

**ORDINANCE #16/93**

**EMINENT DOMAIN AND CONDEMNATION  
STANDARDS AND PROCEDURES OF THE  
FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA**

Adopted by Resolution #1336/93 of the Fond du Lac Reservation Business Committee on November 2, 1993.

FOND DU LAC RESERVATION BUSINESS COMMITTEE

ORDINANCE #16/93

EMINENT DOMAIN AND CONDEMNATION STANDARDS AND PROCEDURES  
OF THE FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

101. Authority & Delegation. The Fond du Lac Reservation Business Committee, as the Governing Body of the Fond du Lac Band of Lake Superior Chippewa does hereby declare, and assumes the rights and responsibilities incident to, the power of eminent domain over all property within the exterior boundaries of the Fond du Lac Reservation, or within other territory subject to the jurisdiction of the Fond du Lac Band, under the authority of its own inherent sovereignty, Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476, and Article VI, 1(d) of the Constitution of the Minnesota Chippewa Tribe, except to the extent that such authority is specifically limited by the laws of the United States.

102. Purposes and Conditions. The condemnation and appropriation of private property by the Fond du Lac Reservation Business Committee shall only occur for these purposes and under these conditions:

- (a) Public Purpose. A valid public purpose, expressed in terms of the best interests of the Fond du Lac Band, must be declared by the Reservation Business Committee for the taking of any property pursuant to its eminent domain authority, which may include any of the following purposes:
  - (1) Acquisition for the governmental operations of the Fond du Lac Reservation Business Committee;
  - (2) Acquisition for the granting of easements and rights-of-way.
  - (3) Acquisition to expand the land base of the Fond du Lac Band; or
  - (4) Acquisition for business necessity.
- (b) Necessity. The taking must be necessary to the achievement of the public purpose.
- (c) Just Compensation. The owner of appropriated, compensable property, as defined by Section 104 of this Ordinance, shall receive just compensation for the loss of such property, as to be determined in accordance with the procedures and methods of assessment prescribed by this Ordinance.

103. Description of the Subject Property. All property subject to condemnation under this Ordinance shall be particularly described by parcel, and accompanied by whatever surveys, maps, photographs, or other recordings as necessary to accurately define the taking and assess the compensation due to the Owner.

104. Identification of Compensable Property Interests. All tangible property interests subject to condemnation shall be compensable in proportion to the interests' share of the entire property. These may include feeholds, life estates, remainder interests, mortgages, easements and leaseholds, and temporary or partial takings, but compensation will not be made for expectations of property unless backed by investment.

105. Preliminary Resolution & Internal Assessment. Upon adoption of a resolution by a majority vote of the Reservation Business Committee, an internal assessment shall be assigned to a qualified appraiser for the purposes of affording the Committee an informed estimate as to the cost efficiency of a proposed taking.

106. Good Faith Negotiation for the Purchase of the Property. Whenever feasible, the Fond du Lac Reservation Business Committee, or its duly appointed representative, after preliminary resolution and internal assessment, shall make a good faith attempt to purchase the subject property from its owner(s) at its fair market value or, where there is no market or sale at fair market value would result in substantial injustice to the owner(s), at some reasonable alternative valuation.

107. Forum: Standing: Filing of Petition: Commencement: Notice. Where a good faith negotiation for the purchase of the subject property has failed or is infeasible, the Fond du Lac Reservation Business Committee, or any affected property owner, may commence condemnation proceedings in the following manner and under the following conditions:

- (a) Forum. Condemnation proceedings under this Ordinance shall be conducted in the Fond du Lac Tribal Court, according to the procedures and standards of review prescribed in this Ordinance and in the Fond du Lac Civil Code.
- (b) Standing. Either the Fond du Lac Reservation Business Committee or any owner of a compensable property interest within the scope of Section 104, shall have standing to bring a condemnation action in Fond du Lac Tribal Court.
- (c) Filing of Petition. Condemnation proceedings shall be commenced by filing a petition for review with the Fond du Lac Clerk of Court and shall contain the following:
  - (1) The Fond du Lac Reservation Business Committee shall state in its petition a precise legal description of the property to be appropriated as prescribed by Section 103, the names and addresses of all owners of such property as defined by Section 104, the authority, necessity, and public purpose for such taking as defined by Sections 101 and 102, and the compensation to be paid, the basis of valuation and the method of assessment as prescribed by Sections 109 and 110 of this Ordinance.
  - (2) An Owner of Subject Property shall state in his/her petition the ownership of a compensable property interest as defined by Section 104 of this Ordinance, and the specific issues contested. Where the matter contested involves the measure of compensation, the petitioner shall advance substantial evidence that the manner or measure of compensation employed by the Fond du Lac Reservation Business Committee was clearly erroneous or constituted an abuse of sovereign discretion.
- (d) Commencement. An action shall commence under this Ordinance with the filing of the petition, but under no circumstances shall a condemnation action commence more than sixty (60) days following condemnation.
- (e) Notice. Following filing of the petition, the initiating party shall serve notice by person or by certified mail upon all parties claiming appropriative authority under Section 101 of this

Ordinance, or known to have a compensable property interest under Section 104, and shall include a legal description of the property as defined by Section 103 of this Ordinance.

