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Access Management Projects Can Significantly Impact Property Values

by John Kuhl

An increasingly common use of the government's power of eminent domain is for what the government calls "access management" in roadway projects. To a roadway engineer, access management means the control of the location and operation of driveways, medians and intersections. To a property owner, access management can often have devastating effects on a business reliant upon frontage, visibility and access. Indeed, the very businesses that attract traffic to an area "in need of access management" are often those businesses most severely impacted by the government's project with the government picking winners and losers along a roadway depending on the access provided following construction.

While the stated purpose of access management – to reduce congestion and traffic accidents – is well meaning, roadway designers often do not adequately balance the needs of traffic safety with the needs of property owners for reasonable access to their property. In many instances, design decisions are not based upon actual traffic or crash data, but instead roadway designers are making access decisions based solely on design manuals and standards distributed by agencies like the Ohio Department of Transportation. In addition, new access controls imposed by roadway designers usually do not consider the highest and best use of property along the roadway. While reduced access may be suitable for an existing low intensity commercial use, a property may have a highest and best use of something different, like a bank branch or fast food restaurant, which requires good access and circulation. Changes in access can permanently affect the ability of a landowner to develop her property to its highest and best use.

In addition to the elimination of driveways, access management projects often involve the installation of medians and the conversion of existing full movement driveways to right-in/right-out

drives. These changes can make it difficult if not impossible for drivers to enter or leave a property when traveling in certain directions. Other common access control techniques involve the creation of access lanes between commercial properties in effect creating a shared driveway to a secondary roadway for businesses that formerly enjoyed direct access to the main thoroughfare.

Access management projects create a myriad of issues in an eminent domain case and it is important to involve an experienced eminent domain attorney as early as possible in the process, ideally long before an eminent domain lawsuit is filed. While design decisions are based on state and federal design standards, anticipated right-of-way acquisition costs are always factored into project design. For most projects, the state or local project owner will hold public meetings to discuss project alternatives before right-of-way plans are finalized. During this planning phase, an eminent domain attorney can help property owners work with project designers to try to reduce the impact of access management projects on their client's property. In some cases, the prospect of high right-of-way acquisition costs can influence design.

After right-of-way and construction plans have been finalized, it is highly unlikely that the condemning authority will change the plans in a material way despite what right-of-way agents may tell affected landowners. Property owners need to be very wary of dealing with right-of way agents (usually private companies on government contract). Too often our clients tell us stories about promises made by these eager third party consultants in an attempt to quickly secure right-of-way for projects. However, once the land acquisition phase of a project has been authorized, the only thing left to discuss with the condemning authority is compensation for the land taken and for the reduction in value to the property that is not taken - referred to as damages to residue.

Unfortunately, condemning authorities and the appraisers who work for them rarely acknowledge that access management

projects damage the value of the remaining property. And there is no shortage of appraisers who receive nearly all of their work from condemning authorities. In some instances, the government will argue that the change in access – even if it does reduce functionality and value – is not compensable as a matter of law. For example, when a median is constructed within the existing right-of-way, the condemnor will argue that this is a legitimate exercise of rights already owned by the government and, therefore, not a compensable change. Similarly, when access management projects make it more difficult to travel to a site, e.g., requiring a more circuitous route to reach a property, the government will argue that this change is not compensable.

Perhaps no issue in eminent domain law creates more confusion among the Courts and non-eminent domain practitioners than access. However, whether access changes are compensable or not under the law needs to be assessed on a case by case basis. What may be deemed non-compensable in one case may be absolutely compensable in another depending on how the take and project affect a particular property.

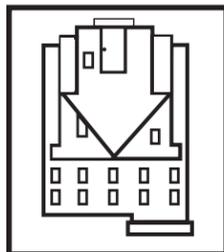
Ultimately, the government has wide discretion on roadway design and on the amount of property it seeks to acquire in connection with access management projects. The government is only limited by its constitutional obligation to pay just compensation for the land it takes. Meanwhile, a landowner has only one opportunity to obtain compensation for an eminent domain project, and that opportunity often comes months or years before the project will be constructed. An experienced eminent domain attorney, using unbiased appraisers familiar with eminent domain projects, is critical to maximizing a landowner's recovery.

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Notable Quotables

A man who views the world the same at fifty as he did at twenty has wasted thirty years of his life.

- Muhammad Ali

Laziness may appear attractive, but work gives satisfaction.

