



THE IMPACT OF FUTURE SITE TRAFFIC

Condemnation case in California uses ratio of rough proportionality to determine just compensation

BY WAYNE RASMUSSEN

Eminent domain is often necessary when acquiring rights of way for roadway extensions and realignments. When the land is undeveloped or partially developed, the process of determining just compensation can become more complicated. In this situation, fairness issues can arise based on the methods used to establish the amount of the compensation.

In determining compensation for the right of way, case law requires that a rough proportionality exist. Rough proportionality does not require that all similarly-situated owners be treated the same. Rather, the focus is on whether the burden placed on a particular owner is roughly proportional to the impact of that owner's highest and best use development scenario. These situations create the need to examine how a local jurisdiction's land dedication requirements would apply if and when the subject property is later developed. However, there is no precise mathematical calculation required for accomplishing this.

Past Rulings

In California, the resolution of right of way condemnation disputes frequently relies on rulings from three landmark court cases.

In *City of Porterville v. Young* (1987), the California Court of Appeals held that when a public agency conditions the development of property on a dedication of frontage to widen

a public street, the portion subject to the dedication should be valued for condemnation purposes based on the existing use of the undeveloped property, not on its highest and best use potential.

In the case of *City of Hollister v. McCullough* (1994), the trial court held that, in order to determine that a dedication is a reasonable probability, it must be found that such a requirement would be legally permissible. Proof that a conditional dedication is a reasonable probability requires showing not only that the local jurisdiction would have likely imposed the dedication condition if the property owner had sought to develop the property, but also that this dedication requirement would have been constitutionally permissible.

The U.S. Supreme Court held in *Dolan v. City of Tigrad* (1994) that the government may not require a person to give up a constitutional right in exchange for a discretionary benefit conferred by the government where the property sought has little or no relationship to the benefit. The court further found that it must be determined whether an "essential nexus" exists between a legitimate state interest and the permit condition. Such determination must be constitutionally sufficient to justify the conditions imposed. The necessary connection required by the Fifth Amendment is rough proportionality. Furthermore, the Court said that, "No precise mathematical calculation is required, but the city must make some sort of 'individualized determination' that the required dedication is related both in nature and extent to the proposed development's impact."

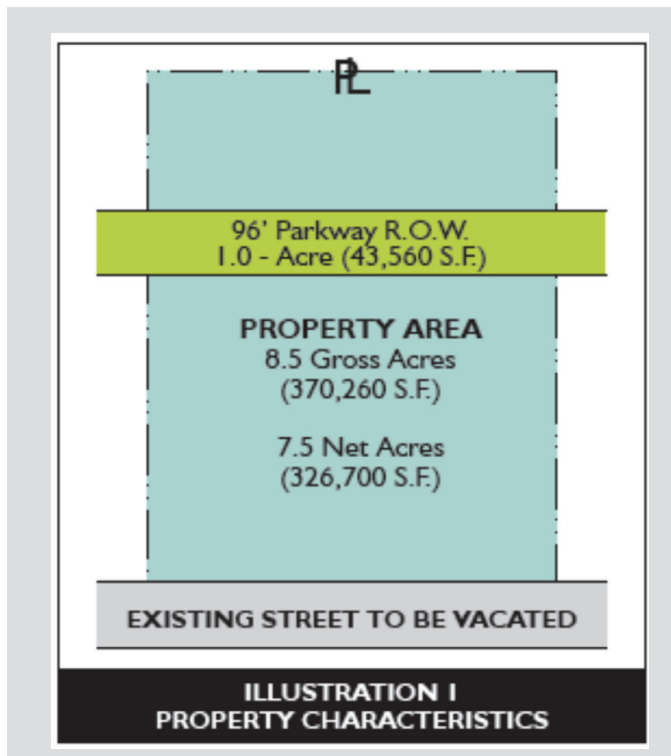
Lack of Specificity

Although the Dolan case calls for the preparation of an individualized determination for certain right of way takes, this is not always done by the condemning jurisdiction. In other situations, individualized determinations are not completed until after the right of way has already been appraised. This is essentially an after-the-fact exercise that can contradict the jurisdiction's appraisal.

