

officer, the county judge, take evidence and make an appraisal. If dissatisfied he can have a second hearing before that most sacred of Anglo Saxon factfinders, the common law jury. As a final protector he has the highest court of the state.

However, this line of appeal is largely theoretical where only a small amount of money is involved. In the case of a minor taking involving \$500 or \$600, a man of modest means is in fact precluded from taking an appeal because he simply cannot afford it. Attorneys fees, witness fees, appraisal costs at not one but two separate stages make justice too expensive to obtain. Dozens of landowners have time and again told me that they wished to take an appeal but knew that the cost would be greater than the return. Under these conditions a constitutional guaranty of just compensation is meaningless.

This unrealistic assumption of the law—that all men can afford to go to court—requires the right-of-way man to be aware particularly of his role as the protector of the condemnee. He can, in the relatively small taking, use the superior economic resources of the state to force the landowner into accepting a low damage figure. He can be prepared to drag the dissatisfied condemnee through every court of the state once the condemnee appeals. On the other hand he can be aware of the unrealistic assumptions of the right to appeal and be doubly on his guard to assure a fair price to the man of modest means in the relatively minor taking.

Some Highway Planning and Land Acquisition Procedures And Their Effect on Property Owners

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● THE LOCATION and construction of Interstate highways and the relocation of state trunk highways have, and will continue to have, a multitude of impacts on metropolitan areas and urban and rural communities. It is commonly accepted that these highways will affect more than transit and transportation. Notable among the effects are changes in land use and land development patterns. These roadways will change rural land use both directly through the acquisition of rights-of-way and, in many areas, indirectly through actual or potential development of adjacent areas (1). As an indication of the possible magnitude of the impact of the roadways on land use, Professor Howard of the Massachusetts Institute of Technology stated that the new highway program "will have more effect upon all form and pattern of growth, and therefore upon the character and structure of our metropolitan areas, than all of the metropolitan planning done by city planners between 1945 and now" (2).

Many economists have undertaken comprehensive studies to determine the effects of various highway improvements on future land use and development and on future land values. In addition, some economists have focused on the immediate impacts of the highway—its effects on those individuals and communities that must give up land for highway rights-of-way and whose activities are modified severely by the highway. This latter area, and in particular problems of rural property owners and communities during highway planning and land acquisition, will be discussed.

Some of the problems that confront rural property owners and operators during highway planning and land acquisition will be cited and an indication made of how some of these problems can be reduced by modifying certain procedures used by the acquiring agencies.

The problems that rural property owners face can be seen in the kinds of questions they ask, some of the more frequent of which are: Where will the road be located? Is there anything we can do to cut down the damage from having the roadway on our property? What will I get for my land? What can I do to make sure I get all that is coming to me? What can I do after the roadway comes through? These questions evidence

the difficulty that property owners have in (1) finding out the location of a proposed roadway before the roadway plans become final, (2) participating in the location of the roadway and its companion facilities, (3) ensuring the receipt of all compensation due them under existing law, and (4) adjusting to the land acquisition in such a way as to minimize any adverse effects it may have upon them. It has been found that through various procedures, the acquiring agency can reduce property owners' difficulties in each of these four areas. Several examples can be cited of the use of such procedures by highway agencies in Wisconsin and other states.

PROCEDURES THAT FACILITATE LOCAL PARTICIPATION

Local participation in highway planning has been recommended by highway officials and professional planners alike (3). Thus, the question here is not whether there should be local participation, but rather what procedures will be mutually helpful to the local individuals or groups affected and to the highway agency. What procedures will help property owners to formulate and present sound views and suggestions to the highway agency for use in deciding the location of the roadway and its companion facilities?

Apparently, several conditions must be met if property owners and others are to make sound suggestions and express their views concerning a proposed roadway, either at or following the public hearing, which apparently is the major vehicle of local participation.

First, property owners must have a clear understanding of the proposed location of the highway. Second, they must have a reasonable amount of time between the receipt of this information and the date of the public hearing, or the time at which the final location is decided, in which to formulate their suggestions. They need to know the means by which they can express their suggestions. In addition, if on occasion, property owners and others interested lack the ability and leadership to formulate and present their views and suggestions, it might be desirable for the highway agency to solicit information from them.

A technique used by many states to increase the range of local participation and provide more information to the highway agency is to disclose the alternative routes for the proposed roadway at the time of the public hearing. (Information is from replies to questionnaires submitted to the state highway departments of 49 states and Hawaii by the Highway-Laws Project, Wisconsin Law School, University of Wisconsin. From this point on, information given on the various procedures mentioned is based on these questionnaires, unless otherwise indicated.) Another technique that might be used to obtain more information is to indicate, either in the notice of the public hearing or at the hearing, certain things that local people may wish to consider and about which they are encouraged to voice their views and suggestions. For example, the highway agency might suggest that rural property owners consider the effects of the proposed roadway and its companion facilities on such items as school and drainage districts, soil conservation districts and practices, and rural cross-traffic between markets. A thorough explanation by those representing the highway agency of the reasons underlying the agency's preference for a particular alignment might also elicit comments and suggestions.

