IN THE CIRCUIT COURT OF MONROE COUNTY
STATE OF MISSOURI

GRAIN BELT EXPRESS, LLC a Limited Liability Company registered to do business in Missouri, Plaintiff, vs. Phillip C. Brown, *et al.*, Defendants.	)	Cause No. 21MN-CV00258

JUDGMENT AND

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On 11th day of July, 2022, the above-referenced cause came before the Honorable Rachel Shepherd-Bringer, Judge of Division I of the Tenth Judicial Circuit, Monroe County for the purpose of consideration of Plaintiff's Petition For Condemnation ("Petition"). Plaintiff Grain Belt Express, LLC ("GBE" or "Plaintiff") appeared through its counsel, Seth Wright, and its representative. Defendants Phillip and Doris Brown ("Browns") appeared through their counsel, Paul G. Henry, and in person. Defendant Missouri Highways and Transportation Commission ("MHTC") appeared through counsel, Jason Saey. Defendant Public Water Supply District No. 2 of Monroe County ("PWSD") appeared through its counsel, Mark Piontek, and its representatives. The Court finds all Defendants parties were properly served and the hearing properly noticed according to applicable rule and statute. Rule 86.05; 523.030 *R.S.Mo.* Having considered the evidence

and arguments submitted by the parties, and being fully advised in the matter, the Court finds as follows:

FINDINGS OF FACT

A. Parties and Pleadings

1. Plaintiff GBE filed its Petition on December 28, 2021.

2. GBE is a subsidiary of Invenergy Transmission Company. (TR 9:25-10:3) GBE and is recognized as an electrical corporation and public utility under the Laws of the State of Missouri. (Ex A – Public Service Commission Report and Order on Remand dated March 20, 2019, Pg 38)

3. The Plaintiff seeks to exercise eminent domain authority for the Grain Belt Express Project, which is an 800-mile high-voltage direct current electric transmission line from Kansas to Indiana with 206 miles crossing Missouri. ("Project")(Ex A, Pg 9; Tr 10:6-10) The Project will consist of lattice-type structures placed 1,200 to 1,500 feet apart, each with a footprint of 40 feet by 40 feet and approximately 145 feet high. (TR 52:16 to 53:6) The Project was approved by the Missouri Public Service Commission. (Ex A; TR 10-11)

4. Defendants Browns, PSWD and MHTC each filed timely Motions to Dismiss. PSWD and MHTC withdrew their respective Motions prior to the Condemnation Hearing.

5. The Browns filed a timely request pursuant to Rule 73.01 that this Court prepare a "Findings of Fact and Conclusions of Law."

B. **Rights Sought by Plaintiff**

1. The Plaintiff seeks a "permanent and exclusive easement" affecting real property located in Monroe County, Missouri. (TR 13:3-7; Petition ¶8)

2. The rights which Plaintiff is seeking in the affected property are stated in Paragraph 7 of its Petition. ("Easement Rights")(Petition ¶7)

C. **The Property.**

1. All of the affected real property is owned in fee simple by the Browns. (Tr 5:21-24; Petition ¶14) and located in Monroe County, Missouri.

2. The affected real property was assigned two parcel numbers by Plaintiff, being MO-MO-002.000-ROW, MO-MO-003.000-ROW. (Tr. 16:11-12) These will be shortened herein, as they were during the hearing, as Parcel 2 and Parcel 3.

3. Parcel 2 consists of 55.54 acres. (Tr 108:20-22; Ex D Appraisal, pg 20)

4. Parcel 3 consists of 514.26 acres. (Tr 110:1; Ex D Appraisal, pg 21)

5. The total size of the Browns' property was not clearly established but testimony showed that it is more than 975 acres. (Tr 80:18-19 and 115:17-22)(The testimony of the appraiser representing GBE testified that the Browns owned 975 acres north of State Highway NN in additional to acreage south of the Hwy NN.)

6. The acreage owned by the Browns south of Hwy NN is included as part of Parcel 3. (Tr 111:7-9; Ex D Appraisal, pg 21)

7. The Petition included an Exhibit B consisting of surveys dated November 12, 2021, depicting:

a. An easement across Parcel 2 with a stated size of 3.250 acres.

b. An easement across Parcel 3 with a stated size of 15.633 acres.

8. During the Condemnation Hearing the Plaintiff substituted its Petition Exhibit B with Exhibit B-1 consisting of surveys dated May 10, 2022, depicting:

a. An easement across Parcel 2 with a stated size of 3.269 acres.

b. An easement across Parcel 3 with a stated size of 15.594 acres.

