

Optimizing Transparency and Disclosure to Reduce Right-of-Way Acquisition Duration for Construction Projects in Mississippi

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Abstract: Any delays in the right-of-way (ROW) acquisition process can lead to major delays in the construction phase. This paper examines the factors that have contributed to higher numbers of condemnation cases and, by extension, to delays in the ROW acquisition process in Mississippi. Addressing some of the delay factors will allow targeted improvements to reduce condemnation cases and speed the acquisition process. By using a survey of practitioners and previous analyses, condemnation cases, transparency, and Mississippi's lack of price disclosure in the public record were identified as significant factors that contributed to delays in the ROW acquisition process. The identified factors that contributed to acquisition delays at the Mississippi Department of Transportation and the survey results were used to develop a new recommended process, changing the state law to reduce the number of condemnations, increase the number of parcels acquired through negotiation, and enhance the overall efficiency of the ROW acquisition process. The recommended new process was tested and validated on an active project that contained 32 parcels in which 10 (31%) parcels were considered for condemnation. Using this new process, only one parcel (3%) was condemned and the other nine parcels (28%) were prevented from condemnation. This new process significantly reduced the duration of ROW acquisition by reducing potential condemnation cases and enhanced the negotiation and the overall acquisition process. The new process is simple and readily applicable for the acquisition policies and procedures of any transportation agency. DOI: [10.1061/\(ASCE\)LA.1943-4170.0000119](https://doi.org/10.1061/(ASCE)LA.1943-4170.0000119). © 2013 American Society of Civil Engineers.

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Introduction

The right-of-way (ROW) acquisition process is not only an economic issue that needs to be executed in a timely manner, but also a socially sensitive issue. It concerns matters of public need and property owner rights (Aleithawe 2010). The ability to acquire the ROW for highway construction projects in a timely manner is the primary key to allowing a highway construction project to begin construction on an approved schedule. Properties needed for transportation construction or improvement projects come in all sizes, shapes, and locations, and each comes with specific challenges. A single project usually has many parcels of land that are needed from different owners; each parcel must be acquired to ensure completion of the project. Project delays often occur because of common difficulties with ROW acquisition that cause schedule slippage and cost increases. Condemnation, the process of taking private property for public use through the power of eminent domain, is an example of this (Aleithawe 2010). Methods are needed to reduce those delays.

Transparency in the acquisition process is a critical component for any effort at increasing operational efficiency and reducing the time required for ROW acquisition. The term "transparency" is a broad reference to multiple concerns within the overall acquisition

process, highlighted by price disclosure, which has substantial implications for the appraisers performing market value appraisals in addition to property owners.

Federal regulation requires that the offer of just compensation to the property owners not be less than the approved appraisal. Under regulations of the Federal Real Property Acquisition Policies Act of 1970 [Uniform Act; Federal Highway Administration (FHWA) 1971], the appraiser is required to personally confirm details of real estate transactions (comparable sales) with a party to the transaction (seller, buyer, attorney, broker, or financier). Therefore, any appraiser seeking information on a sale, especially in a rural area of the state, must persuade a transaction participant to provide him or her with specific information about the transaction, primarily the sales price. Mississippi's status as a nondisclosure state (one of the remaining nondisclosure states) means that the sales price is not required to be disclosed in the transaction deed or any other part of the public record. Historically, the standard process at the Mississippi Department of Transportation (MDOT) was for the appraiser to collect recent sale deeds at local courthouses and to contact buyers or sellers 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 that has delayed the acquisition process.

This paper proposes a process to reduce condemnation cases of new ROW acquisition projects under circumstances similar to those faced by MDOT.

Background

A study was conducted to identify the factors that contributed to the delay in the ROW acquisition process at MDOT. Among a set of

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completed highway construction projects (1,478 parcels included in 35 projects), statistical analysis identified the number of parcels, the parcels that were acquired by condemnation, and the number of revisions in the completed project to be significantly associated with increasing the duration of the ROW acquisition process. Condemnation is the process of taking private property for public use or purpose through the power of eminent domain (Aleithawe 2012).

Other studies sought innovative practices to accelerate the acquisition delivery for ROW in project development. For example, 36 agencies responded to a detailed survey of ROW administrators and managers in all 50 states (Waters 2000). Several contributing factors were identified in the survey. Thirty-six percent listed coordination issues between organizational elements as a primary factor in acquisition delay. More than half of the 36 survey respondents (58%) indicated that issues outside of the control of the state transportation agency management, such as legislation and public policy, contribute to ROW acquisition delays. Some states have found alternative settlement methods, such as mediation, to be useful in reaching amicable settlements and avoiding condemnation and its delays. Mediation is used internally before condemnation procedures are initiated. The survey results showed that 33% of the respondents identified eminent domain laws (condemnation) as a barrier to improving ROW delivery. The time allowed for the property owner to consider the acquiring agency's offer impacts condemnation rates: longer time spans result in higher condemnation rates (Waters 2000). The FHWA recommends that administrative settlements and other techniques be considered before initiation of legal procedures or condemnation (FHWA 2002). Late design and revisions to design plans was a factor that all 36 states survey respondents identified as major concern in the duration of ROW acquisition. Active coordination with ROW staff among design teams in the project development phase resulted in significant quality improvements to the ROW acquisition process, according to the survey.

