
Facilitating the Acquisition of Right of Way through Eminent Domain Proceedings

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When it becomes necessary to acquire property through an eminent domain proceeding, it is critical to reexamine all of the causal effects necessitating such an action. The approach, style, and technique in which the condemnor addresses its acquisition of property merits review. The level of involvement beyond the delivery of final offers should be considered. Which avenues are most cost-efficient to both the condemnor and to the public? Ongoing and, if necessary, repetitive communications between owners, right of way agents, and staff attorneys is paramount to successful negotiations.

In opening, experience has dictated that the earliest possible contact with owners lessens the percentage of property that is required to be condemned. It is important to stress early involvement with design and/or civil engineers not only for design and right of way alignment purposes, but for access to and the dissemination of materials to the public. In general, the majority of projects commence with aerial photogrammetry or basic engineering schematics. These are further developed into final construction plans and tract plats. Under

most scenarios, it is not until these plans are finalized that the project is delivered to right of way personnel with authorization to proceed. By this stage, the majority of the public along a project corridor has heard of and discussed the impact of the project among themselves, with surveying teams, or, possibly, with one of the project engineers. Although these parties are a necessary and essential part of the process, they generally cannot answer the salient questions the citizen wants to know, such as: How and when will it be acquired? How much money will we be paid? By increasing the communication between engineering and right of way personnel, an allowance is made that permits the agent(s) an opportunity to be the first one(s) on the project site. This action offers an excellent means of dispelling rumors among the owners by providing one agency contact who possesses the means of acquiring all of the answers. In addition, it establishes a means of projecting a better public image by reflecting active involvement and interest in the project from its inception to its finalization. Alternative or contrary actions often make it difficult and sometimes impossible to overcome the ingrained anxieties held by owners who for so many weeks/months/years have been overlooked as a very important part of the process. Admittedly, this procedure requires additional man-hours, but the real savings, both monetarily and in personnel time, far outweigh the losses experienced in a contrary

or traditional mode. The question remains as to what type of public image should be portrayed.

What other advantages are there to early contact with property owners? The single most expeditious manner in which to obtain clear title is to begin the process before the commencement of monetary discussions. At some stage of the engineering process, a determination will have been made as to those owners who will be affected, regardless of future changes. At this point, it is possible for agents to deliver preliminary engineering schematics and/or aerial photogrammetry in order to discuss the project's impact on the owner(s); to open discussion on the manner in which the property is to be acquired; and to discuss the requirements relative to curing the title, even if a title opinion or report has not yet been rendered. It is understood that agents may be required to visit owners with preliminary mapping on one or more occasions before the finalization of engineering plans. However, throughout this process the agents are reestablishing contact with the owners and are continuing to obtain and provide the necessary documentation relative to curing title. By doing so, the system has streamlined numerous steps necessary to close on a tract of land and/or it has established the solid back-up required before filing an eminent domain lawsuit. Implementing early dialogue facilitates both avenues of acquisition, either by agreed conveyance or through eminent domain. Both sides will have gained measurable knowledge from each other and both will have benefited from the early contact. Additionally, it is quite possible that a groundwork of mutual trust will be in its infancy, a key element in the overall acceptance of the project, the agency itself, and its operational guidelines.

Many projects require acquiring property via eminent domain. Regardless of whether this action is based on monetary disputes, title discrepancies, etc., the agency supporting the project has an active involvement and a viable investment in the ultimate outcome. Beyond that, those agents responsible for the negotiations remain critical to the process by supplying supportive documentation and a synopsis of the events leading up to this stage of the process.

