



HANDBOOK

Ohio County Commissioners

Published by: County Commissioners Association of Ohio

209 East State Street • Columbus, Ohio 43215-4309

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CHAPTER 9

EMINENT DOMAIN

Latest Revision
February, 2011

9.01 INTRODUCTION

The power of governments to take private real or personal property has always existed in the United States, being an inherent attribute of sovereignty. This power reposes in the legislative branch of the government and may not be exercised unless the legislature has authorized its use by statutes that specify who may use it and for what purposes.

The legislature may delegate the power to private entities like public utilities or railroads, and even to individuals for the purpose of acquiring access to their landlocked land. Its use was limited by the Takings Clause in the Fifth Amendment to the U.S. Constitution in 1791, which reads, "...nor shall private property be taken for public use, without just compensation". The Fifth Amendment did not create the national government's right to use the eminent domain power, it simply limited it to public use. Further, the due process clause of the Fourteenth Amendment has been held to require that when a state or local governmental body, or a private body exercising delegated power, takes private property it too must provide just compensation and take only for a public purpose.

Generally, public uses may be divided into the following three groups:

1. Uses enabling the state or its subdivisions to carry out its public functions and to conserve the safety and health of the public;

2. Uses by a municipal or public corporation (such as a utility company) enabling the corporation to furnish the public with some necessity or convenience;
3. Uses by private individuals in exceptional times and places to enable them to cultivate their land or carry on their business to better advantage, in a community so situated that public sentiment approves such takings, either because they are sanctioned by ancient custom, or because the natural prosperity of the state would be seriously retarded if eminent domain could not be employed for such purposes (O Jur 3d, Em Dom, § 38).

The authority for eminent domain in Ohio derives from Article I, Section 19 of the Ohio Constitution which states that "private property shall be held inviolate, but subservient to the public welfare."

Under Ohio law, any taking entity has the burden of proof, by a preponderance of the evidence, to show that the taking is necessary and for a public use. Public use does not include any taking that is for conveyance to a private commercial enterprise, economic development, or solely for the purpose of increasing public revenue, unless the property is conveyed or leased to one of the following:

1. A public utility, municipal power agency, or common carrier;
2. A private entity that occupies a port authority transportation facility or an incidental area within a publicly owned and occupied project;
3. A private entity when the agency that takes the property establishes by a preponderance of the evidence that the property is a blighted parcel or is included in a blighted area.

However, all of the following are presumed to be public uses: utility facilities, roads, sewers, water lines, public schools, public institutions of higher education, private institutions of higher education that are authorized to appropriate property under ORC Section 3333.08, public parks, government buildings, port authority transportation facilities, projects by an agency that is a public utility, and similar facilities and uses of land.

For a more detailed discussion of the legal aspects of eminent domain see O Jur 3d, Em Dom, § 31 through § 41.

9.02 RECENT DEVELOPMENTS IN EMINENT DOMAIN LAW IN THE U.S. AND OHIO

Since World War II the Supreme Court has only infrequently addressed the constitutional rights of property owners. While the U.S. Supreme Court has extended the due process constraints of the 14th Amendment to states, the Court has consistently

deferred to the right of states to make their own determinations of public use. Such deference led to the Supreme Court's decision in *Kelo v. City of New London*, 545 U.S. 469 (2005) which affirmed the authority of New London, Connecticut, to take non-blighted private property by eminent domain, and then transfer it for a dollar a year to a private developer solely for the purpose of increasing municipal revenues. This 5-4 decision received heavy press coverage and inspired a public outcry that eminent domain powers were too broad.

However, the Ohio Supreme Court specifically rejected the reasoning in *Kelo* and construed the Ohio Constitution to afford greater protection of property owners against eminent domain in *Norwood v. Horney* on July 26, 2006 (110 Ohio St.3d 353.)

In the *Norwood* case, the city wished to seize about 70 homes and businesses to make way for private development, including retail, offices, and condominiums. Homeowners Joe Horney, Carl and Joy Gamble, and Matthew and Sanae Burton, filed three separate cases to stop the seizure of their homes. Following appeals, these cases were combined into the Supreme Court case *Norwood v. Horney*.

