



Information Memo 08

To: Real Estate Council of San Antonio
From: Tracey B. Lehmann, P.E., Senior Director, Development Engineering
Date: 5/8/2024
Subject: Off-Site Easement Acquisition

In response to enquiries from the development community, this bulletin will set forth the general parameters for what SAWS considers to be a “good faith” offer to a landowner to acquire an off-site easement required by a USA, and what SAWS may do, in the event of failure of the developer to acquire the necessary easement.

A good faith offer must be in writing and must:

- Be made pursuant to a metes and bounds survey of the easement
- Be not less than the appraised amount of the easement, pursuant to an appraisal obtained by a third party Texas-certified appraiser (Note: in practice, it will prove necessary to sometimes offer (or agree to pay) greater than the appraised amount to obtain an easement, and SAWS staff will make a case-by-case determination as to whether the developer is acting in good faith in its price negotiations)

Pursuant to State law, the developer does not have the authority to state (in writing or verbally) to the landowner that the offer is made under threat of eminent domain, (ii) state that a written offer is an “initial” or “final” offer pursuant to Texas law, or (iii) submit the Landowner’s Bill of Rights to the landowner. The developer is acting as a private party in its efforts to obtain the easement.

All revisions or deviations from the SAWS-provided easement document must be approved in writing by SAWS Legal.

If SAWS staff determines, in its discretion, that a good faith offer has been made and the developer has still been unable to obtain the easement, SAWS staff may elect to reach out to the landowner to discuss the matter and see if a resolution can be reached.

All further determinations of public necessity for public use are solely within the discretion of the SAWS Board of Trustees and, ultimately, the City Council of San Antonio. If public necessity for the easement in question is found to exist and a Necessity Ordinance is approved by the City Council, the developer will be required to enter into a Funding Agreement, to be drafted by SAWS Legal, providing for developer funding of all easement acquisition costs, including awards, judgments, attorneys’ fees, court costs and expert costs. The Funding Agreement shall further provide that no guarantee of easement acquisition is made by SAWS, and that SAWS shall have complete discretion as to final route selection, legal strategies, settlements and appeals in any litigation.