

Memorandum 2000-56**Early Disclosure of Valuation Data and
Resolution of Issues in Eminent Domain**

At the June meeting the Commission directed the staff to make a number of revisions in the tentative recommendation on early disclosure of valuation data and resolution of issues in eminent domain, and then circulate it for comment. One of the revisions would add a requirement that the condemnor provide to the property owner a copy of its precondemnation appraisal prepared pursuant to the relocation assistance act. The appraisal could not be used at trial as an admission of the condemnor, but could be used for purposes of impeaching a trial witness who had prepared the appraisal.

In the course of implementing this policy decision, it has become apparent to the staff that there are a number of significant related issues the Commission must also address.

Proposed Amendments to Gov't Code § 7267.2 (Precondemnation Offer)

The Commission is proposing two amendments to the provision of the relocation assistance act that requires a public agency to make a precondemnation offer (Gov't Code § 7267.2).

One proposal would add detail to the required written statement and summary of the basis for the amount the public agency offers the property owner as just compensation. This is elaborated in revised subdivision (b), below.

The second proposal would require the public agency to provide a copy of the appraisal to the property owner and limit its use in the eminent domain proceeding. This is set out in proposed subdivision (c), below.

Gov't Code § 7267.2 (amended). Precondemnation offer

7267.2. (a) Prior to adopting a resolution of necessity pursuant to Section 1245.230 and initiating negotiations for the acquisition of real property, the public entity shall establish an amount which it believes to be just compensation therefor, and shall make an offer to the owner or owners of record to acquire the property for the full amount so established, unless the owner cannot be located with reasonable diligence. The offer may be conditioned upon the

legislative body's ratification of the offer by execution of a contract of acquisition or adoption of a resolution of necessity or both. In no event shall the amount be less than the public entity's approved appraisal of the fair market value of the property. Any decrease or increase in the fair market value of real property to be acquired prior to the date of valuation caused by the public improvement for which the property is acquired, or by the likelihood that the property would be acquired for the improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant, shall be disregarded in determining the compensation for the property. The

(b) The public entity shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation. Where the property involved is owner-occupied residential property and contains no more than four residential units, the homeowner shall, upon request, be allowed to review a copy of the appraisal upon which the offer is based. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated. The summary shall contain detail sufficient to indicate clearly the basis for the amount established as just compensation, including but not limited to all of the following information:

(1) The highest and best use on which the appraisal of the fair market value of the property is based.

(2) If the amount established as just compensation is based on market data, the principal transactions supporting that amount.

(3) If the amount established as just compensation includes compensation for damages to remaining real property, the calculations and a narrative explanation supporting the compensation, including any offsetting benefits.

(b) (c) The public entity shall, on request, provide a copy of the appraisal on which the offer is based to the owner of real property to be acquired. If the property is acquired by eminent domain, in the trial of the issue of compensation:

(1) The appraisal may not be given in evidence or referred to, nor shall the appraisal be considered to be an admission of the public entity.

(2) The appraisal may be used for impeachment of a witness who prepared the appraisal.

(d) Notwithstanding subdivision (a), a public entity may make an offer to the owner or owners of record to acquire real property for less than an amount which it believes to be just compensation therefor if (1) the real property is offered for sale by the owner at a specified price less than the amount the public entity believes to be just compensation therefor, (2) the public entity offers a price which

is equal to the specified price for which the property is being offered by the landowner, and (3) no federal funds are involved in the acquisition, construction, or project development.

(e) (e) As used in subdivision (b) (d), “offered for sale” means any of the following:

(1) Directly offered by the landowner to the public entity for a specified price in advance of negotiations by the public entity.

(2) Offered for sale to the general public at an advertised or published, specified price set no more than six months prior to and still available at the time the public entity initiates contact with the landowner regarding the public entity’s possible acquisition of the property.

Comment. Section 7267.2 is amended to prescribe the contents of the summary of the amount established as just compensation. The requirement in subdivision (b)(3) that the summary include detail relating to damages to the remainder applies as well in a situation where no compensation for damages to the remainder is provided due to a complete offset by benefits to the remainder.

Section 7267.2 is also amended to require a copy of the appraisal to be provided to the property owner, and to qualify its use in subsequent eminent domain litigation. This supersedes the provision of former law allowing a homeowner to review a copy of the appraisal. New subdivision (c) is not limited to homeowners, and requires that a copy of the appraisal be actually provided to the property owner, not merely be subject to inspection.

It should be noted that the appraisal referred to in this section is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information. Section 7260.