The Court found unanimously for the homeowners. Justice Maureen O'Connor wrote the majority opinion, which ruled that economic benefit alone was insufficient to satisfy the eminent domain statute of the Ohio Constitution; that an Ohio statute allowing for the use of eminent domain seizures in the case of "deteriorating areas" was void for vagueness; and that the rest of this statute should remain in force. It also specified for the Ohio courts a standard for reviewing statutes that regulate eminent domain powers.

While the *Norwood* case was pending and subsequent to the *Kelo* case, the Ohio Legislature moved quickly to enact HB 167 which placed a moratorium on the use of eminent domain by any entity of the state government or any political subdivision of the state to take without the owner's consent, and created a Legislative Task Force to Study Eminent Domain. Despite the *Norwood* decision, a number of legislative proposals were introduced including constitutional amendments by both the Ohio House and Senate, with the Legislature opting to move forward with the recommendations of the legislative task force and other stakeholders in enacting SB 7, legislation to further define and restrict the state's own power of eminent domain.

9.03 SPECIFIC USES OF EMINENT DOMAIN BY COUNTIES

Various other sections of the Ohio Revised Code and Attorney General's Opinions detail the specific uses of the power of eminent domain by county commissioners. For example, ORC Section 307.02 authorizes commissioners to appropriate land and buildings for all purposes specified in this section. This includes such purposes as a courthouse, county offices, jail, county home, juvenile court building, detention home, public market houses, retail store rooms and offices if located in a building to house county offices, children's home, community mental health facility, community developmental disability facility, facilities for senior citizens, and alcohol treatment and control centers. Also included are other necessary buildings, public stadiums, public

auditoriums, exhibition halls, zoos, libraries, golf courses, and off-street parking facilities. In addition, land adjoining an existing site may be appropriated for such purposes as access to light, air, fire protection, and for ingress and egress.

Specifically, ORC Section 307.08 grants authority to county commissioners to exercise eminent domain (appropriation of property) for the following purposes:

1. Necessary procurement of real estate.
2. A right-of-way.
3. A bridge and the approaches to it.
4. An easement for a courthouse, jail, or public offices.
5. Public market place or market house.
6. Other structures.

Many other uses for eminent domain generally include a combination of roads and bridges, water projects, and other miscellaneous provisions:

ROAD AND BRIDGE USES:

1. For materials, cuts and fills, and rights-of-way necessary for the use and removal of the material for road construction projects (ORC 5549.04).
2. To appropriate, in connection with a road improvement, drainage rights, easements, rights, or interest in any property outside the line of the highway (ORC 5579.01).
3. To appropriate a right-of-way or crossing over railroad tracks in order to construct a crossing either above or below the grade of the railway (ORC 5579.02).
4. To provide for the establishment or alteration of county roads (ORC 5553.11).
5. To establish a road petitioned for by a person, firm, or corporation through the lands of another person (ORC 5553.43).
6. To acquire the right-of-way of land and to remove or relocate tracks, sidings, or other facilities of a street or interurban railway company necessary for the improvement or construction of a highway (ORC 5551.03).
7. To acquire a toll bridge owned by a person or corporation (ORC 5591.38).
8. For the purpose of appropriating a toll bridge (ORC 5591.39).

9. To acquire land or property or to acquire railroad property necessary to construct or improve a bridge (ORC 5591.13).
10. To acquire lands or property for the construction, use, and maintenance of a bridge used jointly by the county and a railroad (ORC 5591.06).
11. To acquire land or property to make alterations to a road made necessary because of the installation of piers or supports for a railroad grade crossing (ORC 5561.11).
12. To acquire lands and property or easements to be conveyed to a street or interurban railway company in exchange for rights-of-way or lands to be acquired from them for road purposes (ORC 5551.07).
13. In cooperation with the Department of Transportation, to acquire property to build or otherwise improve state highways (ORC 5521.06).
14. To acquire property to improve roads, streets, or alleys in platted areas by grading, draining, or paving; or by constructing storm sewers, sidewalks, curbs, or gutters (ORC 5559.02, 5559.06).

