

Maine Statues on Eminent Domain and Their Relationship to *Mitchell v. City of Old Town*

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Summary

For the purpose of this summary, eminent domain and condemnation are functionally identical. There are several proscribed uses of this action that have been defined in Maine Statues. In general, there are four classes of use. First, to gain Property for a park , recreational use, or educational development. Second: for the use of construction of public roads or highways. Third: in order to secure land for sewer systems or domestic water supply. Fourth: to extend or improve existing revenue producing facilities. For each use there is a separate set of conditions that have been defined in statute that must be followed prior to the processing of the action.

After property has been claimed by the governing body, there is a well defined process for determining that just compensation is given to the Property holder in order to meet the state requirement that just compensation is offered. Thus, no matter where the governing body starts in this process, the end is the same. However, by statue this action of condemnation or eminent domain is not to be used lightly. It is designed to be a last resort, only undertaken if all possible means for resolution have been exhausted.

Discussion

In *Mitchell v. Old Town*, the City of Old Town has cited statues that justify their use of condemnation. However, prior to condemnation, the City failed to follow the proscribed actions that are defined in each statue. The only action in which the City has followed the statues is in settling the question of just compensation. However, even in this action, the city has erroneously maintained that there is no title to the land which is an invalid assertion. There is a title to the land that was seized August 19, 2019, and while the City has admitted that they are not the title holders, they have refused to acknowledge both the deed holders of record as well as the plaintiff's claim of quiet title to a portion of the Property that preceded the City's action.

On November 11, 2019, the City asked for a Declaratory Judgement from the court that would determine the issue of ownership of this land. In this request to the court, the City cited 30-A M.R.S.A § 5403 (6), as authorization for their use of eminent domain. Because a sewer line had been laid under the Property in 1975, the City claimed this then gave them reason to assert ownership of the land. While the statue defines that eminent domain can be used by a municipal authority, it also declares that the use of a lease is sufficient for the needs of a revenue producing facility to guarantee needed access to the sewer lines. An easement to the

city that would assure this access was never in question in this case and was stated in the Plaintiff's claim of quiet title.

The City cites 23 M.R.S.A § 3023 as another justification for their action. This statute is clearly defined for use in seizing land for highway purposes. In the description of the Property the City references the map of the Property (Volume 6, Page 45) where the portion of the land claimed by the Plaintiff is specified as a "Transit Line". 23 M.R.S.A § 3023 defines the actions a municipality is allowed if a "public exigency requires the immediate taking of such Property interests, ... or if title is defective." Further, the claim of the City that this seizure was necessary in order to secure the operation of the sewer system is contradicted by 23 M.R.S.A § 3026-A (6) that "(a)n easement for public utility facilities necessary to provide or maintain service remains in a discontinued town way...". Thus the City, by statute has an easement that guarantees their access to the sewer pipes that lie on the Property, making the condemnation an unnecessary action.

The portion of the Property labeled "Transit Line" is defined by statute as abandoned as defined in 23 M.R.S.A § 3032 (1-A) as long as the subdivision plan was recorded prior to September 29, 1987 provided (1) "(t)he way has not been constructed or used as a way" and (2) "(t)he way or portion of the way has not been accepted as a town, county or state way or highway...". Section 3033 goes on to state the actions necessary for a party to claim this vacated Property in 14 M.R.S.A § 6651 by the proceedings to quiet title. This proceeding was initiated by Plaintiff in his original filing with the court on March 3, 2018. It is noted that this would be the proper proceeding the City should have taken for claiming another portion of the Property for the enlargement of their sewer system pumping station in 2017.

The Defendant's Complaint first made a claim based on the revenue producing sewer system, then expanded its claim by reference to acquisition of Property for highway purposes, and finishes its claim by reference to 30-A M.R.S.A § 5204 (3). This statute defines how a municipality can use eminent domain for the purpose of community development, but § 5204 (3) defines the process to be used by the governing body if the ownership of the Property is unknown or the title is defective. The Property is neither, and is entered into the Penobscot Registry of Deeds Book 682, Pages 184-186. Further, § 5204 only states actions to be taken after the resolution of condemnation had been adopted by the municipal officers. Prior to this action, the statute in Section 1 (D) requires that the municipal officers declare that "the acquisition is pursuant to a duly adopted community development program." No such declaration, nor program, was declared by the City. Further, Section 1 (B) requires the City to "(s)pecify the name or names of the owner or owners", a provision that "must" be followed by any adoption of condemnation. The reference to 30-A M.R.S.A § 5204 by the Defendant thus serves to undermine their case rather than support it.

The City states in their Complaint (§ 17) "... that a public exigency required the immediate taking of the Property...". The word "exigency" is used in Maine Revised Statutes ten times, but it is nowhere defined. Common use of the word means that there is a pending danger or the threat of pending danger to an individual or Property such that time constraints require immediate action. Three years after the use of eminent domain the City can point to no action the City took as a result of this seizure of Property. Nothing has changed in the construction or operation of the sewer system because there was no pressing emergency that required the immediate taking of the Property. When presenting this Order of Condemnation to the City Council on August 19, 2019, Counsel for the City pronounced that "You don't need to have a public hearing about that because a public exigency requires it in this case." No exigency existed then, nor does one exist now.

This is in blatant contradiction to the requirements stated in 38 M.R.S.A § 2160 (4) that states that prior to taking there must be "... a public hearing on the advisability of its proposed exercise of the right of eminent domain. Notice of the hearing must be made by publication in a newspaper of general circulation in the area of the taking and published once a week for 2 successive weeks, the last publication to be at least 2 weeks before the time appointed in the hearing." That the City Counsel was aware of this requirement is why she advised the City that it was not necessary to obey this procedure by statute.

Finally, in addition to the assertion of exigency, there is the recurrent theme that the title to the Property is defective or that it does not exist. This is clearly not based in fact, and is an erroneous assertion that allows them to pursue alternatives to the proper use of the powerful tool of eminent domain. Clearly there may be a reason for seizure of land, but only after all processes of negotiation have been resolved. In particular, the failure of the City to join in a process of Alternative Dispute Resolution as mandated by the court is a egregious example of their disdain for the constraints built into the Statute.

Conclusion

The entire Complaint of the City is based on a shaky construction of legal prerogatives that were based on pieces of cherry picked statutes that are full of internal contradictions. Over this mashed up collection of directives the concept of exigency is thrown as a cape to protect the City from the implacable rule of Law. The use of eminent domain thus becomes a legal strategy rather than a legal process. The court can order the City to follow the requirements of Maine Law and follow the process as listed in 38 M.R.S.A § 2160 and start over. But it would better serve the City and the Plaintiff if the court would require the City to follow the process of establishing a quiet title as outlined in 14 M.R.S.A § 6651. This is a process that the Plaintiff would have completed years ago were it not for the disruption created by the City's obstinate insistence that they claim Property to which they have no title.