

An Alternative to Eminent Domain

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Faced with mandates to improve drinking water standards as outlined in the Safe Water Drinking Act (SWDA), the city of North Miami Beach had to act. Operating a lime softening water plant posed many challenges in meeting EPA standards. Switching to the process of enhanced coagulation met the increasing standards of the Safe Water Drinking Act, but with the possibility of more regimented standards on the horizon, the city was faced with the challenge of modifying its treatment process.

A membrane treatment plant was the answer. This treatment would trap precursors before they got in the water, and compliance with the EPA and SWDA would be satisfied, even with future stringent revisions and goals. But there was a problem.

The city's water plant was trapped on three acres in an industrial-turned-residential area. Additional acres would be needed to build the new membrane treatment plant. Homeowners' and rezoning issues pointed to a familiar answer: eminent domain. The umbrella of eminent domain has always been a crutch for public agencies that needed to secure property because of mandates or other pressing issues. But what would be the cost?

The city was faced with a dilemma. As a supplier of water, how do you effectively modify your treatment process to comply with regulatory agencies and mandates in an effort to ensure public health and not drastically affect those whom you serve? After all, we are living in an era when there is an overall reinvention of government—a shift from *big government* to “*Service America*.” Given that thought process, alternatives needed to be explored.

Twenty homes rested on approximately seven acres that were needed. Many residents had lived there for years. Some were retired, while for others these were their starter homes. Eminent domain could be imposed, but the costs would be tremendous and the community and media backlash might be severe. Lawyers estimated that utilizing eminent domain would cost the city an average of \$20,000 per home and 18 months to realize the goal of owning each lot.

Acquiring the acreage needed to meet the new initiatives facing the city meant purchasing those 20 single-family homes. There was no other alternative. This would allow for a plant that would double in size and be capable of increasing average daily water production in the future. Of course,

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there were other less obvious benefits, including improved groundwater quality through the elimination of 20 septic tanks, increased separation and buffering of water supply wells, significant reduction of lime sludge and the negatives associated with its hauling, and improved finished water quality.

Not to be understated were the benefits to be derived by the community, including an improvement in aesthetics. What could be seen as an industrial facility within a residential area would be transformed into a neighborhood with a modern, barely visible facility nestled in a backdrop of lush, green vegetation.

Faced with the dilemma of utilizing eminent domain, the city opted for a road rarely traveled – individual purchase negotiations. This meant developing a purchase strategy that featured customer satisfaction first and foremost.

A team of consultants was assembled to assess the city's options for acquiring the neighboring properties and the different scenarios—financial, environmental, legal, and, most important, community impact. The research found that going the less traditional route would be time efficient. It would also lessen media scrutiny and possible uproar, and it would provide a “*win-win*” situation for the potential sellers and the purchaser – a city without any other customer-focused approach and recourse. This conclusion was reached after all properties were thoroughly researched in terms of owner, legal status, and legal description and values, and the numbers were contrasted with the costs – obvious and hidden – associated with eminent domain.

Through this research, some very definitive numbers were attained. By negotiating purchases, the city would realize a savings of at least \$20,000 per property. With this savings in mind, the approach then was to develop a strategy of procuring these properties in a way that would be sensitive to the homeowners. An additional two months of research allowed us to

develop a strategy and set the funding in place for acquisition.

The process began with a letter that was sent to each homeowner from the director of public services. In that letter, the federal mandate facing the utility was clearly explained. A follow-up letter was then sent explaining our desire to purchase their homes. Obviously, there was mixed reaction.

The utility, in its effort to hear from the homeowners and have them be a part of the process, scheduled individual meetings with homeowners at their convenience. At these meetings, the needs of the sellers were discussed, together with price negotiations and sale terms. A comparison chart of proceeds to the seller was prepared and tailored for each individual case, showing the financial advantages of that particular deal. The potential financial burden some would face was diffused by the city assuming their attorney costs and closing fees.

Once each of the homeowners had arrived at a satisfactory selling price, the closing procedures began. Everyone was kept apprised of the progress being made every step of the way. Throughout the process, which was completed within four months, the one constant always at the forefront was the candid nature of discussions and the city's willingness to listen to the homeowners – at all times cognizant of the fact that they were also our customers.

In the end, each homeowner realized increases in net proceeds ranging from 5 to 7 percent - as much as \$7,000 to \$15,000 above the appraised values of their homes. This was an important goal throughout the process, and being able to accomplish it was satisfying for our customers and also for the city. The thrust was that if homeowners were being displaced, then there should be a financial cushion to soften the effects. While property values can be determined, sentimental feelings are priceless. Sale prices above their expectations would help as they made their respective transitions.

After the purchases, city officials remained in touch with the sellers as they planned their relocations. There were many different scenarios left for the city to resolve. While some homeowners were able to retire or easily relocate, others had some challenges and there were some who harbored – understandingly so – sentimental feelings. The city met and dealt with each homeowner individually and lent attention to those needs and concerns. For some it meant allowing them to take an item as a souvenir. For those who needed time to

relocate, it meant allowing them to remain on the property for the necessary time for as low as \$10 per month.

Acquiring the land was not an end to the process. There was the question of the homeowners who were now surrounded by empty homes and the resulting security issues. The city had an obligation to them as well as the community that surrounded the facility. For this reason, the properties purchased were surveyed and all desirable native trees were tagged for protection as plans were made for demolition. Protecting them would allow for preservation and inclusion in later plans.

Demolition of the homes was undertaken carefully, keeping in mind the traffic flow of the neighborhood and the nearby school. Dust control was also an important aspect of this step. The entire demolition process had to be accomplished with minimal impact to the community. Immediately after the properties were cleared, a beautifully landscaped berm was created around the new perimeter, including over 140 trees and palms and over 1,500 shrubs. This park-like amenity quickly became a favorite among the neighbors as it blended our facility in a way they never thought could be done.

Once this was complete, the city organized a family day picnic with the surrounding neighbors and showed them the conceptual rendering of the entrance to the new plant. Homeowners had an opportunity to ask questions, lend insight and feel some sort of ownership of a project that had involved them from the outset. Their support was clearly evidenced when the city sought a rezoning of the newly acquired land. They gave the rezoning effort their support and showed up at the community council meeting to voice their approval.

What could have gone very negative proved to be a golden opportunity for the city. The needed acreage was secured without public outcry and without any media attention. In the end, there were many happy sellers. Some wrote letters commending the city on its approach to an issue that could have been very volatile. Others kept in touch after the sale by simply offering their thanks. As for the city, it is now preparing to build its new treatment plant in little more than a year, having explored its alternative to eminent domain. In the end, taxpayers saved almost half a million dollars and the city demonstrated to a community care that is rarely evidenced in the midst of mandates.