



Wendy Lathrop is licensed as a Professional Land Surveyor in NJ, PA, DE, and MD, and has been involved since 1974 in surveying projects ranging from construction to boundary to environmental land use disputes. She is a Professional Planner in NJ, and a Certified Floodplain Manager through ASFPFM.

Wired for... Notice?



As we move deeper into the digital age of information transmission, surveyors are well used to the practice of sending image and document files by e-mail, and frequently keep a list of favorite sites in the tool bar of our Internet browsers. Some surveyors may have adapted to this new digital mode for reasons such as saving time and postage in sending the deliverables for a project, and some probably use it to avoid actually having to speak to pesky clients by using e-mail instead. We visit the web when we want something specific, and some of us just surf for relaxation. We take our computer access for granted, and moan piteously when connections fail or systems crash.

But is the whole world as well wired as the surveying community? Specifically, does the posting of a notice on a governmental agency website provide adequate and reasonable notice of meetings to a community? Or does due process require an agency to provide individual notice to owners of property that it plans to take by eminent domain?

A very divided court (5 to 4) in the State of Washington addressed this question in February this year, with

heated back and forth opinions passed between concurring and dissenting judges. The case is *The Central Puget Sound Regional Transit Authority v. Miller et al* (128 P. 3d 588, Supreme Court of Washington, 2006). Part of this debate was over whether or not Mr. Miller provided sufficient evidence to show that his property specifically was not necessary for public use. The majority stated that he did not, and further, that such a decision was beyond the expertise of the court, being a matter better decided by the Transit Authority: "Whether condemnation is necessary is largely a question for the legislative body of the jurisdiction or the government agency seeking condemnation." (*Id.* at 593) The dissenting viewpoint was that the court's refusal to fulfill its "constitutional mandate" in making that decision would give too much power to the legislature and to the agencies that the legislature both creates and empowers to carry out certain duties (including through condemnation).

The primary issue of the case, however, was whether Central Puget Sound Regional Transit Authority provided adequate notice to the public of the meeting in which the three-stage condemnation process against Mr. Miller's property, along with others, began. The

Transit Authority had published both notice of the meeting and its agenda on its website, but had not mailed any individual notices to property owners or sent any notices to the newspaper. Miller and the dissenting judges felt that a web posting was not adequate public notice, especially when constitutionally protected private property rights were at stake. The majority opinion, however, was essentially that you can't get much more public than a posting on the Internet. There is, they observed, very little case law on the sufficiency of web postings to satisfy notice requirements. But "it is equally impossible to assure that anyone will purchase, much less read, a newspaper. In addition, there is no way to assure that a newspaper will even publish a notice furnished by an agency because agencies are not required to buy advertising space." (*Id.* at 595). Washington's statutes require agencies to provide notice, and do not require any specific method of doing so.

Miller argued that the posted agenda was not specific enough to put property owners on notice. The agenda stated in part that the Board of Directors would consider the following resolution:

"Authorizing the Executive Director to acquire, dispose, or lease certain real property interests by negotiated purchase, by condemnation, (including settlement) condemnation litigation, or entering administrative settlements, and to pay eligible relocation and re-establishment benefits to affected owners and tenants as necessary for the construction of the Lakewood and South Tacoma Commuter Rail Station, the new Lakewood Connector railroad line to be constructed from D Street to M Street in Tacoma... and to execute all documents necessary

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Lathrop, continued from previous page to convey certain of those interests to the City of Tacoma...”

The majority found this descriptive enough for a reasonable person to be notified fairly of what was to be discussed at the meeting, and adequate in that it is not misleading. The dissenters thought differently.

Although the Millers knew for years that they might be affected by the Transit Authority’s rail project, they did not know that at the meeting held June 26, 2003 that the Transit board would consider a resolution to authorize condemnation of their land. Acquisition of “certain real property interests” as necessary for the construction of the proposed new line does not provide notice of any specific location or property to be considered for condemnation, and mention of “Lakewood to Tacoma” does not narrow the possibilities. The agenda included no identification by street address, by owner name, or by parcel number. The dissenters noted: “Therefore, at best, the meeting notice merely alerted the Internet-attentive people within the affected area to seek more details elsewhere. At worst, it utterly failed to apprise anyone lacking Internet access of the existence of the resolution.” (*Id.* at 600)

Dismissing the majority’s idea that a newspaper reporter might cover the meeting and thus provide post-meeting coverage, the dissenting opinion continues:

“It is highly optimistic to expect a landowner’s clicks of the computer mouse to lead, at the right time and on the right site, to a posted proposal hearing on his property interests. It may be true that relying on random turns of a newspaper’s pages is just as unlikely to inform an affected citizen of a pending action... [but] in my view newspapers are more accessible to a wider range of people due to their cost – one of the few things in life still available for pocket change. Accordingly, I am troubled that despite the apparent absence of any prior e-mail correspondence with the Millers indicating they were ‘wired,’ so to speak, Sound Transit simply presumed they would receive notice posted exclusively on the Internet.” (*Id.* at 600)

In the end, the case comes down on the two sides of legal practice: what is legal by strict interpretation of the law, and what is fair or equitable to those affected by the imposition of those laws. *A*