

A Position of Objectivity

Performing ethically and competently at all times

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It was many years ago when I realized the importance of objectivity in appraisal for right of way acquisition purposes. I came from a personal, professional and political background of fairness and impartiality, and in my mind these qualities are critical to being a good right of way professional.

Several years ago, I was involved in several major court actions for acquiring land for one of the largest public projects in Colorado's history. It was the first time I had encountered appraisal analysts who had lost their objectivity, and arguments were put forth to the degree that objective valuation opinions and conclusions were precluded. The triers of fact ultimately were faced with the challenge of determining fairness in their awards. This outcome involved a great deal of expense to Colorado taxpayers and certainly harmed public trust in the right of way profession.

The whole experience got me thinking about the concept of fairness. The Takings Clause of the Fifth Amendment to the U.S. Constitution grants agencies the right of eminent domain. For now, let us just agree that it is the law, and public projects are based on its provisions. But what does fairness have to do with it? And to whom is it fair? It is certainly our job to ensure that property owners are treated fairly, but what about the other side of the equation? The government technically has no money of its own. It only has funds that have been acquired from its citizens through taxation or other similar means. These are the funds that are used when agencies acquire private property for public use. Part of our responsibility as right of way professionals is to see that these funds are fairly spent in property and property rights acquisition, and that the public is treated fairly in the process.

Nonetheless, the concept of fairness in what is frequently an adversarial process may need to be adjudicated through the court authorities if the involved parties cannot reach an agreement through negotiation. Experts engaged to complete the appropriate analyses and provide testimony must always keep the concept of fairness foremost in their minds. A person can become persuaded or even biased and still be unaware of their loss of impartiality. A



casual comment overheard, an observation obtained during a sale confirmation, even rumor, street-talk or hearsay, could possibly result in compromised objectivity.

One way for appraisers to test for objectivity is to imagine an assignment that comes to you from the mysterious figure in "Amadeus" who arrived at Mozart's door wearing a mask and costume to commission a requiem on behalf of an unidentified benefactor. What if this figure gave you an appraisal assignment in the same way, but also told you who the client/intended users would be after your development process was completed and the report was written? If you were truly objective, you would fill in the addressee – and not change another thing! That's objectivity, at least as it lives and breathes in the right of way valuation world.

Right of way agents have similar challenges and responsibilities in their essential part of the process. Negotiations must be openly and fairly performed without bias or partiality consistent with the laws and regulations that apply. We have another commitment to meet as well. Not only must we fiercely maintain our objectivity, it is incumbent on us all to become and remain competent. It is in the best interest of members of the private sector, the public generally, and those individuals working with acquiring agencies that professionals in right of way perform ethically and competently at all times. 🌟



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