Hakimi (2005) examined key ROW laws in all states, with emphasis on real estate acquisition rules. This study identified matters impacting the acquisition process, such as: (1) state laws that address ROW governmental acquisition of private property and those amendments that significantly influence the ROW acquisition process; (2) federal laws and regulations applicable to the acquisition of properties for federally funded projects; and (3) best practices and strategies during the acquisition process. Hakimi noted that, to improve the US ROW acquisition process, the environmental, social, economic, and political characteristics of each state should be considered. Although different project corridors are acquired every year, state and federal laws constraining acquisition practices tend to evolve slowly. He also noted the need for law changes to promote transparency to build trust between property owners and the government. Hakimi concluded that appropriate changes would minimize cost by expediting the acquisition process.

A lack of transparency occurs when critical information is not readily available to the parties involved in the process. 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. Therefore, when sales information is not publicly accessible, the entire acquisition process is delayed. Such is the case in nondisclosure states (Aleithawe 2009). In those states that do have transaction price disclosure, there is state law requiring the transaction price to be declared at the time the deed is recorded. Mississippi is a non-disclosure status state, one of a few (Mississippi, Texas, Montana, North Dakota, Indiana, Utah, and Wyoming) remaining in the US

(Setzer 2007). Additionally, in Mississippi, real estate transaction price data are substantially controlled by the local boards of realtors across the state through the Multiple Listing Service (MLS) database system.

O'Connor (2005) examined durations for acquiring roadway ROW and assorted expediting strategies. This study examined the ROW acquisition process of the Texas DOT to identify duration and delays in the tasks required for the successful acquisition of ROWs for construction. The study identified nine types of acquisition delay factors, such as pricing, and compensation delays to parcel acquisition, including: appraisal of multiple improvements to the owner's property, small businesses or shopping centers as part of the acquisition, and uneconomic parcel remainders left as a consequence of the agency's partial acquisition. Title and ownership delays include such concerns as: limited capacity of out-sourced agencies, obstacles due to regulations and procedures, bankruptcy claims, and curative problems such as deceased or multiple owners. Third-party delays include public relations and responses to differing property owners, local city or county contributions, reappraisal needs, and market fluctuation. Parcel type and improvements delays include railroads, businesses, parking lots, homes, shopping centers, and post offices, which have special needs, parcel sizes, numbers of relocations, partial takings, and splitting of parcels. Litigation delays happen when the acquiring agency determines that it must opt for condemnation and the eminent domain (ED) legal process. Property owners are often not aware of the statutory requirements of ED, and the litigation delays become further compounded by the owner's lack of knowledge. Utility delays include utility company reimbursement, procedure delays, number of utility adjustments, concurrent engineering, problematic urban development, and discovery of parcels with underground utilities. Other types of delays include: environmental sensitivity delays; design change delays (revisions) when the parcel acquisition size is increased or new parcels are required; and resource and management delays involving the workload capacity of the acquiring agency, including appraisers, title, researchers, relocation specialists, private consultants, and acquisition services.

All aspects of the ROW acquisition process are subject to the requirements of the Uniform Act, which provides for the uniform and equitable treatment of persons displaced from their homes, businesses, or farms by federal and federally assisted programs, and that establishes uniform and equitable land acquisition policies for federal and federally assisted programs. In addition, this law is consistent with the Fifth Amendment of the United States Constitution "...nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation" (United States Constitution 1791). This law and associated regulations provide protection to affected owners and tenants. ROW administrators, managers, and staff face continuous challenges to provide high-quality service to the land owners and to address public concerns such as taxpayer costs and environmental and archeological issues. Most professionals who worked with the Uniform Act regard the program as an excellent tool to ensure the protection of the property owners affected by the acquisition of private land for public use. It also ensures that taxpayer money is not wasted (Smith 2005).

