



TMBADQ

("THIS MAY BE A DUMB QUESTION BUT ...")

Just compensation and due process

We the People

BY MICHAEL F. YOSHIBA, ESQ.

On more than one occasion, I've received an unsolicited email from a right of way professional that begins with the phrase, "This may be a dumb question but ..." ("TMBADQ"). TMBADQ inquiries are from both new and experienced right of way agents. A common question concerns the underlying origins of the public agency requirement for payment of "just compensation" for provision of relocation assistance and loss of business goodwill payments. We'll examine these TMBADQs so that you'll have a 30,000-foot overview.

United States Constitution — Effective March 4, 1789

The Constitution of the United States became the supreme law of the United States of America beginning March 4, 1789. The U.S. Constitution created equal branches of government: Congress, Executive, and Judiciary. At the first session of Congress, the members of Congress proposed ten amendments to the U.S. Constitution to clarify the rights of the individual states, people and property within the separate states of the union. The first ten amendments to the U.S. Constitution became the "Bill of Rights." Two of the five clauses in Fifth Amendment to the U.S. Constitution relate to public agency right of way acquisitions of private property and the requirement to provide just compensation.

The Fifth Amendment states that “no person shall be deprived of life, liberty, or property without due process of law.” This requirement provides private property owners with the right to fair and equitable government proceedings prior to and during any involuntary public agency acquisition of private property. The actual process has been refined over time to require advance notices of hearings, open hearings for public review and scrutiny, identification of the specific properties being considered for public use and an opportunity for interested parties to raise and present objections to the proposed acquisition, among many other “due process of law” requirements.

In addition, the Fifth Amendment states that property shall not be taken for public use without just compensation. Just compensation has been considered in a variety of court cases for issues that include transfers of property ownership, restrictive zoning and dedication of property to public use as a condition of development. There is often great difficulty in identifying the clear circumstances where a public agency’s impact on private property triggers a requirement to pay just compensation. Nuances in determining whether the public agency’s decisions and actions have caused a taking of private property are exemplified in cases concerning overflight patterns of commercial airports, public access to the beach, noise ordinances and building restrictions.

Requirements in Right of Way Acquisition Defined by Legislative Acts of Congress

In the right of way profession, the most recognizable example of “due process” consistent with the Fifth Amendment requirements was the legislative act of Congress, 42 U.S.C. 4601 et seq. the “Uniform Act,” The Uniform Relocation Assistance and Real Property Acquisition Act (1970). The Uniform Act was passed by the U.S. federal government in 1970. It was created to ensure fair compensation and assistance for those whose property was involuntarily acquired for public use under “eminent domain” law and consistent with the Fifth Amendment. This law specifically defines the method, mode and means of how private properties may be acquired for public use and the process of determining just compensation. This became and remains the codified playbook for compliance with due process and just compensation requirements in eminent domain matters.

State Protections

In 1868, the Fourteenth Amendment to the U.S. Constitution stated, in part, “... [n]or shall any State deprive any person of life liberty or property, without due process of law,” thus expanding the protections of the due process clause of the Fifth Amendment, applying those protections thereafter to persons in the individual States as well as the federal government. It clarified that the States

were not free to disregard or avoid the federal government’s umbrella of Constitutional due process protections. Most states have separate state constitutions that mirror or closely shadow the U.S. Constitution.

States cannot provide individuals with fewer due process protections than those mandated by the U.S. Constitution, however, States can decide to expand the rights of individuals. California provided one example of an expansion of property owners constitutional rights to compensation. In 1975, following several State court cases concerning the loss of business goodwill, California Code of Civil Procedure section 1263.510 was passed into law by the State legislature, codifying the rights of business owners located on the property being taken adding a statutory right to claim loss of business goodwill. This was a clear departure from the Uniform Act’s identification of loss of business goodwill claims as ineligible. In practice and implementation of the law thereafter, when California public agencies used federal grant program monies, reimbursement requests for loss of business goodwill claims were disallowed.

Some states have expanded their application of the relocation assistance sections of Uniform Act to include increased limits for reestablishment payments and scheduled moving costs.

Epilogue

In sum, federal government property takings cases fall under the protections of the U.S. Constitution (more specifically the Fifth Amendment) and the Uniform Act. State cases reply upon the U.S. Constitution, State Constitution and any legislative acts that may redefine or expand existing protections. Note that this is not meant as a treatise on Constitutional law, the legislative process, federal and state regulations or legal advice pertaining to the myriad of court decisions interpreting each and all of these. You can certainly get deep into discussions with very learned people over the intent of the framers of the Constitution, natural law, James Madison and the Articles of Confederation. My hope is that this brief overview will simply spark your further curiosity to explore any of these subjects. And I look forward to getting more of your TMBADQs! 🍷



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