Unintended Consequences: The Impact of Medians

BY JOHN T. SCHMICK

Mention the word median to an appraiser and the first thoughts that come to mind are the use of police power, not compensable and settled law. The reality is that an appraiser should be thinking about the unintended consequences of medians and their impact on real estate markets. Ultimately, from an appraisal point of view, the issue of a median revolves around the conflict between how appraisers measure market changes in value and a possible legal requirement to ignore those changes. What is undeniable is that medians are only one factor, within a larger project, that impact market value. The challenge to the appraiser is to recognize and measure the magnitude of that factor.

In most states, a search of past litigation will turn up any number of cases where judicial decisions reflect a thought process that equates the construction of a median to the exercise of police power rather than the exercise of eminent domain power. For example, if a median is constructed in an existing street right of way with no need to take land from the adjacent private property, the argument is whether the city, county or state has that right as part of its existing right of way. However, in cases where the street must be widened and/or rebuilt and a new median is included in the project, one can argue that construction of the median cannot be accomplished without additional land being condemned and taken from the adjacent private property. Consequently, the median and the land taken are so inextricably connected that the median itself, as a component of the total road project, becomes a factor in the overall damage measurement to the adjacent property. By taking a broader viewpoint of road projects with new medians, we find that both sides misidentify the important issues in this type of eminent domain case.

To understand the dilemma for the appraiser, one has to understand what medians are intended to accomplish. In their basic, functional use, medians are designed to change traffic patterns. This often results in higher traffic speeds and the need for more control of street access and vehicle movement. Medians are generally described as safety features that will result in fewer vehicle crashes and better pedestrian movement in high traffic areas. However, appraisers recognize that changing traffic patterns influences market values and marketability of land in the area of the project. It is well recognized that reduced access can have a negative impact on value. As a result, the appraiser is caught between the responsibilities to measure how real estate markets react to a road project that includes a new median, and measuring only those parts of the total project that condemners argue can or cannot be recognized in an eminent domain case. This conflict may bring the appraiser perilously close to violating Uniform Standards of Professional Appraisal Practice (USPAP) as well as state appraiser license rules when appraisal theory and legal theory collide. While appraisers can avail themselves of legal instructions from clients as to local legal practice, the appraiser is also walking into a hypothetical, and unrealistic, condition when instructed to ignore some part of the market reaction to a specific project attribute. At the same time, it provides an opportunity for appraisers to educate all parties involved as to the inherent conflict between legal and appraisal theories presented by such cases. At the very least, full disclosure of legal instructions to ignore certain parts of a road project is required.

Market Realities

As mentioned, road projects with new medians are designed to change traffic patterns. Frequently, this involves the need to accommodate higher levels of traffic and/or to reduce congestion in a given area. An example would be an area where vehicles turning left from a traffic lane back up traffic during periods of heavy volume. Medians may be used to control where traffic can turn left, thereby controlling traffic into and out of a particular property or area. A limited number of medians, combined with controlled intersections, may be a good traffic management tool in a high traffic area, but to the extent that all properties do not have the same level of access, there will be winners and losers for the available consumer dollars when a new median is installed. A classic example of this concept is around a shopping mall that has an interior perimeter road routing traffic through specific controlled intersections for access to primary streets. Small, independent properties with reduced access may be inconsistent with the new road and traffic patterns. If they cannot effectively compete in the market as a result of the road project and new median, they will eventually be combined, either voluntarily or involuntarily, into larger sites with better access.