Duplication of Information and Effort

Now that we are requiring that the appraisal itself be provided to the property owner, does it make any sense to continue to require a written statement and detailed summary of it? It could be argued that the written statement and summary may actually be more useful to a property owner, particularly a lay owner who is unrepresented by counsel. On the other hand, why put the public agency to the extra work of preparing a statement and summary, and create potential legal issues about the accuracy and adequacy of a particular statement and summary, when the appraisal itself will be preferred by and be more useful to the property owner in most cases?

In attempting to balance these considerations, the staff thinks that the better approach is to replace the statement and summary with the appraisal, rather than supplement it with the appraisal. We see no real benefit to putting the public agency through the exercise of preparing the summary and appraisal — the property owner receives the original document and if the property owner wants a statement and summary of it, let the property owner bear that burden.

There is another reason that influences the staff in this direction. If the agency provides both the appraisal, and a statement and summary of the appraisal, awkward questions arise about disparate treatment of these various documents at trial. This issue is discussed below.

Limitations on Use of Appraisal at Trial

Under the Commission's proposal, use of the pre-condemnation appraisal at trial would be limited:

(c) The public entity shall, on request, provide a copy of the appraisal on which the offer is based to the owner of real property to be acquired. If the property is acquired by eminent domain, in the trial of the issue of compensation:

(1) The appraisal may not be given in evidence or referred to, nor shall the appraisal be considered to be an admission of the public entity.

(2) The appraisal may be used for impeachment of a witness who prepared the appraisal.

Probably there should be added to this provision a limitation on the property owner calling as a witness the appraiser who prepared the appraisal. Absent such a provision, the property owner could simply call as a witness the appraiser used by the public agency, and then bring in the appraisal in the guise of impeachment. Such a provision would look something like this:

In the trial of the issue of compensation:

...

(3) On objection of the public agency, the person who prepared the appraisal may not be called at the trial by the property owner to give an opinion as to compensation.

(There is a similar provision in the statute protecting the prejudgment deposit appraisal. See Code Civ. Proc. § 1255.060(c).)

Use of Written Statement and Summary at Trial

Under existing law, the availability of the written statement and summary as an admission or for impeachment purposes is not clear. The point may be moot to some extent, since we understand that the same information is ordinarily used later on as a basis for the prejudgment deposit, and it may thus be protected from use at trial under the prejudgment deposit statute. (The staff questions the legal adequacy of this device, but apparently the parties accept it.)

The prejudgment deposit statute provides:

Code Civ. Proc. § 1255.060. Limitations on use of evidence in connection with deposit

1255.060. (a) The amount deposited or withdrawn pursuant to this chapter shall not be given in evidence or referred to in the trial of the issue of compensation.

(b) In the trial of the issue of compensation, a witness may not be impeached by reference to any appraisal report, written statement and summary of an appraisal, or other statements made in connection with a deposit or withdrawal pursuant to this chapter, nor shall such a report or statement and summary be considered to be an admission of any party.

(c) Upon objection of the party at whose request an appraisal report, written statement and summary of the appraisal, or other statement was made in connection with a deposit or withdrawal pursuant to this chapter, the person who made such report or statement and summary or other statement may not be called at the trial on the issue of compensation by any other party to give an opinion as to compensation.

If we give the appraisal express protection in the relocation assistance statute, but do not give the public agency's offer or written statement and summary any protection, we think a strong argument can be made that the Legislature does not intend to protect these items.

If we are going to require the public agency to continue to provide a written statement and summary as well as a copy of the appraisal, the staff believes we need to protect all these documents to the same extent. Thus we would revise proposed Government Code Section 7267.2(c) as follows:

(c) The public entity shall, on request, provide a copy of the appraisal on which the offer is based to the owner of real property to be acquired. If the property is acquired by eminent domain, in the trial of the issue of compensation:

(1) The appraisal, written statement and summary, and offer made pursuant to this section may not be given in evidence or referred to, nor shall the appraisal, written statement and summary, or offer be considered to be an admission of the public entity.

(2) The appraisal, written statement and summary, and offer made pursuant to this section may be used for impeachment of a witness who prepared the appraisal.

(3) On objection of the public agency, the person who prepared the appraisal, written statement and summary, or offer pursuant to this section may not be called at the trial by the property owner to give an opinion as to compensation.

Of course, this problem goes away if we discontinue the written statement and summary requirement. However, we still should protect the public agency's offer on the same terms we protect the appraisal.

Respectfully submitted,

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