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Lawyers provide eminent domain advice

BY GEOFF HAMILL • STAFF WRITER

WILLIAMSVILLE — Land can be home and home can be sacred, but the government will take it, if it wants.

Several Bath County residents are living a nightmare with the forced sale of their land for a pipeline project looming on the horizon. Two Texas attorneys provided legal advice to landowners last Wednesday at the Williamsville community center.

During the meeting, one landowner described his home place as “hallowed ground” and said the pipeline would jeopardize his farm’s water supply.

Another said her late husband worked three jobs to buy their family property and, “Dominion wants to take it all away from me. It’s just pure greed that they can bully us and take our home.”

Delaware company Atlantic Coast Pipeline LLC, a partner of Dominion Energy, will obtain the power to forcibly purchase land rights if federal regulators approve construction of the proposed 42-inch gas pipeline through West Virginia, Virginia and North Carolina.

The process by which the government and authorized corporations compulsorily obtain land rights is known as eminent domain. A court action brought to obtain property through eminent domain is called a condemnation. Because the ACP would be an interstate pipeline, federal law would apply in a condemnation action brought to force a land sale.

The Fifth Amendment to the U.S. Constitution requires the federal government and authorized corporations to pay “just compensation” for any property obtained from private owners. During the eminent domain process, a landowner and the government can agree on a price and conclude a sale without court action. If the parties cannot agree on a price, or if an owner refuses to sell, the government/corporation will initiate a condemnation action, where a court will decide the amount of compensation. Both sides can present evidence on value, but the law is that fair market value must be paid.

If a landowner refuses to sell and does nothing, a condemnation action will proceed, and the court will determine fair market value with evidence presented only by the pipeline company.

That's a bad course of action, according to attorney Chris Johns, who said facing off against a pipeline company without competent legal help is foolhardy. The attorney said his firm has obtained higher compensation for landowners in 100 percent of eminent domain cases, even with legal expenses subtracted.

Johns said 70 to 85 percent of landowners sell at whatever price the pipeline company offers — often because they feel intimidated by land agents, who often use coercive techniques.

The attorney described techniques used by pipeline companies and land agents to purchase land for low prices, which include:

- Paying for the specific parcel acquired, but not paying for the impact on the remainder of the property. Acquisition of one parcel can effectively block access or negatively impact another parcel, requiring additional compensation. Pipeline companies often focus on the parcel to be acquired, not the negatively-affected remainder. Johns said property values are typically reduced by 15 to 40 percent when a pipeline is built.
- Not paying for the highest and best use of the property. The highest and best use of agricultural property can be residential development. Pipeline companies will attempt to pay for cheaper farm acreage rather than potential home sites.
- Comparing the land to other land that is not similar. For example, property with water features will fetch a higher price, so pipeline companies will compare it to land without water features to lower the appraised value.

One landowner asked the attorney what to do if she doesn't have money to hire an attorney. Johns explained that a firm normally charges on a contingency fee basis and will collect a percentage of the amount received, over and above what the pipeline company offered. Therefore, a landowner incurs no out-of-pocket expenses to retain an attorney.

Johns said his firm achieves settlement in the great majority of eminent domain cases, which he said is usually preferable to fighting a condemnation action in court. Juries are typically pro-landowner, but there is risk with putting the case in the hands of a jury. Litigation increases the work for the attorneys and raises legal costs, reducing the final payout.

The attorney said it's likely the Federal Energy Regulatory Commission will approve ACP construction. He said the best chance for pipeline opponents is the election of an anti-pipeline governor in the November election. The attorney said an anti-pipeline governor could refuse to sign a 401 water quality certificate for the ACP, which would effectively kill the project.

Johns did not mention any candidate, but Democratic candidate Tom Perriello strongly opposes the ACP and pledged to refuse campaign contributions from Dominion. Republican candidate Corey Stewart has stated opposition to the proposed pipeline due to eminent domain issues.

Democratic candidate Ralph Northam and Republican candidates Ed Gillespie and Frank Wagner support the pipeline.

Johns described negative impacts of pipeline construction to property including reduction in value, environmental and safety risks, and having the pipeline company as a “development partner,” in any future use of the property.

Attorney Jacob Mekord assisted during the landowner meeting. The lawyers are with Texas firm Johns, Marrs, Ellis and Hodge, which has expertise in pipeline eminent domain cases, which are common in Texas. The firm is joint venturing with Charleston, W.Va., firm Bailey Glasser to represent landowners in the pipeline path. Johns can be reached at cjohns@jmehlaw.com.

In Augusta County, landowner Hazel Palmer’s lawsuit against ACP reached the Supreme Court of Virginia, which heard oral arguments on April 19.

“My heart is broken that I am forced to give up land for a private company to install a pipeline,” the 83-year old widow wrote to the Richmond Times-Dispatch. “This should not happen in the United States of America.”

To view a video of Palmer discussing her dispute with ACP, search “Path of the Pipeline: Hazel Palmer” on www.youtube.com.