

Eminent Domain

Local Rule 600 Eminent Domain. Scope.

The rules of this chapter shall be construed consistent with the provisions of the Eminent Domain Code, 26 P.S. § 1-101 *et seq.*, and shall apply to all eminent domain and assessment of benefits proceedings, including but not limited to:

- (1) All preliminary objections to a declaration of taking, including the objection that there was an earlier *de facto* taking;
- (2) Petitions for the appointment of viewers on claims for compensation where no declaration of taking property has been filed;
- (3) Preliminary objections to a petition for the appointment of viewers;
- (4) Petitions for the appointment of viewers to ascertain just compensation, including special damages;
- (5) Petitions for the appointment of viewers to assess benefits or to assess benefits and ascertain just compensation where statutes permit municipalities to assess the properties benefited for the costs, damages and expenses of public improvements; and
- (6) Appeals from Board of Viewers' awards of damages or assessments of benefits whether or not objections other than or in addition to the amount of the award are raised by the appeal.

Editor's Note: Effective December 4, 2006.

Local Rule 601 Definitions.

- (1) Appeal — an action contesting the decision, report or recommendation of the Viewers, which is filed with the Prothonotary and a courtesy copy delivered to the Board of Viewers.
- (2) Applicable trial term — the first term assigned by the Court of Common Pleas during which the trial is scheduled to be conducted.
- (3) Board of Viewers — the administrative body designated by the Court of Common Pleas to hear eminent domain and assessment of benefits proceedings.
- (4) Hearing — the mechanism by which the Viewers shall hear testimony and receive evidence.

- (5) Hearing date — the first date scheduled by the Viewers for a hearing, without regard to any request for a continuance, unless otherwise ordered by the Viewers.
- (6) Trial — the mechanism by which the Court of Common Pleas shall hear testimony and receive evidence in an appeal.
- (7) View — the date and time scheduled for the parties and the Viewers to inspect the subject property.
- (8) Viewers — the panel of the Board of Viewers which shall preside at the View and Hearing and shall issue the decision, report or recommendation of the Board of Viewers.
- (9) Viewers' Plans – the plan or any supplemental plan required under Section 1-509 of the Eminent Domain Code.

Editor's Note: Effective December 4, 2006.

Local Rule 602 Administrator.

- (1) The Administrative Judge shall appoint one (1) of the members of the Board of Viewers to serve as Administrator for a term of two (2) years. The Administrator may be reappointed.
- (2) The Administrator shall be primarily responsible to the Court for the efficient and prompt administration and disposition of the matters before the Board of Viewers. The Administrator shall keep records and submit such data to the Court as may be required.

Editor's Note: Effective December 4, 2006.

Local Rule 603 Preliminary Objections.

Preliminary objections to a declaration of taking or to a petition for the appointment of viewers shall not be subject to any other local rules and shall be governed by the following procedures:

- (1) No brief shall be required upon the filing of the preliminary objections.
- (2) The filing of preliminary objections shall stay all other proceedings as to only the parcel or parcels that are the subject of the preliminary objections.
- (3) Preliminary objections shall be filed with the Prothonotary upon which the Prothonotary shall stamp the date and time on which the preliminary objections

were filed. The party filing the preliminary objections immediately shall take the stamped preliminary objections and the Prothonotary's file to the Administrative Judge.

- (4) Upon receiving the stamped preliminary objections and the Prothonotary's file for the captioned matter, the Administrative Judge shall either hear the preliminary objections or designate another judge to hear the preliminary objections.
- (5) The judge assigned to hear the preliminary objections shall schedule a status conference, which shall take place as soon as practicable after the date stamped on the preliminary objections. At the status conference, the judge shall determine whether the parties shall submit evidence in support of or in opposition to the preliminary objections by deposition, by hearing, or by a combination thereof, and shall schedule a date and time for the submission of all evidence and for the submission of briefs. The judge may consider such other issues as are raised by the parties.
- (6) Unless mutually extended by the parties or otherwise ordered by the presiding judge for good cause shown, all discovery relating to the preliminary objections, including all depositions, must be completed no later than sixty (60) days after the date stamped on the preliminary objections.
- (7) Pursuant to Section 1-406 of the Eminent Domain Code, the parties must present in one pleading, and the Court shall consider, all preliminary objections at one time.
- (8) A party, either by filed consent of all parties or by leave of court for good cause shown, may amend that party's preliminary objections.
- (9) After the submission of evidence, the presiding judge shall promptly decide all preliminary objections.
- (10) The parties shall not file post-trial motions. The order of court ruling upon the preliminary objections is the final order from which an appeal may be taken.

