Uncovering the TRUTH

When a friendly condemnation may be the best option

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Right of way negotiations frequently involve family members who do not agree. There might be a specific discord about the current acquisition, or perhaps the family has suffered from a long history of unrelated disagreements that make it difficult to form a consensus.

Recently, I was working on a project to improve the superelevation on a curve. The pavement heading toward and through the rotating curve was continually being inundated with water on the low side. With a landowner less than a quarter mile from the project, I needed a borrow option in order to proceed. The cultivated field had a hill that would provide all the estimated borrow required, along with an excellent access point that would not need any reworking to accommodate fully loaded haul trucks.

The title research indicated that the property was owned by a life estate holder. Additionally, there were four adult children who were entitled to inherit the property upon the termination of the estate. One of the siblings lived on the property, so I stopped by to introduce myself. While walking the field with him, we discussed details about the project. I explained that we would need a half-acre permanent acquisition from the landowner, his mother. I further explained that since she was a life estate holder we would need the signatures of all four siblings. That information was met with a stony silence. He stopped suddenly and asked, "Exactly how do you contact them?"

I told him that I had already located the addresses for his brother and two sisters and had sent them an introductory letter with a brief overview of the project and the taking. The letter also included a request to meet with them individually to go over all the paperwork. He paused to formulate his response and then plainly stated, "My brother may be a problem."

Not wanting to pry, I drove back to the office pondering what kind of problem the brother might be and decided to review the file thoroughly to see if I could find any clues. There it was, on pages seven and eight of the Preliminary Certificate of Title. There were three state tax liens against the brother, all at least eight years old with a beginning balance of just over $15,000 dollars. I checked with my title officer who confirmed that they were valid according to the report. A second call to the collections department at the Secretary of State's office confirmed that they were still outstanding, and that with penalties and interest, the payoff balance was just over $33,000.

Since I wasn't sure if the family knew about the liens, I contacted the brother responsible for them to get more information. He responded to my voicemail with an angry email citing state and federal statutes proving that the liens were invalid and informing me that he would fight us on them. He also said that since I had uncovered these fraudulent liens it was my personal, legal obligation to get them removed. I could tell by his use of bold

capital letters in huge fonts that he was quite accustomed to denying responsibility for these liens. So I responded calmly, letting him know that I would have upper management further review the situation.

I double checked all my facts and confirmed again that the liens were valid. Since the permanent acquisition involved compensation of less than $3,000, we would be obligated to pay down the oldest lien first, with no money going to the life estate holder. The remaining balance would need to be addressed separate from the transaction I was negotiating.

I called the "good" brother and as gently and clearly as I could, told him about the liens. He had no idea they existed and doubted his mother did either. We agreed to meet at the farmhouse the following week, but without the other brother. Once there, we sat somberly in the living room as I explained the liens, the payoff balance and that we had two choices – to pay the check against the oldest lien or to do a "friendly" condemnation where the Clerk of Court would decide who would receive the money. The mother wept quietly while the rest of the family grew increasingly angered and frustrated by the news.

The mother spoke about how much trouble the other brother had been since her husband died 23 years earlier. Now that this had come to light, she sadly stated that her beloved husband would never rest in peace. After things quieted down, I spoke about the value of the land. It was a full section, almost all under cultivation, and had just been appraised at $3,000 per acre. Surely these tax liens could be handled somehow. I suggested they consult their attorney and tax professional to get some advice. I tried my best to comfort her, but it seemed futile.

Finally, in a measured tone seething with disgust, a brother-in-law finally spoke. "Miss, you don't have the whole picture." He went on to say that he had checked online in the county records and that the three state tax liens were just the tip of the iceberg. The brother had multiple IRS liens, and when it was all totaled, the principle balance was around $250,000. With interest and penalties, that could easily mean there was half a million dollars in outstanding debt.

I gently suggested that we proceed with a friendly condemnation so that the clerk could sort out who would be paid. They agreed and confirmed that the absent sister would be fine with that. None of them cared about the other brother's opinion. I wrapped up by saying the protocol for a condemnation meant that I would no longer be able to contact them. I sincerely wished them the best and apologized for bearing such stressful news. At the door, the mother held my hand gently and tearfully thanked me for helping them.

As right of way professionals, we work hard to resolve situations as amicably as possible. So when a positive outcome isn't feasible, a sense of powerless is bound to follow. Walking back to my car that cold November day, I carried a heavy heart and a sense of sadness for the property owner. ✪

IRWA CALL FOR AWARDS

Each year, the IRWA recognizes those members, chapters and companies for their valuable contributions toward advancing the Association and the right of way profession.

The International Nominations and Elections Committee is currently accepting nominations for the following award categories:

- Frank C. Balfour Professional of the Year
- W. Howard Armstrong Instructor of the Year
- Young Professional of the Year
- Government Employer of the Year
- Employer of the Year
- Chapter of the Year
- Website of the Year
- Newsletter of the Year
- SARPA Scholarship
- CRWEF Scholarship

Deadline

February 2, 2015

Award winners will be honored at IRWA's Annual Awards Luncheon on June 15, 2015 in San Diego,CA, held in conjunction with the 61st Annual International Education Conference.

SUBMISSION INFORMATION

All forms are available on the IRWA website and submissions will be accepted by email only.

CRWEF Scholarship application should be sent to Dawn MacDougall at dtmacdougall@gov.pe.ca.

Newsletter and Website of the Year forms should be submitted to INEC Vice Chair Arlene MacKenzie at arlene.mackenzie@gov.ab.ca.

All other submissions should be sent to INEC Chair Kevin Paul at kevin_paul@cpr.ca.

For more information, please contact Kevin directly, or visit the Awards Forms link under the About Us tab at www.irwaonline.org

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