

Right-of-Way Problems on Urban Expressways

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● BEFORE I begin the text of this paper on right-of-way matters, I would like to relate how the expressway idea has grown in Milwaukee County. Expressway planning began in the City of Milwaukee in 1944 with an origin-and-destination survey sponsored jointly by the city, Wisconsin State Highway Commission, and the Bureau of Public Roads. In 1952, land acquisition and construction was under way for portions of a 24-mile system of expressways for the City of Milwaukee.

In the fall of 1952 the Common Council of the City of Milwaukee passed a resolution asking the county board to join forces for the purpose of preparing and supporting a bill intended to be introduced in the state legislature. This bill would authorize Milwaukee County to impose a wheel tax on all motor vehicles for the purpose of raising revenues to finance expressways. This resolution was referred to the legislative committee of the county board. Hearings were held on this matter and all units of government in the county were invited to send representatives. A 21-man committee was eventually formed, consisting of three groups of seven men each, one group from the suburbs, the second group from county government and the third group from the city. The wheel-tax bill was considered impractical. A legislative committee of three attorneys was formed in order to prepare a bill to establish a county expressway commission. This was written and formally approved by the common council and by the county board. It was passed in the 1953 fall session of the state legislature and became Section 59 965 of the Wisconsin Statutes, "Expressways in Populous Counties."

The expressway idea advanced from the city level to the county level. As a city program it was limited to the 55-sq.-mi. area and 1953 estimated population of 660,000 of the city. The larger scope of activity on a county-wide basis covers an area of 239 sq. mi. with an estimated 1953 population of 908,000.

The five-man Milwaukee County Expressway Commission was appointed by the governor pursuant to statutes. After the commission was organized, the City of Milwaukee transferred certified copies of all maps, engineering studies, and reports pertaining to an expressway system in Milwaukee together with all contracts pertaining to the creation and construction of such expressways as required by statute. The statute states:

The Commission is charged with the duty and vested with all powers necessary to plan, acquire the right of way for, and construct an expressway system in Milwaukee County and administer each expressway project until it shall be certified as completed, subject to the general supervision of the County Board. . . .

As soon as possible after its organization the Commission shall consider and devise a general plan of expressways to serve the entire county.

Pursuant to the legislative directive a general plan for expressways for Milwaukee County is now being prepared by consulting engineers. Their report is scheduled for completion in March, 1955. Again quoting from the Law:

Such plan shall be presented to the governing body of each municipality through which a part of the expressway system is routed for its consideration and approval. . . . When the approval of the necessary local governing bodies has been obtained or the recommendation of the State Highway Commission has been obtained in lieu thereof, the general plan shall be presented to the County Board. . . .

When a general plan has been approved by the County Board the Commission shall prepare and submit to the County Board tentative expressway project budgets for such units of the comprehensive plan and in the order of construction as the Commission deems proper . . . The County Board shall adopt expressway project budgets with such changes as it may deem proper. When so adopted the County's contribution to the expressway project shall constitute a legal appropriation and shall be expendable to the extent that expressway bonds have been authorized or money otherwise provided . . .

Municipalities shall be reimbursed for prior expressway project expenditures. Any expressway projects under construction at the time the Commission is created and the transfer of functions to the Commission has been effectuated shall be completed by the Commission.

This paper is a report of activities on land acquisition. This subject has been profoundly explored and well reported by many others, some of whom are present here. For this reason my topic will be limited to a few special features. Among these are appraisal work, public relations, land values in adjacent areas, billboard control and advance buying.

We commenced our land purchasing in 1952. All emphasis was on speed. We were told construction would start in 1953. As it happened some of the land was obtained by license agreement from Milwaukee County. These lands were vacant and did provide a site for early construction of certain bridges. However we reached the conclusion after a short time that about two years time should be allowed for the appraisal, negotiation, vacating, and clearance of any considerable segment of right of way. This estimate of time will allow for a minimum of hardship on property owners. It might be interesting to set down the sequence of events as the actual record of the acquisition of one parcel.

Land-acquisition project was authorized	July 21, 1952
Negotiations started	October 10, 1952
Condemnation was requested	December 11, 1952
Settlement made without court action on	March 27, 1953
Owner agreed to vacate on	October 15, 1953
Owner actually vacated on	March 1, 1954

Wrecking of building by contract started	May 3, 1954
Wrecking job was completed	June 8, 1954

The total elapsed time was over 22 months. It may seem that unusual forbearance was used in disposing of this action. It is our belief that a wise public relations policy includes the element of maximum consideration for property owners who are displaced.