Note: This rule recognizes Pa.R.A.P. 311(e), which provides for an appeal as of right following a court order ruling upon preliminary objections in eminent domain cases.

Editor's Note: Effective December 4, 2006.

Local Rule 604 Petitions for the Appointment of Viewers. Notices of Special Damages. Claims Before Board of Viewers.

- (1) Each petition for the appointment of viewers, whether filed by a condemnee or by the condemnor and whether including one or more than one property, shall be assigned a new docket number.
- (2) Where a declaration of taking has been filed, a petition for the appointment of viewers shall include in the caption as a “Sur No.” a reference to the docket number at which the declaration of taking was filed, as follows:

No. _____ 20 _____

Sur No. _____ 20 _____

- (3) A petition for the appointment of viewers shall include all information required to be set forth by Section 1-502 of the Eminent Domain Code.
- (4) A condemnee who desires to claim special damages shall set forth the type of special damages sought either in the petition for appointment of viewers or in a written notice to be served upon all other parties and the Board of Viewers at least forty days before the hearing date.
 - (a) If any petitioner is seeking the determination of any damages or benefits payable under Article VIA of the Eminent Code, the petition for appointment of viewers must clearly set forth which of those damages or benefits are to be litigated before the Viewers. If the petitioner fails to comply with the terms of this paragraph, any damages or benefits payable under Article VIA of the Eminent Domain Code shall not be litigated before the Viewers.
 - (b) Documents in support of or in opposition to damages or benefits payable under Article VIA of the Eminent Domain Code which properly have been designated under subsection (1) of this local rule as issues to be litigated before the Viewers shall be admitted into evidence at the Viewers' Hearing without the necessity of calling a witness to authenticate the document or to testify about the document's contents, provided that at least twenty (20) days' notice of the intention to offer such documents was given to every other party accompanied by a copy of each document to be offered.
- (5) Before presentation of a petition for the appointment of viewers to the Administrative Judge, or such other Judge as the Administrative Judge may designate, the petitioner shall file a copy of the petition with the Chief Clerk of the Board of Viewers. The Chief Clerk shall thereupon designate the particular

members of the Board of Viewers to serve in the case by completing Appointment of Viewers (FORM 604) (see subsection (8) below).

- (6) A copy of any petition filed by a condemnee shall be sent promptly by registered or certified mail, return receipt requested, postage prepaid to the adverse party or parties as required by Section 1-502(f) of the Eminent Domain Code and to all other condemnees known to the condemnee filing the petition to have an interest in the property.
- (7) A copy of any petition filed by a condemnor shall be sent promptly by registered or certified mail, return receipt requested, postage prepaid to all condemnees known to the condemnor to have an interest in the property.

(8) **FORM 604 Appointment of Views**

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN THE MATTER OF: CIVIL DIVISION

CONDEMNATION OF No. GD _____

Plaintiff,

vs.

Defendant.

ORDER OF COURT

AND NOW, this ___ day of _____, 20___, the within Petition having been presented in open court in consideration thereof, it is ORDERED THAT

are appointed as Viewers as provided by law to view the property and to ascertain such damages as they may find to have been caused to Plaintiff's property by reason of the condemnation and taking by Defendant as set forth in the within Petition.

_____ J.

BOARD OF VIEWERS

Administrative Chair

Date of View _____

Date and Time of Exceptions Hearing _____

Editor's Note: Effective December 4, 2006.

Local Rule 605 Viewers' Plans.

