or corporations authorized to exercise functions of public character.

Topics

- Public Use
- Entry on Property
- Good Faith Offer
- Condemnation Complaint
- “Take” Hearing
- Court Appointed Appraisers
- Getting to Final Damages
- Project Timing
- Inverse Condemnation

Public Use

- 5th Amendment
 - *nor shall private property be taken for public use, without just compensation*
- IC 32-24-4-1 – Authority of Utilities to Exercise Eminent Domain
- IC 32-24-1 – Eminent Domain Procedures

Public Use

- Kelo v. City of New London (2005)
 - IC 32-24-4.5 (2006)
- Wymberley Sanitary Works v. Batliner (2009)

Pre-Court

- Right to Enter Land
 - Examine and Survey the Property to be Acquired
- Utility – 14 Day Notice
 - Damages & Potential Attorneys Fees

Good Faith Offer

- Effort to Purchase
- Must include:
 - Establish proposed purchase price
 - Provide owner with appraisal or other evidence used to establish proposed price
 - Conduct good faith negotiations

Good Faith Offer

- Uniform Offer – IC 32-24-1-5
 - Hand delivery, certified mail, or publication
 - 30 days before lawsuit
- Independent Appraisal = Good Faith
 - Wagler v. West Boggs Sewer District
- Agreement Not Required

Uniform Offer

UNIFORM EASEMENT ACQUISITION OFFER

The Town of Whitestown, Indiana and Whitestown Municipal Utilities (collectively, "Whitestown") is authorized by Indiana law to obtain your property or an easement across your property for certain public purposes. Whitestown needs an easement across your property for a sewer system project that will allow Whitestown to efficiently and effectively provide utility service, and needs to take the easement enclosed with this document.

It is our opinion that the fair market value of and/or any damages for the easement Whitestown wants to acquire from you is \$7,175, and, therefore, Whitestown offers you \$7,175 for the above described easement. You have thirty (30) days from this date to accept or reject this offer. If you accept this offer, you may expect payment in full within ninety (90) days after signing the documents accepting this offer and executing the easement, and provided there are no difficulties in clearing liens or other problems with title to land. Possession will be required thirty (30) days after you have received your payment in full.

HERE IS A BRIEF SUMMARY OF YOUR OPTIONS AND LEGALLY PROTECTED RIGHTS:

1. By law, Whitestown is required to make a good faith effort to purchase an easement across your property.
2. You do not have to accept this offer and Whitestown is not required to agree to your demands.
3. However, if you do not accept this offer, and we cannot come to an agreement on the acquisition of an easement, Whitestown has the right to file suit to condemn and acquire the easement in the county in which the property is located.
4. You have the right to seek advice of an attorney, real estate appraiser, or any other person of your choice on this matter.
5. You may object to the public purpose and necessity of this project.
6. If Whitestown files a suit to condemn and acquire an easement and the court grants its request to condemn, the court will then appoint three appraisers who will make an independent appraisal of the easement to be acquired.
7. If we both agree with the court appraisers' report, then the matter is settled. However, if either of us disagrees with the appraisers' report to the court, either of us has the right to ask for a trial to decide what should be paid to you for the easement condemned.
8. If the court appraisers' report is not accepted by either of us, then Whitestown has the legal option of depositing the amount of the court appraisers' evaluation with the court. And if such a deposit is made with the court, Whitestown is legally entitled to immediate

Uniform Offer

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Uniform Offer

possession of the easement. You may, subject to the approval of the court, make withdrawals from the amount deposited with the court. Your withdrawal will in no way affect the proceedings of the case in court, except that, if the final judgment awarded you is less than the withdrawal you have made from the amount deposited, you will be required to pay back to the court the amount of the withdrawal in excess of the amount of the final judgment.

9. The trial will decide the full amount of damages you are to receive. Both of us will be entitled to present legal evidence supporting our opinions of the fair market value of the property or easement. The court's decision may be more or less than this offer. You may employ, at your cost, appraisers and attorneys to represent you at this time or at any time during the course of the proceeding described in this notice.
10. If you have any questions concerning this matter, you may contact us at:

Whitestown Municipal Utilities
6210 Veterans Drive
Whitestown, IN 46075
Attn: Danny Powers, Public Works Director
(317) 732-4328

This offer was made to Hockett Real Estate, LP on the 11th day of October, 2019.

Danny Powers, Public Works Director
Town of Whitestown, Indiana

If you decide to accept the offer of \$7,175 made by Whitestown sign your name below and mail this form to the address indicated above. An additional copy of this offer has been provided for your file.

IF THIS OFFER IS OVER FIVE THOUSAND DOLLARS (\$5,000), YOU MAY ELECT UNDER IC 32-24-4-4 TO ACCEPT PAYMENT IN A LUMP SUM PAYMENT OR IN ANNUAL PAYMENTS FOR A PERIOD NOT TO EXCEED TWENTY (20) YEARS WITH INTEREST. IF YOU ELECT ANNUAL PAYMENTS, THEN POSSESSION WILL BE REQUIRED THIRTY (30) DAYS AFTER YOU HAVE RECEIVED YOUR FIRST ANNUAL PAYMENT.