D. **Pre-Filing Notices**

1. The Plaintiff tendered Exhibit C consisting of letters to the Browns.

a. Exhibit C consists of four letters - one letter each to Phillip Brown and to Doris Brown for each of the two Parcels together with copies of the return receipts issued by the USPS.

b. The court received Exhibit C as evidence without objection. (Tr 17)

c. The letters depicted in Exhibit C are on Polsinelli letterhead, signed by Seth Wright and were mailed to the Browns via certified mail on July 21, 2021. (Tr 17:2-7)

d. The letters depicted in Exhibit C were received by the Browns at least 60 days prior to initiation of the condemnation action.

e. The letters describe the easement on Parcel 2 to be "approximately 4 acres" and on Parcel 3 to be "approximately 16 acres." (Ex C)

f. Exhibit C will be referred to as the "60-Day Letters" below.

2. The Plaintiff tendered Exhibit D consisting of letters to the Browns accompanied with appraisal reports.

a. Exhibit D consists of four letters, in total representing one letter each to Phillip Brown and to Doris Brown for each of the two Parcels together with copies of the return receipts issued by the USPS. Each letter is accompanied by a copy of the appraisal report prepared by Mr. Carlo Forni.

b. The court received Exhibit D as evidence without objection. (Tr 20)

c. The letters depicted in Exhibit D are on Polsinelli letterhead, signed by Seth Wright and were mailed, together with the appraisals, to the Browns via certified mail on September 30, 2021. (Tr 17:22-3)

d. The letters and appraisals included in Exhibit D were received by the Browns at least 30 days prior to initiation of the condemnation action.

e. The letters describe the easement on Parcel 2 to be "approximately 4 acres" and on Parcel 3 to be "approximately 16 acres." (Ex D)

f. Exhibit D will be referred to as the "Offer Letters" below.

E. **Witnesses**

1. Mr. Brad Fine testified on behalf of Plaintiff. His testimony included:

a. He is the Manager of Transmission Development for Invenergy, the parent company to GBE. (Tr 9:14-10:3)

b. The Easement Rights described in the Petition include ingress/egress access rights that would allow GBE to access portions of Browns' properties *not* located in the easement areas. (Tr 23:4-22) He testified that the ingress/egress access rights would authorize GBE to:

- Construct temporary roads
- Install crossings and culverts
- Construct gates

He was unsure if it would include the right to install permanent crossings or roads.

(Tr 31-32)

c. The 60-Day Letters do not provide a description or the location of the easements. (Tr 34:7-13)

d. The 60-Day Letters recite the same Easement Rights stated in the first eleven and a half lines of the description included in Paragraph 7 of the Petition as follows:

"rights to develop, permit, construct, reconstruct, repair, improve, alter, replace, operate, use, inspect, maintain and remove a transmission line,

which transmission line may include poles, towers and structures, such wires and cables as Grain Belt shall from time to time suspend therefrom, foundations, footings, attachments, anchors, ground connections, communications devices, and other equipment, accessories, access roads and appurtenances, as Grain Belt may deem necessary or desirable in connection therewith and to study or inspect in preparation therefor, including survey, soil sampling, geotechnical evaluation, environmental tests, archeological assessments, and transmission and interconnection studies. The permanent right-of-way may be used for the transmission of electrical energy and for communication purposes, whether existing now or in the future in order to facilitate the delivery of electrical energy"

However, the 60-day letters omit the remaining portion of the easement rights set out in Paragraph 7 of the Petition that includes the ingress/egress access rights over the Browns' property, as follows:

"The easement rights include the nonexclusive right of ingress and egress over the Easement Property (defined in paragraph 8 below) itself in order to obtain access to the permanent right-of-way, and over the Defendant's [sic] property adjacent to the Easement Property and lying between public or private roads. Grain Belt shall, without being liable for damages, have the right from time to time, including after the initial construction of the transmission line, to clear the Easement Property of any improvements or other structures to the extent that they interfere with Grain Belt's use of the Easement Property as described herein, except fences (provided Grain Belt shall at all times have access through any such fence by means of a gate); control, cut down, trim and remove trees and underbrush from the Easement Property; and cut down and trim any tree encroaching upon the Easement Property or the transmission line that in the reasonable opinion of Grain Belt may interfere with the safety, proper operation and/or maintenance of the transmission line."

