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Suing Caltrans can make a lot of bucks

An Orange County Register investigation shows that land owners who sue the state in eminent domain cases almost always profit from the decision.

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SACRAMENTO -- The state constitution says government may not seize private property without paying "just compensation." But that wasn't William Hoyer's experience.

The California Department of Transportation once tried to take part of his gas station without paying him a cent.

Caltrans needed the land to widen a freeway, but offered Hoyer nothing for it, even though it was located near the Disneyland entrance.

"There was only one thing I could think," Hoyer told me. "Get an attorney."

Years later, Hoyer said Caltrans agreed to pay him more than \$700,000.

Director Will Kempton told The Orange County Register during the reporting of our Caltrans investigation last year, "The law is clear. The property owner will be made whole." But if that's the policy, then why have so many landowners gotten more money by fighting Caltrans?

Not many challenge a Caltrans seizure, but an analysis of about 570 recent cases where they did finds they increased their final payoffs by an average of about 60 percent.

One San Joaquin Valley property owner, Robert Papazian, saw the compensation for his land triple from an initial offer of \$1 million to more than \$3 million after he took legal action. The Calvary Deaf Church in Riverside saw its offer quadrupled to more than \$4 million.

"My family said, 'Take the money, it's the government,'" Papazian said in 2006. "They said there was nothing you can do. ... I decided we could."

State officials say they don't try to lowball property owners, but note they're forbidden from making excessive offers because of another constitutional provision that bans making a gift of public funds.

Still: why are so many challenges successful? The analysis of settlement data from 2001 to August 2006 – provided by Caltrans itself – found that more than 75 percent of the landowners who fought eventually increased their payoffs.

Assemblyman Todd Spitzer, R-Orange, said it appears Caltrans may be intentionally giving low offers, especially since it employs its own appraisers.

"Property owners are intimidated when they're given an offer by Caltrans," he said. "They say, 'If you don't take our offer, we're the big bad government and we'll take your property through eminent domain.' They're pounding on the property owner."

Critics are also frustrated with the way Caltrans conducts its seizures. Caltrans decided Hoyer's Anaheim gas station wasn't worth any money because it estimated the cost of cleaning the dirt below was more expensive than the value of land.

Never mind that such logic is suspect – "There is always someone in the marketplace," Los Angeles real estate appraiser Ron Buss said.

Hoyer thought Caltrans could help him apply for state funds that he knew were available to clean the land. The department refused, he said.

"I said 'Help me with the paperwork.' They said, 'No, we can't do that,'" Hoyer told me. "It was like talking to a damn wall."

Compare that to the experience of Danny and Shanae Young, a Utah couple that learned last year they'd have to sell a 1,676 square-foot strip of land from the front of their ranch style home because the state needed it for a road-widening project.

The Youngs were offered a little more than \$11,000, which they thought was below market rate. But instead of hiring a lawyer, they called Craig Call, Utah's property ombudsman.

In one week, Call obtained a copy of the state's appraisal and ordered a second one. By the second week, he got highway officials to pay the Youngs about \$17,000 plus \$200 in damages. And it didn't cost the Youngs a penny.

Utah created Call's position to help resolve eminent domain disputes more peacefully and fairly and, last year, Missouri adopted a similar model.

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