



Exploring Inverse Condemnation

Sometimes timing is everything

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Inverse condemnation is a familiar concept, but one that is often misunderstood in the right of way profession. Right of way agents are not alone in the confusion — with the recent court system austerity measures, trial courts have been revealed as similarly unfamiliar with inverse condemnation claims.

The Fifth Amendment to the U.S. Constitution requires that the government, as plaintiff, provide just compensation to owners of private property taken by direct condemnation. By contrast, inverse condemnation law provides that an aggrieved property owner can be the plaintiff seeking to recover damages from the government for a property taking without payment of just compensation.

To recover compensation in an inverse condemnation case, the property owner must become the initiator (plaintiff) of legal action and must file a complaint with the court first alleging and then proving four legal elements - an ownership interest in the affected property, the public project that impacted the property, that a taking or damaging of property occurred, and that the taking or damaging was caused by the public project.

Inverse condemnation has evolved over time, and now not only includes claims for physical takings by the government, but also regulatory takings, which involve changes in law or regulation lowering property values. Right of way agents are most familiar with claims involving physical takings, which can be just as difficult for property owners making their case as they are troublesome for the government to defend.

Case Study

In 1996, the State of California had just completed the construction of the most ambitious and costly new freeway project in state history. Thousands of properties were acquired and several thousands of persons and businesses were successfully relocated from the right of way. But along with the large swaths of property included in the project were remnants, slivers and odd-shaped parcels that were not deemed necessary and were therefore not acquired for the project.

One property owner Prairie Associates, had a 47-unit apartment building that was one of the properties in the project vicinity but was not acquired for the project. After the other takings, instead of being located in the middle of a residential neighborhood, the post-project property was left next to a freeway exit ramp and within the loop of a freeway cloverleaf. The property owner sued the state for inverse condemnation arising under Article I, section 19 of the California Constitution, which states “...a property owner whose land is not formally appropriated for a public use, but is substantially damaged by a public improvement, has a cause of action against the public entity to recover damages suffered.”

After project completion, several state-owned excess land parcels were created next to the property in question. The state-owned excess land parcels were cleared of improvements, fenced, and left vacant pending their future sale by public auction. The state’s vacant excess properties were the target

of periodic illegal trash dumping, and Prairie's allegations were that the actions and inactions of the state in constructing the off-ramp adjacent to the property in this manner caused significant amounts of trash to accumulate on and around the subject property. Prairie went on to claim that the trash led to rodents, vagrants, drug dealing, prostitution and a general unhealthy condition around the subject property. The property owner alleged that the degradation in conditions caused them to lose most existing residential tenants and scared away new tenants, causing a significant loss of income to the property. The loss of income resulted in the property owner being unable to continue to pay the mortgage on the property, which was eventually lost in foreclosure, resulting in the loss of the \$5.5 million investment.

The Defense

The state was able to provide testimony from right of way staff confirming that the property owner's assertions were based on faulty premises and contrary to the existing facts. The subject property's deterioration and subsequent foreclosure was caused by Prairie's own actions and inactions. There was evidence that general economic conditions during the plaintiff's ownership tenure included a nationwide economic recession, riots in vicinity of this property following a highly-publicized case involving excessive police force, and the imposition of far too much debt service on the property in relation

to its actual and expected rental income. A lack of working capital led to deferred property maintenance and documented serious health code violations. The state argued that Prairie's money management decisions regarding the subject property were the sole cause of the lost tenants, lost income and the inevitable foreclosure on Prairie's interest in the subject property.

In retrospect, the key testifying witness was the post-foreclosure property owner. The new owner told the jury that after he purchased the property through the foreclosure action, he immediately updated all deferred maintenance items and was then able to get the property fully rented within a few months. That was compelling evidence, and the eight-day jury trial ended in favor of the state with a verdict finding no inverse condemnation liability. The jury agreed with the state's assertion that "the state came along with its freeway project just in time to be blamed for the riots, economic downturn, bad property management and criminal activity," that were the actual contributing factors in the eventual foreclosure.

Conclusion

The main difference between inverse condemnation and direct condemnation concerns the burden of proof. An informal survey showed that the majority of courts hearing these types of cases would apply the same rules of procedure and evidence to both types. In direct condemnation

matters, neither the government nor the property owner has the burden to prove their respective valuation cases. It is instead the comparison of the persuasiveness of the two competing presentations that the jury must select the appropriate amount of just compensation. Alternatively, with inverse condemnation cases, the aggrieved property owner must first offer evidence proving that there has been a taking and that the government is liable for damages to the subject property.

Both inverse condemnation and direct condemnation require the payment of just compensation for property taken by the government. As a result, the government has the affirmative responsibility to make thoughtful decisions concerning impacts to private property rights. ☛

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