

CDBG Acquisition and Relocation

Case Study #2

“What To Do When You Can’t Agree”

Despite everyone’s best efforts, the Office of Community Development (OCD) of Cortes County cannot come to agreement on an amount for acquisition of an owner’s property.

As an entitlement community, Cortes County receives an annual grant under the Community Development Block Grant (CDBG) program. This year, as part of some infrastructure improvements, Cortes County found that it needed to purchase a home and surrounding land. County engineers had looked at several different options for the improvements, but could find no alternative to acquiring the property.

Having used the acquisition and relocation procedures previously, the OCD staff was familiar with the process and the requirements. But, the staff also knew that the URA regulations had changed recently, so they went on-line to <http://www.hud.gov/relocation/> to ensure that they had the most up-to-date information on acquisition and relocation as well as current forms and sample letters. They also contacted the HUD Regional Relocation Specialist for their area – contact information was found on <http://www.hud.gov/relocation/> -- to review the changes and discuss their plans. OCD determined that acquisition of the property would be considered “involuntary”, since this specific piece of land was needed for the project. No other land was suitable for the project.

OCD met with the owner very early in the process so he would hear of the OCD plans from staff, rather than read about it in the paper or hear rumors from other neighbors. They explained how the acquisition and relocation processes worked and his rights under each process. OCD determined that the owner would be displaced as a result of the proposed acquisition and therefore eligible for URA relocation assistance and payments. Although nervous about whether he would “be made whole,” the owner was very cooperative, asked good questions, and appeared to have a good understanding of the process.

When it came time for the appraisal, the owner was an eager participant. He had made many improvements to his home over the years and was proud of his work. He wanted to ensure that the appraiser saw the fine details and took into account the upgrades.

Following the review appraiser’s certification of the appraisal, an authorized OCD official established the amount they believed to be just compensation for the acquisition. The OCD official knew the estimate could be no less than the approved fair market value of the property and then proceeded to prepare a written purchase offer for the full amount, along with a

“summary statement” OCD met with the owner to present the offer and the summary statement and to answer any questions. The owner indicated that he wanted to consult an attorney before accepting the offer. At that time, it appeared that OCD and the owner would probably agree on the original offer, with one relatively minor change.

A week later, OCD received a letter from the owner’s attorney accusing OCD of violating the owner’s rights and stating that there was no basis for the compensation amount being offered for his property. The letter did not contain any specific information about what rights had been violated or what was incorrect about the compensation being offered.

OCD immediately contacted the attorney to arrange a meeting to walk through the regulatory processes required for acquisition and relocation and how OCD had complied with those processes. The attorney talked about how the County was taking advantage of the owner. OCD staff indicated that if the owner was not satisfied with the offer, he was entitled to present evidence as to the amount he believed was fair market value, or make suggestions for changing the terms and conditions of the offer. After the meeting, OCD sent a follow-up letter to the attorney and the owner summarizing the meeting and indicating that if the owner wanted OCD to modify its offer, he would have to provide additional information.

The attorney provided a letter stating that he believed the value of the property was higher than the appraisal. He said that the owner should be compensated for his inconvenience as well as his attorney’s fees. The letter implied that the County had “deep pockets” and could offer more for the property with no justification.

OCD staff went back to the County engineers to find out again, if there was an alternate method of making the infrastructure improvements without involving the owner’s property. Staff knew that there was potential for significant delay in reaching agreement with the owner and did not want to use eminent domain proceedings to obtain the property. Unfortunately, County engineers could find no other way of moving the project forward without the owner’s land.

What would you do? When would you invoke the use of eminent domain or condemnation proceedings? What might happen in court? What further appeal process is available?

Answer Key – Acquisition and Relocation

Case Study #2: What to Do When You Can't Agree

After several additional attempts at negotiating an agreement with the owner and his attorney, including a proposed administrative settlement, OCD staff and the County Attorney determined that eminent domain proceedings were going to have to be used to obtain the property. OCD staff ensured that the HUD Field Office staff was kept informed of the events and how the delays could impact OCD's ability to meet its obligation and expenditure requirements for the CDBG grant. Alternate plans were drafted to reschedule other projects if this project became significantly delayed, to ensure the obligation and expenditure deadlines were met.

The eminent domain or condemnation proceeding works in different ways from state to state, so the OCD staff met with the County Attorney to understand their local requirements. The County Attorney provided materials to explain the process to the owner and his attorney.

Once in court, OCD staff provided information on the process that was followed, using the various letters that had been sent to the owner as evidence that the regulatory process was used. The appraiser was called as a witness, and he reviewed all of the details about the appraisal, including verification of what land and property was specifically included in the appraisal. He also provided the court with information on the comparable properties used in the appraisal.

The owner's attorney indicated that he believed the property should have a higher value and asked one person to testify. The individual was not a licensed appraiser but "knew something about real estate." There was no factual information presented that would have allowed either the owner or OCD to recalculate the offer. No request to modify any of the terms of the contract was presented, except that the attorney requested that his fees be paid by OCD.

The judge issued his ruling quickly. The ruling indicated that, since owner had presented no additional information regarding the value of the property and had not requested changes in the terms of the original offer, the original just compensation offer would stand. In addition, the court denied the request for OCD to pay the attorney's fees.

OCD hoped that this would end the case and waited the appropriate period of time for the owner to file an appeal with the appellate court before moving forward with enforcement of the court order. Of course, if the court had ruled against OCD, the agency could have filed an appeal as well. No appeal was filed and before long, OCD was back on track with the project, assisting the owner with the purchase of his replacement home and the relocation process.