The appraiser was unable on cross-examination to explain why the ingress/egress access rights were not provided to the property owners prior

to the Petition:

"Q And you just testified on redirect that it was necessary -- that Grain Belt feels these are necessary rights in order to allow them to build and maintain their project?

A Correct.

Q If it's so important -- the question to you is: If it's so necessary, why did Grain Belt not inform the owners of this right until the petition was filed?

A I don't know."

(TR 64:21 to 65:4)

2. Mr. Carlo Forni testified on behalf of Plaintiff. His testimony included:

a. He is a vice-president and principal at the appraisal firm of Allen Williford & Seale ("AWS"). (Tr 73)

b. He stated: "Allen Williford & Seale is a real estate appraisal company that specializes in right-of-way valuation. Right-of-way valuation is the only type of work we do, and we do it all over the country." (Tr 73:13-16) Their clients include, utilities, pipeline companies, highway departments, railroads, airports and agencies or entities which have some form of power of eminent domain. (Tr 100:6-11) They virtually never represent property owners. (Tr 100:13-15)

c. In connection with his work on the Project on behalf of the Plaintiff, his firm was paid $65,000 for a market study for an "agreed-upon rate" of $4,000 for each of approximately 300 appraisal reports. (Tr 100:21-101:18)

d. He prepared a single appraisal report relating to the Browns' Property about which he testified:

- The appraisal is included as part of Exhibit D. (Tr 74:18-18); Ex D)
- He valued a total of 975 contiguous acres owned by the Browns in Monroe County north of Hwy NN. (Tr 80:16-20)
- He divided the Browns' 975 acres into two tracts separated by a county road running north and south. The two tracts he described as Tract A (380 acres) and Tract B (595 acres). (Tr 80:19-25)
- He allocated damages to Parcel 2 based on an easement area of 3.26 acres and to Parcel 3 based on an easement area of 15.5 acres. (Tr 116, Ex D, Appraisal Pg 15)
- His appraisal did not include or value the portion of Parcel 3 located south of Hwy NN. (Tr 115:17-22)
- He did not appraise Parcel 3. (Tr 115:14-16)
- His appraisal report on Page 3 recites verbatim, the same Easement Rights stated in the first eleven and a half lines of the description included in Paragraph 7 of the Petition as follows:

"rights to develop, permit, construct, reconstruct, repair, improve, alter, replace, operate, use, inspect, maintain and remove a transmission line, which transmission line may include poles, towers and structures, such wires and cables as Grain Belt shall from time to time suspend therefrom, foundations, footings, attachments, anchors, ground connections, communications devices, and other equipment, accessories, access roads and appurtenances, as Grain Belt may deem necessary or desirable in connection therewith and to study or inspect in preparation therefor, including survey, soil sampling, geotechnical evaluation, environmental tests, archeological assessments, and transmission and interconnection studies. The permanent right-of-way may be used for the transmission of electrical energy and for communication purposes, whether existing now or in the future in order to facilitate the delivery of electrical energy"

- He acknowledged that the following language included in the "easement rights" in Paragraph 7 of the Petition was not included within his appraisal report:

  "The easement rights include the nonexclusive right of ingress and egress over the Easement Property (defined in paragraph 8 below) itself in order to obtain access to the permanent right-of-way, and over the Defendant's [sic] property adjacent to the Easement Property and lying between public or private roads. Grain Belt shall, without being liable for damages, have the right from time to time, including after the initial construction of the transmission line, to clear the Easement Property of any improvements or other structures to the extent that they interfere with Grain Belt's use of the Easement Property as described herein, except fences (provided Grain Belt shall at all times have access through any such fence by means of a gate); control, cut down, trim and remove trees and underbrush from the Easement Property; and cut down and trim any tree encroaching upon the Easement Property or the transmission line that in the reasonable opinion of Grain Belt may interfere with the safety, proper operation and/or maintenance of the transmission line."

