



BOTH A LEGAL AND A RIGHT OF WAY ISSUE

Part 1

BY MICHAEL F. YOSHIBA, ESQ.

Right of way and the eminent domain attorneys have, in most instances, very clearly defined roles in the eminent domain process, but the respective tasks are not always mutually exclusive. Part-takes from properties offer an example of where the intersection of the two professions meet. This is the first of a two-part article examining some of the nuanced consequences of an acquisition for public use. We will examine the unforeseen impacts to one property owner that caused some tense moments despite careful planning by the property owner and the public agency to minimize the property needed for the project. The part-take for the State of California (“State”) freeway widening project required some street frontage from private property, but that requirement also included a seemingly simple “cut and reface” of the industrial buildings.



Severance Damages and Causation

Locally, California Code of Civil Procedure §1263.420 sets forth the legal basis for claiming severance damages in California eminent domain cases. The Code states:

Damage to the remainder is the damage, if any, *caused to the remainder by either or both of the following:

- (a) The severance of the remainder from the part taken.
- (b) The construction and use of the project for which the property is taken in the manner proposed by the plaintiff whether or not the damage is caused by a portion of the project located on the part taken.

*Emphasis added.

Appraisers, acquisition agents and attorneys use this as the legal standard in their review and analysis of the measure of compensation due to property owners who are subject to part-take acquisitions. Damage to the remainder parcel is a matter of appraiser opinion, but causation can also be a legal issue reviewed by the attorneys and sometimes is decided by the court.

Property Needed for the Project

A State freeway widening project included moving a frontage road 46 feet outward. The new frontage road design also required the acquisition of a 46-foot strip of property with some building improvements from the adjoining 7-acre property improved with industrial buildings used by a manufacturing business. A majority of the 46-foot strip consisted of an irrigated landscaping greenbelt, but the 46-foot strip-taking also included 12 feet from the industrial buildings located closest to the existing frontage road. The State learned that the part-take would remove nearly all of the business’s administrative offices. The part-take of the industrial buildings left the business with two choices: move their administrative offices to another location or construct replacement offices on the remainder property. The business chose to construct replacement offices on a reconfigured site because they could not efficiently function with separate manufacturing and administrative locations.

Consequences of Part-Take — City Building Code Requirements
The existing building exterior was painted metal siding that was constructed 50 years prior. The manufacturing business had no need or desire to change the appearance of the building exterior, as it was well maintained and functioned more than adequately for their purpose. But because the State’s part-take required a building “cut and reface” and a new replacement building construction project, these acts triggered a City building code requirement calling for replacement or covering (re-skin) of the metal building exterior on all wall portions visible from the City street. The building improvements were non-conforming to municipal code but remained allowable until the business either voluntarily sought to make changes to the improvements or ten years had elapsed from the enactment of the applicable municipal

code. There were six more years remaining until the improvement exterior covering would have been required.

There were over 100,000 linear feet of the building exterior that required covering, including covering a 200-foot manufacturing tower. The State’s appraiser and attorney appropriately questioned whether these City requirements were project-caused or if the business (and possibly the City) used the State’s project as an indirect funding mechanism to improve the appearance of properties within the City. Certainly the property owner and business had no immediate need to make these changes, but the same improvements would be necessary in six short years, and the City would not agree to a deferment or waiver of the code requirements. There was no evidence that the City implemented these “beautification” ordinances with the specific motive that the State would eventually be required to reimburse or pay the property owner to make these improvements.

In addition to the new exterior building wall covering requirement, the City required installation of City approved xeriscape with a meandering (rather than straight) sidewalk, a commissioned art piece of \$50k and an upgraded fire suppression system within the buildings. All of these costs were the direct result of the State’s acquisition that caused a building “cut an reface”.

Conclusion — Part 1 of 2

In this instance, the State agreed with the property owners that the obligation of immediate reskinning of the buildings, artwork, fire suppression system and decorative landscaping and sidewalk could not be exempted, deferred, dismissed as a betterment or justifiably prorated based upon the City ordinance requiring building improvements be completed in a few years. The State’s decision to compensate for all code-required improvement costs, and to not prorate those costs based upon the six years remaining in the code enforcement deadline, avoided legal challenges over causation of damages that included speculation over the City’s future code enforcement process, waiver applications and exemption requests.

In the next article, Part 2, we will examine the other unforeseen legal impacts to the remainder property and business that occurred after the escrow closed, and the part-take purchase and sale was complete. There were disputes over property taxes assessment after the replacement building construction, a necessary lot line adjustment and an unexpected change in utility servicing. Stay tuned. 🌟



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