In the beginning of our activities, to save time it was necessary to seek outside appraisal help. It was decided to arrange for an appraisal contract. Proposals came in accompanied by letters of qualification. The appraisers who were best qualified had submitted the highest schedule of fees. This firm was hired. Our staff provided a considerable portion of the background material required for appraisals consisting of comparative sales data, parcel sketches, pictures and appraisal forms. The cost of the contract work was \$28 per residential property, which is defined as a residence of less than four dwelling units, and \$125 per nonresidential property.

Every appraisal report must be recommended for approval by the staff. The accuracy of the report and opinion of value are a staff responsibility. For this reason the report is carefully reviewed. It is our belief that the review of appraisals is a very important phase of our activity. If the fair market value of a given parcel is established by appraisal and carelessly set 10 percent or more too high, it will follow that negotiations will be easy and acquisition will be a routine matter. However, public funds are being wasted and what is worse a bad precedent for value is established. In urban areas homes tend toward similarity by areas. A high price precedent may be a landmark which will result in too high settlements for many other parcels.

The establishment of a suitable appraisal review method is most essential. Every appraiser's work should be checked by another appraiser of equal or greater competence

before a cash offer is made for a property. This check should include a complete field inspection of the property, reworking of computations and an analysis of the comparative sales used or other evidences of value found in the report.

In the case of simple residential property, the field inspection need not include an interior inspection in every instance. It is our practice involving higher-type residential properties and all commercial and industrial properties that, when an outside appraisal report is procured, an additional staff appraisal is also made. The more-difficult appraisals are prepared by two staff people working together.

For additional precaution, to avoid errors, we insist that all negotiators shall be highly competent appraisers. A negotiator is instructed to make a complete interior inspection of all premises and satisfy himself as to the accuracy of the appraisal report he is using before making an initial offer.

The importance of good appraisal work as a tool for the right-of-way agent cannot be over emphasized. It is astounding to consider the cost of purchasing engineering skill for the economical design of expressways compared to the cost of purchasing appraisal talent for the economical acquisition of right-of-way. In urban areas construction costs are but a little higher than land costs. It is our belief that the right-of-way division should have available for consulting service the best appraisal talent in the county.

In connection with the preceding discussion about review of appraisals, it can be noted that, for a small right-of-way organization, it may at times be impossible to assign an individual to negotiate for a given parcel who has not been one of the appraisers. The principle of having three parties to every negotiation—the appraiser, negotiator, and property owner—has been widely discussed. This principle states that the appraiser should never be the negotiator. We endorse this principle. The use of

this three-party method tends to prevent some forms of criticism. The same three-party arrangement can be accomplished, however, when there are two appraisers and the property owner, if one appraiser acts as the negotiator.

Good public relations are a great help in negotiations. A number of simple matters will be helpful in this regard. It is well to send advance notice to all affected property owners that their property is within the right-of-way. Notice of the impending visit of an appraiser should be sent to all tenants. Negotiators must be well informed concerning construction so that they may explain all its details and the basis of the need for the taking. It is helpful to have small-scale prints of the proposed construction for distribution. Owners seem to derive some satisfaction in being a part of a public improvement. This feeling is promoted by a better understanding of the entire project and the public need for the work.

An important element in good public relations is to provide plenty of time for negotiations. Some people require a lot of time to adjust to new ideas. They prefer to have a new home in mind before making a deal. This means they will spend weeks or months looking for a buy before they will agree to final terms. These people are under pressure and should be allowed to make their plans in their own way if this is possible. An over-ambitious timetable on acquisition can generate a lot of animosity by property owners. A factor of safety in timing should be set up to allow for stay-over periods after closing deals. The owner agrees to vacate as of a certain date and tenants are given notice to vacate after the deals are closed. Extensions of tenancy are often required. Some leniency of enforcement is appropriate at this stage and is justified in view of the overall hardship to the citizens by the public.

Some families, especially with several children, find difficulty in locating new quarters. In the City of Milwaukee we

have 2,500 units of permanent public housing operated by the Milwaukee Housing Authority. Applicants for housing are screened for eligibility under low-income standards, together with veteran's status. Top priority for admission is given to families displaced by expressway purchasing. Cooperation from this agency is helpful in getting homes vacated.