108. Declaration of Taking. Where the Fond du Lac Reservation Business Committee requires immediate possession of the subject property following filing of petition and notice to affected property owners, it may obtain such possession by filing a declaration of taking with the Fond du Lac Tribal Court where the declaration includes:

- (a) A signed statement of the authority, necessity, and public purpose, as defined by Sections 101 and 102 of this Ordinance, for the immediate possession of the property.
- (b) An accurate legal description of the property, as defined by Section 103 of this Ordinance.
- (c) A deposit of fair market value or a reasonable alternative valuation, as designated by Section 110 of this Ordinance, and an explanation of its assessment.
- (d) Upon satisfaction of these requirements, the Fond du Lac Tribal Court must order surrender of possession of the property by its owner(s), in consideration of the sum deposited, or invalidate the declaration, and state its reasons for so doing, within ten days.
- (e) Neither the declaration of taking, or the surrender of property thereto, shall constitute a waiver by the owner(s) to further proceedings respecting the taking.

109. Manner & Method of Assessment. All assessments made of subject property on behalf of the Fond du Lac Reservation Business Committee shall be conducted according to the following manner and method:

- (a) Assessment shall be conducted by impartial and qualified individuals, and shall be accompanied by detailed explanations in terms of the designated standards of valuation prescribed under Section 110 of this Ordinance, stating the specific bases of such valuation, and shall be signed by both the appraiser and the Chairman of the Reservation Business Committee.
- (b) Subject property shall be valued as a whole and in its entirety, according to the designated standards of valuation prescribed by Section 110 of this Ordinance. Division of compensation is a factual determination to be decided on a case-by-case basis, and is subject to court approval or modification unless mutually agreed upon in writing by all affected parties. Recommendations for divisions of compensation shall be accompanied by detailed explanations, which may rely upon the designated standards of valuation prescribed by Section 110, and must be signed by both the appraiser and the Chairman of the Fond du Lac Reservation Business Committee.

110. Designated Standards of Valuation. The following standards of valuation shall be employed in all appraisals of property appropriated through eminent domain by the Fond du Lac Reservation Business Committee.

- (a) Fair Market Value is the general measurement of compensating owners for takings, and seeks to estimate what a willing buyer would pay a willing seller for the property at the time of the transfer, by considering these factors:
- (1) Assessed Valuation is generally admissible to estimate market value, particularly where the owner has paid taxes based upon such assessment.
  - (2) Adaptability of the Property to a Particular Use may be relevant where evidence is advanced as to the probable demand for the property for a particular use, but speculative testimony as to possible future use is inadmissible.
  - (3) Rental Value of the property is admissible to indicate market value, unless speculative.
  - (4) Price Paid for the Property is generally admissible as evidence of market value unless too remote in time or the purchase was made under exceptional circumstances suggesting that other-than-market value was paid.
  - (5) Improvement Values are admissible, but evidence of cost of improvements, as a separate item, is not admissible.
  - (6) Reproduction Cost or Replacement Value may be considered in market valuation, but cannot be the sole basis of assessment unless there is no market for the property or where market valuation would result in manifest injustice to the owner.
  - (7) Condition and Value of Comparable Property Nearby is generally admissible.
  - (8) Sale Price of the same property is admissible in ascertaining market value unless too remote in time.
  - (9) The Enhanced Value of a Parcel Attributable to Adjacent Condemnations must be included in market estimations unless all parcels are subject of a single condemnation action.
- (b) Alternative Valuation Standard. Where there is no market for the subject property, or where condemnation at market value would result in manifest injustice to the owner, i.e. where market valuation would not be "fair," other data may be relied upon to arrive at fair compensation, including, but not limited to the following:
- (1) Actual Value of the property.
  - (2) Subjective Value of the property to the owner.
  - (3) Replacement Cost of the property.
  - (4) Depreciated Original Cost of the property.

111. Burden of Proof in Condemnation Proceedings & Evidentiary Standards of Valuation. The following evidentiary standards will govern condemnation proceedings in the Fond du Lac Tribal Court:

- (a) Burden of Proof. The burden of proof is upon the property owner to rebut the presumption of validity as to the authority, necessity,

and stated public purpose of the taking at issue, as well as in contesting the Government's valuation of the subject property.

