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Acquisition Information for Property Owners Guidebook

A primary responsibility of Olmsted County Public Works is the administration, planning, construction, maintenance and safety of the County highway system.

In carrying out this responsibility, the acquisition of privately owned real property is sometimes necessary. The purpose of this brochure is to inform those individuals whose land must be acquired of their rights under Minnesota law and to provide information about the acquisition process.

Under Federal and Minnesota law, Olmsted County Public Works may acquire property by gift, direct purchase or eminent domain proceedings.

Additional acquisition and relocation information is available on the Federal Highway Administration website at: <http://www.fhwa.dot.gov/realestate/ua/index.htm> or the Minnesota Department of Transportation website at: <http://www.olmweb.dot.state.mn.us/>

How Olmsted County Acquires Property:

Minnesota Statute 117 allows the State and certain other governmental agencies to acquire property for public purposes such as schools, parks, libraries, recreation facilities, airports and highways.

The Constitution of the United States and the State of Minnesota requires a payment of “Just Compensation” to the owner for property being acquired or damaged for public use. Payment of “Just Compensation” means that the owner is entitled to the fair market value of their property, which is generally defined as the amount the buyer and seller agree upon based on an appraisal of the property.

Early Contact

Before Olmsted County Public Works is in a position to acquire your property, a survey crew may request permission to enter your land to obtain information for the development of the proposed improvement.

A field title agent may also contact you to learn the nature and interest of parties involved in the land.

Determination of Just Compensation

An appraisal of your real property will be made before negotiations are started. (Real property is defined as the rights and interests possessed in land and generally, whatever is erected, or growing upon or affixed to land.)

You, or a representative you designate, will be given an opportunity to accompany the appraiser during his/her inspection. This provides you an opportunity to point out any unusual or hidden features your property may possess.

In preparing the appraisal, the appraiser may not consider an increase or decrease in the value of your property, prior to the date of valuation, which results from the project or the likelihood that your property will be acquired for the project. However, any physical deterioration within your reasonable control will be considered in the valuation of your property.

The appraisal is based primarily on studies of recent sales of property in the vicinity of your property.

The completed appraisal will be reviewed by Olmsted County Public Works or designated review Agency. The review will establish the amount it believes to be just compensation to be offered for the property.

Direct Purchase

Olmsted County Public Works will make a prompt offer to purchase the property for the full amount that has been determined to be just compensation. A written statement will be provided to you, which will include the amount offered and an explanation of the basis for determining this amount. In cases where only a part of the property is to be acquired, the statement will separate the amount of compensation to be paid for the property being acquired and the amount (if any) for damages to the remainder. If the acquisition leaves you with an uneconomic remnant, Olmsted County Public Works must offer to purchase it.

Olmsted County Public Works will not take any action that would coerce you into accepting its offer. Prohibited actions include advancing the time of condemnation, deferring negotiations or condemnation, or postponing the deposit of funds in court for your use.

You will have a minimum of thirty (30) days to consider the offer. To aid in your decision, you may wish to secure your own appraisal. Minnesota law provides for reimbursement for reasonable costs of the appraisal up to a maximum of \$1,500 for single-family and two-family residential property and minimum damages acquisitions and up to a maximum of \$5,000 for other types of property, provided that the owner submits to the acquiring authority the information necessary for reimbursement, including a copy of the owner's appraisal.

If you choose to accept the offer, you will be asked to sign instruments granting Olmsted County Public Works the rights it needs in your property. Olmsted County Public Works will, at its own expense, furnish all documents necessary to complete the sale, make the necessary examination of title, and record the instruments of conveyance.

After the documents have been recorded, payment will be processed. If there is a mortgage and all or a major portion of the property is acquired, a separate check payable to the lender will be drawn for the amount of the balance on the mortgage plus interest to the date of payment. When the checks are ready for delivery, one check will be mailed to the lender, who will in turn give Olmsted County Public Works a satisfaction of mortgage to be recorded. The check for the amount of the balance due you will be mailed.

If only a part of your property is to be acquired, Olmsted County Public Works may ask for a partial release of the mortgage. The check will be mailed to you; you and your lender must then agree on the distribution of the money. Any fee charged by the lender for issuing a partial release or for a prepayment penalty must be borne by you. However, after your property is acquired, you will be furnished a claim form in which you may request reimbursement for fees charged by your lender for a partial release or prepayment penalty.

If all or a major portion of your property is being acquired, it will be necessary that all current and delinquent real estate taxes, as well as all special assessments, be paid in full. If only a small portion of your property is being acquired, any delinquent taxes must be paid, although in some instances Olmsted County Public Works may be able to record the conveyance documents notwithstanding current real estate taxes due.

Olmsted County Public Works will make every reasonable effort to avoid litigation by acquiring your property through direct negotiation.