WATER AND SEWER PROJECT USES:

1. A soil and water project, to the extent that the exercise of eminent domain is necessary to the establishment and/or operation of a federal project or a "SB 160" petition ditch (ORC 307.85, 1515.21, OAG 79-053).
2. To procure real estate, a right-of-way, or an easement for the construction or maintenance of sanitary or drainage facilities (ORC 6117.39).
3. To procure real estate, a right-of-way, or an easement for a sanitary sewer trunk or main line in a sewer district (ORC 6117.48).
4. To acquire lands to prevent, arrest, and control shore erosion along Lake Erie (ORC 1507.052).
5. To acquire property and easements for county ditches (ORC 6131.01 et seq.).
6. For county water supply system purposes (ORC 6103.25).
7. To acquire sewage systems owned and originally constructed by private entities (ORC 6112.05).
8. To acquire property and easements for the purpose of diverting, altering, or straightening a waterway to protect a bridge (ORC 6151.01, .02).

9. To acquire drainage rights outside the line of a highway (ORC 5579.01).

MISCELLANEOUS USES:

1. To obtain property to sell or lease for county redevelopment purposes when using tax increment financing (ORC 5709.78). See Chapter 17 of this *Handbook* for details of this procedure.
2. For the appropriation of private property as a site for a mental health or developmental disability facility upon the recommendation and request of a alcohol, drug and mental health services board or a board of developmental disabilities. (ORC 307.02, 307.08, and OAG 71-070).
3. To acquire property for use by a county or joint solid waste management district (ORC 343.01).
4. For additional fairgrounds (ORC 1711.34).
5. To acquire real or personal property in connection with the removal of slum or blighted areas (ORC 303.37). (The General Assembly has provided an in-depth statutory test found in ORC Section 1.08 regarding defining property as “blighted” or a “slum”.)
6. To acquire property for airports (ORC 307.20).
7. To acquire property for hospitals (ORC 339.01).
8. To acquire property for parks and parkways (ORC 301.26).
9. To acquire property for forests (ORC 5707.08).
10. To acquire property for recreational centers (ORC 755.12).
11. To remove buildings or other structures near railroad crossings (ORC 5515.06).
12. To acquire land for a state penal institution or a federal correctional facility or complex to donate to the state or the U. S. Bureau of Prisons (ORC 307.084).

9.04 WHEN EMINENT DOMAIN MAY BE EXERCISED

Commissioners may exercise eminent domain only in the following circumstances (ORC 163.04):

1. When the commissioners are unable to agree on a conveyance or the terms of a conveyance, for any reason, with the owner or the owner's guardian or trustee.

2. When the owner is incapable of contacting the landowner in person or by agent and has no guardian or trustee.
3. When the residence of the owner is unknown.
4. When the owner's residence is unknown to the commissioners and cannot be determined with reasonable diligence.

9.05 USE OF EMINENT DOMAIN BY DISTRICTS, AUTHORITIES, BOARDS, AND COMMISSIONS

The governing bodies of many county-related districts, boards, authorities, and commissions may also exercise eminent domain in carrying out their duties subject to the provisions below. Table 9-1 at the end of this Chapter summarizes these governing bodies. However, while these entities may exercise eminent domain, their use is often conditioned upon approval by an appropriate elected authority, which may include the board of county commissioners.

For example, no park board, park district, board of directors of a conservancy district, incorporated association with a purpose of establishing or preserving public parks and memorial sites, or similar park authority shall exercise any power of eminent domain to appropriate real property outside the county or counties in which the park authority is located unless the appropriation has the written approval of the legislative authority of each county in which the property is located, other than the county or counties in which the park authority is located.