- (b) Evidentiary Standards of Valuation. Evidence of value of the subject property will not be excluded by the Court if competent under the Federal Rules of Evidence and relevant to an ordinary prudent judgment of the property's value.

112. Court Judgment or Award of Compensation. Court judgments or awards of condemnation issued by the Fond du Lac Tribal Court shall include the following:

- (a) Judgments Upholding Condemnation by the Government must include:

- (1) A decree of public use and necessity;
- (2) A judgment fixing the amount to be paid to the owner; and
- (3) A decree of appropriation transferring title.

- (b) Judgments Favoring Property Owners must include:

- (1) An order invalidating the condemnation; or
- (2) A judgment fixing the amount to be paid to owner.

113. Remedies of Owners. Where a judgment or award is ordered in favor of an owner, the following remedies shall be exclusive of all other remedies at common law or equity:

- (a) Recovery or Repossession of Property may be ordered where the condemnation was unauthorized as defined under Section 101 of this Ordinance, unnecessary or not put to the public purpose as defined under Section 102 of this Ordinance, or for overextended taking or nonpayment, and the Court may issue an order of ejectment.
- (b) Compensation Proceedings may be ordered, and recovery of compensation ordered, where the Government has failed to take the necessary steps following its condemnation as required by this Ordinance.

114. Right to Appeal. Either party to a condemnation proceeding shall have the right to appeal the condemnation judgment of the Fond du Lac Tribal Court, under the Fond du Lac Civil Code, to the three-member Fond du Lac Board of Condemnation Appeals.

115. Strict Adherence to Ordinance Procedures. The provisions of this Ordinance shall apply without exception to all condemnation proceedings undertaken by the Fond du Lac Reservation Business Committee.

We do hereby certify that the foregoing Ordinance #16/93 was duly presented and adopted by Resolution #1336/93, by a vote of 4 for, 0 silent, 0 against, with a quorum of 5 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on November 2, 1993 in Cloquet, Minnesota.

  
Robert B. Peacock, Chairman

  
Peter J. Defoe, Secretary/Treasurer

# Fond du Lac Reservation Business Committee

105 University Road,  
Cloquet, MN 55720  
Phone (218) 879-4593  
Fax (218) 879-4146



Chairman  
Robert B. Peacock

Secretary/Treasurer  
Peter J. Defoe

Dist. I Councilman  
Clifton Rabideaux

Dist. II Councilman  
Herman Wise

Dist. III Councilman  
George Dupuis

Executive Director  
I. Jean Mulder

RESOLUTION # 1336/93

The Fond du Lac Reservation Business Committee, on behalf of the Fond du Lac Band of Lake Superior Chippewa, hereby enacts the following Resolution:

WHEREAS, the Fond du Lac Reservation is a sovereignty, created by the Treaty of September 30, 1854, 10 Stat. 1109, as the perpetual home of the Fond du Lac Band of Lake Superior Chippewa, which possesses the inherent jurisdiction and authority to exercise regulatory control within the boundaries of the Fond du Lac Reservation; and

WHEREAS, it is the sovereign obligation of the Fond du Lac Reservation Business Committee, as the Governing Body of the Fond du Lac Band, under the Indian Reorganization Act, 25 U.S.C. § 461 et seq., and in accordance with the Indian Self-Determination Act, 25 U.S.C. § 450 et seq., to assume the responsibilities of self government; and

WHEREAS, the Reservation Business Committee has determined that it possesses the general power of eminent domain over private property within the boundaries of the Fond du Lac Reservation, or within other lands over which the Fond du Lac Band possesses jurisdiction, except to the extent that such authority is specifically limited by the laws of the United States; and


WHEREAS, the Reservation Business Committee has further determined that it is necessary and in the best interests of the Fond du Lac Band to adopt an Ordinance governing its exercise of such authority; and

WHEREAS, the Reservation Business Committee has considered the proposed Ordinance entitled "Eminent Domain and Condemnation Standards and Procedures of the Fond du Lac Band of Lake Superior Chippewa," and has determined that adoption of said Ordinance is in the best interests of the Fond du Lac Band;

NOW THEREFORE BE IT RESOLVED, that the Fond du Lac Reservation Business Committee does hereby adopt Fond du Lac Ordinance #16/93, entitled "Eminent Domain and Condemnation Standards and Procedures of the Fond du Lac Band of Lake Superior Chippewa," as the law of the Fond du Lac Band which shall govern the exercise of eminent domain authority by the Reservation Business Committee.

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 4 for, 0 against, 0 silent, with a quorum of 5 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on November 2, 1993 in Cloquet, Minnesota.

  
Robert B. Peacock, Chairman

  
Peter J. Defoe, Sec./Treas.