



by Anthony M. Leones

Since the enactment of the Federal Highway Beautification Act of 1965, the number of outdoor advertising signs in the United States has, and will continue to, decrease due to highway projects. Public projects led by local municipalities and redevelopment districts have also resulted in a decrease in the number of outdoor advertising signs. Highway or redevelopment projects do not usually provide for the relocation of outdoor advertising signs, and many local zoning ordinances prohibit the rebuilding or relocation of outdoor advertising signs that must be removed in order to accommodate the project. Therefore, in most circumstances, a sign owner's only option is to be compensated for the loss of the sign. Given the revenue-generating ability of many outdoor advertising signs, the value of the sign can be substantial and often is the central focus of legal battles. The rights and compensation afforded to sign owners in condemnation or eminent domain actions vary between jurisdictions.

## Legal Corner: Valuation is Key

**While many states struggle with whether to include business loss as part of the value of billboards in condemnation actions, the answer is clearer in California.**

The major discrepancy from state to state when valuing outdoor advertising signs has been in defining the legal interest being taken. Is an outdoor advertising sign an interest in real property? Is it a personal property interest, intangible asset or is it a combination of two or more? The answers to these questions are very important in most states, and will determine the degree of compensation owed to the sign owner. A property owner is entitled to "just compensation" for the property being taken under the federal and state constitutions. (U.S. Const., amend. V and XIV; see also Cal. Const., art. I, § 19.) However, compensation for a diminution or loss of business value is not mandated under the federal or state constitutions. If an outdoor advertising sign is defined as personal property, then the sign owner may be limited to receiving compensation for the value of the physical structure or relocation expenses under state law. An intangible property interest, such as business value, is not compensable in most states other than California.

California law provides that the owner of a business operated on real property taken by eminent domain may be entitled to compensation for loss of business goodwill. (California Code of Civil Procedure § 1263.510; the "Goodwill Statute".) California law defines business goodwill as consisting of the "benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage." (California Code of Civil Procedure § 1263.510(b).)

Even though ownership and operation of an outdoor advertising sign has significant and meaningful characteristics to that of an interest in

real property, the debate of how to value signs continues in some jurisdictions, but generally not in California. Although it has been decades since California enacted the Goodwill Statute as a way to address business losses caused by the condemnation of urban land for redevelopment in an effort to spur economic renewal, the rest of the nation has not followed suit. Many

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resources and litigation costs are utilized in condemnation actions in order to determine how to characterize and value outdoor advertising signs. Sanctioning a rule of law allowing sign owners to be compensated for their business loss, similar to California's Goodwill Statute, would more accurately compensate sign owners.

Sign owners in California are able to focus their energy on the actual value of a sign being taken for a public purpose. California's Goodwill Statute does not provide a specific method for the valuation of goodwill. Rather, such value depends on the circumstances of each individual case. Appraisers in California most often utilize an income approach rather than a cost approach in valuing outdoor advertising. A cost approach to valuation is often incomplete since relocation may not be an option, and the cost of the outdoor advertising sign structure is only part of the value of the outdoor advertising sign. A complete analysis of the value of the sign typically includes a method based on the income stream generated by the sign. The income approach values the sign based on actual or potential revenue it generates and fully compensates the sign owner for the loss caused by the taking. Generally, appraisers will establish the income of a sign, and based on comparable sales, will calculate an appropriate multiple to apply to the income stream in order to determine the value. In developing

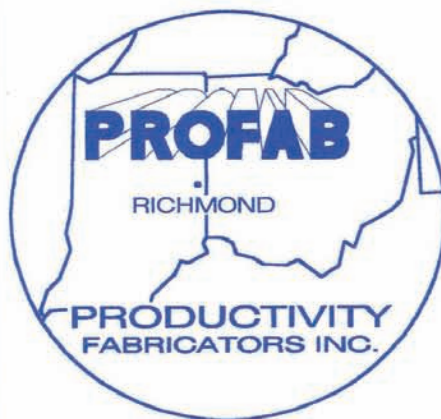
the proper multiple, appraisers will look at comparable sales, as well as a number of other factors, such as location, visibility and traffic counts. Outdoor advertising signs are bought and sold based upon multiples of cash flow and gross income. Cash flow is calculated by taking the sign's actual gross income and subtracting the sign's expenses, which may include rent, utilities, posting and installation costs, taxes, maintenance, sales and marketing, and administrative expenses. This approach to the valuation of outdoor advertising signs more accurately compensates the sign owner for the actual value of the loss caused by the taking. However, many states do not recognize or allow

business loss as a component of the "just compensation" owed for the taking of a sign.

When determining your rights as a sign owner in a condemnation action, fully analyze the specific laws of the jurisdiction where the sign is located and, where appropriate, incorporate the income generated by the sign to determine its value.

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