If an appropriation is by a public agency that is not elected and an owner has provided the public agency with a written objection to the appropriation, the elected officials of the public agency or elected individual that appointed the unelected agency may veto that appropriation. If the unelected public agency was appointed by more than one public agency or elected individual, a majority vote of the elected officials of the appointing public agencies or elected individuals is required to veto the appropriation. (ORC 163.021).

9.06 RIGHT OF ENTRY

The county may, prior to or subsequent to the filing of an eminent domain petition in court, enter upon the premises being considered for eminent domain for the purpose of making surveys, soundings, drillings, appraisals, and examinations necessary to pursue the eminent domain proceedings. However, the county shall give no less than 48 hours and not more than 30 days notice to the owner prior to the proposed entry (ORC 163.03).

In addition, the county must make restitution or reimbursement for any actual damage, resulting to such lands, waters, and premises and to improvements or personal property located in, on, along, over, or under such lands, waters, and premises, as a result of

such activities. If the parties are unable to agree upon restitution or other settlement, damages are recoverable by civil action.

9.07 NOTICE OF INTENT TO ACQUIRE PROPERTY & FIRST OFFER

At least 30 days before filing an eminent domain petition, a county must provide notice to the property owner of the county's intent to acquire the property. The form of the notice is set forth in ORC Section 163.041.

Either with the notice of intent to acquire property or at least 30 days prior to filing an eminent domain petition, the county must provide an owner with a written good faith offer to purchase the property. The county may revise the offer if, before commencing an appropriation proceeding, the county becomes aware of conditions indigenous to the property that could not have reasonably been discovered at the time of the initial good faith offer.

The county also must obtain an appraisal of the property it intends to acquire and share a copy of the appraisal with the property owner(s) if the property is worth \$10,000 or more. However, if the property is worth less than \$10,000, the county may, but is not required, share a summary of the appraisal with the owner(s).

9.08 PETITION FOR EMINENT DOMAIN & REQUIRED NOTICE

The county may file an eminent domain petition in a court of common pleas or probate division (*Barr v State*, 73 Ohio Op. 2d 111). Each petition shall contain (ORC 163.05):

1. A description of each parcel of land or interest or right therein sought to be appropriated, such as will permit ready identification of the land involved;
2. A statement that the appropriation is necessary, for a public use, and a copy of the resolution of the county commissioners or public agency to appropriate;
3. If the property being appropriated is a blighted parcel that is being appropriated pursuant to a redevelopment plan, a statement that shows the basis for the finding of blight and that supports that the parcel is part of a blighted area pursuant to the definition in ORC Section 1.08.
4. A statement of the purpose of the appropriation;
5. A statement of the estate or interest sought to be appropriated;
6. The names and addresses of the owners, so far as they can be ascertained;
7. A statement showing the requirements of ORC Section 163.04 have been met;
8. A prayer for the appropriation.

Where the residence of the owners is known and is within this state, notice of the filing of a petition as provided in ORC Section 163.05 is required to be given to all such owners by serving a summons and a copy of such petition in the manner of service of summons in civil actions. When the residence of the owners is unknown, and as to all who cannot be served within the state, notice is given by publishing the substance of the petition, and a statement of the date of the filing thereof and of the date on and after which the matter may be heard, once a week for two consecutive weeks, in a newspaper of general circulation in the county, or shall be given by registered mail. When service is made by publication, the county must comply with ORC Section 2703.16.

9.09 ANSWERS TO AN EMINENT DOMAIN PETITION

Any owner may answer the petition by civil action. If any of the matters relating to the right to make the appropriation, the inability of the parties to agree, or the necessity for the appropriation are denied by the owner, the court resolves the matters (ORC 163.08). The burden of proof is on the county by a preponderance of the evidence.

If no answer is filed pursuant to ORC Section 163.08, and no approval ordered by the court to a settlement of the rights of all necessary parties, the court, on motion of a county, declares the value of the property taken and the damages, if any, to the residue to be as set forth in any document properly filed with the clerk of the courts by the county.