Possession

If you must move because your home has been acquired, or if you must relocate your business or farm operation because of the acquisition of your property, you will be given at least 90 days written advance notice of the date by which you are required to move. If you have to move from your home, a decent, safe and sanitary replacement dwelling must be available to you, on a nondiscriminatory basis, prior to your displacement.

You are not required to surrender possession of your property until:

1. You have been paid the agreed purchase price, or

2. A deposit has been made with the court, for your benefit, in an amount not less than the approved appraisal, or the amount of the award compensation in a condemnation proceeding.

Once your property has been acquired, Olmsted County Public Works may decide to rent it, subject to termination on short notice. The amount of rent charged you, or another tenant, will not exceed the fair rental value of the property to a short-term occupier.

Donations

You may make a gift or donation of the property, or any part of it or any of the compensation paid for it, to Olmsted County Public Works.

You have the right to receive just compensation for the acquisition of the property if it is desired. You are also entitled to have an appraisal made of the property along with an offer of just compensation.

However, you may release Olmsted County Public Works from either or both of these obligations; it is your option.

Condemnation

If agreement cannot be reached on the purchase of your property Olmsted County Public Works will acquire your property by the exercise of the power of eminent domain. If a situation such as this does occur, Olmsted County Public Works will institute formal condemnation proceedings.

Buildings, Structures and Improvements – Single Ownership

When Olmsted County Public Works obtains an interest in your land, it must acquire at least an equal interest in any buildings, structures or improvements located on the acquired land, if they are required to be removed or if the highway project will adversely affect them.

Tenant-Owned Buildings, Structures and Improvements

Olmsted County Public Works is required to pay for property as if it were in a single ownership, and the contributory value of a tenant's improvements will be paid. In other words, if you are a tenant who owns a building, structure or improvement on land required for public purposes, the offer made by Olmsted County Public Works to the landowner will include either the fair market value your building, structure or improvement contributes to the real property, or the fair market value of the building, structure or improvement for removal from the real property, whichever is greater. As a tenant owning any buildings, structures or improvements on real property, you must reach agreement with the landowner as to your share of the settlement.

Reimbursement of Litigation Expenses

(a) If the final judgment or award for damages, as determined at any level in the eminent domain process, is more than 40 percent greater than the last written offer of compensation made by the condemning authority prior to the filing of the petition, the court shall award the owner reasonable attorney fees, litigation expenses, appraisal fees, other experts fees, and

other related costs in addition to other compensation and fees authorized. If the final judgment or award is at least 20 percent, but not more than 40 percent, greater than the last written offer, the court may award reasonable attorney fees, expenses, and other costs and fees. The final judgment or award of damages shall be determined as of the date of taking. No attorney fees shall be awarded if the final judgment or award of damages does not exceed \$25,000. For the purposes of this section, the "final judgment or award for damages" does not include any amount for loss of going concern unless that was included in the last written offer by the condemning authority.

(b) In any case where the court determines that a taking is not for a public use or is unlawful, the court shall award the owner reasonable attorney fees and other related expenses, fees, and costs in addition to other compensation and fees authorized by this chapter.

Reimbursement of Incidental Expenses

You are entitled to be reimbursed for fair and reasonable expenses you necessarily incurred for:

1. Recording fees, transfer taxes and similar expenses incidental to conveying your real property to Olmsted County Public Works.
2. Penalty costs for prepayment of any preexisting, recorded mortgage, entered in good faith, encumbering your property.
3. The pro-rata portion of prepaid real property taxes that can be reimbursed in accordance with state law.
4. The cost to update your abstract as it pertains to this conveyance.

Appeals

You may file a written appeal with Olmsted County Public Works in any case in which you believe that it has failed to properly determine your eligibility for, or the amount of, a payment required for those expenses incidental to transfer of title to it or certain litigation expenses as mentioned above. All written appeals, regardless of form, shall be considered by Olmsted County Public Works.

In filing an appeal, you have the right to be represented by legal counsel or other representative in connection with the appeal, but solely at your own expense. In making an appeal, you shall be permitted to inspect and copy all materials pertinent to the appeal, except materials that are classified as confidential by Olmsted County Public Works. Reasonable conditions may be imposed upon right to inspect, consistent with applicable laws.

Summary and Conclusion

The information contained in this booklet is an outline of the laws and regulations that pertain to governmental property acquisition in the State of Minnesota. It is in no way intended to be a comprehensive presentation of all relevant information.

If you feel that you require additional guidance or assistance please feel free to contact the Right of Way Agent listed below. They are available to assist you with your questions or concerns.

You are encouraged to consult with your own legal counsel at any time. Please keep in mind that legal fees are often times not compensable in the Direct Purchase or Eminent Domain process.

Right of Way Agents

Jeremy Douglas
Right of Way & Transportation
Contracts Supervisor
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