- He stated that he "considered" the ingress/egress access rights in his appraisal. (Tr 95:5-8)

- He applied the definition of fair market value provided by Section 523.007 of the Missouri Revised Statutes that provides, in part: "If less than the entire property is taken, fair market value shall mean the difference between the fair market value of the entire property immediately prior to the taking and the fair market value of the remaining or burdened property immediately after the taking." (Tr 106:19-23; Ex D, Appraisal Pg 3)
- He stated that an appraiser must "know the location and size of the easement in order to complete a before and after appraisal report." (TR 106:1-10)

F. **Different easement sizes**

Over the course of the testimony and through exhibits, the sizes attributed to the proposed easement areas varied as follows:

Date	Source	Parcel 1	Parcel 2
July 7, 2021	Ex C ("60-Day Letter")	~ 4 acres	~16 acres
Sept 22, 2021	Ex D (Appraisal)	9.660 acres	9.100 acres
	Ex D (Appraisal)	3.260 acres	15.500 acres
Sept 28, 2021	Ex D ("Offer" Letter)	~ 4 acres	~16 acres
Nov 12, 2021	Ex B (Surveys)	3.250 acres	15.633 acres
May 10, 2022	Ex B-1 (Corrected Surveys)	3.269 acres	15.594 acres

CONCLUSIONS OF LAW

The Court, based upon the evidence, pleadings, motions, memorandum, and its findings set forth above, makes the following conclusions of law:

A. **General**

1. A condemnation hearing is an "evidentiary hearing in which the right or power of the condemnor to condemn the property in question is finally adjudicated." *Washington University Medical Center Redevelopment Corp. v. Komen*, 637 S.W.2d 51, 54 (Mo.App. 1982).

2. Where, as here, the authority to use eminent domain authority is delegated by the State, the trial court must determine whether all requirements associated with the delegation of the power have been met by the agency before proceeding. See, *City of North Kansas City v. K.C. Beaton Holding Co., LLC*, 417 S.W.3d 825,831.

3. The grant of the power of eminent domain is narrowly and strictly construed. *Maryland Plaza Redevelopment Corp. v. Greenberg*, 594 S.W.2d 284 (Mo.App. 1979). "Since it involves the taking of private property for the use and enjoyment of others, the whole process is treated as an invasion of private rights, and a strict construction of the legislative grant of authority is exacted by the law, and doubts appearing in such grants are resolved in favor of the property owner." *State ex rel. Missouri Water Co. v. Bostian*, 272 S.W.2d 857, 861 (Mo.App. 1954). "In addition to constitutional and statutory limitations, statutes which delegate the power

of eminent domain to these various public or private entities are strictly construed by the courts." *Osage Water Company v. Miller County Water Authority, Inc.*, 1997 WL 367294 (Mo.App. S.D. 1997).

4. Evidence of "substantial compliance" with statutory prerequisites is not sufficient to support the mandate on courts to "strictly construe statutes delegating the right of eminent domain." *City of St. Charles v. DeVault Mgmt.*, 959 S.W.2d 815, 824 (Mo.App. E.D. 1997).

5. Many of the statutory provisions applicable to these proceedings were adopted in 2006 when the Missouri Legislature enacted a comprehensive bill that has been described as "sweeping reform of eminent domain." *Land Clearance for Redevelopment Authority of City of St. Louis v. Henderson*, 358 S.W.3d 145, 150 (Mo.App. E.D. 2011). The overriding purpose of the legislation "was to strengthen the rights of landowners in eminent domain actions." *Planned Indus. Expansion Authority of Kansas City v. Ivanhoe Neighborhood Council*, 316 S.W.3d 418, 426 (Mo.App. W.D. 2010).

G. **The 60-Day Letters tendered by Plaintiff do not meet the requirements of §523.250**

Section 523.250 *R.S.Mo.* "Notice of Intended Acquisition" requires an agency to provide a notice to property owners that includes:

> "(1) Identification of the interest in real property to be acquired and a statement of the legal description or commonly known location of the property;

(2) The purpose or purposes for which the property is to be acquired;

(3) A statement that the property owner has the right to …

(c) Obtain such owner's own appraisal of just compensation."

The Court finds that the Plaintiff's 60-Day Letters as found in Exhibit C do not comply with the requirements §523.250 in the following respects:

1. When a condemnation involves a partial taking of property, the plain meaning of "Identification of the interest in real property to be acquired" required by §523.250(1) would include the physical description of what is to be taken. The 60-Day Letters do not include a description of the easement area other than the approximate size in acres. According to the 60-Day Letters "the exact location of the easement" was not yet determined. In the 60-Day Letters, the Plaintiff declares its authority to conduct land surveys and notifies the Browns of its intent to do so and cites to *State ex rel. Rhodes v. Crouch*, 621 S.W.2d 47, 48 (Mo. banc 1981). The Plaintiff provided no explanation why it had not availed itself of its right to conduct a land survey prior to issuing the 60-Day Letter. Since the purpose of §523.250 is to give a property owner advance notice of a taking, an agency must first make that determination to *prior to* sending a 60-Day notice letter.

