



TRANSPARENCY **in the Acquisition Process**

Obstacles mount for appraisers in non-disclosure states

BY IMAD ALEITHAWA, PE AND RALPH SINNO, PH.D., PE

Acquiring right of way for transportation projects can be time consuming and costly. As a result, right of way administrators and managers are constantly looking for ways to reduce their project schedules and save money.

SO, WHY DOES PROPERTY ACQUISITION TAKE SO LONG?

While there are a host of reasons why the property acquisition process gets delayed, one of the more challenging reasons stems from public information that is not made public. A lack of transparency or disclosure occurs when critical public information is not readily available.

This lack of public information can affect both sides of the acquisition process. When an appraisal report is not available to a landowner, or there is a lack of real estate price disclosure, it injects uncertainty into the mix. Uncertainty typically creates time delays and additional costs, inconveniencing state agencies and property owners alike.

THE UNDERLYING CAUSE

Acquiring the right of way at a fair market value and in a timely manner to meet the construction letting deadline is the ultimate goal. However, determining the fair market value when comparable sales data is not part of the public record makes the process challenging, at best.

Collecting sales data and gathering research is a critical function in the appraisal process. So when sales information is not publicly accessible, the entire acquisition process is delayed. Such is the case in non-disclosure states.

Mississippi, for example, is a “non-disclosure status” state, one of a few remaining in the United States. Having non-disclosure status means that the sales price is not disclosed in the deed and not recorded as part of the public record. Therefore, any appraiser seeking information on a sale, especially in a rural area of the state, must persuade a transaction participant to provide them with specific information about the transaction, primarily the sales price.

“It becomes easy to understand why a property owner would have a suspicious reaction...”

More than 70% of states disclose the real estate sale price in some form that is currently accessible to the public. This translates to 37 states that have full disclosure, with six states that disclose the sales price through “transfer tax” data, including Mississippi’s neighboring states of Arkansas and Tennessee. That leaves seven states that practice non-disclosure.

DETERMINING FACTORS

In Mississippi, the acquisition process was reviewed to determine which factors most significantly impacted the right of way acquisition process and whether greater transparency might decrease delays. To ascertain the various challenges and obstacles encountered, interviews and discussions were conducted with the Department of Transportation in Mississippi (MDOT) appraisal/review managers and senior acquisition agents.

From these discussions, three major factors surfaced as primary obstacles. They were identified as condemnation, design changes and the acquisition management process.

Additional discussions led to discovery of even more specific reasons for delays. One of the recurring reasons included the lack of effective communications between the acquisition agents and property owners following the start of negotiations. Another reason highlighted existing policies that prevent agents from giving appraisals to land

owners. Important information can often be missing, and if the fair market value was even provided to the landowner, the document doesn’t itemize the breakdown for land, improvements and damages, which results in further questions and delays.

A lack of agent training also surfaced, as well as the appropriate use of information technology tools. For example, visualization technology tools that are available to agents were not being utilized to help property owners see the positive impacts that projects would have on their properties.

TRANSPARENCY AND THE LAW

In states like Mississippi, continuing as a non-disclosure state is directly contributing to the delay in the right of way acquisition process. It affects the property owners, as it makes it difficult for them to compare prices and validate their own opinion for the “market value” of their property. It is also one of the direct causes of suspicion, uncertainty, additional costs and time delays injected into the process of right of way acquisition.

The lack of price disclosure carries substantial implications for the appraisers hired by the MDOT right of way division to perform market value appraisals. Under Federal regulations of the Uniform Act, an appraiser is required to personally confirm details of real estate transactions (comparable sales) with all parties involved in the transaction (seller, buyer, attorney and broker). The standard process requires the appraiser to collect deeds in local courthouses and then contact the buyer or seller and request information on the transaction, such as sales price, condition of the property and time it took to sell. This has always been a time-consuming process, and the non-disclosure rules that necessitate this only serve to create more obstacles.

Another change which would increase transparency involves providing the property owner with a copy of the appraisal report. Currently, property owners are presented the fair market value offer (FMVO) by the acquisition agents. The agent verbally explains the figures in the FMVO based on the appraisal report, but without the actual copy of the appraisal report, property owners are required to complete their own appraisal at their own expense or “take on faith” that the FMVO presented by the agent is fair.

It becomes easy to understand why a property owner would have a suspicious reaction, especially if they think, “they must be hiding something, that’s why they are not showing me the report.” Uncertainty is sure to follow when an offer is made in this manner.



BENEFITS OF TRANSPARENCY

Implementing real estate price disclosure law in non-disclosure states would have direct and immediate beneficial impact on the right of way acquisition process for both the state agencies and the public.

Benefits of transparency include the following:

- Less time spent on searching for sale prices; reduction in the overall acquisition duration.
- Would likely reduce the number of condemnation cases and bring efficiency and better communication to the acquisition process between all parties involved.
- Opportunity for trust-building between property owners and public agencies by showing the property owners that the agencies have nothing to hide.
- Would facilitate the ability of most landowners to render their own opinion regarding the fairness of the fair market value offer compensation offer made.
- Allows the State Tax Commission to collect accurate property taxes based on the disclosed sale price recorded in the deed.
- Would require little or no-cost access to real estate transaction price information.

SUMMARY

The ability to purchase right of way in a timely manner is a primary driver in enabling a project to move forward. When there is a lack of data, incomplete data or data is simply not made public because of copyright law or federal regulations, the appraiser is substantially handicapped.

While most states disclose the real estate sale price in one form or another, there are still seven states that maintain the non-disclosure status. The transparency gained by changing the law of real estate sales price disclosure in those states would provide enormous savings in time and money for both state agencies and property owners alike. 🌟

REFERENCES

Waters, T. Innovative Practices to Reduce Delivery Time for Right-of-Way in Project Development NCHRP Synthesis of Highway Practice, No 0309069017, TRB, National Research Council, Washington, D.C., 2000.

Federal Highway Administration (FHWA) website, accessed in January 2009

[http://www.fhwa.dot.gov/REALESTATE/right of waymgt/index.htm](http://www.fhwa.dot.gov/REALESTATE/right%20of%20waymgt/index.htm).
Federal Highway Administration "Uniform Act Section 301 49 CFR 24.104"