In Wisconsin, several means of expressing views other than the public hearing are provided property owners and others (4). Individuals or groups can funnel their suggestions to the State Highway Commission through county highway officials. In addition, property owners and others have the right of petition, and they can meet directly with district or central State Highway Commission personnel. They may also express their views to other local or regional planning agencies that are in contact with the State Highway Commission.

Apparently, local participation depends not only upon the legal means available for participation, such as public hearing and right of petition, but also upon the existence of a comprehensive information program. Property owners and others will be hindered in presenting their views and suggestions if they do not have precise information about the proposed roadway and its companion facilities, the possible alternative routes, and the various ways in which they can express their views.

Local participation in highway planning becomes more difficult as standards of design become higher. However, even with high design roadways, local participation can be helpful to the highway agency, particularly in location of companion facilities such as interchanges and feeder roads, overpasses and underpasses, and service roads.

APPRAISAL AND NEGOTIATION PROCEDURES

Having considered briefly some aspects of local participation in the planning process, procedures that may be used by the acquiring agency to reduce problems of property owners during the land-acquisition stage will be discussed. As with the planning process, a property owner may have difficulty in obtaining the information he needs during the land-acquisition process. He may be unable to determine what part of his property will be needed, when and how his property will be appraised, and for what items he will be compensated. To minimize this difficulty, the State Highway Commission of Wisconsin now informs property owners by personal contact rather than by letter that their land will be acquired (5). During this initial contact, the owner is told the general procedures the Commission will use in attempting to buy his land. He is told the amount of land needed for the roadway, and the alignment of the roadway is explained to him.

However, even with the technique of personal contact, the property owner may still have difficulty in determining the roadway alignment through his property unless he can inspect a right-of-way plat of his property. Recently, the Wisconsin State Highway Commission began sending rights-of-way plats to individual property owners upon request. These plats, or maps, indicate precisely the amount and location of the property needed, and thereby help the property owners to visualize the probable consequences of the taking.

It is possible that an informational brochure might be provided by the acquiring agency as a matter of course. It would include a right-of-way plat showing the property needed, along with other information on appraisal and negotiation procedures and the law of compensation. If such a brochure were available to the property owner before or at the time of the appraisal, it might help him to point out obscure items to appraisers, especially if there are improvements on the land to be acquired.

A property owner may have difficulty in deciding whether the offer he receives for his property is adequate. Procedures have been developed that are aimed at minimizing this difficulty. These procedures are intended to insure that the property owner is paid all that he is entitled to receive, and that he gets the information he needs to help him decide whether the amount offered is adequate.

As the offer made by a highway agency is usually based on staff or independent fee appraisals or both, many states have used an appraisal procedure to make sure that all compensable items are included. In Wisconsin, as in several other states, the appraisers are instructed to contact the property owner and allow him to be present at the time of the appraisal (3, 4). Thus, a property owner who wishes to do so may call attention to the importance of certain items that might be overlooked by appraisers.

A few states specifically instruct their appraisers to request the property owner to accompany them so he can point out various features of his property and help them obtain the basic facts. It is unfortunate for property owners that many states do not follow this appraisal procedure.

A different procedure is used by many states to assist property owners in deciding whether or not the offer they receive is adequate. This is the disclosure of the appraisal upon which the offer is based. This information allows the property owner to see how the appraisal is made within the law of compensation, to discover whether any compensable items were overlooked, and to determine which items were excluded as legally non-compensable. Some states in which this procedure is used have noted that it allows negotiators to explain appraisal methods and to point out the non-compensable items. Others have indicated that disclosure helps the property owner decide on the adequacy of the offer and makes him feel that he is being treated fairly.

Some states break down the offer into "payment for property" and "damages to the remainder." This appears to be of some assistance to property owners in comparison

with complete nondisclosure of appraisals. States that do not disclose appraisals in any form usually say that disclosure leads only to bickering, as property owners understand neither the appraisal process nor the laws of compensation.

Before leaving the question of disclosure of appraisals it might be said that disclosure is particularly significant to property owners because of the nature of the negotiation process. Most states do not negotiate in the bargaining sense. In general, these states raise their offers only when compensable items have been overlooked in the appraisals. If the appraisals are not disclosed to the property owner, he is hindered in his review of the offer and thereby loses an opportunity to ensure receipt of all compensation due him.

