

Simple Acquisitions

AN APPRAISAL PROCEDURE FOR ACQUISITIONS UP TO \$10,000

by Clyde B. Johnson, SR/WVA

In order to meet specific program needs within the state for uncomplicated, simple acquisitions less than \$10,000, the Federal Highway Administration (FHWA) Georgia Division Office and the Georgia Department of Transportation (Georgia DOT) have developed a unique appraisal procedure.

With the passage of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), the FHWA has aggressively sought to identify areas where the increased flexibility provided by the ISTEA legislation could be used. One area that lends itself to this goal are efforts to streamline appraisal/acquisition procedures while maintaining the quality work product long associated with federal-aid projects.

Using FHWA and state partnership objectives, as well as risk assessment techniques, Georgia DOT performed a detailed review of its program. After evaluating all pertinent factors, Georgia DOT adopted a unique appraisal procedure that addresses program needs while maintaining strict compliance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646), and the Code of Federal Regulations (CFR) 49 Part 24. The procedure allows Georgia DOT to assume more responsibility for its programs (number of employees and

cost considerations factored into program requirements), and provides an avenue for possible changes in procedures better tailored to meet its needs.

More specifically, Georgia DOT's *Appraisal Procedure for Simple, Uncomplicated Acquisitions up to \$10,000* was developed to relieve administrative burdens associated with the involved procedures of more complicated acquisitions. After completing a detailed review of its program and projected workloads, Georgia DOT opted to implement a procedure that provides more flexibility in the negotiations process while establishing fair market value before the initiation of negotiations, as required by CFR 49 Part 24.102(c). Analysis of Georgia DOT's transportation program indicated that about 60 to 65 percent of all parcels acquired involved rural projects consisting of simple, uncomplicated acquisitions below the \$10,000 amount.

Why is the procedure so appealing? It simply allows the right-of-way agent to enter into negotiations with the property owner, after being fully informed of the right to receive fair market value. The owner may elect to donate the property, or accept an amount of money or services as may be agreed upon based on the estimate of appraisal calculation. Within specific limits, the procedure allows a negotiator to make an administrative settlement above the fair market value

(if negotiations fail) and settle the claim on the first contact. All documentation and justification for any settlement is included in the negotiation record.

Using risk management techniques, Georgia DOT addressed its program requirements, work force constraints and projected workload. Working with the FHWA Division Office, both agencies were able to assure compliance with federal and state laws and regulations. Development of this procedure was the result of a long and deliberate process first implemented on state-aid projects. The procedure was strengthened to address federal requirements, and ultimately approved for use on federal-aid projects. The procedure may be examined from the perspectives of two agencies: the FHWA and Georgia DOT.

FHWA

(Georgia Division) Perspective

The first thing that must be stated emphatically is, "this procedure does not constitute a waiver of appraisal." Time and again, questions have been raised about how to waive appraisals of less than \$10,000. The CFR 49 Part 24 Section 24.102—basic acquisition policies under (c)(2)—states that "An appraisal is not required if the owner is donating the property and releases the Agency from this obligation, or the Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair

market value is estimated at \$2,500 or less, based on a review of available data." The Final Rule of March 2, 1989, was the first time an acquiring agency was given the authority to waive an appraisal under specific conditions. Before this change in the law, **only the property owner could waive rights to an appraisal of his property.** Again, the Georgia DOT procedure completely ignores the \$2,500 waiver provision.

To understand the problems associated with establishment of the Georgia DOT alternative procedure, review appropriate sections (listed below) of CFR 49 Part 24 to build the foundation, and then examine the appraisal process under CFR 49 Part 24 before looking at the procedure as administered by the Georgia DOT as it relates to each specific regulation.

- Key Subsections of CFR 49 Part 24
- Subsection 24.102(b)
 - Subsection 24.102(c)
 - Subsection 24.102(c)(2)
 - Subsection 24.102(d)
 - Subsection 24.108

The basic objective driving the development of this procedure was the need to comply with CFR 49 Part 24 Section 24.102(c), which requires that real property to be acquired shall be appraised, to establish the fair market value and, through the negotiations process, obtain a right-of-way deed on the initial contact, if possible. Also, keep in mind the provisions governing administrative settlements as provided for in subsection 24.102(i), "The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest," and 24.103(e), conflict of interest provisions.