The payment of fair prices for property will have a wholesome effect on the public. An expressway-system plan must necessarily include right-of-way which will not be purchased for years to come. If the public realizes that when the proper time comes they will be treated fairly, they will be less inclined to be resentful and stir up the neighborhood. Conversely, if the county should acquire the reputation of paying more than market value, speculators may be encouraged to purchase income-producing property within the right-of-way limits and possibly tend to inflate values by falsely stimulating market activity in these areas.

Good public relations is a term which may be defined many ways. The expressway staff which keeps the public informed and interested in its activities and, at the same time, uses every precaution to cushion the impact of the necessary inconvenience caused to the public can be said to operate with good public relations.

Many informative articles have appeared recently reciting the effect of expressways upon property values in adjacent areas. In Milwaukee we have no expressways built as yet. Land acquisition has progressed in areas already substantially built up. There has been little evidence to indicate changes in values in adjacent areas. However, I can mention one example of the conversion of land use because of expressway planning:

A gas station owned by a large oil company located on a heavily traveled street was acquired for expressways. No other vacant site was available. The expressway plans indicate that the next cross street will be used as an outlet for an off ramp.

This company assembled a site at this next cross street by buying three residential parcels on land zoned for local business. The cost of assemblage was rather high. One of the three parcels was bought for \$18,000 from the owner, whose cost a year prior was \$9,000. The cost of the land was about 25 percent more than the purchase price of the complete gas station. We were advised that the additional traffic as well as right-hand-turning movements to be generated at this location, after the expressway is in operation, influenced the company to make this investment.

During our activities in acquiring land for about a year, in one particular segment about a mile in length, we observed a great increase in real-estate activity in the adjacent area on one side. The other side, being industrial, was apparently not affected. A considerable number of sales were made to owners bought out by the expressway. The market for the older homes in this area was bolstered up considerably. During this relatively short period we believe most of the properties sold at 5 to 10 percent above prevailing market prices.

During this period while the county is having prepared a county system plan for expressways, our office is receiving numerous inquiries about tentative locations. Subdividers are evidencing great interest in expressway routes. They have announced their intention of planning to acquire lands for subdivision purposes which will be convenient to future expressways.

The phenomenon of rising land values adjacent to expressways will be proven here as well as elsewhere, we have no doubt. It is in the nature of cause and effect that the utility value of these multimillion-dollar improvements will benefit most those property owners nearest in line to use them.

The Common Council of the City of Milwaukee in 1953 enacted an ordinance to regulate advertising devices in areas abutting expressways. The principal purposes of this ordinance are to promote public

safety and preserve aesthetic values. According to the terms of this ordinance no outdoor-advertising structure, post sign, or advertising statuary which faces and is visible from the right-of-way of an expressway shall be erected, constructed, relocated, or maintained after January 1, 1953, within 500 feet of the outer limits of the right-of-way of such expressway, except as follows:

The provisions of this paragraph shall not apply to any nonflashing sign or sign structure constructed, painted, or maintained on a building on which the advertising is limited to: (1) the name of the building; (2) the name of the person, firm, or corporation occupying the building and the type of business conducted or produce handled by such person, firm, or corporation; or (3) signs erected and in place before January 1, 1953. All outdoor advertising structures which are erected after January 1, 1953, shall be removed, rearranged, or relocated to conform within 3 years from the date of opening of the expressway.

Some thought is now being given to the extension of similar billboard control on expressway routes throughout the county.

The problem of providing an adequate method of preventing further improvement of lands required for expressway construction in future years is a serious one. In order to intelligently conserve public funds, lands which are now vacant should remain so and substantial additions should not be made to improve the lands. For the past 26 years, Milwaukee County has enforced measures to prevent the construction of buildings within the ultimate right-of-way limits on state and county highways. This has been achieved by the use of zoning powers in the establishment of building setback base lines. However, this type of control is of no value for expressways, since these routes are not coincidental with existing state and county highways.

The Milwaukee County expressway law permits buying in advance of need for right-

of-way purposes. Certain steps need to be taken in the application of this authority: (1) provide notice to property owners that their lands are in the proposed right-of-way; (2) provide a method of delaying the issuance of building permits for improvements to lands required for right-of-way; and (3) set up funds to acquire lands.

