



CAUSATION – BOTH A LEGAL AND A RIGHT OF WAY ISSUE

Part 2



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Right of way agents and the eminent domain attorneys have specific roles but also overlapping responsibilities within the eminent domain process. The two professions intersect as a result of part-takes from private property for public projects. This is the second of a two-part article examining a few of the right of way and legal complexities experienced by one private property owner after a seemingly successful and final negotiated settlement for a part-take.

Requisite Upgrade and Consolidation of Electrical Service Requires “Lot Tie” Leading to Change in Title

The part-take in this case was for a State of California (“State”) freeway widening project in Los Angeles County. The project required portions of private property, from three separate but related-in-use Assessor’s parcel numbers (APNs), that combined for



total of seven acres. The acquisition area required the demolition of building improvements and relocation of the business's heavy machinery and equipment back onto the remainder property. The business constructed new improvements for office and manufacturing operations on the reconfigured remainder parcels because they could not otherwise efficiently function with separate manufacturing and administrative locations.

Prior to the State's acquisition, the business had separate electrical services for each of the three APNs. The reimagined business functionality on the remainder parcels included consolidating electrical services for the newly reconfigured office and industrial buildings. To comply with local City municipal code requirements, the business upgraded from their existing electrical systems to a single larger transformer unit. The upgraded electrical system unexpectedly triggered a utility company policy that precluded a business standalone electrical system from receiving power and then distributing it across separate Assessor parcels.

The utility provider required that the three APNs be combined with "lot tie." Lot ties between separate Assessor parcels is an acknowledgement that two or more separately numbered parcels are considered as one property for the purposes of property taxation and development. And although the business owned all three APNs, the APNs were listed under similar but different ownership names. The lot-tie process required a name change into a single record ownership name.

Automatic Property Tax Reassessment from Change in Title and Construction of New Improvements

State law requires the property tax assessor to reappraise property upon change in ownership or completion of new construction. Both automatic triggers for property tax reassessment occurred in this eminent domain case. The property was subjected to a supplemental assessment reflecting an appraisal of the difference between the pre-taking old value and the post-taking new value. While most changes in ownership are those involving a voluntary buyer and seller, this was an ownership change prompted by an eminent domain taking requiring construction of replacement improvements on the remainder property. Notably, the replacement of improvements on the remainder parcels were nearly identical in square footage with the precondemnation building improvement and not a betterment.

Appeal of Reassessment

In 1978, California voters passed Proposition 13, which substantially reduced property tax rates. As a result, the maximum levy on property in California could not exceed 1% of a property's assessed value (plus bonded indebtedness and direct assessment taxes). Increases in assessed value are limited to 2% annually. Only four events can cause a reassessment: (1) A

change in ownership; (2) Completed new construction; (3) New construction partially completed on the lien date; or (4) A decline in value. Arguably, two of these four causes occurred in this transaction and thus prompted a review for reassessment. Appraisals for reassessment because of "change in ownership" are performed by the Tax Assessor's office when a publicly recorded transfer occurs. In this case, the Tax Assessor reviewed the State's Final Order of Condemnation, determined that a change of ownership had occurred and a reappraisal was required under State law. The reappraisal valuation date was the State's date of possession of the part-take.

Also, the Tax Assessor learned that the property owner constructed new building improvements on the remainder property costing in excess of \$3M. Copies of city building permits were sent to the Assessor by the City, confirming the new construction. The new buildings, additions and other improvements (even though only functional replacements for area taken by eminent domain) constituted the second basis for property tax reassessment.

The preexisting assessed value was adjusted following the appraisal, reflecting the new building and improvement construction. The Tax Assessor sent the property owner supplemental tax bills for years 2011 through 2015 based upon newly appraised property values. The amounts were almost double the prior assessed values. The property owner filed an appeal but in the interim had to pay the supplemental assessments while the appeal was pending.

Success After Stress

After responding to several telephone calls and requests for additional written explanation from the Tax Assessor's office, the Tax Assessor reversed their reassessment decision. They agreed that there wasn't a change to the property ownership name and that the construction of new improvements were exempt from reassessment because of an acquisition by use of eminent domain. The taxes were readjusted to pre-2011 levels, and a refund was processed. The entire reassessment and appeal process lasted eight months. These right of way and legal issues arose almost five years after the original settlement agreement was signed by parties and more than three years after the Final Order of Condemnation was recorded. Unavoidable legal complexities and unexpected right of way consequences. ⚡



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