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Surviving eminent domain: Be proactive!

by Ira Bauman, DMD

As a Dental Economics® reader for more than 30 years, I thought I was prepared for any contingency. Come flood, earthquake, monsoon, disability, or medical emergency, I knew what to do. How could I have known that what would hit me was the one thing I was completely unprepared for: eminent domain.

For 20 years, I had a general practice in a rundown part of town. In 1998, a newer facility in a better area of town located on the highway became available a half mile away. Using the entire profits from the sale of the first office building, I did extensive construction on the rental property to adapt it to the needs of a dental office. Production immediately climbed and I anticipated a rosier second half of my career.

Then, in March 2005, I received the letter that would change my life. The New Jersey Department of Transportation was condemning my new building in order to correct a flooding situation not far down the highway. I had 15 months to vacate the office and relocate. At the meeting with the DOT representative, I was told that the government's responsibility was to "make me whole."

A leap into darkness

My first job was to secure legal representation. The New Jersey Dental Association advised me to find someone who specialized in condemnation law. I called some of the largest firms in the state and was told that no one on those staffs specialized in that area. The New Jersey Bar Association didn't recognize it as a specialty. I chose a lawyer whose work is solely with dentists.

At the time, 15 months seemed like a long time, so I accepted the DOT rep's offer to find a new location. After investigating several of his leads, I realized that his locations were, without exception, inappropriate for me. They were either wrongly zoned, in economically disadvantaged areas, or in industrial parks. So I began cruising local neighborhoods in search of locations with more promise.

Negotiations with the DOT began in earnest. I quickly learned that the expression to "make me whole" was open to interpretation. My substantial legal expenses were not to be reimbursed; neither were any construction costs in excess of the 1,150 square feet that I presently inhabited.

If I couldn't move into a new facility in time, the state would pay to store my equipment, but would not reimburse me for lost income. All of my built-in cabinetry had to be moved, with minimal breakage, I hoped, because the government would not pay for new built-in cabinetry. For this reason, the construction crew was to build the new lab and operatories to the exact specs of the cabinetry. I was lucky to have the services of Patterson Dental, who helped with the negotiations and planning. Apparently, word got out about my situation and potential landlords felt they could capitalize on my desperation. After unsuccessful attempts to secure leases at two different properties, I found a property and landlord that I could live with.

Time grows short

With six weeks to my deadline, construction began. The rental was a double storefront on a hill, meaning that visitors had to climb two steps from the right side of the office to the left side, over the entire length of the storefront. The DOT agreed to gut the facility, build a raised floor on the right side, and rebuild the rooms, ceiling, electrical, and plumbing.

Hank Foster, the construction contractor, was great. He worked every day, including weekends and evenings, and I was able to move in time and lost only one week of production. I got my paid receipts together, submitted them to the state, and waited ? and waited.

For months, I waited for payment and badgered the DOT office weekly. I juggled the loans to minimize the substantial interest payments. Finally, my lawyer called the assistant district attorney for the state of New Jersey, and within a week I had my check ? almost 10 months after construction started.

Lessons learned

The ordeal was a learning experience, and there are many things I would do differently if I knew then what I know now.

1. I would spend a lot more time to find a lawyer who specializes in working with the state. Although the lawyer I used was generally competent, it seemed obvious that he was as surprised by the condemnation procedures as I was.
2. I would look for my own facility from the start. Relying on the state's agency was a costly waste of time.
3. I would be more proactive with my patients. Some have made excuses and said that driving to a new location for their treatment is too inconvenient. I reassure them that it is not far and they are valued friends who would be sorely missed if they did not follow me.
4. I would allow time for unforeseen glitches. Fifteen months seemed like a lot of time, but with just a couple of setbacks I found myself desperately filing for an extension.
5. I would secure my financing ahead of time. In my naïveté, I waited until it was too close to the start of construction. I thought that as I made a payment to the construction company, state reimbursement would arrive in time for the next payment. When I realized that payments took months to be processed, I scrambled to find enough funding to fill the gap. I took out a small business loan, raised the limit on two credit cards, and hit up some relatives so the construction and new equipment could proceed. The landlord agreed to finance the remaining unreimbursed construction costs, but at a substantial add-on to the rent.
6. I would prepare for a great deal of stress. I spent six months of sleepless nights wondering if the practice I had toiled over for 30 years could survive this ordeal. I was fortunate to have the support of my wife and the rest of my family, otherwise it would have been much worse.

One year later

It is now one year after the move. Most of my patients followed me the three miles to my new office. Unfortunately, my penetration into the new market here has not provided the new-patient flow the practice needs. My rent is nearly twice what it was a year ago, the profit margin has been reduced, and the continued viability of the practice is not assured.

At age 54, while my colleagues are having thoughts of retirement, I am facing all the challenges of starting a new practice. I am learning about marketing, Web sites, exposure in the community, and other experiences that, until now, I knew nothing about. I may be a little sadder, but I am a lot wiser.

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