Alternatives to immediate purchase are: (1) approve the issuance of building permits for low cost structures only and (2) postpone purchase for a period during which owner uses land without erecting improvements.

Let us briefly discuss these several points:

1. *Notice to owners that their lands are in the proposed right-of-way.* Within the next year Milwaukee County will adopt a plan of expressways to serve the entire county pursuant to statute. It is expected that many years will pass before all these routes have been constructed. It is anticipated that wide publicity will be given to these routes so that property owners will be aware that they are affected by the proposed routes. This is a general form of notice which will be useful. However, when the expressway commission decides to schedule land purchase on some particular segment of the plan, all property owners should be notified by letter. Good judgment would indicate that this be done on acquisitions planned during any future 5-year interval. A personal notice will be profitable because most owners will be discouraged from making improvements to their property. Extensive rehabilitation jobs will be avoided. Major and minor repairs and other maintenance will be held to a minimum.

2. *Provide a method of delaying the issuance of building permits for improvements on lands required for right-of-way.* For several years now the building inspector of the City of Milwaukee has been notifying the expressway office of the filing of

an application for a building permit on lands included in expressway routes. This cooperation has been helpful. Milwaukee is presently considering passage of an ordinance which will provide for the temporary withholding of building permits pending the purchase of properties. This proposed ordinance will require that upon application for any permit, if it shall appear to the inspector of buildings that such application concerns property which has been entered on the map for acquisition by expressways, the building inspector shall so notify the applicant and shall forthwith notify in writing the expressway division. Upon request of the expressway division, such permit may be withheld for a reasonable time to allow it to proceed to acquire such property. The city attorney has written an opinion that this proposed legislation is probably constitutional.

The Expressway Commission is planning to submit an amendment to the Wisconsin Statute 59.965 "Expressways in Populous Counties." The intention is to require by law all local municipalities to delay, for a reasonable time, the issuance of building permits and to notify the expressway commission of such permit applications affecting property within expressway routes.

3. *Set up funds to acquire lands.* Locally we are considering the establishment of a revolving fund to use for advance buying of lands. This fund would be reimbursed from project funds when parcels purchased in advance of need are incorporated in current projects. It is expected that this fund will be used wisely to safeguard the county's future interests. It will be necessary to administer this fund carefully. Certain policy considerations will govern in deciding which parcels are to be purchased. First of all the funds available will be raised by bond issue. The interest rate is expected to be about 2%. The investment must be justified in view of the following items: (1) present day value of parcel; (2) value

of improvements proposed; (3) elapsed time before parcel will be used for expressway; (4) accrued depreciation of existing buildings during this elapsed time; and (5) interest charges.

Let us consider a typical problem which might arise. An owner proposes to build an additional improvement estimated to cost \$12,000 on a business property. The present day value is \$60,000, of which \$40,000 is building value. The elapsed time before this parcel will be required for public use is 8 years.

The estimated cost of the property in eight years is found as follows:

The land value in 1963 is assumed to be the same as the present value which is . . .	\$20,000
The loss in value by depreciation of the existing building is assumed to be 40.000 × 02 × 8 =	6,400
The depreciated building value is estimated at	33,600
For this computation no depreciation will be estimated for the new improvement	
Value of new improvement	12,000
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Estimated cost in 1963	\$65,600
The cost to the county as of 1963 based on present acquisition	
Present cost	60,000
Interest for 8 years at 2 percent	9,600
Loss of real estate tax revenue is not included in this consideration	
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	\$69,600

These figures indicate that under these circumstances the acquisition could be deferred

As a general rule, permits for the construction of nominal additional capital improvements to properties now carrying large existing improvements can be permitted in many cases. Usually a new building improvement is worth many times the value of its site. Land, therefore, which is located in growing areas of the county must be acquired as vacant land to avoid a waste of tax dollars.

No discussion on land acquisition would be complete without a reference to condemnation. Our experience shows that 15

percent of all parcels were turned over to the legal department for proceedings in condemnation. About an eighth of these actually went to trial. Since all of these parcels were improved with buildings, a proceeding before a county judge was used. In this action the county judge hears the

parties and appraises the value of the lands to be taken. A more-summary method of taking without a hearing known as the "award law" is also available to the commission. However, it is deemed advisable to use this method only for taking vacant land.