- (1) The condemnor, in cases where a declaration of taking has been filed, or the municipality (including a municipal authority), in cases of municipal improvement assessment proceedings, shall furnish Viewers' Plans to the Viewers and to the condemnees or to the abutting property owners within thirty (30) days after being served with the petition for the appointment of viewers or within thirty (30) days of filing the petition if the condemnor or municipality is the petitioner or within thirty (30) days following receipt of a written request from a condemnee or an abutting owner.
- (2) If no declaration of taking has been filed, the condemnor shall furnish Viewers' Plans to the Viewers and to the condemnees within sixty (60) days of an adjudication that there has been a taking or that the condemnor is liable for consequential damages in cases where the condemnor contests its liability or within sixty (60) days of service upon it of a petition for the appointment of viewers where it does not file preliminary objections to the petition.
- (3) If the condemnor or the municipality fails to furnish Viewers' Plans within the time specified, the Administrative Judge or such other Judge as the Administrative Judge may designate, upon petition of the condemnee or abutting owner, may permit the condemnee or abutting owner to have Viewers' Plans made and order that the cost thereof be charged to the condemnor or municipality. In such a case, the Viewers shall determine and award reasonable amounts for professional engineering services and related costs.

- (4) Viewers' Plans shall indicate the entire property involved, the improvements thereon, the extent and nature of the condemnation and such other physical data, including grades, as any may be necessary for the proper determination of just compensation.
- (5) Plans of municipal improvements shall indicate the location and names of owners of affected properties. Each property shall be identified by a Viewers' number beginning with "V-1" and running consecutively. Street improvement plans shall also show the cuts and fills resulting from change of grade in the center line as well as at the property lines on each side of stations fifty feet apart. Sewer improvement plans shall show frontal and depth dimensions of affected property, and where the whole of any property cannot be served by the sewer, the drainage line shall be shown on the plan.
- (6) If, in the opinion of the Viewers, the plans are insufficient, the Viewers may require revisions or the submission of supplemental plans. If the condemnor or the municipality fails to furnish adequate Viewers' Plans within the time specified by the Viewers, the provisions of subdivision (3) of this Rule may be invoked.

Editor's Note: Effective December 4, 2006.

Local Rule 606 Notices of View. Directions to Viewers and Access to Property.

- (1) The Viewers shall schedule a view and shall give notice of the view as required by Section 1-504, 1-505 and 1-506 of the Eminent Domain Code.
- (2) At least three (3) days before the scheduled View of the property involved, the petitioner shall provide the Viewers and all parties with written directions to the property.
- (3) At the time of the View, the persons in possession of the property shall provide access to the interior of all buildings on the property.

Editor's Note: Effective December 4, 2006.

Local Rule 607 Notices of Additional Condemnees and Mortgagees.

Within twenty (20) days after service of a petition for the appointment of viewers, each condemnee shall furnish to the Viewers and to the condemnor a notice containing the information required by Sections 1-502(a)(4) and 1-506(a) of the Eminent Domain Code regarding the names, addresses and type of interest of all mortgagees and all other known condemnees who have an interest in the property and have not been identified in the petition.

Note: "All other known condemnees" may include, but is not limited to, tenants or other occupants of the property as of the date of condemnation. Family members of the owner generally need not be listed. "Type of interest" may include, but is not limited to, such things as whether an occupancy was under an oral or written lease, whether the lease contains clause(s) intended to terminate the leasehold in the event of condemnation, and whether there is an easement or right of way.

Editor's Note: Effective December 4, 2006.

Local Rule 608 Discovery Prior to Hearing Before Board of Viewers.

- (1) All discovery disputes shall be presented upon proper notice to the Administrative Judge, or to such other Judge as the Administrative Judge may designate to preside over the case.
- (2) Discovery shall close ten (10) days prior to the Hearing unless otherwise mutually agreed by the parties or ordered by the Court.

Editor's Note: Effective December 4, 2006.

Local Rule 609 Hearings and Continuances. Notice.

- (1) The Viewers shall schedule a Hearing and shall give notice of the Hearing date as required by Sections 1-504, 1-505 and 1-506 of the Eminent Domain Code.
- (2) If a party who has been given reasonable notice of a scheduled hearing does not appear at the hearing, the Viewers may proceed to hear the case ex parte.
- (3) Scheduled hearings shall not be continued except by order of the Viewers.

Editor's Note: Effective December 4, 2006.

Local Rule 610 Findings of Fact and Conclusions of Law.

- (1) A party may request the Viewers to specifically include in their report specific findings of fact. A party must orally make this request known to the Viewers and to opposing parties no later than the conclusion of the Hearing and shall file and serve written proposed findings of fact within ten days of the conclusion of the Hearing.
- (2) The Viewers shall include in their report a written adoption or rejection of any requests for specific findings of fact made in accordance with subsection (1) of this Rule.

