

Is a Partial Acquisition a Displacement?

by Tracy Graff, SR/WA

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Right-of-way professionals who are experienced in partial acquisition are aware that the Uniform Act, as well as most state and local procedures, make it necessary to do a case-by-case assessment to determine whether or not any given partial acquisition causes a displacement. Those practitioners who have not yet had the opportunity to meet this challenge should not expect precedents or court decisions to provide clear-cut solutions.

Precedents may contain variations in the steps used to determine eligibility. Also, remainder displacements may be difficult to identify because very few agencies maintain a method of tracking them apart from the acquisition.

Relocation appeals findings are not normally published outside the local agency. Court decisions have a limited distribution, while case law on partial acquisitions is uncommon and rarely considered applicable beyond a specific court's jurisdiction.

Agencies generally identify a displaced person as "any person who moves from real property, or moves his or her personal property from the real property, as a direct result of the agency's written notice... In the case of partial acquisition, the agency shall determine whether the person is displaced as a direct result of the partial acquisition."

How do right-of-way practitioners go about determining the location eligibility of persons who are on the remainders of tracts resulting from partial acquisitions?

For persons occupying the remainders of residential properties, the agency relies mostly on the appraisal report. For businesses on remainders, it is common practice to consider the

appraisal and business damage reports as aids in making a decision about relocation eligibility.

It is important to remember, however, that appraisal and damage reports have not been prepared for the purpose of providing relocation eligibility criteria.

Before resolving the "direct result" relocation problem, the common causes of damages to the remainder must be identified and carefully analyzed. When the appraisal is prepared, the damages are categorized and quantified. The degree of damages to the remainder is determined by what the agency has the right to do, which is frequently clarified by legal staff. If the appraisal does not identify each element and degree of damage present in remainders, the relocation eligibility question becomes more difficult.

A general appraisal rule states, "The element of damages to remaining lands due to lands acquired from the owner must be separated from damages resulting from the use of lands taken from others for the same project." This rule is not yet fully established or recognized regarding relocation entitlement, although most right-of-way practitioners regard the "direct result" as encompassing this premise.

Damages mitigated by cost to cure, which can be physically and/or economically corrected but are not corrected through restoration by the owner of the property, clearly impact the tenant occupants to a degree that normally causes displacement. That displacement may or may not be recognized by the agency.

Damages which are remote or speculative aren't considered compensable by the appraiser and are

the instances that relocation administrators may wish to examine more closely. Changes in traffic patterns, reduced access, light, view, loss of business, etc., may very well be the cause of occupant displacement. Where was the "direct result" line intended to be drawn when considering relocation entitlements? Are the criteria for relocation entitlements the same as those for establishing damages to the remainder tract? Additional factors which should be considered, when applicable, are potential hazards if cut and face is undertaken on occupied structures. Relocation benefits extend beyond just compensation to both owners and tenants. It has been acknowledged that relocation entitlements begin where just compensation ends.

It is highly unlikely that a complete and comprehensive list of types of potential damages due to a partial acquisition exists. However, some of the most common causes affecting the highest and best use of remainder tracts are a loss of access, reduction of size, configuration, and impaired or loss of utilities. Damages to a remainder tract may not be recognizable when the part acquired is a very small percent of the parent tract. Yet, a very small acquisition can have total damaging effect to the structure housing the residential or business occupants, resulting in little or no change in highest and best use of the parent tract.

The appraisal process does not recognize consequential damages in any circumstance, and the Uniform Relocation Act does not specifically rule out recognition of non-compensable damages. Relocation entitlement as a direct result of the acquisition is generally evaluated in terms of degree of damages to the remainder of the property. Occupants of remainder tracts are being categorized as eligible or ineligible by the percent of damages measured by cost

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to cure, capitalized rent losses or comparable sales analysis. Frequently this results in an ineligible determination when less than 100 percent damages to the remainder tract are found.

Relying on percent of damages, obviously, is not the solution. In many instances, curing the damages is the very cause of displacement. Numerous examples exist where correcting damages are the precise cause of displacement. Mobile home parks and parking spaces for strip shopping centers are familiar to most right-of-way practitioners. The appraisal process may provide just compensation for relocating vital service areas in a mobile home park. This may be done by the elimination of a number of occupied spaces required to rebuild internal access roads, utility services, offices and recreation facilities. The cure displaces a number of occupants to keep the mobile home park in operation. Some agencies may consider this displacement an "indirect result" of acquisition. An example of a "direct result" question is a partial acquisition affecting parking for a strip shopping center. The occupants in the shopping center share the loss of parking spaces. The appraisal process provides just compensation to replace the parking loss as a cost to cure. The owner chooses not to restore the parking, and several of the tenants relocate due to inadequate parking for customers. Is this a "direct" or "indirect" result of the partial acquisition?