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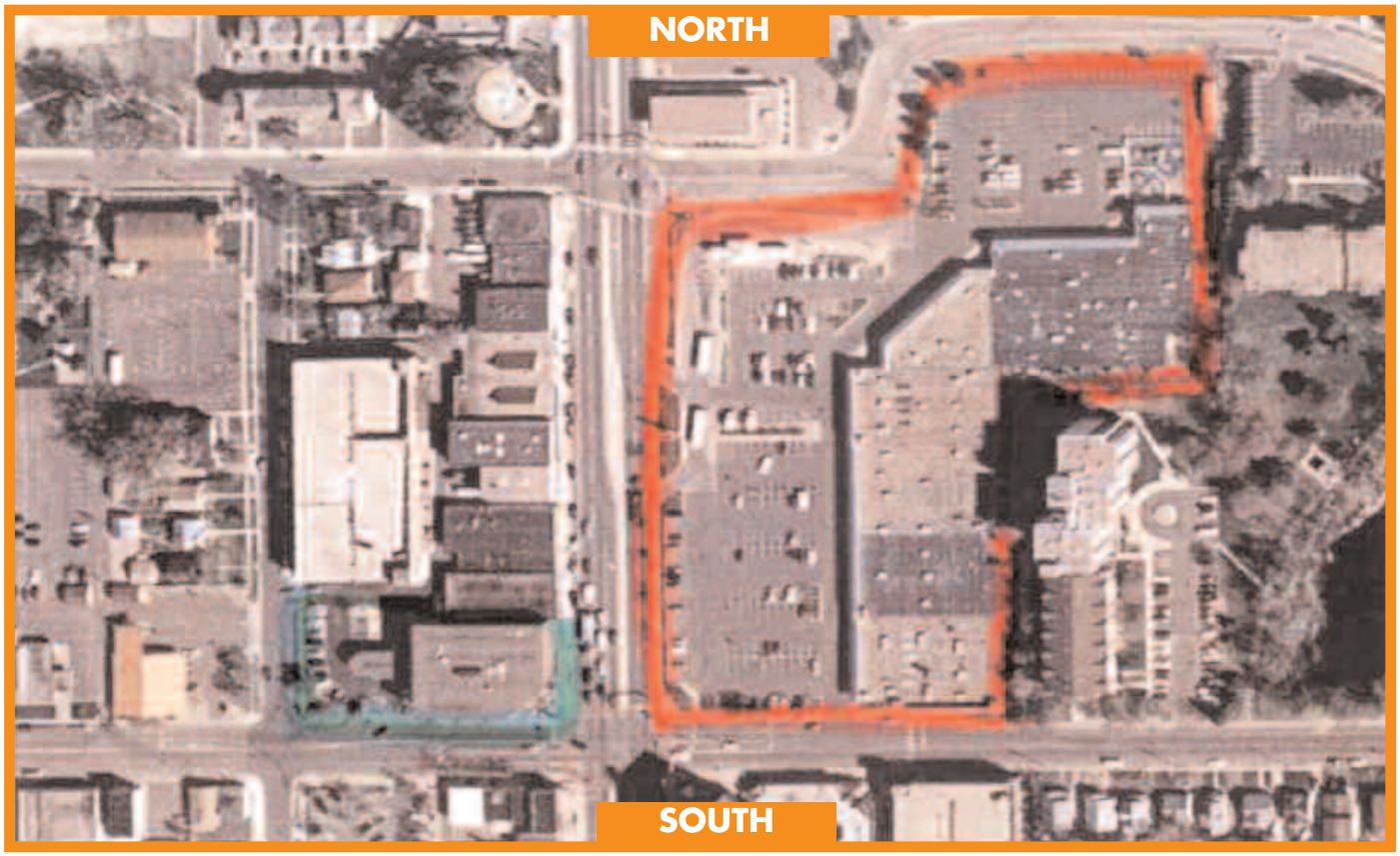
Closely associated with new medians as a part of road projects is the reduction in curb cuts or driveways providing access to the main road. If the goal of the road project is to increase traffic flows in terms of volume and/or speed, then reducing the number of direct access points is consistent with that goal. In developed areas, there is a trend with this type of road project to combine driveways for smaller properties. However, that technique has its own specific legal and valuation issues which will not be addressed here.

Markets have always reacted to changing traffic patterns. When a new interchange is built on a major highway, development soon follows since a new area with good highway access has been created. Generally, we find commercial uses (and users) locating closest to the highway interchange and residential uses locating farther away. Conversely, when a highway interchange is closed or removed, existing commercial development usually suffers, then declines. We often find the same phenomenon in neighborhoods when a street is upgraded from a local collector street to an arterial street. The increases in visibility to higher levels of traffic attract businesses as long as there is good accessibility. Take away the accessibility, however, and all you have is a second-rate noisy corridor. The question is not whether markets react to changing traffic patterns, but how they react. Since most medians are found in commercial areas, the focus of this discussion will be on commercial property, particularly retail properties.

Furthermore, the impact of a new median is relative to the overall development of the neighborhood when it is constructed. If the land on either side of the road is vacant before the new median is constructed, developers can adapt their project plans to accommodate the road and other infrastructure. The shapes and sizes of lots to be platted, and interior streets within the project, can be designed to minimize the impact of a median. However, in older or fully developed areas, existing platted lot shapes, lot sizes and access points cannot easily be changed. Existing buildings were designed for two-way traffic and oriented based on existing setback requirements. When a road is widened and a new median incorporated in these areas, many small buildings become a nonconforming use. Consequently, economic viability is challenged and obsolescence increases. In short, the highest and best use of the site is negatively impacted.