Editor's Note: Effective December 4, 2006.

Local Rule 611 Settlements.

If a case is settled by the parties, notice of the settlement shall be given to the Viewers.

Editor's Note: Effective December 4, 2006.

Local Rule 612 Exceptions Before Viewers in Municipal Improvement Assessment Proceedings.

In municipal improvement assessment proceedings, exceptions to the schedule of proposed awards and assessments shall be filed in writing with the Chief Clerk of the Board of Viewers within ten (10) days following the exhibition of the schedule. Exceptions shall be heard on the date set forth in the schedule and shall be decided by the Viewers.

Editor's Note: Effective December 4, 2006.

Local Rule 613 Appeals to Court of Common Pleas.

- (1) A party may appeal the Viewers' report to the Court of Common Pleas.
- (2) An appeal shall set forth the information required by Section 1-516 of the Eminent Domain Code.
- (3) No answer need be filed to an appeal.
- (4) Appeals shall automatically be placed at issue upon filing.

- (5) Appeals, except in municipal improvement assessment proceedings, shall be filed at the same docket number as the hearing before the Viewers and shall include in the caption as a “Sur No.” a reference to the docket number at which the declaration of taking, if any, was filed in the manner set forth in Local Rule 604(2).
- (6) Appeals in municipal improvement assessment proceedings shall be assigned new docket numbers. Reference to the docket number of the Viewers' Hearing shall be set forth in a separately numbered paragraph of such appeals.
- (7) The caption of an appeal shall identify the condemnee or the property owner as plaintiff and the condemnor or municipality as defendant.
- (8) The appealing party shall serve a copy of the appeal on all other parties and upon the Board of Viewers within five (5) days after filing. The appellant shall file proof of service of a copy of the appeal upon all parties.
- (9) An appeal raising objections other than or in addition to the amount of damages shall state in the caption under the designation of the docket number the following phrase in capital letters: INVOLVES OBJECTIONS OTHER THAN OR IN ADDITION TO AMOUNT OF AWARD.
- (10) A party filing an appeal raising an objection other than or in addition to the amount of damages, shall obtain at the time of filing from the Administrative Judge's Clerk, or the Clerk of any such Judge as the Administrative Judge may designate a date for argument of the legal questions raised by the appeal. The legal argument shall be heard by the Administrative Judge or such other Judge as the Administrative Judge may designate. The appealing party shall promptly serve notice of the date obtained upon all other parties.

Editor's Note: Effective December 4, 2006.

Local Rule 614 Discovery On Appeal to Court of Common Pleas.

- (1) Discovery after an appeal is taken to the Court of Common Pleas shall be governed by the Pa.R.C.P. 4001 et seq. relating to discovery.
- (2) Discovery shall close twenty (20) days prior to the first day of the applicable trial term unless otherwise mutually agreed by the parties or ordered by the Court.

Editor's Note: Effective December 4, 2006.

Local Rule 615 Pre-Trial Statements On Appeal Before Court of Common Pleas.

- (1) Thirty (30) days prior to first day of the applicable trial term, the condemnor(s) and condemnee(s) shall serve the opposing party or parties with a pre-trial statement, which contains the following:
 - (a) A list of the names and addresses of all persons who may be called as witnesses, classifying them as liability or damage witnesses. Witnesses may be described by title or representative capacity.
 - (b) A list of all exhibits which the party intends to use at trial.
 - (c) The written report of any expert (on value or otherwise) who may be offered as a witness at trial.

Note: Expert reports may include, without limitation, appraisals, machinery, environmental and engineering reports.

- (2) The exhibits listed pursuant to subsection (1) of this local rule, or copies thereof, shall be made available to the opposing party or parties.
- (3) In the event of non-compliance with subdivisions (1) or (2), the trial judge may, in his or her discretion, grant appropriate relief, which may include:
 - (a) the preclusion or limitation of the testimony of
 - (i) any witness whose identity is not disclosed in the Pre-Trial Statement, or
 - (ii) any expert witness whose opinion have not been set forth in the report submitted with the Pre-Trial Statement or otherwise summarized in the Pre-Trial Statement as provided by subsection (1)(c) of this local rule, and
 - (b) the preclusion of exhibits not listed in the Pre-Trial Statement and made available.

