



Top 10 Considerations When Retaining an Appraiser for Eminent Domain

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When a public agency is acquiring private property for a public project, typically the key issue in dispute is how much the agency should pay -- what is “just compensation”? Determining the property’s value and any damages from the acquisition or public project is usually based on appraisals prepared for the public agency and property owner. A recent article written by Lauren Alexander, on behalf of the Owners’ Counsel of America (a network of experienced eminent domain attorneys dedicated to defending the rights of private property owners across the US), highlights the top 10 questions a property owner should ask of an appraiser before he or she is retained. I thought the list of questions was quite well done, and actually applies equally for both public agencies and property owners.

To summarize the article, the questions can be broken down into the following:

1. **Does the appraiser have sufficient experience doing eminent domain appraisals?** Eminent domain laws and valuation approaches are unique and much different than a standard real estate appraisal, and a failure to follow certain rules can result in the appraiser being excluded from being able to testify. So it is critical to find an appraiser with sufficient experience in eminent domain litigation.
2. **Is the appraiser qualified?** The appraiser should have sufficient experience appraising the type of property at issue (retail, industrial, vacant land, residential subdivision, etc.), along with experience in the geographic area and an understanding of assessing project impacts (such as loss of parking, impairment of access, view impacts, etc.).
3. **Is the appraiser well-suited for the assignment?** Every valuation assignment is unique, and some are much more complex than others; you should consider what are the key issues in the assignment (is it heavily reliant on market research or investigative skills, or are there other creative approaches that should be applied), and whether the appraiser has the appropriate skill-set.
4. **Is the appraiser comfortable as an expert witness?** In many eminent domain litigation matters, preparing a well-reasoned appraisal is only part of the battle; just as important is whether the appraiser is comfortable as an expert witness, can withstand intense cross-examination, is relatable and likeable by a jury.

5. **Are there any credibility issues?** Consider whether the appraiser has any issues related to his or her credibility, impartiality, or independence (has the appraiser had an opinion thrown out of court before, has the appraiser only done work for one side or the other, has the appraiser done a substantial amount of work for the client, etc.).
6. **Does the appraiser have sufficient time available?** Eminent domain cases typically involve specific deadlines to exchange expert reports, complete depositions, and prepare for trial; ensure the appraiser has sufficient time available to meet the needs and deadlines.
7. **Is the appraiser interested and committed?** Finding an appraiser that is interested in the valuation issues and a strong commitment to getting the valuation right will help in producing a strong and supportable appraisal.
8. **Can the appraiser work as part of a team?** Many valuation assignments will involve other experts in addition to the appraiser, such as an entitlement expert, a traffic or engineering expert, a goodwill appraiser, or an FF&E appraiser; the real estate appraiser should have experience with and be comfortable interacting with other experts at arriving at a final valuation conclusion.
9. **How much will the appraiser charge?** Appraisal costs vary widely depending on the appraiser, the assignment, and the scope of work; costs will be even more expensive if the matter goes to trial. You should understand the costs up front so there are no surprises, but as with many professions, you get what you pay for so don't let cost be the final determining factor.
10. **How well do you or your attorney know the appraiser?** It is extremely helpful to work with an appraiser that you or your attorney have worked with before, as there will be a level of comfort in knowing if the appraiser meets deadlines, is appropriately qualified, sticks to a budget, prepares supportable appraisals, and testifies well in deposition or trial.

Appraisers can play a crucial role in any condemnation proceeding, so property owners and public agencies should strongly weigh who is best suited for the assignment. Finding the right appraiser who prepares a reputable valuation report and testifies well can be the difference-maker in a case.