

# Don't Let Size Fool You

Even seemingly minor acquisitions can cause legal challenges



BY MICHAEL F. YOSHIBA, ESQ.

On a recent project, we assisted our City client in San Bernardino County, California in acquiring permanent street easements for a proposed street widening project. The acquisition involved four privately-owned, single family residential parcels, each of which had its own unique sidewalk. Because they were constructed site-by-site while under the jurisdiction of the County, each sidewalk varied in size and together, they formed a staggered alignment.

The proposed public project design sought to straighten the street with the installation of new sidewalks and greenbelt areas for safety and aesthetic reasons. The proposed permanent easement areas were each less than 200 square feet and did not impact any structural improvements. After the appropriate environmental clearances were secured, the City ordered appraisals to determine just compensation.

Once completed, the City's governing body reviewed and approved the appraisals reporting. The City set the amount of just compensation and made formal written offers to purchase the easements at the established fair market value of \$2,000 each.

## Navigating the Legal Process

Upon receipt of the City's written offers to purchase, the property owners realized they needed guidance in navigating through the legal process. A formal written offer to purchase includes a detailed description of the acquisition process, however, the verbiage contains many specific legal phrases and references. Although these are intended to inform affected property owners, they often lead to confusion. Some property owners may turn to their friends and family familiar with real estate to assist them in responding to the City's offer to purchase, but eminent domain law is highly specialized. Most attorneys, including those who specialize in real estate, rarely deal with the procedural specifics in eminent domain acquisitions.

Consulting with competent eminent domain legal counsel is typically the next consideration, and there are two ways to compensate them. One is through a contingency agreement and the other is retaining them on an hourly basis.

With contingency agreements, attorney compensation is based on an agreed percentage of the final settlement, and it includes all of the attorneys' time from the first meeting until final resolution of the case. For example, when the estimated just compensation is \$2,000, a 40 percent contingency agreement leaves the property owner with only \$1,200. Not surprisingly, there is very little incentive for attorneys or property owners to enter into a contingency agreement in these small compensation cases.

Retaining an eminent domain attorney through a retainer agreement based on hourly rates is another option. However, those hourly rates can vary significantly depending on their experience and skillset. The time necessary to secure a settlement or court judgment can very easily range from 5 hours to 1,000 hours. The cost could be exorbitant for the property owner, and once again, there could be little financial incentive for the attorney.

### Working with the City

Without a financially feasible option to retain competent eminent domain legal counsel, property owners are often left to rely upon themselves and the City to proceed through this process. That was definitely the case with this particular group of easements.

From the City's perspective, qualified valuation experts had established fair and just compensation for the permanent easements. The amounts offered for the permanent easements were in the upper range of the comparable sales prices cited by the appraisers. And while the City bears the fixed costs of the administrative and legal costs necessary to complete the eminent domain process, it still has responsibility to be prudent when it comes to using public funds.

A delicate balancing of these considerations is required when negotiating with property owners who do not have any legal representation. As a result, the City made it a priority to ensure that the property owners were never left with unanswered questions about the eminent domain process. Open lines of communications included in-person meetings, numerous phone

conferences, project design maps, environmental documents and follow up correspondence. The City representatives provided supplemental information concerning the many steps involved in the eminent domain process, including the resolution of necessity hearing and potential for condemnation litigation.

Fortunately, the City was able to reach settlements in each of these cases by addressing the real concerns of the property owners and answering all of their questions. By educating the property owners about the acquisition process and overcoming distrust of the unfamiliar agency acquisition processes, the property owners understood the impact on their property and decided that they were, in fact, receiving fair compensation.

### In Summary

The underlying legal process for acquisitions of small permanent easements is not fundamentally different from agencies seeking to acquire 45-floor office buildings. Procedural and substantive due processes are required regardless of the property interests involved, large or small, and protections for the rights of property owners are codified and regulated. 🌟



Michael Yoshida is a shareholder in the Eminent Domain and Litigation Departments of the Los Angeles law firm, Richards, Watson & Gershon.

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