Editor's Note: Effective December 4, 2006.

Local Rule 616 Special Rules for Sewer Cases.

In all cases involving the construction, installation or renovation of sewers, the following additional procedures shall be followed. These local rules shall be read in para materia with the Eminent Domain Code and the Second Class Counties Code. To the extent this local rule

conflicts with any portion of Local Rules 600-615, this local rule shall govern; to the extent this local rule does not conflict with any portion of Local Rules 600-615, then they shall also apply.

(1) **Declaration of Taking.**

The condemnor shall file a declaration of taking, which lists the affected property(ies) by name and address of owner and by Lot and Block number.

(2) **Petition for Appointment of Viewers.**

After a declaration of taking has been filed, the condemnor or any condemnee may file a Petition for Appointment of Viewers (FORM 616) (see subsection (13) below). Attached to any Petition filed on behalf of the condemnor shall be:

- (a) a copy of the Viewers' Plan on which each property shall be identified by a viewers' number beginning with "V-1," running consecutively and corresponding to the owners' name and Lot and Block number;
- (b) street improvement plans, which shall show the cuts and fills resulting from any change of grade in the center line as well as the property lines on each side of stations fifty feet apart;
- (c) sewer improvement plans, which shall show frontal and depth dimensions of affected property, and where the whole of any property cannot be served by the sewer, the sewer improvement plan shall show the drainage line; and
- (d) if benefits are to be determined, a certified copy of all hard and soft construction costs.

(3) **Presentation of Petition for Appointment of Viewers to Board of Viewers. Proposed Scheduling Order.**

Before presenting a Petition for Appointment of Viewers (FORM 616) (see subsection (13) below) to the Administrative Judge, or such other judge as the Administrative Judge may designate, the petitioner shall file a copy of the petition with the Chief Clerk of the Board of Viewers. At the time of filing, the Chief Clerk of the Board of Viewers shall complete a proposed scheduling order which the petitioner must present to the Administrative Judge, or such other judge as the Administrative Judge may designate along with the petition for appointment of viewers. The Petition and shall state:

- (a) the names of the Viewers to be appointed;
- (b) the date and time of the View;

- (c) the date after which the Viewers' initial report should be available in the office of the clerk of the municipality in which the property or properties are located;
- (d) the last date upon which the affected parties may file written exceptions to the Viewers' initial report; and
- (e) the date and time of the Exceptions Hearing.

Note: The Proposed Scheduling Order Form will be available from the Chief Clerk of the Board of Viewers.

(4) Presentation of Petition for Appointment of Viewers to Court.

After obtaining the proposed scheduling order from the Chief Clerk of the Board of Viewers, the petitioner shall present the petition for appointment of viewers, along with the proposed scheduling order, to the Administrative Judge, or such other Judge as the Administrative Judge may designate. After the Administrative Judge or such other Judge as the Administrative Judge may designate has approved the appointment of Viewers and has entered the scheduling order, the petitioner must:

- (a) If the petitioner is the condemnee, the petitioner must serve a copy of the petition for appointment of viewers and the scheduling order on the condemnor by certified mail, return receipt requested postage pre-paid, by Sheriff's service, or by personal service.
- (b) If the petitioner is the condemnor, the petitioner must serve a copy of the Petition for Appointment of Viewers and the scheduling order on all condemnees affected by the petition by certified mail, return receipt requested postage pre-paid, by Sheriff's service, or by personal service. In addition, the condemnor shall advertise the scheduling order in a publication of general circulation, and shall file a copy of the scheduling order in the office of the clerk of the municipality where the property(ies) is located.

(5) Condemnor's Obligations When Petition for Appointment of Viewers is Filed by Condemnee.

Within ten (10) days after receiving a copy of the scheduling order entered after presentation of a Petition for Appointment of Viewers filed on behalf of a condemnee, the condemnor shall file with the Viewers a copy of those documents which Local Rule 616(b) requires the condemnor to attach to a Petition for

Appointment of Viewers filed on behalf of a condemnor and shall serve a copy on all affected parties or their counsel of record.

