

---

# Facilitating the Acquisition of Right of Way through Eminent Domain Proceedings

---

■ R. DIRK CAMPBELL

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

---

*R. Dirk Campbell is the Assistant Operations Manager with Harris County Toll Road Authority, Houston, Texas. Mr. Campbell presented this paper at an Eminent Domain Seminar held recently at South Texas College of Law, Houston, Texas.*