Instead of preparing an individualized determination, it is common for local jurisdictions to rely on their subdivision dedication standards to serve this purpose. However, these standards typically do not provide the level of specificity needed to address the uniqueness of the site-specific acquisition. In a situation where the jurisdiction does not prepare a sufficient individualized determination, the landowner has the opportunity to challenge the legality of the take through the preparation of a nexus study to establish the basis of proportionality.

The Effect of Future Development

In the San Francisco Bay Area, a related right of way condemnation case requiring an individualized determination was recently settled prior to trial. The dispute was in regards to a right of way take by the City for a parkway extension.



In Illustration 1, the 8.5-gross acre (370,260 sq. ft.) subject property contained a single-family home with the remaining land area consisting of undeveloped open space. Vehicular access was provided by an existing partially-improved public arterial street that fronted the site. The zoning map designated the site for office use. A

96-foot wide right of way for the construction of a public parkway was called for by the general plan to extend through the center of the site.

Although the planned parkway would provide somewhat more convenient access to the property, it was primarily intended to increase vehicular capacity and substantially improve pedestrian and landscape amenities for city and regional users. The project was further intended to allow for the arterial street that fronted the property to be vacated for transfer of ownership to another public agency for constructing a different public facility.

The City determined that most of the parkway right of way take area would eventually have had to be dedicated to the City when the property was developed. By applying the Porterville ruling, the City valued most of the 96-foot wide right of way take (one acre) as open space instead of the office use for which it was zoned, which reduced the compensation amount. The landowner argued that the City had unfairly valued too much of the right of way take as open space and not enough as office. The City had relied on its subdivision dedication standards for determining what amount of the take would be valued as open space versus office. However, these citywide standards failed to address the specific traffic impact that the developed property would ultimately have on the parkway.

The City did not prepare either a nexus study or an individualized determination of rough proportionality prior to the taking, nor did it relate the extent of the compensation to the amount of traffic that future development of the site would place on the parkway. For the landowner to clearly demonstrate his contention that he was being unfairly compensated by the City, he was required to obtain his own experts to prepare a nexus study.

Calculating Rough Proportionality

The landowner's nexus study established a ratio of rough proportionality between the amount of traffic that future development of his property would generate compared to the amount of cumulative traffic generated by the combined total of all future parkway users.

$$\frac{\text{Future site traffic}}{\text{Future parkway cumulative traffic}} = \text{Ratio of rough proportionality}$$

This ratio of rough proportionality was then used to create a more site-specific amount of right of way that should be valued as open space versus office use.

Future Site Traffic

The traffic volume anticipated for future office development on the subject property was calculated in two steps. The first step involved calculating the amount of floor area that would be allowed by the city for the future office development. The City's floor area ratio (FAR) standard was applied for this purpose. The FAR establishes the permitted amount of floor area (square footage) as a function

of the amount of net property area (square footage). The 326,700 net square foot property area (excluding the right of way take area) was multiplied by the City's office building FAR of 0.5:1 to determine the future building floor area, as follows:

$$(\text{Net property sq. ft.}) \times (\text{Office FAR}) = \text{Future office building floor area } \textit{or}$$

$$(326,700 \text{ net property sq. ft.}) \times (0.5 \text{ office sq. ft./net property sq. ft.}) = 163,350 \text{ sq. ft. of permitted future office building floor area}$$

Next, the volume of traffic to be generated by the property upon build-out was projected. This was done by multiplying the future building floor area by an accepted engineering rate for daily trips per square feet of office. A rate of 11.58 average daily trips (ADT) per thousand square feet of office floor area was used for this purpose. This was intended to represent the extent of the traffic impact on the parkway created by development of the property, as discussed in the Dolan v. Tigar case. For example:

$$(\text{Future office floor area}) \times (\text{Office daily trip rate}) = \text{Total ADT created by office development } \textit{or}$$

$$(163,350 \text{ sq. ft. of future office floor area}) \times (11.58 \text{ office ADT} / 1,000 \text{ sq. ft.}) = 1,892 \text{ total ADT created by office development}$$

The City's general plan indicated that at general plan build-out the parkway would accommodate a cumulative total of approximately 11,400 ADT. This represents the sum of trips generated by the build-out of the subject property, plus all existing and future traffic projected for the parkway at general plan build-out.