- (6) Certification of Notice -- Petition for Appointment of Viewers and Scheduling Order.

At least ten (10) days before the date of the View, the petitioner shall certify in writing to the Viewers that the petition and scheduling order have been served, advertised, and/or posted in accordance with subsection (4) of this Rule.

- (7) Viewers' Initial Report.

Within twenty (20) days after the View, the Viewers shall deliberate and determine benefits and/or damages on each V-numbered parcel set forth in the petition for appointment of viewers and shall submit an initial report containing an itemized award of benefits and/or damages. Attached to the Viewers' initial report shall be a notice, which shall contain the following:

- (a) a brief and concise statement listing the Lot and Block numbers affected and informing the parties that the Viewers have issued an initial report which contains an itemized award of benefits and/or damages;
- (b) a statement informing the affected parties of their right to file exceptions to the initial report;
- (c) a statement informing the affected parties that they will not be heard at the scheduled exceptions hearing unless they have timely filed written exceptions; and
- (d) an announcement that the full text of the initial report shall be made available by the condemnor in the office of the clerk of the municipality where the property or properties are located.

Note: All parties will have received by way of the scheduling order notice of the latest date on which the Viewers' initial report will issued. See Local Rule 616(3) and (4). Accordingly, all parties are responsible for making sure that they obtain a copy of the Viewers' initial report prior to the date on which written objections to that report must be filed.

- (8) Service of Viewers' Initial Report.

The Viewers shall mail a copy of their initial report (with the notice attached) to the condemnor or its counsel of record. The condemnor shall immediately post a copy of the initial report in the office of the clerk of the municipality where the property or properties are located. Within ten (10) days of the date of the

Viewers' initial report, the condemnor shall serve all affected condemnees with a copy of the Viewers' initial report and the attached notice by certified mail, return receipt requested postage pre-paid, by Sheriff's service, or by personal service.

(9) Certification of Notice -- Viewers' Initial Report.

At least ten (10) days before the date of the exceptions hearing, the condemnor shall certify in writing to the Viewers that the initial report and attached notice have been served and posted in accordance with subsection (8) of this local rule.

(10) Exceptions Hearing.

An exceptions hearing shall be held on the date and time set forth in the scheduling order. Only those condemnees who have timely submitted their written objections to the Viewers' initial report shall be heard by the Viewers at the exceptions hearing. The Viewers shall consider the exceptions of the condemnees and make any adjustments the Viewers deem necessary to their initial award of damages and/or benefits.

(11) Viewers' Final Report.

Within twenty (20) days after the exceptions hearing, the Viewers shall serve a copy of their final report on all parties. Attached to the report shall be a notice advising the parties of their right to appeal the Viewers' decision to the Court of Common Pleas. Within five (5) days of the date of the Viewers' final report, the condemnor shall post the Viewers' final report with the notice attached in the office of the clerk of the municipality where the property or properties are located. Within five (5) days of the date of the Viewers' final report, the condemnor also shall make arrangements to advertise in the next available issue of a publication of general circulation a notice in the following form:

The Board of Viewers has issued its final report, which contains an itemized award of benefits and/or damages for the following Lot and Block numbers: [list]. The full text of the report may be obtained at the [municipality office and address]. Your rights as a property owner may be affected by this report.

(12) Appeals to Court of Common Pleas.

Appeals to the Court of Common Pleas shall be governed by the Eminent Domain Code, the Second Class Counties Code and Local Rules 613, 614, and 615.

(13)

FORM 616 Appointment of Viewers – Sewer Cases

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN THE MATTER OF:

CIVIL DIVISION

CONDEMNATION OF

No. GD _____

Plaintiff,

vs.

Defendant.

ORDER OF COURT

AND NOW, this ___ day of _____, 20___, the within Petition having been presented in open court in consideration thereof, it is ORDERED THAT

are appointed as Viewers as provided by law to view the property and to ascertain such damages as they may find to have been caused to Plaintiff's property by reason of the condemnation and taking by Defendant as set forth in the within Petition.

_____ J.

BOARD OF VIEWERS

Administrative Chair

Date of View _____

Date Initial Report Available _____

Last Date for Filing Exceptions _____
Date and Time of Exceptions Hearing _____

Editor's Note: Effective December 4, 2006.