Supportive documentation and extensive examination of the title requirements not only increase the knowledge of the agent, but are tremendously beneficial to the

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counsel representing the condemnor. Whether or not the condemnor is represented by independent counsel or a staff of governmental attorneys, it is more cost-efficient to the agency for their agents to pursue every possible avenue in clearing the title. For example, agents can research and supply all of the following items:

- Partnership Agreements
- Corporate Resolutions
- Probate, Marital/Divorce, and Tax Records
- Status of lien(s)
- Instrumentation such as Affidavits, Release of Liens, etc.

all of which are coupled with:

- A confirmed listing of the defendants; registered agents for service, their addresses and telephone numbers
- Engineering plans and/or schematics

and, most importantly, a brief summarization of any special dialogue relative to the negotiations and the impact that the project will have on the owner's remaining property, if any. Performing these functions may appear to be relatively insignificant. Nevertheless, by doing so one will have expedited the acquisition process by lessening the attorney's work efforts. Additionally, it will dedicate the agency to continued involvement throughout the process and allow for ongoing dialogue that affects the ultimate resolution.

The act of gathering this information will raise certain questions. Despite the complexity of the parcel, it is often advisable for right of way personnel and attorneys to hold in-depth discussions about the title and the substantive elements leading up to it. Discussions of this nature often allow different perspectives in ascertaining a satisfactory conclusion to both the owner and the condemnor. Additionally, open forum contributes to the reduction of errancy, which ultimately lends itself to a repetitive process.

Having agreed on a proper course of action, the condemnor has the option of determining its level of involvement throughout the eminent domain process. Although levels of involvement vary among agencies, they do not necessarily end with the request that eminent domain proceedings be filed. Pursuing continued involvement would include the following:

- Preparation of Resolutions Declaring Public Necessity authorizing the acqui-

sition (by the agency) of a particular tract of land

The preparation of all of the instruments necessary to file an eminent domain lawsuit within its territorial jurisdiction

Filing the lawsuit

Arranging the special commissioners hearing

Notifying expert witnesses and special commissioners of hearing dates

Serving citation on defendants

Attending special commissioners hearings

Preparing the paperwork necessary to pay special commissioners and/or attorney ad litem fees and the monies required pursuant to the special commissioners award

Preparation of interrogatories and other pretrial instrumentation

Review of court records necessary for the preparation and filing of Final and Agreed Judgments along with the request for additional monies coincidental therewith, if any.

Arguably there are merits for and against working within these parameters. First, in order for this process to be effective and cost-efficient, a significant amount of instrumentation must be inputted into a word processing or computer system. However, once this task has been realized, only minor alterations to each instrument are required (the style of the case and the listing of the party defendants). Outwardly, performing this function would appear to be a burdensome addition to the level of responsibilities of the agency and its personnel. On the other hand, the agency gains, through experience, a means of providing and establishing a system of ongoing professional development among its staff by the daily performance of these functions; a means of providing accountability for the status of each particular parcel of land that better lends itself to final completion of the project relative to the award of construction contracts; and a means for the agency to have greater control over the whole process via continued dialogue with its attorneys. Supplemental influence is permitted by the agency possessing the ability to provide corrected instrumentation. From the paralegals' and the attorneys' viewpoints, a notably lesser degree of time is spent on preparing and proofreading this material,

thereby enabling more time for actual preparation for hearing(s), deposition(s), trial(s), etc.

Naturally, varying levels of staffing and budgetary restraints will preclude some condemnors from establishing the above described system. Not all projects are conducive to this concept. Furthermore, the initiation of such an operation may meet with some resistance. However, to reiterate, when examining the increased level of expertise and professional development realized by right of way personnel, the controllability and higher level of accountability held by the agency, and the diminishment of routine activities for the attorney, it is certain that the system offers a viable option to the traditional modes of acquiring right of way.

It is the general public who anticipates, desires, and benefits from the completion of projects. Delays are measurable in the actual costs of gasoline, time, and in less comparable transportation systems and utility services. It is, therefore, desirous to construct those facilities expeditiously and not let them languish.

In the final analysis it is the interest of the public and the individual property owner that must be considered. By providing one solid source of information within each agency with the knowledge and control throughout the duration of the project, higher levels of proficiency, accountability, and cost-awareness are realized, not only to the public sector but to the condemnor as well. (IRMA)

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