Historic Background

In order to better understand this procedure, it would be beneficial to review the historical background of the

Georgia DOT's acquisition program to understand what prompted its development.

Historically, the acquisition program within the state of Georgia has been divided between key agencies, the Georgia DOT and Local Public Agencies (LPAs). Figure #1 provides a comparison of acquisition activity that occurred in Fiscal Year 1984 and Fiscal Year 1992. In 1984, acquisitions for both entities totaled 1,771 parcels, with the Georgia DOT acquiring approximately 85 percent. By Fiscal Year 1992, the acquisition program had grown to more than 4,110 parcels with LPAs acquiring approximately 58 percent of the total parcels acquired.

Figure #2 reflects the number of LPAs acquiring rights of way since 1984 [note the steadily increasing number of LPAs (120) over the last five years acquiring rights of way for federal-aid construction dollars]. Figure #3 is a graphic of the total number of parcels acquired (Georgia

DOT and LPAs) since Fiscal Year 1988 that supports the development of this procedure to meet the demand of acquiring between 4,000 to 5,500 parcels per year.

A major force driving the adoption of this procedure was the passing of a one percent Local Option Sales Tax provision by the Georgia General Assembly during the 1985 legislative year. Prompted in part by the necessity to address local transportation issues the law provides needed capital, and allows LPAs to fund projects faster than traditional funding programs offered by the Georgia DOT.

This law allows any LPA (city, county or municipality) upon public referendum, to impose a one-percent local option tax directed specifically for capital improvements, such as local transportation needs. In 1991, for example, 59 cities/counties generated approximately \$750 million to be devoted to transportation projects within their jurisdictions over a four-

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Acquisitions

year program.

Government Regulations

The primary federal regulations governing the development of this procedure are found in CFR 49 Part 24 under the basic acquisition policies, Subsection B, Real Property Acquisition. The following key sections address rights and benefits afforded by these regulations that must be extended to the property owner.

SUBSECTION 24.102(b): NOTICE TO OWNER

This section points out the agencies obligation to notify the owner of the agency's interest in acquiring the real property and the basic protection, including the agencies obligation to secure an appraisal on the property to be acquired.

SUBSECTION 24.102(c): APPRAISAL, WAIVER THEREOF, AND INVITATION TO OWNER

This requirement states, "Before the initiation of negotiations, the real property to be acquired shall be appraised, except as provided in subsection 24.102(c)(2) and the owner or owners designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property."

We now have three major requirements that must be addressed:

- the property must be appraised;
- it must be done prior to the initiation of negotiations for the property; and
- the owner accompaniment requirement.

SUBSECTION 24.102(c)(2):

This requirement addresses the provision that deals with the acceptance of donations and allows the owner to release the agency from the obligation to perform an appraisal, or the agency determines that an appraisal is unnecessary because the

valuation problem is uncomplicated, and the fair market value is estimated at no more than \$2,500 (not \$10,000).

SUBSECTION 24.102(d):

ESTABLISHMENT AND OFFER OF JUST COMPENSATION

In this section, the regulations clearly discuss the establishment and offering of just compensation before the initiation of negotiations, "the agency shall establish an amount which it believes is just compensation for the real property..." again focusing on the need for an appraisal. At this point, it was clearly understood that, in most cases, each parcel would need to be appraised in order to establish just

"The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal."

compensation prior to entering into negotiations for the acquisition of the property.

SUBSECTION 24.108: DONATIONS

Here we have a mechanism where the property owner may donate the real property, after being fully informed by the Agency of the right to receive just compensation. Again the regulations enforce the requirement that the Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in Subsection 24.102(c)(2).

At this point we need to consider the appraisal process and requirements as outlined in CFR 49 Part 24.

What Constitutes an Appraisal?

The Final Rule of March 2, 1989, defined the term appraisal for the first time. In Subsection 24.103(a), Standards of Appraisal it states, "The

format and level of documentation for an appraisal depends on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal."

The main emphasis here should focus on, "The format and level of documentation for an appraisal depends on the complexity of the appraisal problem." In addition it establishes the following minimum

criteria for a detailed appraisal:

1. The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

2. An adequate

description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, and analysis of highest and best use, and at least a 5-year sales history of the property.

3. All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's

opinion of value.