In all other cases, the court fixes a time, within 20 days from the last date that the answer could have been filed, for the assessment of compensation by a jury.

When an answer is filed pursuant to any of the matters relating to the right to make the appropriation, the inability of the parties to agree, or the necessity for the appropriation are specifically denied in the manner provided in that section, the court sets a day, not less than five or more than 15 days from the date the answer was filed, to hear those matters.

When an answer is filed and none of the matters set forth above is specifically denied, the court fixes a time within 20 days from the date the answer was filed for the assessment of compensation by a jury.

If answer is filed on behalf of fewer than all the named owners, the court sets the hearing or hearings at such times as are reasonable under all the circumstances, but in no event later than 20 days after the issues are joined as to all necessary parties or 20 days after rule therefore, whichever is earlier.

Finally, if an answer is filed with respect to the value of property, the trier of fact determines that value based on the evidence presented, with neither party having the burden of proof with respect to that value.

9.10 EITHER PARTY MAY OPT FOR NONBINDING MEDIATION

Either an owner of property or a county may request that the issue of the value of the property be submitted to nonbinding mediation. Any request for mediation shall be made in writing within 10 business days after the owner files an answer pursuant to ORC Section 163.08. The court appoints a mediator, and the mediation is conducted and concluded within 50 days after the owner filed an answer. Only a judge may extend the time for concluding the mediation, and the judge may do so only for the reason of an inability to obtain an appraisal. The county pays the cost of mediation

9.11 JUDGMENTS IN FAVOR OF COUNTY & APPEALS

If, the court determines the matters in favor of the county, the county sets a time for the assessment of compensation by the jury not less than 60 days from the date of the journalization by the court. An order of the court in favor of the county on any of the matters or on qualification under ORC Section 163.06 is not a final order for purposes of appeal. An owner has a right to an immediate appeal if the order of the court is in favor of the county in any of the matters the owner denied in the answer, unless the county is appropriating property in time of war or other public exigency imperatively requiring its immediate seizure, for the purpose of making or repairing roads, sewer construction, or for the purpose of implementing rail service under ORC Chapter 4981.

9.12 JUDGMENTS AGAINST THE COUNTY

An order of the court against the county on any of the matters or on the question of qualification under ORC Section 163.06 is a final order for purposes of appeal. If a court decides that the county is not entitled to appropriate particular property, the court shall enter both of the following:

1. A judgment against the county for costs, including jury fees;
2. A judgment in favor of each affected owner, for the owners expenses including witness fees, expert witness fees, attorney's fees, appraisal and engineering fees and other actual expenses.

If the county has already taken possession, and if the court rules against the county, then the county must restore the property to the owner in its original condition, or must respond in damages, which may include the court costs and owner's costs for witness fees, attorney's fees, and other actual expenses (ORC 163.09).

9.13 VALUATION OF PROPERTY TAKEN

County commissioners may employ competent appraisers to advise as to the value of property or expert witnesses to testify in appropriation proceedings (ORC 307.06).

Recent legislative action also provides for damages to the property owner if a county government's offer is significantly less than that determined by a jury. Subject to certain conditions in ORC Section 163.21, if a court decides in favor of the county on the necessity of the property appropriation, but the jury's final award of compensation is greater than 125% of the county's good faith offer for the property, the court shall enter judgment in favor of the owner for all costs and expenses, including attorney's fees and appraisal fees. However, the award of costs and expenses cannot exceed the lesser of 25 % of the following:

1. The amount by which the final award of compensation exceeds the county's good faith offer; or
2. The amount by which the final award of compensation exceeds the county's revised offer following exchange of appraisals.

9.14 RELOCATION PAYMENTS

In addition to compensation for real property a county should also be prepared to pay relocation payments and/or goodwill costs in the event an eminent domain appropriation requires that the owner, a commercial tenant, or a residential tenant move. Such costs may include:

1. Actual reasonable expenses in moving the person and the person's family, business, farm operation, or other personal property;
2. Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the county.
3. Actual reasonable expenses in searching for a replacement business or farm, but not to exceed \$2,500;
4. Actual and reasonable expenses necessary to reestablish a farm, nonprofit organization, or small business at its new site, but not to exceed \$10,000.

