

# HIGHWAY RESEARCH CIRCULAR

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## COMMITTEE ACTIVITY

Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Department of Economics, Finance and Administration, Highway Research Board

LAND ACQUISITION  
MEMORANDUM #171

## REPORT OF COMMITTEE ON LAND ACQUISITION AND CONTROL OF HIGHWAY ACCESS AND ADJACENT AREAS

The Committee on Land Acquisition and Control of Highway Access and Adjacent Areas continued, through the year 1964, to give assistance to State Highway Departments and other governmental agencies in providing information on new and improved methods of land acquisition, to the end that the highway program may be expeditiously and economically carried forward.

During the years 1963 and 1964, the publication "Highway Research Board News" carried digests prepared by the Committee on State appellate and Federal court decisions in which matters relating to condemnation of property for public purposes were at issue. The procedure for disseminating these digests has now been changed; during 1965 and thereafter, the digests will be carried in the newly established "Highway Research Circular." The first issue of this new circular was issued in March, 1965. These digests remain a valuable part of the Committee's work and continue to receive widespread recognition in various publications and house organs.

For a number of years now, the Committee has had a vital interest in the severance studies that are being undertaken in the States. At least 47 States have or are now making such studies. A bank of approximately 2,300 cases has been processed, and the data derived therefrom have been used in responding to an increasing number of requests.

## REPORT OF SELECT SUBCOMMITTEE ON REAL PROPERTY ACQUISITION

In 1961, the 87th Congress, by resolution, created the Select Subcommittee on Real Property Acquisition, House Public Works Committee, to make a comprehensive, impartial, and nonpartisan study, in order to determine whether owners, tenants, and other persons affected by the acquisition of real property in Federal and federally assisted programs receive fair and equal treatment, and adequate compensation, considering the value of their property and losses and expenses they incur on being required to move from their homes, farms, or business locations. The subcommittee was directed also to develop specific

legislative proposals, as necessary, in order to eliminate inequities and to prevent or minimize hardships in these programs.

The study report has recently been submitted as Committee Print No. 31, House Committee on Public Works, 88th Congress, 2nd Session. It is entitled "Study of Compensation and Assistance for Persons Affected by Real Property Acquisition in Federal and Federally Assisted Programs," dated December 22, 1964.\* The report is quite voluminous, covering 522 pages and 20 recommendations plus a "proposed bill" providing suggested language for implementing each recommendation.

The Land Acquisition Committee has maintained a continuing interest in this study from its inception to its completion. A very brief resume of the recommendations follows:

- (1) That Congress declare the policy that owners and tenants of property acquired for public programs conducted by the Federal Government, or with the assistance of Federal funds, shall be afforded fair and equitable treatment on a basis as nearly uniform as practicable; that owners and tenants shall be fairly compensated for their property and for other losses and necessary expenses incurred because of such programs; and that every reasonable effort shall be made to prevent hardships to persons caused to move from their homes, farms, or places of business, or to lose their employment or to suffer other economic injury as a direct result of such programs.
- (2) That Congress establish a uniform policy to guide and the land acquisition practices of all Federal agencies.
- (3) That the market value standard be retained as the basic measure of compensation "for the real property taken."
- (4) That legislation be enacted requiring the taking of any building along with the land if such building must be removed or would be damaged by the project.
- (5) That tenant (in connection with (4) above) be compensated for such building; and that no agreement between the owner and the tenant with regard to such building shall work to the detriment of the tenant.
- (6) That legislation be enacted to provide uniformity as to whether a structure or other improvement is a part of the real property.
- (7) That further study be made of the "Mayme Riley" problem.

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\*Copies may be purchased from the U. S. Superintendent of Documents, Government Printing Office, Washington, D. C., at \$1.50 per copy.

- (8) That legislation be enacted authorizing the payment of incidental expenses incurred in the transfer of real property to the U. S.
- (9) That property owners be reimbursed for reasonable expenses of litigation.
- (10) That relocation payments be made to all displaced person on a uniform basis.
- (11) That lands acquired by local interests for Federal programs, for relocation payment purposes, be regarded as acquired by the Federal Government.
- (12) That agreements with State and local government agencies conducting public programs with assistance of Federal funds be required to provide that persons having to move be given 180 days notice; fair and reasonable land price be established before negotiation begins; owner be not required to surrender possession until paid or such amount deposited in court; decrease in market value because of administrative action be disregarded in determining the compensation for the taking; and that (4 & 5) above be adhered to.
- (13) That the Internal Revenue Code be amended with regard to gains and documentary stamp taxes.
- (14) That loans and counseling be provided for displaced and injured small businesses.
- (15) That retaining be provided for owners and employees displaced and caused injury.
- (16) That unemployment compensation be provided for employees of displaced business concerns having less than four employees.
- (17) That legislation be enacted authorizing the Housing and Home Finance Administration to make monthly "rental adjustment" payments to assist families and elderly or handicapped individuals with low income.
- (18) That low-interest loans be provided for the purchase or construction of single family homes by low-or moderate-income displaced homeowners.
- (19) That public housing subsidy be provided for displaced families or individuals.
- (20) That the National Housing Act be amended to make low- or moderate-income displaced individuals, regardless of age, eligible for present FHA section 221 housing programs.