Uniform Offer

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Uniform Offer

ACCEPTANCE OF OFFER

I (We), _____
and _____, landowner(s) of the above-described property or
interest in property, hereby accept the offer of \$7,175 made by Whitestown on this ____ day of
_____, 2019. Please check one of the following if the offer is in excess of Five
Thousand Dollars (\$5,000):

- I (We) elect to accept payment in a lump sum.
- I (We) elect to accept payment in annual payments for a period of ____ years
with interest as determined under I.C. § 32-24-4-4.

NOTARY'S CERTIFICATE

STATE OF _____)
) SS:
COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 2019.

My Commission Expires:

(Signature)

County of Residence:

(Printed) NOTARY PUBLIC

3729515

Uniform Offer

- Cover Letter
- Attach Easement / Deed
- Appraisal

Accept Offer

- Offer Acceptance
- Easement/Deed
- Sales Disclosure
- W-9
- Liens & Mortgages

PARTIAL RELEASE OF MORTGAGE

FOR VALUE RECEIVED, the undersigned, for and on behalf of _____, hereby agrees and declares that the mortgage (the "Mortgage") from _____ to _____ recorded in the Office of the Recorder of _____ County, Indiana on _____ as Instrument No. _____ is hereby released and satisfied solely as to the real estate described in the attached Exhibit A, incorporated herein by reference (the "Released Real Estate").

_____ expressly acknowledges and agrees that (i) this Partial Release of Mortgage shall in no manner discharge the lien of the Mortgage and such other listed documents from any of the real estate described therein except the Released Real Estate; and (ii) the real estate, other than the Released Real Estate, described in the Mortgage shall remain pursuant to the terms of the Mortgage and such other documents as security for the payment of the indebtedness secured thereby and for the full performance of all covenants and obligations provided therein.

IN WITNESS WHEREOF, _____, has caused this Partial Release of Mortgage to be executed this _____ day of _____, 2013.

By: _____
 Printed: _____
 Title: _____

STATE OF _____)
) SS:
 COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, by me known and by me known to be a _____ of _____, who acknowledged the execution of the foregoing "Partial Release of Mortgage" for and on behalf of _____.

WITNESS my hand and Notarial Seal this _____ day of _____, 20____.

 Notary Public
 Printed: _____

My Commission Expires: _____ My County of Residence: _____

This instrument was prepared by, and after recording return to: _____

Liens

Don't Accept Offer

- Starts 6 Year Clock for Utility to File Suit
 - Non-utility – 2 year clock
 - After – 3 year moratorium

Don't Accept Offer

- Who to Sue?
 - The known owners, claimants, and holders of liens on the property shall be named as defendants
- Title Search

Title Search



MERIDIAN TITLE CORPORATION YOUR PEACE OF MIND

SEARCH REPORT

Search Report Prepared For:
Department of Planning and Development
16 S 10th St, Suite 150
Noblesville, IN 46060

Property Address: 161 Wellington Parkway, Noblesville, IN 46060
County: Hamilton
File Number: 20-31871
Customer Reference No.:

SEARCH PARAMETERS

A Search of the records of the Office of the Recorder of Hamilton County, Indiana was performed between the dates of August 4, 1970 and August 4, 2020 at 8:00 am.

A Judgment and Bankruptcy Search was made against the following:

James M. Rogers
James M. Rogers Revocable Trust dated September 21, 1992

TITLE VESTING

The Estate or Interest in the Land described or referred to in this Report is Fee Simple

[James M. Rogers, as Trustee under the James M. Rogers Revocable Trust dated September 21, 1992](#)

LEGAL DESCRIPTION

The land referred to in this Search Report is located in the County of Hamilton, State of Indiana described as follows:

Lot 19 in Wellington Northeast, Section One, an Addition to the City of Noblesville, in Hamilton County, Indiana as per plat thereof, recorded in Plat Book 8, pages 88-90, in the Office of the Recorder of Hamilton County, Indiana.

TAXES AND SEARCH RESULTS

1. Taxes for the year 2020 payable in 2021 are a lien not yet due and payable.

Taxes for the year 2019 payable in 2020 are as follows:

Key No. 11-11-07-03-03-023.000
State Id No. 29-11-07-303-023.000-013

Page 1 of 4

Title Search



MERIDIAN TITLE CORPORATION YOUR PEACE OF MIND

SEARCH REPORT

Search Report Prepared For:
Department of Planning and Development
16 S 10th St, Suite 150
Noblesville, IN 46060

Property Address: 161 Wellington Parkway, Noblesville, IN 46060
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Page 1 of 4

Title Search

1st installment due May 11, 2020 \$3,391.31 - Paid
2nd installment due Nov. 10, 2020 \$3,391.31 - Unpaid

Assessed Valuations: 2019/2020

Land \$49,200.00
Improvements \$225,400.00
Exemption (None) \$0.00

Net Valuations \$274,600.00

NOTE FOR INFORMATION: Tax information supra is limited to the LAST BILLED information reflected in the computer input in the Treasurer's office and does not necessarily reflect the most current information as to applicable penalties, deductions, exemptions, assessments and payments. Also, it does not reflect possible additional taxes and civil penalties as a result of a determination by County officials that a deduction was improperly granted. A check with the Treasurer's or Auditor's Office should be made to determine the exact status and amount of taxes due, if any.