For more information on relocation and goodwill costs, please see ORC Sections 163.14 and 163.15.

9.15 ABANDONMENT OF PROCEEDINGS

A county may abandon eminent domain proceedings at any time, prior to 90 days after a final determination is made, and before it takes possession of the property. In the event that the county abandons the proceedings, or in the event that the court determines that the county is not entitled to appropriate the property, the county must pay any court costs, including jury fees, and also must pay to each affected owner the

costs that the owner incurred in witness fees, attorney's fees, and other actual expenses (ORC 163.21).

9.16 RIGHT TO REPURCHASE

If a county decides not to use appropriated property for the purpose stated in the appropriation petition, the prior owner from whom the property was appropriated may repurchase the property for its fair market value as determined by an independent appraisal made by an appraiser chosen by agreement of the parties or, if the parties cannot agree, an appraiser chosen by the court. The right of repurchase shall be extinguished if any of the following occur:

1. The prior owner declines to repurchase the property.
2. The prior owner fails to repurchase the property within 60 days after the county offers the property for repurchase.
3. A plan, contract, or arrangement is authorized that commences an urban renewal project that includes the property.
4. The county grants or transfers the property to any other person or agency.
5. Five years have passed since the property was appropriated.
6. Prior to the filing of the petition for appropriation, the appropriated property was a blighted parcel, and the prior owner contributed to the blight.

9.17 TAKING POSSESSION (QUICK-TAKE)

The eminent domain process can prove very time consuming. Thus, the Ohio Revised Code provides what are commonly referred to as quick-take provisions for certain purposes. In quick-take actions, the county can take possession of condemned property before compensation litigation with owners is complete if they deposit "probable compensation" with the courts. However, please note the additional requirements for quick-take actions for the purpose of making or repairing roads in Section 9.18 of this Chapter.

Under the quick-take provisions, a county may, in times of public exigency, place with the court at the time of filing the petition a deposit for the value of the property together with damages to the residual property. The county may then take possession of the property, except that the county may not take possession of structures in this manner (ORC 163.06).

A public exigency is defined as the following:

1. A finding by the director of environmental protection that a public health nuisance caused by an occasion of unavoidable urgency and suddenness due to unsanitary conditions compels the immediate construction of sewers for the protection of the public health and welfare;
2. The issuance of an order by the board of health of a health district to mitigate or abate a public health nuisance that is caused by an occasion of unavoidable urgency and suddenness due to unsanitary conditions and compels the immediate construction of sewers for the protection of the public health and welfare.

Further, as soon as the county pays the owner the amount of the court award it may take possession, if it has not already done so.

9.18 TAKING POSSESSION FOR ROAD PURPOSES

If the appropriation is for the purpose of making or repairing roads, a statement declaring the intention to take possession of the property, including structures, must be attached to the deposit. The owner or occupant shall vacate a structure after 60 days notice of the summons described in the next section. If the county removes the structure before the jury has fixed its value, the court, upon motion of the county shall:

1. Order appraisals to be made by three persons; one to be named by the owner, one by the county, and one by the county auditor.
2. Have pictures taken of all sides of the structures.
3. Compile a complete description of the structures.

At any time after the deposit, the owner may apply to withdraw the deposit. The withdrawal will not injure the position of the owner in court (ORC 163.06).

9.19 APPROPRIATION FOR COUNTY RENEWAL PROJECTS AND BLIGHT

Under ORC Section 303.26, counties are afforded the authority to remove slums or blighted areas through a "County Renewal Project". The project may include undertakings and activities of a county in a county renewal area for the elimination and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in a county renewal area including acquisition of a slum area or a blighted area, or portion thereof; demolition and removal of buildings and improvements; installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out the county renewal objectives of ORC Sections 303.26 to 303.56.