2. The Court's analysis is supported by §523.250(3)(c) that requires an agency to inform the owner of the right to "Obtain such owner's own appraisal of just compensation." The 60-Day Letters provide notice of the Browns' right to obtain an

appraisal, but Browns could not obtain an appraisal based on the information provided in the 60-Day Letters. The Plaintiff's appraiser stated that in order to prepare an appraisal to determine just compensation as defined by §523.001, that he would need to know the "size and location" of the easement. Neither the size nor location of the easement were provided in in the 60-Day Letters. The Court's concludes that the legislature intended an agency to not only inform an owner of the right to obtain an appraisal, but also to provide the information that an appraiser would need to form a meaningful determination of just compensation. To read this provision otherwise would render meaningless that portion of the notice requirement. The paramount goal of statutory interpretation is to determine the legislative intent. *Missouri Rural Elec. Co-op v. City of Hannibal*, 938 S.W.2d 903, 905 (Mo.banc 1997). In arriving at intention of the legislature the objectives of an act are to be considered, and construction must be reasonable and logical to give meaning to statute. *State ex rel. Rhodes v. Crouch*, 621 S.W.2d 47 (Mo. banc 1981). The Court's application of §523.250 follows these rules of interpretation in light of the previous authority that the eminent domain reform legislation was intended to add to and improve the rights of property owners.

3. When a condemnation involves the taking of an easement for certain purposes, the "Identification of the interest in real property to be acquired" should include a description of the rights and uses that the agency will acquire. The 60-Day

Letters describe only a portion of the "easement rights" in Paragraph 7 of the Condemnation Petition. The 60-Day Letters do not fully and adequately notify Browns of all the rights that the Plaintiff seeks to acquire through eminent domain.

H. **The Offer Letters tendered by Plaintiff are inadequate.**

Section 523.253 *R.S.Mo.* requires an agency to tender a written offer to a property owner before instituting condemnation proceedings. Section 523.253 provides express requirements as to the form of the offer such that it must be in writing and include an appraisal or explanation with supporting financial data. In this case, the Plaintiff included an appraisal with its Offer Letters. The requirement that an agency tender an offer to a property owner before starting condemnation proceedings was established by case law pre-dating adoption of §523.523. The existing case law was codified by §523.523. *City of Richmond Heights v. Waite*, 280 SW3d 770, 777 (Mo.App. E.D. 2009). The Court concludes that the Offer Letters do not comply with the requirements §523.523 nor with relevant case law in the following respects:

1. The Offer Letters lack essential material terms necessary to form the basis of a binding agreement. Section 523.010 (which pre-dates the Eminent Domain Reform Bill) requires that a condemnation action can only be brought when the agency "and the owners cannot agree upon the proper compensation to be paid." §523.010(1) Courts construed this language to impose upon the condemning agency to make an offer "sufficient to create a binding contract." *City of Blue Springs, Mo. v. Cent. Dev. Ass'n*,

684 S.W.2d 44, 49 (Mo.App. W.D. 1984). "It is hornbook law that in order to make a contract there must be a meeting of the minds of the parties. [A] meeting of the minds can ultimately be reached only by a valid offer by one party and the unqualified acceptance of it by the other." *State ex rel. State Highway Comm'n v. Pinkley*, 474 S.W.2d 46, 49 (Mo. App. 1971).

The Offer Letters could not have resulted in a "meeting of the minds" because material terms were either entirely omitted or subjected to contingencies:

- The Offer Letters lack an unequivocal offer of payment to the Browns and instead state that "Grain Belt is *prepared* to offer you compensation..." This is an expression more commonly found in a letter of intent as opposed to a binding offer. An offer, to be binding, should include an unqualified offer of payment.
- While the Offer Letters included a legal description of an easement, the Plaintiff reserved the ability to modify the description based on "detailed survey work." The Court again notes that the Plaintiff already had the authority to perform a survey. The Plaintiff asserted that right in the 60-Day Letters. The earliest dated surveys produced by the Plaintiff are found in the original Exhibit B filed with the Petition. Those surveys are dated November 12, 2021, whereas the Offers Letters were dated September 28, 2021. This leads to the conclusion that the Plaintiff made the purported

offers to the Browns before the Plaintiff, itself, had availed itself of its ability to conduct a survey to provide an accurate easement description. Even at that, Plaintiff's counsel admitted at the hearing that the November 2021 surveys were "off" as the surveyors were not able to find points of contact or corner posts and "things like that." (Tr. 142:12-23) The Plaintiff acted prematurely to tender an offer for an easement for which it could not with certainty describe its size or location.