Percent of the damages cannot be relied upon to provide the correct solution to the "direct result" cause and effect. Damages to the site resulting from changes in highest and best use must be analyzed separately from those that are the result of curing the damages to a structure. Each may cause the direct result of displacement from a remainder, or neither maybe the "direct result." Diagram of parcels A and B further illustrate this point.

Parcel A: The area 10' x 60' requires 600 square foot from a residential property which also requires the front entrance to be relocated to the

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side and rebuilt. However, the cost-to-cure damages which are approximately ten percent of remainder value does not change the highest and best use of the property from residential. Yet, without the entrance rebuilt, the structure is not habitable for residential use.

Parcel B: The acquisition requires that the parent track be reduced by 3,000 square foot, but does not directly effect the structure. However, due to residential zoning requirements, the remainder tract is 100 percent damaged and the highest and best use is no longer residential.

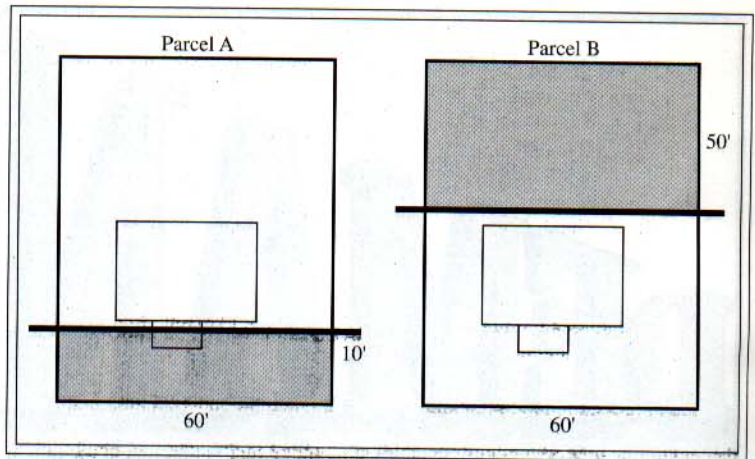
In either example, can the question of relocation eligibility be answered based solely on the appraisal data? It's unlikely, because in most instances the agency's administrative decision regarding "direct result of acquisition" is generally preponderant. Clearly it can be seen that the intent and desire of the occupants may also be a major controlling factor.

What then may be relied upon for determining relocation eligibility of residential and business occupants? It is not the direct result of notices to vacate, for these are not applicable. Furthermore, it should not be based solely on the appraisal reports, arbitrary decisions or displacees' desire. Before and after tests of comparability for residential occupants would further indicate displacement as di-

rect result of acquisition. Several other comparable factors should be examined as to the remaining property. Is the dwelling

decent, safe and sanitary? Is the lifestyle of the occupants the same? Is the dwelling functionally equivalent? Is the remainder site a typical size for continued residential use with normal site improvements? Is the remainder environmentally unchanged? Should the answer to one or more of the questions be no, it is possible the remainder may not accommodate the residential occupants, and relocation as a "direct result of acquisition" may apply.

For business, a before and after suitability test may provide the answer to the direct result question. However, commercial activities present subjective divergences normally not present on residential properties. Answers to three questions could form the basis for a displacement determination. Is the remainder site suitable for continued use of the business in occupancy? Is the structure suitable to house the business operation? Is the business market area unchanged, as a result of acqui-



sition of properties for the construction project? If the answer to one or more of these questions is no, further analysis may be needed.

As with many issues involving human concerns, answers are not frequently black or white, nor unconstrained. Displacement as a direct result of partial acquisition is no different. However, when the agency considers the "direct result" premise in a responsible, congruous and reconcilable manner — taking into account the short-term effects and the long-range consequences — the eligibility determination process becomes firm in purpose. By conscientiously observing the hallmark of the Uniform Relocation Act, which is ensuring that persons displaced as a "direct result" are treated fairly, consistently and equitably, the resolution of the "direct result" question becomes evident with compliance, clearly and accurately demonstrated.



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