

# Condemnation – Do's and Don'ts

Presented by

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# Poll

- Have you seen the movie SHREK?
- Fictional case.
  - Kingdom of Duloc v. Shrek Properties.
  - Town's condemnation of swamp for relocation of fairy tale creatures.
  - Do's and don'ts for the project.



# Polling Results

- [Link to polling results goes here]

# Preliminary Planning

## I. General considerations

- A. Identify project.
- B. Time and budget constraints.
- C. Regulatory framework.
- D. Funding sources.

## II. Other important considerations

- A. Public support or opposition.
- B. Policy-maker considerations.



# Project Development

## I. Project design

- A. Where?
- B. Engineering function?
- C. Role of attorney and ultimate decision-maker.
- D. Do's and don'ts.

# Project Development

## II. Determine property to be acquired

- A. Full or partial take?
- B. Fee, permanent easement, temporary easement, etc.
- C. Legal descriptions and surveys.
- D. Do's and don'ts.





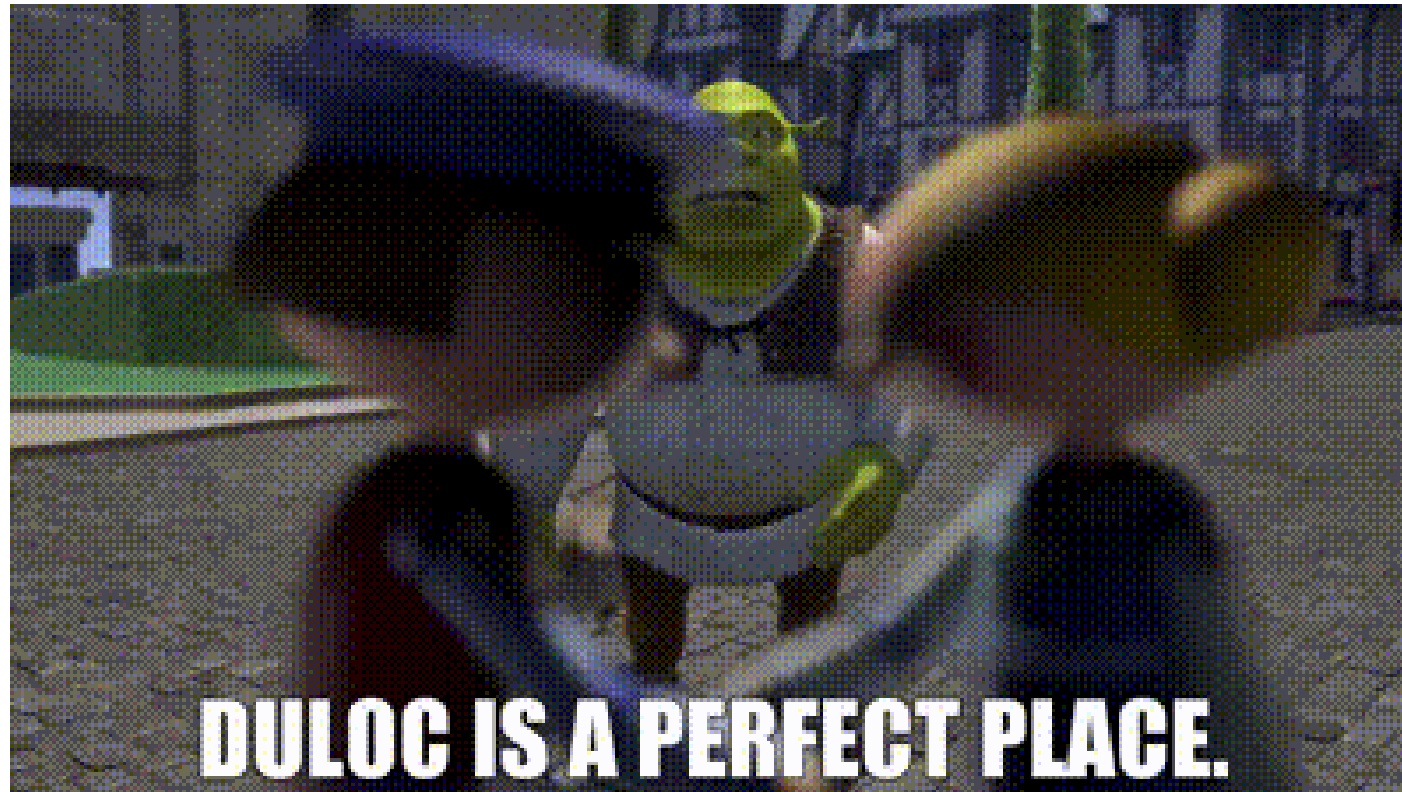
# Property Inventory

- I. Owners and record interest holders
  - A. Title insurance.
  - B. Component property interests (i.e. minerals and water rights).
  - C. Possessory interests.
  - D. Title exceptions you can and cannot live with.
  - E. Do's and don'ts.