The installation of a new median in front of a property creates an immediate change in accessibility. Left-turning traffic must now turn right and proceed to the next available left turn or continue to the next opening in the median to turn around. This may or may not be an intersection with another street and may or may not be a controlled intersection. In either case, a driver must either perform a U-turn or turn left/right and follow an alternative route back to the planned destination. If the goal of the road project with a new median installation is to increase traffic flow, it is counterproductive to encourage a high volume of U-turning vehicles. More difficult access affects traffic patterns that may begin to shift to alternative routes. Small retail properties are generally the hardest hit by this change in traffic patterns as competing commercial areas, with better access on the alternate route, will draw business away. What was once a top tier commercial site can slip to a second or third tier commercial site.

The diminished accessibility created by medians can be corrected by building a service road that provides full turning access to the individual properties but channels traffic to controlled access points to the main street or road. However, this means taking more land area to build the new street. If a service road is placed adjacent to the main road, it will often require either removing some of the existing buildings, or it may end up being right at the front door of an existing building. If the service road is placed behind the front row of adjacent properties, the access to those properties may be inconsistent with the existing building's orientation on the lot. In either case, the market views the property as being less than optimal given market standards for top tier commercial retail properties.



Example #1: West side of street shows existing development while east side of street shows market reacting to median through assemblage and redevelopment of larger retail property with significant access point on side street. Large building on west side, south end has reoriented front access to rear of property away from median.

As the full extent of the overall road project, including the new median component, becomes widely known, the market will recognize that normal development patterns have been affected. Smaller sites with commercial or retail buildings will generally exhibit the earliest warning signs of changing neighborhood dynamics, as the decline in business due to reduced accessibility leads to more vacant buildings and/or deferred maintenance of those properties. While appraisers often talk about a reduced functional utility in those properties, what really occurs is a change in highest and best use. As sales volumes decline in the smaller retail properties, fewer tenants and types of tenants are willing to locate in the property which, in turn, affects the amount of rent that can be charged. This directly impacts the market value of the property. As the number and type of tenants decline from national top credit tenants (tier one) to regional tenants (tier two), and/or to local tenants with less credit worthiness (tier three), the economic obsolescence of the property increases. As a result, the overall neighborhood retail 'pulling power' can suffer.

More importantly, the downward pressure on rents and possible increased market vacancy can create a negative environment for smaller properties, which has a broader market impact, because neighborhood land use patterns are also affected. While occurring over time, the negative impact of a median may begin or accelerate the economic decline of existing smaller commercial properties in that neighborhood or commercial corridor. As neighborhood commercial activity declines, the area becomes a target for eventual redevelopment into larger properties that better fit with the new traffic patterns. Neighborhood life cycle patterns are disrupted and/or accelerated from stable to declining, and finally to redevelopment. The length of time for completion of this cycle is different for each neighborhood. In some cases, long term comprehensive growth plans of cities must be updated, and zoning changes may be needed in order to address the changing highest and best use of the individual properties, as well as the overall neighborhood.

To the extent that local government units do not act to address the declining neighborhood commercial activity, market participants themselves can initiate redevelopment. Developers can either assemble property, or request the local city use its power of eminent domain to assemble property, for a larger development that is more consistent with the city's investment in infrastructure. Consequently, road projects with new medians are sometimes viewed by the market as the beginning of a long term drive, or opportunity, to facilitate redevelopment in a neighborhood.

Example #2: Properties on streets with medians develop alternative access points to address one direction front access.

Appraiser's Dilemma

The appraiser who is asked to offer an opinion of value on the impact of a road project that includes a new median faces a real dilemma. Quite often, the appraiser is directed NOT to measure a certain component of the public project that the client believes is not compensable under the current law in that jurisdiction. The appraiser, however, has the responsibility to remain unbiased when measuring the impact of any public project on the subject property. To artificially eliminate one component of the overall larger project and attempt to measure just the remaining components is unrealistic in terms of market data. When was the last time the market reacted to the impact of only half a project? If the appraiser does not know what the full impact of the project is on a given property, how can that appraiser accurately measure some arbitrary or defined percentage of the project? For that matter, who determines what percentage of a given road project a new median represents?

