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June 27, 2008
Volume 1 Issue 4
(208)342-3658



IDAHO 16 PROJECT

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ITD TO PROPOSE CHANGES IN EMINENT DOMAIN LAW THAT WILL AFFECT YOU

In its meeting on May 22, 2008 the Idaho Transportation Board met with Right of Way manager Bill Smith, Deputy Attorney General Scot Campbell, and District 2 Right of Way Supervisor Tim Long discussed how to change Idaho's existing law to reduce the amount of money the State of Idaho is required to pay for condemning private property. At the end of the session the Board instructed its staff to proceed with the legislative proposals.

Idaho law currently requires the condemning authority to pay interest to the property owner on all sums unpaid from the date of the Summons until the Final Judgment is entered. This interest is considered part of the just compensation the condemning authority is required to pay and is in part to compensate the property owner for the interference with the property during the condemnation process. The proposals reported in the minutes were to change the law to provide that interest does not accrue until either possession is obtained or the property is obtained by Judgment.

Another proposal will be to limit who can testify to value in a condemnation case. Our Idaho courts establish rules of evidence

as to who can testify as an expert to the fair market value of property being condemned. Currently real estate agents, brokers, appraisers and any one who has experience and knowledge about the value of property can testify in court. ITD lawyers have historically tried to block anyone except licensed appraisers from testifying in court. Those efforts have been uniformly rejected by the courts. Apparently ITD now wants the legislature to become involved. This would force property owners to hire appraisers and not allow other qualified experts to testify.

The third proposal is to address an equitable fee limit in small cases, meaning a cap on amounts owners can recover to pay their attorney fees. (Currently the court can award all or a portion of those fees without a cap.) This would create a chilling affect on a property owner who wishes to exercise his constitutional right but has a small case. This would also discourage attorneys from representing a property owner that wishes to contest the amount the State wants to pay for the condemnation. However, ITD has a staff of at least five full time attorneys who are paid by taxpayer money to devote all the time necessary to achieve the State's goals in condemnation without worrying about

whether or not they get paid. ITD clearly does not believe in having a level playing field and allowing property owners to obtain counsel as well.

We can only comment on what the minutes report. WE ARE CONFIDENT THAT OTHER ISSUES WERE DISCUSSED AND THAT OTHER LEGISLATION WILL BE PROPOSED. As that information becomes available we will inform you of the same. Rest assured any legislation brought to the

legislature by ITD in this area will not be favorable to property owners whose property is being condemned.

The ITD Board Minutes are on line at <http://itd.idaho.gov/Board/brdmin.htm> should you care to review them. We encourage you to participate in the legislative process when the time comes so that legislators hear from citizens, not just government and lobbyists.

THE LONG PROCESS OF CONDEMNATION

Connecting Idaho Partners is still in the process of drafting the Environmental Impact Statement (EIS) for the Idaho 16 Extension. The EIS is expected to be finished in August 2008, and then it will be circulated for public comment and redrafted to include any changes that are needed. After another public comment period, the Final Environmental Impact Statement (FEIS) may be submitted to the Federal Highway Administration for consideration. Finally, an alternative will be chosen for the project plans, also know as the Record of Decision (expected in November 2009), and plans will be drafted. Once the plans are complete, they will be given to the Idaho Transportation Department Right of Way division, who will initiate appraisals and then negotiate for your property. Construction can only take place after this if funding is available. Future bond requests are expected to be around \$96 million for this project.

All this takes years to carry out and there is no guarantee funds will be available to complete the project. In the meantime, many homeowners are asking, what should I do with my property until then?

As a property owner you know this project has already affected you although it's years from being constructed. Many of you are considering what the effects will be on your property and whether you should sell now, continue with plans to develop, or to wait and see what happens with the project.

In order to determine what is best for your particular situation, you need to consider the positive and negative effects the project could have on your property and the surrounding area. If you own a family homestead with acres of land for animals or just space and quiet, you will probably choose not to stay near a major expressway. On the other hand, if you are a business owner near an access point to the new road, you may be looking forward to the increased traffic.

One thing you should know is that if you decide to develop your property in any way that requires applying to a local agency, your application cannot be denied because of the knowledge of plans for the future project. In the past certain agencies have been found guilty of denying applications in order to keep right-of-way costs down for future projects.

A LOOK INTO THE FUTURE: The Ten Mile Project

The first mention of an interchange at Ten Mile Road was in the *1978 to 2005 Revisions to the City of Meridian*

Comprehensive Plan, however it wasn't until 2003 that word of the new interchange started buzzing. With the help

and funding of an east coast development company, Eastbourne Investments, the process got underway. After five years of planning, the Idaho Transportation Department is finally in the process of acquiring the necessary right-of-way to begin construction, which is expected in the spring/summer season of 2009.

The homeowners who will be effected are currently going through the process of negotiating a price for their properties. You may find yourself in the same situation in the future if the chosen alternative for the Idaho 16 Extension affects your property.

After years of work, the Environmental Analysis for the Ten Mile Interchange was published in October 2007 and open for public comment through December 18, 2007. Once the Record of Decision was made, the plans were given to

the Right of Way division, who outsourced the work to a national firm based out of Oklahoma, Universal Field Services. Around the first of the year Integrity Appraisal was hired to appraise the just compensation of the required property, and initial offers were made with a 10% incentive to accept the offer within 45 days. This is a key strategy of condemning authorities and right-of-way professionals to pressure property owners to sell quickly and accept their initial offer. See *"Current ITD Right of Way Acquisition Practices"* below.

Ten Mile Homeowners who accepted their offers have most likely signed over possession of their property and those who did not will try to negotiate with the state for just compensation. If a price cannot be agreed upon, the state must bring condemnation proceedings, and the issue may be decided in court, another process that can take years.

CURRENT ITD RIGHT OF WAY ACQUISITION PRACTICES

As reported above, Connecting Idaho Partners, with the approval of ITD, has hired Universal Field Services, Inc to represent the State of Idaho in acquiring right of way on some of the Garvey Projects here in Idaho. Universal was hired to acquire right of way on both the Ten Mile Project and I 84 from Broadway to Orchard. There is no reason to believe that Universal won't be used on Highway 16 when the time comes.

Connecting Idaho's strategy when presenting a proposal is to offer 10% more than the appraisal price. There is, however, a catch. You have to accept the offer within 45 days or they reduce the offer by 5% and if you don't take it within 60 days, the reduce it another 5%. We believe that this serves as a chilling effect to the property owner who wants to exercise his constitutional right to have a jury trial determine the amount owing.

We tell you this because if and when the State gets the authority to go forward with the Highway 16 Project, this is in all likelihood what you will be presented.

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