Following what the Ohio Legislature deemed abusive practices in *Kelo* and *Norwood* in redeveloping "blighted areas", SB 7 specifically addressed the determination of blight.

A “blighted area” or “slum” is defined as an area in which at least 70% of the parcels are blighted parcels and those blighted parcels substantially impair or arrest the sound growth of the state or a political subdivision of the state, retard the provision of housing accommodations, constitute an economic or social liability, or are a menace to the public health, safety, morals, or welfare in their present condition and use.

“Blighted Parcel” means either of the following:

1. A parcel that has one or more of the following conditions:
 - a. A structure that is dilapidated, unsanitary, unsafe, or vermin infested and that because of its condition has been designated by an agency that is responsible for the enforcement of housing, building, or fire codes as unfit for human habitation or use;
 - b. The property poses a direct threat to public health or safety in its present condition by reason of environmentally hazardous conditions, solid waste pollution, or contamination;
 - c. Tax or special assessment delinquencies exceeding the fair value of the land that remain unpaid 35 days after notice to pay has been mailed.
2. A parcel that has two or more of the following conditions that, collectively considered, adversely affect surrounding or community property values or entail land use relationships that cannot reasonably be corrected through existing zoning codes or other land use regulations:
 - a. Dilapidation and deterioration;
 - b. Age and obsolescence;
 - c. Inadequate provision for ventilation, light, air, sanitation, or open spaces;
 - d. Unsafe and unsanitary conditions;
 - e. Hazards that endanger lives or properties by fire or other causes;
 - f. Noncompliance with building, housing, or other codes;
 - g. Nonworking or disconnected utilities;
 - h. Is vacant or contains an abandoned structure;
 - i. Excessive dwelling unit density;
 - j. Is located in an area of defective or inadequate street layout;

- k. Overcrowding of buildings on the land;
- l. Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- m. Vermin infestation;
- n. Extensive damage or destruction caused by a major disaster when the damage has not been remediated within a reasonable time;
- o. Identified hazards to health and safety that are conducive to ill health, transmission of disease, juvenile delinquency, or crime;
- p. Ownership or multiple ownership of a single parcel when the owner, or a majority of the owners of a parcel in the case of multiple ownership, cannot be located.

Furthermore, when determining whether a property is a blighted parcel or whether an area is a blighted area or slum, no person shall consider whether there is a comparatively better use for any premises, property, structure, area, or portion of an area, or whether the property could generate more tax revenues if put to another use.

In addition, a property is not a blighted parcel because of any condition listed above if the condition is consistent with conditions that are normally incident to generally accepted agricultural practices and the land is used for agricultural purposes as defined in ORC Section 303.01 or 519.01, or the county auditor of the county in which the land is located has determined under ORC Section 5713.31 that the land is “land devoted exclusively to agricultural use” as defined in ORC Section 5713.30.

9.20 APPROPRIATION WITHIN AGRICULTURAL DISTRICTS

Special procedures apply to eminent domain proceedings where more than 10 acres or 10% of property under one owner is located in an agricultural district. Refer to Section 93.12 of this *Handbook* for detailed information.

TABLE 9-1

**EMINENT DOMAIN POWERS OF COUNTY BOARDS,
COMMISSIONS AND AGENCIES**

NAME OF ENTITY	ORC SECTION
PARK DISTRICT	1545.11
CONSERVANCY DISTRICT	6101.17
SANITARY DISTRICT	6115.21, .22
SEWER DISTRICT	6117.39, .48
REGIONAL WATER AND SEWER DISTRICT	6119.11
PORT AUTHORITY	4582.06
REGIONAL AIRPORT AUTHORITY	308.06
COUNTY TRANSIT SYSTEM	306.04
REGIONAL TRANSIT AUTHORITY	306.35, .36, .82
JOINT TOWNSHIP DISTRICT HOSPITAL	513.15
METROPOLITAN HOUSING AUTHORITY	3735.32
BOARDS OF EDUCATION	3313.39
COUNTY BRIDGE COMMISSION	5993.03, .08