

Role of Land Use Planners in the Eminent Domain Process, by Wayne Rasmussen

During recent years land use planning has become an increasingly complex element of the eminent domain process. The expanding role of general plans, zoning standards, site planning, environmental conditions, local politics, etc. have combined to complicate the land valuation process. As a result, a greater burden has been placed upon real property appraisers, particularly in the determination of highest and best use.

Highest and best use is commonly understood to be the reasonably probable and legal use of vacant land or an improved property, which is: (1) physically possible; (2) legally permissible; (3) financially feasible; and (4) that results in the highest value. The terms “physically possible” and “legally permissible” closely relate to land use planning and sometimes require planning input to achieve a sufficient basis for the determination of highest and best use. A planning consultant may be called upon to collaborate in making such determinations and provide expert opinions. They may also be useful in cases where a land valuation witness, that is otherwise qualified to provide an opinion about market value, may not be qualified to provide an opinion regarding the reasonable probability of a zoning change, developmental feasibility or issues pertaining to land dedication.



In condemnation actions, planners provide consulting and expert witness services to either the condemning agency or to the party whose land is the subject of the condemnation. These services can be used to both create the foundation for determining highest and best use and to critique the basis of an opposing appraiser’s determination.

The planner’s role in the condemnation process generally begins with a site analysis, review of pertinent planning documents, and interviews with local governmental officials. This is followed by consultation with the appraiser/legal team to provide planning input regarding the “physically possible” and “legally permissible” uses of a property. In cases where a legal action has been filed, the planner’s role may be expanded to include more detailed land use investigation leading to expert opinions, deposition and court testimony, if necessary.

Some cases require more detailed analysis through the preparation and use of conceptual site plans or diagrams to determine the feasibility of particular uses. These studies can also be used to demonstrate how physical constraints to development could be overcome in order to realize the highest and best use. They may further be used to illustrate the “before” and “after” conditions in matters relating to severance damages.

Planners are also commonly called upon to contribute to the analysis of assemblage situations since the potential to assemble parcels may affect the highest and best use. Similarly, use of the “Porterville Ruling” may be applicable to certain right-of-way acquisitions and thus require a planning expert to help evaluate the application of this rule.

Planners can provide valuable assistance throughout the eminent domain process by helping to analyze planning matters and forming opinions relating to highest and best use. The process can benefit from this assistance by generating reliable and supportable land use determinations for complex pieces of land.

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