

Bypass project inflicting collateral damage

Some Yamhill County property owners will be affected by state officials' efforts to secure right-of-way



GUEST COMMENTARY

Neil Olsen

The Oregon Department of Transportation is moving forward with Phase 1 of its Newberg-Dundee Bypass project. As

designed, the \$760 million project calls for an 11-mile, four-lane expressway around Newberg and Dundee, diverging from Oregon Route 99W northeast of Newberg and converging with it at the OR 18/99W junction near Dayton.

Though the full project is approved by state and federal authorities, full funding is not available. The Oregon Legislature, the federal government, Yamhill County, the Confederated Tribes of the Grande Ronde, and the cities of Newberg, Dundee and McMinnville are contributing money to the \$262 million Phase 1. This portion includes a four-mile, two-lane expressway diverging from OR 99W at OR 219 in Newberg and converging with OR 99W just south of Dundee.

While Phase 1 will go toward effecting ODOT's goal of decreasing traffic congestion on OR 99W in Newberg and Dundee, the project will have a dramatic effect on property owners, homeowners and business in its path. Armed with more than \$76.2 million in right-of-way acquisition funds for Phase 1, ODOT will acquire by condemnation or threat of condemnation more than 156 acres of real estate, comprised of 147 properties or parts of properties. These takings will displace approximately 59 homeowners and 11 businesses.

Rolling toward the start of construction in 2014 and scheduled completion in 2016, ODOT has already acquired some of the right of way necessary for Phase 1, and is in the process of acquiring the remainder. If not successful in "negotiations" with property owners, ODOT will use its power of eminent domain to obtain court orders forcing them to relinquish possession of, and ultimately title to, the targeted properties.

As ODOT advances in the taking of property, property owners will want to ensure they are treated fairly and receive "just compensation" for their taken property, which, under Oregon law, is the fair market value of the property taken,

plus, in the case of a partial taking, the diminished value of the remaining property.

Property owners, tenants and business owners must also face the substantial impact to their lives and livelihoods as construction of the project progresses. Those not entirely displaced by the project will be forced to grapple with the effects of construction activities, including access to their property and the continued viability of the property as a home or business location. Those "relocated" by ODOT will be required to find adequate replacement property, which in the case of a business may fundamentally affect its continued profitability.

If these typical hardships were not enough, property owners also face a real estate market still trying to pull itself from a historic downturn. This market distortion not only affects the ability of appraisers to find adequate comparable sales used to determine the fair market value of real property, but for many property owners impacts what remains after a mortgage holder is satisfied from the condemnation proceeds. In addition, relocated business owners and homeowners must overcome the challenge of finding and obtaining financing for adequate replacement property in tight credit conditions.

These challenges, though significant, are not insurmountable. While recognizing the need of our governments to build public works projects for the benefit of all, the framers of our federal and state constitutions enshrined legal protections for persons and entities impacted by such projects, including the rights to "just compensation," "due process" and "trial by jury." These rights to be treated fairly and paid fair market value as determined by a jury of one's peers ensure that the government, in its effort to deliver public works projects "on time" and "on budget," cannot minimize the effect of a project on those in its path.

Neil Olsen is an attorney and shareholder with Zupancic Rathbone Law Group. He focuses on representing property owners in eminent domain, real estate and land use matters. Contact him at 503-941-9622 or at neil@zupgroup.com.