#### ADDITIONAL RESEARCH PROJECTS UNDERWAY

Other research projects underway include Project 11-1 under the auspices of the National Cooperative Highway Research Program. This project "Rules of Compensability and Valuation in Highway Land Acquisition" is being carried forward at the University of Wisconsin under the direction of Richard U. Ratcliff, Professor of Land Economics at the University.

The research is designed to cover the acquisition of land for highway rights-of-way where difficult problems have arisen as to compensability and valuation. These problems continue to plague the courts, highway administrators, and appraisers. Diversity of standards and rules between States and within States is a source of confusion, inefficiency, hardship and expense. The rules relating to compensability and valuation are only partly sketched by legislation and administrative interpretation; decisions continue to play an important role, and case law frequently has produced diverse results in all of the States. Appraisal theory and practice frequently produce widely divergent results under these legal rules. The research contemplated by this study envisions a final product which will be of practical use to legal and appraisal personnel in highway agencies.

Another research project under the NCHRP program is Project 11-2 "Theory and Practice in Inverse Condemnation." This project is being carried on at Harvard University under the direction of Charles M. Haar. Inverse condemnation suits are those wherein the State is sued for property damage occasioned by highway construction. Generally these suits may involve damage occurring during or after construction, and accordingly, not compensated at the time of taking. (For example, damages due to blasting and other construction activities, disturbances of drainage, and loss of lateral support.) Inverse condemnation cases are increasing, but the theory and limits of the State's liability for inverse condemnation are neither clearly understood nor agreed upon. Legal procedures for determining questions of liability are also unsettled. Current handling of inverse condemnation claims is becoming increasingly diverse, the results confusing and costly, and judicial use of both eminent domain and tort theories in dealing with these claims has hampered the evolution of clear legal rules of compensation.

#### OTHER COMMITTEE ACTIVITIES

The Committee continues to provide assistance wherever possible in the right-of-way field, and to provide case information by the issuance of monthly memoranda through the medium of the "Highway Research Circular."

The year's highlights of Committee activities were the open meetings at the Highway Research Board's forty-fourth annual meeting held in Washington, D. C., in January, 1965. Two excellent papers were sponsored by the Committee dealing with land economics at interchanges and the effect of zoning on valuation in eminent domain.

The paper "Interchange Development Along 180 Miles of I-94" was prepared

by Roger H. Ashley and William Berard, both of the Michigan State Highway Department. Since the introduction of freeways, and particularly with the advent of the Interstate program, many appraisers, investors, and property owners have pondered the question "does every interchange on a limited access freeway develop benefits?" To answer this question, a study covering 66 interchanges on a 180-mile span of I-94 was made. The study area of I-94 extends from the Indiana State line at New Buffalo to US-23 near Ann Arbor. The study was made three and a half years after the opening of the freeway. Analysis of the study demonstrates that the question is not whether there are benefits at an interchange, but the degree; and the degree of benefits on a future interchange can best be estimated by comparing it with a similar class of interchange on an existing facility. An excellent movie summarizing the study was also shown, prepared by the Michigan State Highway Department.

The other paper presented is entitled "The Effect of Zoning on Valuation in Eminent Domain," by George F. Limerick. The principal problem in this field arises out of the application of the doctrine known as "reasonable probability of rezoning." A common statement of this doctrine is: Where land is not presently available for a particular use by reason of zoning, but the evidence tends to show a reasonable probability of a change in the near future, the effect of such probability upon the minds of purchasers generally may be taken into consideration in fixing present market value. This doctrine has been recognized by many States where the issue has been raised at the appellate level. The paper further goes into what evidence has been held to be admissible to prove reasonable probability of rezoning.

#### 1964 LEGISLATION

In improvement of the Interstate System, it is anticipated that more than 750,000 individual parcels of land will have to be acquired by 1972. In addition, approximately 1,500,000 parcels will have been acquired for the ABC systems of highways by the same date. To meet this tremendous workload of acquiring highway right-of-way, many of the States have overhauled their methods of operation and others are in the process of doing so. Several States enacted measures aimed at improving their acquisition processes.

