



MEMORANDUM

Date: June 16, 2017

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

A handwritten signature in black ink, appearing to be "C.H. Huckelberry", is written over the typed name and title.

Re: **Board of Supervisors Agenda Items Involving Condemnations**

At recent Board of Supervisors meetings, Supervisor Miller questioned the practice used for condemnation resolutions. A primary concern was that the resolution map did not identify what the County intended to acquire. While the map depicts entire parcels, the resolution only grants authority to "acquire real property interests for the above described Project..." In other words, the resolution only authorizes condemnation, where necessary, for the portion of the property needed for a County project. The resolution does not constitute a condemnation action. In addition, the resolution is not recorded, and it does not encumber the property.

Board approval of the resolution simply facilitates the process for acquisition of the property rights. In most cases, we are able negotiate an acceptable purchase price for the acquisition. All negotiations involve the County obtaining an appraisal of the property and making an offer based on the appraised value. If agreement is not reached on the purchase price, the resolution gives the County Attorney authority to file a condemnation action. Condemnation actions are a last resort. Of the 340 acquisitions currently in queue, there are only two pending condemnation proceedings.

A key factor in determining when to file a condemnation action is the ability to keep the project on schedule. An "Order of Immediate Possession" is generally received within a short period after filing, which allows the County (or Regional Flood Control District) to use the property for the project while continuing negotiations with the property owner on the purchase price. Most cases involving a condemnation action are resolved through settlement rather than a trial. This is a common outcome, since both sides recognize there are risks of going to trial and that a compromise is generally in the interests of all parties. The Board of Supervisors must approve these settlements.

Obtaining a condemnation resolution prior to commencing negotiations benefits both the property owner and the County by establishing that the property interest will be acquired by the County, and the only question is how much will be paid to the property owner. Putting this framework in place avoids delays to both parties and is fair to both sides. In addition, there are potential tax benefits available to a property owner that sells property "in lieu of

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condemnation.” With a condemnation resolution in place, language is inserted into the purchase agreement stating that acquisition was done “in lieu of condemnation,” which may trigger the benefit. Without the resolution, the property owner may lose the potential tax benefits.

In summary, the current practice for condemnation resolutions is practical and legal, and it rarely results in condemnation. Through this practice, both parties understand the framework for acquisition negotiations, project delays are avoided, and the property owner may benefit from certain tax benefits. This process is also the same as that utilized by the City of Tucson.

I recommend that no change be made in the current practice regarding condemnations.

CHH/mjk

c: Carmine DeBonis, Jr., Deputy County Administrator for Public Works
Nanette Slusser, Assistant County Administrator for Public Works
Neil Konigsberg, Manager, Real Property Services