The property owner may be confronted with still another problem during negotiations, that of deciding between alternative ways to make his settlement. In Wisconsin, the property owner is given the opportunity of selling some severed remnants or his entire tract when badly severed, to the Highway Commission in addition to land for right-of-way. The owner also has the alternative of retaining, at their salvage value, buildings situated on the right-of-way. Property owners need to be informed of the alternatives and the legal advantages and responsibilities that go with each. Again, the usefulness of a comprehensive informational program is evident.

PROCEDURES THAT FACILITATE ADJUSTMENT

Another stage at which property owners have difficulty is in adjusting to the loss of some or all of their property. They may not be able to find additional property to buy or rent. They may not have sufficient time to vacate their property and move. In addition, they may have to finance the cost of moving.

If his adjustment is to be comparatively trouble free, a property owner must have a "reasonable" period of time and enough money with which to finance the change. The reasonable period of time depends upon the type of property taken. To an urban home owner, the task of locating a dwelling in 2 or 3 months may not be unreasonable. But the same period of time might be grossly inadequate for a farmer who is trying to locate another farm unit, or a set of farm buildings to rent or purchase. To overcome this difficulty, several state highway departments allow as much as 6 months between the notification to the property owner of the date of the taking and the actual taking.

Timing the acquisition properly will also help to provide the property owner with a reasonable amount of time for adjustment. For example, a farm owner or operator who must vacate buildings during the summer or fall may have limited opportunities to rent or buy another unit with buildings. If acquisition occurs in March, when more farm units are available for rental, he has a greater number of units from which to select. Also, acquisition in March is not as disruptive for a farmer as acquisition in summer or fall when farm labor requirements are high and when feed supplies have been built up, making a move more difficult and expensive.

As mentioned previously, the property owner needs adequate funds with which to finance his adjustment. The need for funds is apparent when the property owner cannot be paid until he vacates, cannot vacate until he acquires other suitable property, and cannot acquire other property until he is paid for his present property.

In order to provide some early financial assistance to property owners, some states have provisions for making a partial payment before title is taken. Some of these states limit this partial payment to the amount needed for moving buildings and fences or for other expenses incurred by owners before conveyance.

Another procedure that might be developed would be to allow the property owner to sell his property to the highway agency, receive his payment, but continue to occupy the property (subject to certain leasing requirements) while he is trying to acquire other suitable property. Establishing use of this technique, as of the partial payment technique, might require adjustment in state statutes.

Other changes in highway agency procedures that would be helpful to property owners in their adjustment to loss of land are advanced acquisition of right-of-way, payment of moving costs, and changes in the classification of items that are presently non-compensable.

The technique of advanced acquisition, by which land is purchased one or more years before the highway is constructed, benefits the acquiring agency by reducing right-of-way costs and forestalling speculation in properties (6). It also has advantages for property owners in that it affords more time for conducting negotiations and for necessary relocation (6).

Several states now pay the costs of moving to assist property owners and operators in the adjustment process. In addition, payments for such items as realignment of personal property, cost of refinancing, and change of grade resulting from a taking would help property owners, but, as in the case of payment of the costs of moving they would probably require permissive state legislation.

These are some of the workable procedures that can reduce the adverse impact of highway land acquisition on those losing property. Examples of the successful use of these techniques can be found, even in such areas as local participation, where their use appears to be most difficult. Recently for instance, in two Wisconsin projects, local recommendations supported by sound, well-documented information were used by the State Highway Commission in the alignment of a roadway and the location of overpasses (7).

Two main points should be emphasized. One is the need for a comprehensive informational program for property owners. The property owner who is affected by highway planning and land acquisition needs information on: (1) the location of the proposed roadway; (2) the means by which he can make his wishes known; (3) the procedure followed by the highway department in the appraisal and negotiation process; (4) the law of compensation, including the distinction between compensable and non-compensable items; (5) the alternative ways in which he might settle; and (6) the timing of occupancy and compensation. A comprehensive informational program, integrated with the procedures previously discussed, should help property owners avoid many of the difficulties that presently confront them when they lose land to highways.

The second point is that the highway program involves much adjustment and although the transition can be eased the impact of the program is still great. This impact inevitably creates a situation that can strain relations between local people and the public agency. It may create ill will, distrust and opposition, which in the long run are harmful to all interests. There is a real need, therefore, for a conscious effort by public officials to demonstrate in all possible ways that they are anxious to minimize the adverse local and personal impacts of this far-reaching program.

(The opinions expressed in this paper are those of the author and do not necessarily represent the views of the Farm Economics Research Division, ARS, or the U.S. Department of Agriculture.)

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