To accept an assignment under this condition requires the disclosure, under appraisal professional standards, of either an extraordinary assumption or a hypothetical condition. In either case, the measurement of damages becomes less than credible, as only part of the full impact is being measured. Consequently, the triers of fact will have a much more difficult time evaluating the testimony because they are left to wonder what the full impact is and what relationship the appraiser's opinion on damages has to the full impact. If you don't have the full picture, it is hard to evaluate the significance of a small part of the picture.

Realistically, there is an increased risk of error in measuring damages when part of the project is ignored. Real property markets, with their lack of full and equal knowledge for all participants, are not efficient. While searching for market data to measure the change, or impact, a project has on a property, the appraiser needs to be cognizant of interrelationships and/or overlapping impacts within the available data. By measuring the full impact of a project, the appraiser is in a position to identify all the major components of the project and analyze the importance the market places on each component. To that extent, the appraiser can establish a hierarchy of impacts and the relationship each has on the other. For example, in one case a median may have the greatest impact on access while in another case, the speed and volume of traffic may make access more difficult, rendering the median of secondary importance. Each is a factor in the overall project. By focusing only on what is termed 'compensable' under state or case law, the appraiser often fails to fully understand the total impact of a

project on the property. In the end, the appraiser's analysis for allocation of total damages between what is classified as 'compensable' and 'non-compensable' increases both the information available to the trier of fact and the appraiser's ability to articulate the impact of the project

It is a rare appraisal report that discusses the intended goals of a new road project. Appraisers generally describe the physical attributes of the eminent domain taking and focus on the incremental change in value that the project may have caused. However, changes in traffic patterns that include reduced access, higher traffic volumes, increased traffic speed and alter traffic flow cannot be ignored. Appraisers often value a property based on the concept of 'the day before and the day after.' This simple concept assumes the project did not exist the day before the date of taking but does exist the day after the date of taking. Consequently, it is easy to miss the long term unintended consequences of a road project with a new median. However, value is a forward looking concept based on the past and the current environments. Perceptions of changing traffic patterns by market participants do impact anticipated future uses, development patterns and values. As a result, appraisers should take a broader viewpoint of this type of assignment to identify the full impact of the project on the adjacent properties.

Road with New Median Project Goals	Result
▪ Increase traffic flow ▪ Increase traffic speeds ▪ Increase traffic volume ▪ Reduce access	Change in Neighborhood Traffic Patterns

Impact on Neighborhood	Result
▪ Reduced access to/from properties ▪ Lost business to alternative traffic routes ▪ Decline in retail 'pulling power' ▪ Increased vacancy, lower rents ▪ Change in building orientation ▪ Decline in neighborhood ▪ Change in development patterns ▪ Possible change in zoning	Change in Highest and Best Use of Properties and Neighborhood

Earlier, I stated that an assignment to estimate the impact on a property caused by a road project with a new median is an opportunity to educate the parties involved with the case. Only by measuring the full impact that a partial taking has on a property will the parties recognize all of the other issues raised by the taking. Certainly, allocation of the full impact among the various issues provides all parties with a better understanding of the facts of the case. More importantly, it forces appraisers to consider whether or not the issue they were instructed to ignore is, in fact, an important one. For example, if a partial taking changes on-site traffic patterns such that customers can enter the property, but cannot turn around to exit, or have no place to park, can a case be made that the median is causing all the damage? Can the appraiser reasonably separate the impact of the median alone from the on-site traffic/parking problem? Isn't it possible that some issues will overlap?

Ultimately, if appraisers take a broader valuation viewpoint, including the issue of new medians as one of many components of the larger road project, they will recognize the impact and change to the highest and best use of individual properties and the neighborhood overall. Given the goal of road projects with new medians to change traffic patterns and traffic behavior, it is clear that appraisers have a responsibility to recognize the market reaction to those changing traffic patterns and the impacts on individual properties. New medians, as a part of a larger road project, may be good traffic management tools, but their market impacts are much broader and usually result in unintended, and sometimes intended, consequences for the neighborhood.

Conclusion

Medians and their impacts on neighborhood development patterns have generally not received much attention in appraisal literature. In areas where development is starting, land use patterns and development plans can be designed to mitigate the impact of road designs. In older areas where the adjacent land is fully developed, the impact of a road project that includes a new median is much more severe, as improved properties cannot easily adapt to the changing traffic patterns. However, changing neighborhoods patterns are often not recognized or are diagnosed as increased functional and/or economic obsolescence. Certainly the issues presented here could benefit from more investigation, debate and commentary from readers of this publication.

The author would like to acknowledge Robert J. Strachota, MAI, CRE, for his contributions to this article.