4. A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing and verification by a party involved in the transaction.

5. A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

6. The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

As mentioned, the Final Rule of March 2, 1989, provided the first definition of the term. Subsection 24.2(b) states, "The term 'Appraisal' means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information."

FIRREA Legislation and Requirements

The Office of Management and Budget Bulletin Number 92-06, Guidance on Real Estate Appraisal Standards and Practice provides information on this topic. Two points must be stressed:

1. FIRREA legislation does not bring our program (Uniform Act) under Title XI. It extends Title XI Appraisal Standards to our program.

2. Our existing appraisal standards (CFR 49 Part 24) are already consistent with Title XI, Uniform Standards of Professional Appraisal Practice (USPAP).

Also, Attachment A, Section 1.d states, as indicated above, appraisals and appraisal reviews performed in accordance with CFR 49 Part 24 meet approved agency standards that are consistent with USPAP Section I, II and III.

Georgia DOT Perspective

In developing the current procedure Georgia DOT, as the first step, examined the current \$2,500 waiver threshold and noted, as reflected in Figure #4, if this figure was adjusted based on the purchasing power of the dollar derived from an analysis of the Consumer Price Index from 1975 through 1993 it would reflect approximately \$7,500 in 1993 dollars. Figure #5 reflects the acquisition statistics using this procedure from Fiscal Year 1985 through Fiscal Year 1992. Excluding 1985 (Freeing the Freeways Program within Metro Atlanta) total parcels falling under this procedure average 59 percent. Since Fiscal Year 1990 the figure has been more than 60 percent.

Georgia DOT elected to use its appraisal procedure over the \$2,500 appraisal waiver procedure set forth in federal regulations.

Project Implementation

The basis steps in this procedure are as follows:

1. The team manager/member in consultation with the Appraisal Review Section conducts a field inspection of the project with plans to determine which parcels fall within the \$10,000 threshold.

2. The team or consultant prepares a data book for the types of properties being acquired (based upon highest and best use, etc.). The data book also included purpose and/or function of appraisal assignment, defines estates being appraised, statement of assumptions and limiting conditions, statement as to relevant approaches to value, neighborhood analysis, sales verification data/sales maps, improvement values (as required) and other elements required under CFR 49 Part 24.

3. The data book constitutes the first submission to the Georgia DOT Appraisal Review Section for analysis. The Section then approves the range of values (ranges of values are set based on Highest and



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Best Use for each type of property on the project) and other factors including but not limited to zoning, size, shape, current use. All sales are verified with photos and sketches of the property. (Note: The data book maybe simple or more in-depth depending on the number and types of parcels being acquired). A review appraiser reviews all elements in the data book and approves or establishes a range of values for each type of property. The data book is then approved by the review appraiser.

4. The team member takes the approved data book and prepares the Estimate of Appraisal Calculation Form (Form #1).

5. An owner contact is made at which time he is advised of the right to receive fair market value and may elect one of three options on the notification letter (Form #2). The owner may a) receive fair market value for his property, b) agree to

donate the property and either waive or not waive an appraisal of fair market value, or c) agree to accept an amount of money or services based on the Estimate of Appraisal Calculation and includes a waiver of rights to inspect the property at the time of said appraisal calculation.

The owner is furnished a brochure, executes a receipt for brochure form (Form #3) and an incidental payments form (Form #4) for execution. In the best case, an option can be obtained on the initial contact either by acceptance of the fair market value or counter offer/negotiation for services. Upon settlement, and at the owners request, additional information can be included with the Estimate of Appraisal Calculation and provided to the owner to further document the appraisal report. This usually involves extracting data from the data book to form a complete package.

If negotiations are unsuccessful the

property is condemned, at which time a full condemnation package is compiled.

The parcel file must contain the following items or documents:

- A copy of the Estimate of Appraisal Calculation Form
- A copy of the executed Notice to the Property Owner that indicates the option selected (legal signature is required)
- A copy of the Receipt for Brochure
- Other appropriate data as normally required.