The year of 1964 was relatively a light one so far as State legislation goes, being what is generally termed the "off year" legislative wise. Only 23 State legislatures held regularly scheduled sessions with several others holding special sessions. A resume of the pertinent legislation enacted follows:

#### Land Acquisition

Probably the most important and significant piece of legislation enacted in the field of land acquisition was in Pennsylvania where a comprehensive act was approved, to codify, amend, revise and consolidate the laws relating to eminent domain. The new Act sets forth the procedure to condemn, procedure for determining damages, just compensation and measure of damages, evidence, and

for a board of viewers. The Act provides that just compensation shall consist of the difference between the fair market value of the condemnee's entire property interest immediately before the condemnation and as unaffected thereby and the fair market value of his property interest remaining immediately after such condemnation and as affected thereby, and such other damages as are provided in this article. The new law was approved by the Governor on June 22, 1964, and became effective on September 1, 1964. New elements of compensation were authorized, as well as new procedures.

A new law was enacted in Arizona relating to the procurement of rights-of-way. It authorized the State Highway Commission to acquire whole parcels of land where remaining lands would be severely damaged; to condemn lands for exchange with public and quasi-public agencies where such agencies' land is needed for highways; to acquire rights of way, easements, lands or other real property for future highway needs, until used; to create the Highway Property Rental Fund and for the annual distribution of such fund to the various counties; and final, the law authorizes the State Highway Commission to dispose of excess property when not needed for highway purposes.

Legislation enacted in Virginia established a \$10,000,000 Highway Right-of-Way Fund to provide a revolving resource for the purpose of acquiring properties to be used for highway rights-of-way, before the development of such properties, so as to minimize the costs of highway construction and reduce the inconvenience to owners of property. The State Highway Commission is required under the Act to reimburse the Fund with the amount expended for property when it proceeds to construct a highway project on such property.

#### Outdoor Advertising

Twenty States<sup>1/</sup> have entered into control agreements with the Bureau of Public Roads to control outdoor advertising along the Interstate System, but only seven States<sup>2/</sup> have received payment under the one-half of one percent bonus provision of the law. In addition to the twenty States named that have entered into control agreements, two others -- California and Georgia -- have approved State laws, but no agreements have yet been signed.

In 1964, legislation was enacted in several States. California adopted a measure which restricts billboard advertising within 660 feet of the Interstate System. Certain exceptions to this restriction are provided and the removal period for signs now in place is set at three years. This law authorizes the State to enter into an agreement with the Secretary of Commerce to obtain additional Federal funds.

Georgia enacted a law controlling the erection and maintenance of outdoor advertising signs adjacent to the Interstate System in conformity with Federal

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<sup>1/</sup> Connecticut, Delaware, Hawaii, Kentucky, Maine, Maryland, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

<sup>2/</sup> Kentucky, Maine, Virginia, New York, New Hampshire, Ohio and Wisconsin (in order of acceptance).

standards. Under the law, the Director of the State Highway Department is authorized to enter into agreements with the Secretary of Commerce and to participate in the bonus.

Michigan passed a resolution creating a special committee to study roadside advertising.

Virginia passed a resolution directing the Virginia Advisory Legislative Council to study and report on matters relating to the control and regulation of outdoor advertising. It also approved a measure which increases fees for outdoor advertising and which allocates the monies received from these fees to the regulation and control of outdoor advertising and the landscaping of highways. Under the old law, these monies were used for the construction and maintenance of highways.

#### Public Utilities

Three States -- Michigan, New Jersey and Virginia -- enacted legislation on the subject of reimbursement of public utilities for the cost of utility facility relocation made necessary by highway construction.

Michigan created a special House Committee to study the economic impact of the proposed payment of utilities' relocation costs incident to Interstate System construction and to study the effect of such payment on Highway revenues and on utility service rates.

New Jersey amended its law providing that the Delaware River Joint Commission reimburse utilities for relocation costs by removing an exception and therefore including reimbursement for relocation of facilities along public streets, roads or highways.

Virginia further extended reimbursement for utility relocation made necessary by Interstate System construction. Reimbursement is provided for relocation of water and sewer lines owned by municipalities, counties and other governmental subdivisions. The State also passed a resolution directing the Virginia Advisory Legislative Council to study the possible amendment of condemnation statutes to require public service companies to use their own easements more fully and to allow the use of the same easement by two or more public service companies.

#### Relocation Assistance and Removal Costs

Three States -- Kentucky, Pennsylvania and Virginia -- and the District of Columbia enacted laws granting relocation payments to persons whose property is taken for highway construction.

Kentucky and Virginia amended their laws to take advantage of the provisions of the Federal-Aid Act for reimbursement to States for relocation payments not to exceed \$200 to an individual or family or \$3,000 to a business concern.

Pennsylvania amended its laws on eminent domain to provide reimbursement

for moving expenses up to \$500 for residences and up to \$25,000 for places of business.

A Federal law enacted for the District of Columbia authorizes the payment of relocation costs to families (\$200) and to businesses (\$3,000 or actual certified moving costs up to \$25,000) displaced by highway or other public works construction in the District. This measure also established the Relocation Assistance Office within the Redevelopment Land Agency of the District of Columbia to handle relocation services and payments.

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