



Necessity

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Reference Number: MTAS-1292

Unlike the review of the legislative body's determination of public use, the court has only a limited review of the necessity to take any particular parcel of property. The legislative body's determination of necessity is conclusive upon the courts in the absence of a showing of fraudulent or arbitrary and capricious action by the condemner. ^[54]

Arbitrary and capricious actions are willful and unreasonable actions taken without consideration for or in disregard of the facts existing at the time the condemnation was decided upon or within the foreseeable future. ^[55] An action is not arbitrary and capricious when exercised honestly and upon due consideration where there is room for two opinions, even if the court believes that the condemner erred in basing its decision on one of the two opinions. ^[56]

Thus, the property owner cannot ask the court to substitute its judgment for that of the condemner on what is in the best interest of the public. ^[57] The court cannot substitute its judgment on the proper parcel of property to be taken, as distinguished from similar property in the same area, or determine the suitability of a particular parcel of property for the proposed use, or decide the quantity of property required by the condemner for the proposed use. ^[58]

Notes:

[54] *First Utility District of Knox County v. Jarnigan-Bodden*, 40 S.W.3d 60 (Tenn. App. 2000); *City of Maryville v. Edmondson*, 931 S.W.2d 932 (Tenn. App. 1996); *Duck River Electric Membership Corp. v. City of Manchester*, supra; *Justus v. McMahan*, supra; *City of Knoxville v. Heth*, supra; *Department of Highways v. Stepp*, supra; *Southern Railway Co. v. City of Memphis*, supra; *Metropolitan Government of Nashville and Davidson County v. Huntington Park Associates*, Docket No. 88-144-II (Tenn. Ct. App. M.S. October 26, 1988), app. denied (March 9, 1989); *County Highway Commission of Rutherford County v. Smith*, supra; *Harper v. Trenton Housing Authority*, 38 Tenn. App. 396, 274 S.W.2d 635 (1954).

[55] *Metropolitan Government of Nashville and Davidson County v. Denson*, supra; *Metropolitan Government of Nashville and Davidson County v. Huntington Park Associates*, supra.

[56] *Metropolitan Government of Nashville and Davidson County v. Huntington Park Associates*, supra; *Harper v. Trenton Housing Authority*, supra.

[57] *Justus v. McMahan*, supra.

[58] *Pickler v. Parr*, 138 S.W. 3d 210 (Tenn. App. 2003); *City of Knoxville v. Heth*, supra; *Department of Highways v. Stepp*, supra; *Southern Railway Co. v. City of Memphis*, supra; *Metropolitan Government of Nashville and Davidson County v. Huntington Park Associates*, supra; *Harper v. Trenton Housing Authority*, supra.

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