Ratio of Rough Proportionality

In order to calculate a sufficient measure of the rough proportionality between the future traffic generated by development of the property versus that of the cumulative traffic using the parkway, a ratio was established. This was done by dividing the property development's ADT by the total cumulative ADT generated by all users of the parkway, as follows:

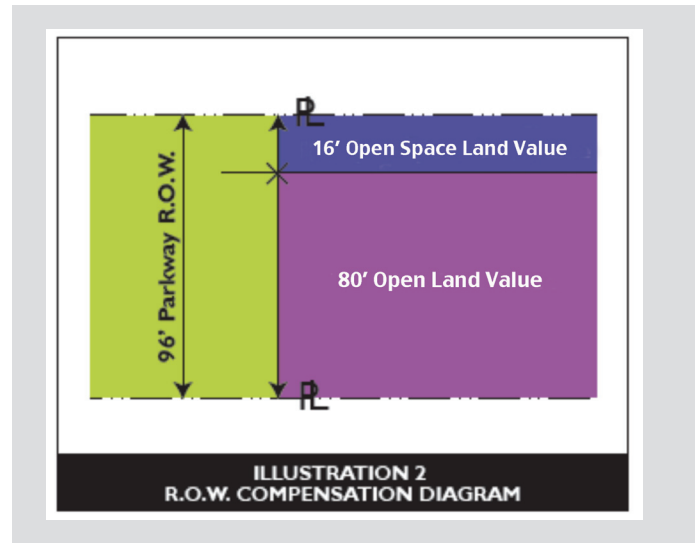
$$\frac{\text{Office ADT using parkway at site build-out}}{\text{Cumulative ADT using parkway at general plan build-out}} = \text{Ratio of rough proportionality } \textit{or}$$

$$\frac{1,892 \text{ office ADT using parkway at site build-out}}{11,400 \text{ cumulative ADT using parkway at G. P. build-out}} = \frac{17}{100} \text{ ratio of rough proportionality}$$

Thus, the property was expected to generate approximately 17/100 (or a ratio of 17:100) of the total ADT using the parkway.

Ratio of Compensation

The compensation diagram in Illustration 2 highlights the methodology used by the landowner's traffic engineer and land use planning experts for determining the ratio of rough proportionality.



The property owner's nexus study further determined an equitable method for determining the specific amount of the 96-foot wide section of the parkway right of way to be paid at open space value. This was done by multiplying the 17:100 ratio of the property's contribution of future traffic by the parkway width of 96 feet, as follows:

$$(\text{Ratio of rough proportionality}) \times (\text{Total ROW width}) = \text{ROW width to be valued as open space } \textit{or}$$

$$(0.17 \text{ ratio of rough proportionality}) \times (96\text{-feet total ROW width}) = 16 \text{ feet of ROW width to be valued as open space}$$

The result was that 16 feet of the 96-foot wide parkway right of way width should have been compensated at open space value. The remaining 80 feet of the right of way width should have been compensated at office land value.

Conclusion

Calculating just compensation for undeveloped or partially developed land can present a host of challenges, especially when the right of way is needed for roadway extensions and realignments. While case law requires that a rough proportionality exist between the compensation for the take and the impact of traffic generated by future development of the property, there is currently no specific methodology for establishing a fair amount. Local jurisdictions are therefore left with examining land dedication requirements if and when the property is to be developed at a later date. As in this California case, using a strategic process to calculate potential future impact can work to address this issue.



Wayne Rasmussen

Wayne is President of Rasmussen Planning, Inc., a land use planning consulting firm in San Ramon, California. Prior to starting the firm in 2005, he spent 30 years as a city planner in the San Francisco Bay area. He holds degrees in city and regional planning from Cal Poly, San Luis Obispo and Penn State.