2. Possible Rights of Way for legal drains and ditches, feeders and laterals, if any, and all rights therein.
3. Minerals or mineral rights or any other subsurface substances (including, without limitation, oil, gas and coal), and all rights incident thereto, now or previously leased, granted, excepted or reserved.
4. Subject to parties in possession by virtue of unrecorded leases.
5. Building lines and easements as evidenced in the recorded Plat of Wellington Northeast, Section One recorded May 30, 1980 in [Plat Book 8, page 88](#) in the Office of the Recorder of Hamilton County, Indiana.
6. Restrictions filed with Notes on Plat recorded May 30, 1980 in [Book 8, Page 88](#) and amended by Resolution of Wellington Northeast Neighborhood Association to Amend Wellington Northeast Neighborhood Association Restrictive Covenants recorded July 18, 2001 in Instrument No. [200100044099](#), all in the Office of the Recorder of Hamilton County, Indiana.
7. Mortgage in the amount of \$175,000.00 from Kent W. House and Juanita S. House, Husband and Wife to Rober L. Mitchell dated January 20, 2003 and recorded February 12, 2003 in Instrument No. [200300015036](#) in the Office of the Recorder of Hamilton County, Indiana.
8. DEFECTS, LIENS, ENCUMBRANCES AND ANY OTHER MATTERS AFFECTING TITLE, WHICH WOULD BE DISCLOSED BY A SEARCH OF THE PUBLIC RECORDS, PRIOR TO THE ONLINE EFFECTIVE DATE.

NOTE: DUE TO OFFICE CLOSURES RELATED TO COVID-19, WE MAY BE TEMPORARILY UNABLE TO SEARCH THE PUBLIC RECORDS PRIOR TO THE ONLINE EFFECTIVE DATE.

[VIEW YOUR VESTING DEED AND SCHEDULE B DOCUMENTS BY FOLLOWING THIS LINK](#)

LIMITATION OF LIABILITY AND SEARCH

The liability of this Company shall not exceed \$1,000.00 for any loss covered hereunder, including attorney's fees and court costs.

This information is not an abstract or opinion of title, nor is it a commitment to insure title. This information is furnished for reference purposes only and should not be relied upon for title purposes when acquiring or conveying an interest in the land. It may not be relied upon as a commitment to insure title to the land identified herein. If title insurance coverage is desired, application should be made for a title insurance commitment in a specified amount and identifying the proposed insured.

MERIDIAN TITLE CORPORATION

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MERIDIAN TITLE CORPORATION

Filing Complaint

- Single Project with Multiple Properties in Same County
 - May file in single case or separately
- Specific Description of Property to be Acquired
- Temporary Easement Considerations

Take Hearing

- Notice to Appear
- Objections
 - 30-60 days to file
 - Limited

Take Hearing

- Example Objections
 - Not Public Purpose
 - Not “Necessary”
 - Take a Different Route
 - No Good Faith Offer
 - Didn’t Follow Procedures

Take Hearing

- Summary Proceeding
- Explain Need
- Project Drawings
- Appraisal Report
- Offer Letter & Efforts

Court Appointed Appraisers

- Order of Appropriation
- Appoint 3 Appraisers
 - Indiana residents
 - 1 disinterested freeholder of county
 - 2 disinterested licensed appraisers
 - 1 must live within 50 miles of property

Court Appointed Appraisers

- Appraise Damages
 - Fair Market Value
 - Damage to “Residue”
 - Any other damages
- File Report
- Fees

Appraisers Report

- 45 Days to File Exceptions
- No Exceptions = Done
- Any Party Files Exceptions = Damages Phase

Damages Phase

- Longer Process
- Discovery
- Expert Witnesses
- Mediation
- Jury Trial
- Offer to Settle
 - Up to \$25,000 in owners attorneys' fees

Project Timing

- After Court Appraisers Report
- Deposit Assessed Damages with Court
 - May take possession
 - Certification Process with Auditor & Recorder
 - Property owner can withdraw funds

Project Timing

- Appeal Does Not Delay
- Funding Issues

Inverse Condemnation

- Example: Utility line found to be outside of easement or right of way
- Inverse Condemnation
 - Damages & Attorneys Fees

Inverse Condemnation

Limits

- Sagarin v. Bloomington (2010)
 - Property owner at time of intrusion

- Murray v. Lawrenceburg (2010)
 - 6 year statute of limitations

Questions?

Alan S. Townsend

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