- The Offer Letters do not state the terms of use for the easement. Whereas the Petition includes a detailed and extensive provision expressing the terms of the easement and the Plaintiff's intended uses, the Offer Letters do not offer these terms, nor any other. The appraisal included with the Offer Letters does include a *portion* of the easement rights found in the Petition but excludes significant terms including the ingress/egress access rights. The Offer Letters are expressly conditioned on the parties coming "to terms on an easement agreement" within 30 days but does not propose terms for the Browns to consider. The Plaintiff has the "burden of proving the inability of the parties to agree" and "a bona fide attempt to agree." *Pinkley* at 49. The Offer Letters are insufficient to meet that burden.

2. The amounts of payment stated in the Offer Letters were based upon an appraisal that did not value the same rights as are requested in the Petition. An amount

of the offer made to a landowner must be based on the same rights described in a condemnation petition. *City of Cape Girardeau v. Robertson*, 615 S.W.2d 526 (Mo.App. E.D. 1981). In *Robertson*, the city was taking a permanent easement for a road project but failed to consider the impacts of the permanent easement when making offers to the landowners. At the condemnation hearing, the city admitted that the permanent easement would permit it to "cut back" onto the landowners' property at times. *Id.* at 530. The court approved the trial court's dismissal of the petition on the grounds that the offer was insufficient to meet the requirement of "good faith" since it did not include compensation for the permanent easement. *Id.* at 531. On direct, the appraiser for Plaintiff testified that he took into account the ingress/egress rights, in spite of omitting them from his report. The Court recognizes that it has the authority to consider the credibility of an appraiser's testimony at a condemnation hearing. *Planned Indus. Expansion Auth. of Kansas City v. Ivanhoe Neighborhood Council*, 316 S.W.3d 418, 425 (Mo.App. W.D. 2010), as modified (June 1, 2010). This Court "is not required to take the appraisers' testimony at face value." *Id.* at 428. With that consideration, the Court gives more weight to the fact that the *written* appraisal report omits a significant portion of the easement rights sought in the Petition and thus did not include compensation for the omitted rights. As to the appraiser's testimony to the contrary, the Court attributes bias to the witness who has already obtained significant compensation for his services and stands to gain significantly more in the course of this Project.

3. As to Parcel 3, the compensation in the Offer Letter was not based on an appraisal of the property. The appraiser for Plaintiff admitted that he did not appraise Parcel 3 – only a portion of it. He stated that his valuation analysis applied the statutory definition of fair market value in §523.001(1) that provides, in part, "If less than the entire property is taken, fair market value shall mean the difference between the fair market value of the *entire property* immediately prior to the taking and the fair market value of the remaining or burdened property immediately after the taking." *Id. (emphasis added).* Consequently, the Offer Letters as to Tract 3 does not meet the requirements of §523.253(2)(1) that requires a condemning authority to, "provide the property owner with an appraisal … for its determination of the value of the property for purposes of the offer."

I. **No Finding of Good Faith**

Pursuant to §523.256 *R.S.Mo.*, a court may not enter an order of condemnation without first finding that the condemning agency engaged in good faith negotiations. This Court finds that the Plaintiff did not engage in good faith negotiations in the following respects:

1. The Plaintiff did not "properly give all notices to owners required by" Chapter 353. Specifically, the 60-Day Notice was not in proper form for the reasons stated above. (§523.256(1))

2. The owners were not afforded an opportunity to obtain their own appraisal as they were not provided an accurate description of the easement area, nor a complete description of the easement rights. (§523.256(3))

3. As to Parcel 3, the compensation stated in the Offer Letters is not reflect in an appraisal of the Property. (§523.256(2))

In the event a court does not find good faith negotiations have occurred, §523.256 provides that the condemnation is to be dismissed and the agency is to reimburse the owners for their reasonable attorneys' fees and costs.

CONCLUSION

It is therefore the ORDER of this Court that Plaintiff's Petition in Eminent Domain is DISMISSED without prejudice. The Court, pursuant to the requirements in Section 523.256 *RSMo*, orders Plaintiff to reimburse the owners for their reasonable attorney's fees and costs incurred with respect to this condemnation proceeding. Defendants may file appropriate motions requesting the same.

SO ORDERED:

Rachel L Bucyan Shepherd

Dated: 12/31/2022