# -Poll

- Should the Kingdom of Duloc name Donkey as an interest holder in its condemnation of the swamp?





# Polling Results

- [Link to polling results goes here]

# Property Inventory

## I. Improvements

- A. Improvements survey.
- B. Informal access.
- C. Location and age and condition of improvements.
- D. Land use issues – annexation, zoning, comp plan, entitlements.
- E. Do's and don'ts.



# Choosing the Players

- I. Technical consultants  
(engineers, surveyors,  
etc.)
  - A. In house or contract?
  - B. Recognize potential layers  
(civil, soils, environmental)
  - C. When?
  - D. Do's and don'ts.



# Choosing the Players

## II. Appraisers

- A. In house or contract?
- B. Consultants or expert witnesses or both.
- C. Spread the wealth.
- D. Do's and don'ts.

# Choosing the Players

## III. Negotiators

- A. In house or contract?
- B. One of the most important decisions.
- C. Person will likely testify; generally shouldn't be your lawyer.
- D. Do's and don'ts.

# Choosing the Players

## IV. Attorneys

- A. In house or contract?
- B. Role sharing.
- C. When?
- D. Do's and don'ts.





# Pre-Condensation Contacts

## I. Initial

- A. Directly or through negotiator?
- B. Goals.
  - A. Introduce self and project.
  - B. Listen and build relationship.
  - C. Determine potential impacts and issues.
- C. Do's and don'ts.

# Pre-Condensation Contacts

## II. Identify the potential downside

- A. Listen to the owner.
- B. You may affect improvements.
- C. May affect access, visibility, traffic patterns, etc.
- D. May be noisy or affect site utility or development potential.
- E. Do's and don'ts.

# Starting the Condemnation Process

- I. Adopt resolution or ordinance
  - A. Identify condemnation authority.
  - B. Identify project.
  - C. Identify need for property.
  - D. Authorize negotiations.
  - E. Authorize condemnation if negotiations fail.
  - F. Do's and don'ts.



# Starting the Condemnation Process

## II. Send a Notice of Intent to Acquire

- A. Identify project detail.
- B. Identify property interests needed.
- C. Identify timeframe.
- D. Identify right to get appraisal and expense reimbursement.
- E. Identify contact person and likely next steps.
- F. Do's and don'ts.



# Starting the Condemnation Process

## II. Send Written Offer

- A. A letter.
- B. Offer precise amount and precise acceptance deadline (try to give at least 30 days).
- C. Attach “closing” documents in case owner accepts.
- D. Do’s and don’ts.

# Condemnation Action

## I. Filing an action

- A. Filed in state district court where property is located.
- B. Name owner and record interest holders.
- C. Nature of take may influence who needs to be joined.
- D. Do's and don'ts.





# Condemnation Action

## II. Immediate possession

- A. Usually within 45-90 days after owner is served.
- B. Typically half day to day.
- C. Government must show has right to condemn.
- D. Be prepared to place a deposit in your estimate of just compensation.
- E. Do's and don'ts.



# -Poll

- Did the Kingdom of Duloc properly condemn the swamp?
- Or was Lord Farquad just on a power trip?



# Polling Results

- [Link to polling results goes here]

# Condemnation Action

## III. Valuation – Pre-Trial

- A. Like most other civil cases.
- B. Will mostly be expert driven (mostly by appraisers).
- C. Trial will be to commission or jury (chosen by landowner).
- D. Commission will view the property.
- E. Do's and don'ts.

# Condemnation Action

## IV. Valuation – Trial

- A. What is the amount of just compensation?
- B. You pay for value of part taken.
- C. Sometimes you pay for damages to the owner's remaining property.
- D. Occasionally you get a credit for special benefits.
- E. Do's and don'ts.



# Condemnation Action

## V. Valuation – Post-Trial

- A. You will pay owner's reasonable costs of litigation.
- B. Usually you will pay statutory interest.
- C. Sometimes you pay owner's reasonable attorney fees.
  - A. You will pay if action is dismissed.
  - B. You may pay depending on the verdict (130% rule).
- D. Do's and don'ts.



# Condemnation Action

## VI. Valuation – Appeal

- A. If government appeals:
  - A. May take possession pending appeal.
  - B. But must deposit total just compensation into court registry.
  - C. Owner may use deposit before determination of appeal.
  - D. But surety bond in double amount of compensation plus government's appeal costs must be posted.
- B. Do's and don'ts.

# Condemnation Action

## VI. Valuation – Appeal

### A. If owner appeals

- A. The deposit generally can't be withdrawn until appeal is heard and determined.
- B. If owner premature withdraws deposit, appeal is dismissed.

### B. Do's and don'ts.

# Traps for the Unwary

- I. Highly specialized area of the law.
- II. Unique constitutional and statutory frameworks.
- III. Engage team and knowledgeable counsel early.
- IV. Dot i's and cross t's and you'll position your project for success.



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