- Anne Frank

Many of life's failures are people who did not realize how close they were to success when they gave up.

- Thomas A. Edison

You know you are getting old when the candles cost more than the cake.

- Bob Hope

By three methods we may learn wisdom: First, by reflection, which is noblest; Second, by imitation, which is easiest; and Third, by experience, which is the bitterest.

- Confucius

Delay is preferable to error.

- Thomas Jefferson

Supreme Court rules for property rights in water disputes

Court rules against Army Corps of Engineers, opening potential for those accused of violating Clean Water Act to defense.

Published on July 6, 2016

by Willie Voght, *farmprogress.com*

There's plenty of regulatory lunacy about with administrative agencies charged with all manner of power gallivanting about the countryside in search of something to control, manage, whatever. None is so egregious as the Clean Water Act that empowers the EPA and the Army Corps of Engineers to make determinations on "navigable" waters and control them as "waters of the United States."

In our July issue, Melissa Hemken offers some background on Waters of the United States - WOTUS as most of us call it - and concerns about new rules that could expand the reach of EPA and the Army Corps of Engineers.

Recently, the U.S. Supreme Court issued a unanimous opinion on a case against the Army Corps of Engineers deciding in favor of the defendants. Essentially when the Army Corps makes a determination that water is classed as WOTUS, you don't have a lot of rights to fight the ruling. In fact the federal government had maintained that judicial review was not an option for landowners under the Clean Water Act.

So a regulatory body can claim something and you have little room to fight? Chief Justice Roberts rejected the federal government's position noting that judicial review of these findings should be available before EPA "drops the hammer" on a group. Note that if you're found in violation of the Clean Water Act the fine is \$37,500 for each day you're held in violation of the Act.

Of interest is the fact that all eight justices concurred with Roberts, but three - Justice Anthony Kennedy, joined by Clarence Thomas and Samuel Alito, wrote separately to criticize what they called the

"ominous reach" of the Clean Water Act itself. One legal blogger notes that this criticism may invite future litigants to file more property rights cases against the Clean Water Act.

Zippy Duvall, president, American Farm Bureau Federation, issued a statement noting that the court decision "removes a huge roadblock that has prevented landowners from obtaining relief from the courts when the Corps illegally claims their land is federally regulated water. Now, farmers and ranchers can have their day in court when the government tells them they cannot plow a field or improve a ditch without a federal permit."

Rise of the regulators

Longer ago than I care to remember, I was taking a business law class when the professor observed that within a decade a majority of rules that governed our lives would be created by administrative bodies, not people we elected to office.

Looks like the farmers and ranchers of the West know that more than anyone whether you're talking WOTUS, the Sage Grouse or Bison management in Yellowstone. The challenge with that? No one in EPA, the Army Corp of Engineers or any other regulatory body has to answer to voters.

Independence from politics is only a good thing when there can be a check and balance in the system. Regulatory agencies in this country are running unchecked developing rules that govern even the smallest part of our lives. It's a challenge we'll have to deal with but at least some folks in the Supreme Court are paying attention.

That helps.

Foreclosures rising in Ohio, report says

Columbus Dispatch
July, 14, 2016

Despite a continued decline in U.S. foreclosure activity, a report released this morning suggests that foreclosures are heading up in central Ohio and statewide.

The report, from the real-estate information service RealtyTrac, found that foreclosure filings nationally during the first half of the year fell 11 percent from the first half of last year. June foreclosures were down 19 percent from a year ago to the lowest level since July 2006.

However, in central Ohio, foreclosure activity rose 10 percent this June over a year earlier. Most of that increase is due to a 22 percent jump in new foreclosure lawsuits, the first legal step in the foreclosure process.

Ohio overall was one of a handful of states that saw a rise in new foreclosures during the first six months. Across the state, foreclosure starts rose 10 percent compared with the first half of last year.

Daren Blomquist, senior vice president at RealtyTrac, suggested that states, such as Ohio, which require judicial approval of foreclosures, are still winding their way through the remnants of the housing crisis.



Forbes: Cowboys first team worth \$4 billion

NEW YORK (AP) — The Dallas Cowboys are the first sports franchise worth \$4 billion, according to Forbes.

In its annual rankings, Forbes placed the Cowboys ahead of Real Madrid and Barcelona after the NFL team had a 25 percent increase in value.