Summary

The above procedures developed by the Georgia DOT have clearly met the need for the acquisition of simple uncomplicated parcel under \$10,000. It has enabled the Georgia DOT to effectively manage its acquisition program, reduced time requirements and at the same time, provide good stewardship of public funds. Through



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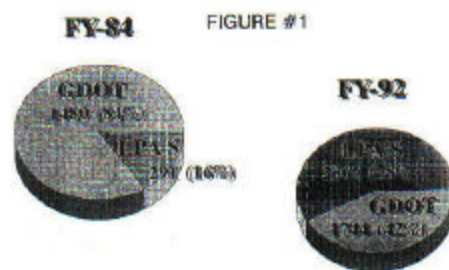
the joint efforts of FHWA and Georgia DOT, the rights and benefits of private property ownership (mandated by federal and state laws) are protected while achieving program goals and objectives.

It must be emphasized that this procedure was developed under laws established by the state of Georgia and addresses specific acquisition requirements mandated by its program. The Georgia Division Office of the FHWA worked with the Georgia

DOT to assure compliance with both federal and state laws and regulations, and to assist them in advancing its transportation acquisition program based upon its projected program requirements. It represents a creative process that does not compromise commonly accepted appraisal/acquisition principals. At the same time, it reflects a **pro-active** approach in response to Georgia DOT's needs, and has accomplished its objectives. □

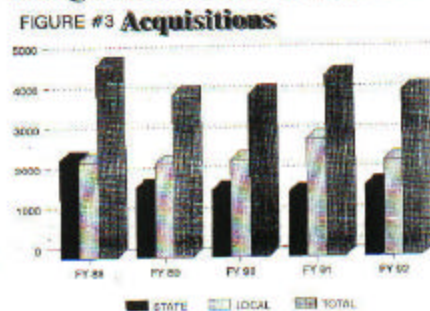
Clyde Johnson is the Project Development Manager for the Federal Highway Administration Georgia Division Office. He holds a master's degree in business administration, with a major in real estate, and he has more than 20 years experience in the right-of-way profession. He is a certified IRWA instructor and a part-time instructor for the department of real estate at Georgia State University. Currently President Elect of IRWA Chapter 22, Clyde also serves on the Planning and Zoning Commission for the city of Alpharetta. He was a 1992 finalist for the Frank C. Balfour "Professional of the Year" award.

GEORGIA DOT/LPA COMPARISON

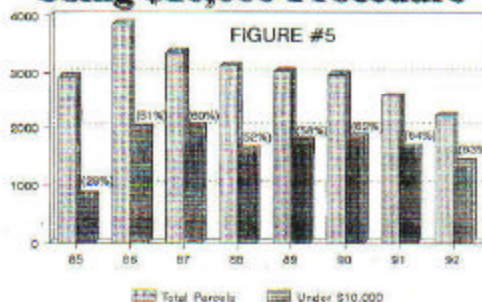


TOTAL PARCELS

Georgia DOT / Local Government



Acquisition Statistics Using \$10,000 Procedure



LPA'S Acquiring Right-of-Way

FIGURE #2 GEORGIA

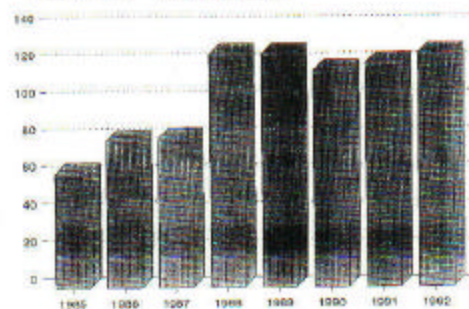


Figure #4

PURCHASING POWER

Base - \$2,500

Year	% Change	(Based on CPI) \$ Increased/Year
1975	9.1	2,727.50
1980	13.5	4,177.37
1985	3.6	5,456.66
1990	5.4	6,623.89
1993	3.0	7,308.22

ESTIMATE OF APPRAISAL CALCULATION

PARCEL OWNER: _____

PARCEL: _____

PROJECT: _____

P.I. NO.: _____

Area of Total Property: _____

Area of Remaining Property: Remainder Left _____ Right _____

Fee Acquisition Area: _____ X _____ = _____

Easement Area: _____ X \$ _____ X (factor, if applicable) = _____

Improvement within Area of Acquisition:

_____ \$ _____

_____ \$ _____

_____ \$ _____

_____ \$ _____

TOTAL ESTIMATED VALUE = \$ _____

Prepared by: _____

Date: _____

Counter Offer Basis: _____

Support for improvement value must be attached or in data book. Land value must be computed in accordance with DOT v. Gunnels. Trees, landscaping, etc. must be evaluated based on DOT v. Willis.

The **Review Appraiser** reviews and establishes/concurs in the above unit value. These values are determined by an analysis of verified comparable sales, adjusted for dissimilarity, correlated to a unit value and incorporated in the project data book.

DATA BOOK APPROVED BY GEORGIA DOT -----

DATE

ESTIMATE OF APPRAISAL CALCULATION OR DONATION FORM

DATE: _____

NAME: _____
STREET: _____
CITY/STATE: _____

RE: PROJECT NO. _____
COUNTY _____
PARCEL NO. _____

Dear _____:

As you have probably already been informed, plans are underway for the construction of _____

The proposed construction will require additional right of way. The plans indicate you will be one of the property owners from which right of way must be acquired, as indicated on the attached plat. Our Right of Way Agent will be glad to point out the location of the required right of way on the ground and accompany you on an inspection of this area if you so desire.

The construction of this project is to be financed with State and Federal funds. It is the responsibility of the State to furnish the Right of Way necessary for the project.

On any project that involves State or Federal funds, procedures require the property owner be informed that he has the right to (1) receive payment based on the appraised fair market value, just compensation; (2) donate my property and hereby waive the right of an appraisal for the required right of way; or (3) accept an amount of money or services as may be agreed upon, based upon an estimate of appraisal calculation to be retained in the parcel file which includes the waiver of your right to inspect the property.

Please indicate your choice by executing one of the following:

- _____ (L.S.) I desire to receive the appraised Fair Market Value (FMV) (Just Compensation) for my property.
- _____ (L.S.) I agree to donate my property which is required for right of way and () waive () do not waive my right to an appraisal of FMV.
- _____ (L.S.) Accept an amount of money or services as may be agreed upon, based upon an estimate of appraisal calculation and includes a waiver of my rights to inspect the property.

FORM #2

RECEIPT FOR BROCHURE

DATE: _____

INDIVIDUAL _____ FAMILY _____ MOBILE HOME _____ BUSINESS _____

FARM _____ NON-PROFIT ORGANIZATION _____ NON-RESIDENT OWNER _____

PROJECT NO. _____ COUNTY _____ PARCEL _____

NAME: _____
(LAST) (FIRST) (MIDDLE)

PRESENT ADDRESS: _____
(NUMBER, STREET, BOX, RFD, CITY, STATE, ZIP CODE)

I, the above named do hereby certify that I have this date received a copy of the State's Brochure titled *What Happens When Your Property Is Needed for A Transportation Facility.*

(SIGNATURE)

(DATE)

(D.O.T. REPRESENTATIVE)

(DATE)

GEORGIA DEPARTMENT OF TRANSPORTATION

DATE: _____

Project No. _____ County _____ Parcel _____

Name: _____

Address: _____

SUBJECT: AVAILABILITY OF INCIDENTAL PAYMENTS

This is to advise you that due to the acquisition of the above project and parcel, you are eligible for reimbursement for expenses you may have incurred due to the Georgia Department of Transportation purchasing your property. These expenses may include: (1) pro-rata portion of taxes, (2) recording and/or cancellation fees, (3) mortgage prepayment penalty and/or service fee charges by mortgagor for release of mortgage.

The payment for these expenses are normally handled at closing, however, if they are not, or in the event of condemnation, it will be your responsibility to provide to the Department of Transportation copies of your paid receipt(s).

In addition to the above expenses required at acquisition you may also be eligible for reimbursement for reasonable survey fees to reestablish existing property corner pins that were removed as a result of construction of the project. Contact your acquisition agent before proceeding with any survey.

All paid receipt(s) must be mailed to :

Mr. Robert Bell
Georgia Department of Transportation
Office of Rights of Way
No. 2 Capitol Square
Atlanta, Georgia 30334-1002

IT IS IMPERATIVE THAT YOU PROVIDE THE PROJECT AND PARCEL NUMBER, AS SHOWN AT THE TOP OF THIS LETTER, WITH ANY CORRESPONDENCE TO MR. BELL.

In order to file claim for payment of the above expenses, you must have paid receipt(s) to support your claim and you must file within eighteen (18) months of the date your property was acquired except survey fees which must be filed within six (6) months after construction on the project is completed.

Yours very truly,

State Rights of Way Engineer

FORM #4