Champions League winner Real dropped to the second spot at \$3.65 billion, followed by its archrival Barcelona at 3.55 billion.

The rest of the top 10 has the New York Yankees (\$3.4 billion) in fourth place, followed by Manchester United (\$3.32

billion), the New England Patriots (\$3.2 billion), New York Knicks (\$3.0 billion), Washington Redskins (\$2.8 billion), New York Giants (\$2.8 billion), and tied for 10th, the Los Angeles Lakers and San Francisco 49ers (\$2.7 billion).

The average current value of the 50 most valuable teams is \$2.2 billion, the highest to date, a 25 percent increase over last year. NFL teams account for more than half the list with 27.

"Blockbuster TV contracts are fueling unprecedented increases in sports team values around the globe as the average

value of a top 50 franchise has doubled over the past four years," says Forbes senior editor Kurt Badenhausen. "The NFL is still king on TV with contracts worth nearly \$7 billion annually from its media partners."

Eight European soccer teams and eight NBA franchises made the list, and there were seven Major League Baseball clubs in the top 50.



Artificial lights can keep houseplants growing through the dark days of winter

by Lee Reich

Short days put sunlight at a premium. Even houseplants feel it.

Mostly, they just sit and wait for better growing conditions. But for indoor gardeners who want plants to keep growing and even flowering this time of year, artificial light is the answer.

Visible light is only a small slice of the electromagnetic wave spectrum, which runs from the very short gamma and X-rays (with wavelengths measured in millionths of a meter) to the long radio waves (with wavelengths measured in kilometres). Plants utilize and respond to that part of the spectrum that is visible to us (390 to 780 millionths of a meter), except for a portion in the middle. That portion, which is green, is reflected rather than absorbed. That's why grass is green. Plants can't "see" it; we can.

MAKE LIGHT FOR PLANTS

Fluorescent light is rich in blue and the shorter wavelengths of red light, important for healthy foliage; incandescent light is rich in "far-red" - the longer wavelengths of red light - and is important for flowering.

Without belaboring all the pros and cons of different lights, let's just say that plants can be grown to perfection indoors with a combination of run-of-the-mill, cool-white, fluorescent bulbs and screw-in incandescent bulbs. A good balance

of light is achieved with one 15-watt incandescent bulb for every 40-watt fluorescent bulb.

Plant growth is almost as good if you use fluorescent bulbs alone, especially if only foliage houseplants are grown. But incandescent bulbs, besides affecting flowering, cast a light that gives plants a warmer, more pleasant appearance.

Still in the experimental stage, but with a lot of potential for offering specific wavelengths and low energy use, are LED lights.

Some 2-by-4s, light fixtures and electrical equipment are all you need to build a stepped-down version of the phytotrons — research greenhouses — used by botanists. These phytotrons are plant growth chambers within which light, temperature, and humidity can be carefully controlled and studied. You almost need sunglasses to look into or enter phytotrons, where every inch of reflective wall and ceiling is covered with fluorescent and incandescent lights. Or, in some newer installations, LEDs.

In a home, a small, functional phytotron need take up only a few square feet in the corner of a basement, spare room or even a closet. Use your phytotron as a recuperation area for light-starved plants, for bringing houseplants into flower before moving them for display, and for growing seedlings. With attention to

design and craftsmanship, you could build a permanently displayed habitat of healthy plants.

BUT IT'S NOT SUNLIGHT

How much light is there under one standard two-tube, 4-foot fluorescent light fixture?

The unit of measure for light recalls the days before electricity: one foot-candle (abbreviated fc) is the amount of light a foot away from a candle. On a bright, sunny day outdoors, plants are showered with 10,000 fc. On a cloudy winter day, 500 fc. At 6 inches below the middle of the fluorescent fixture, 900 fc.

The illumination drops by about half for each additional 6 inches distance from the tubes. Dust and age further diminish the light.

Plants vary in their light needs. Cast-iron plant, baby's tears and other foliage plants grow happily with less than 250 fc. Real flowers, so welcome this time of year, can be coaxed from flowering maple (this is Abutilon species, no relation to the tree maples outside), crown-of-thorns, African violet, and oxalis with 600 fc. Put on your sunglasses and crank the intensity up to 1,400 fc for flowers on tuberous begonias, and Christmas cherries and peppers.

Artificial lights will make your plants feel that you have taken them on a winter trip to the Caribbean.