Almost 80% of all ROW acquisitions are settled without initiating condemnation proceedings (FHWA 2002). Condemnation is the process in which private property is acquired for public use through legal proceedings when the property owner does not agree to the acquiring agency's just compensation offer and refuses to sign the deed or other instrument of acquisition. When a parcel is recommended for condemnation, the process consists of several steps: (1) add the parcel file to the condemnation status report;

(2) submit a request to the Special Assistant Attorney General for assignment of an attorney to the case from a preapproved list; (3) prepare the recommended for condemnation case for inclusion on the next Mississippi Transportation Commission agenda, which occurs once a month; (4) submit a condemnation survey request or field verification of the parcel; and (5) after this is finished, the parcel will be filed with the court. Usually, the survey and preparation of the parcel file process takes an average of three to six months, depending on whom the task is assigned to (in-house or consultant) before sending the file to the attorney. In addition, once it has gone to the attorney, it takes an average of five to six months to receive a right of entry. This right of entry is obtained through a Quick Take (the acquisition of property where negotiations to purchase the property have failed) procedure that is set forth by statutes ([State of Mississippi 1972](#)). In 2011, the Mississippi Constitution was amended by referendum to prohibit state and local government from taking private property by ED and conveying it to other persons or private businesses for a period of 10 years after acquisition. Exceptions from the prohibition include drainage and levee facilities, roads, bridges, ports, airports, common carriers, and utilities. However, this recent amendment did not affect the condemnation process at MDOT ([State of Mississippi 2011](#)). Ideally, all ROW should be acquired via negotiation, rather than condemnation and litigation. This approach reflects the Uniform Act's requirement that agencies "... make every reasonable effort to acquire expeditiously real property by negotiation" (FHWA 1971). Acquisition duration and cost in acquiring property through litigation are substantial for the agency and property owners. It also results in adversarial interactions between the acquiring agency and property owners and further burdens an already overloaded court system ([FHWA 2002](#)). Many state DOTs have adopted new techniques, such as South Carolina's mediation program, Tennessee's arbitration process, and Georgia's administrative appeal hearing process, to further the negotiation process and to reduce condemnation cases ([Aleithawe 2010](#)).

Some states require that there be an attempt to negotiate in good faith, others require only a failure to agree, and some require no negotiations at all. Whatever the rule, it is best in all cases for the agency's ROW administrators/negotiators to be in a position to make an offer to owners and be familiar with the elements of that offer in early negotiations. The preliminary visits and interactions of a negotiator with owners influence owner attitudes throughout the subsequent acquisition proceedings ([Netherton 1963](#)).

Currently, there is no simple and direct answer to reduce the duration of acquisition. Reviewing the acquisition process and defining the factors that impede the process will help to direct answers to minimize delays.

Methodology

The study was designed to identify the factors that contributed to higher numbers of condemnation cases and, by extension, to delays in the ROW acquisition process in Mississippi. Informal interviews with MDOT managers and senior field agents of the acquisition, appraisal, survey maps and deed, and title sections were conducted to gain a more complete understanding of the current acquisition process, including the difficulties and problems personally encountered by agents and the agent's perspective of the challenges facing the acquisition process. More detailed information on the interviews is provided in the study by [Aleithawe \(2010\)](#). The database of MDOT projects was utilized to identify completed highway projects from 2008–2010. A total of 71 completed projects were found in the database and compiled in spreadsheet format. To show the

impact of condemnation cases on the acquisition duration, 21 randomly selected completed projects were examined in this research. Every third project, without looking at project details, was selected. The 21 projects included 691 parcels, a statistically meaningful but manageable sample size. The evaluated sample variables included the total number of parcels per project, the number of parcels acquired by condemnations, the number of parcels acquired by negotiation, and total acquisition duration in days. A stepwise multi-regression analysis was also used to verify the factors that impacted the acquisition duration. In addition, an online survey with in-person and/or telephone-based follow-up was conducted to gain better understanding of the challenges facing the acquisition process and to measure the impact of transparency and disclosure status on condemnation cases for a period of 30 days. The target audience for the survey and follow-up interviews consisted of ROW managers, senior and field ROW agents (present, former, and contract), staff of private consultant services, and private real estate business agents. The online survey URL was sent electronically to 47 randomly selected individuals in the target audience. Thirty-five (74%) participants responded to the online survey questionnaires. To gain insight and depth into the responses from the online survey, a descriptive analysis of the survey results was performed. Additionally, the survey respondents were given extra space to provide optional comments for each question as needed.

To check the validity, accuracy, and applicability of the developed process, an active project with 32 parcels was used to test the new recommended process.

Results

Interviews

The MDOT's acquisition process was reviewed to determine the factors that most significantly affected the ROW acquisition process and whether new processes or techniques decreased the number of parcels recommended for condemnation, thus enhancing the overall acquisition process. To gain understanding of the current acquisition process and to ascertain the various challenges and obstacles encountered in the ROW acquisition process, interviews and discussions were conducted with a full range of ROW staff, managers, engineering, survey, mapping, title, appraisal, review, acquisition, and relocation sections. From these discussions, three major factors surfaced as primary obstacles. They were identified as state law, local policies, and the acquisition management process. It was also noted during the interview that 12–18% of parcels were usually acquired through condemnation. Some of the challenges expressed during the interviews included, but were not limited to:

1. Lack of effective communications between the ROW acquisition agents and property owners to address property owner's questions/concerns following the start of negotiations;
2. Lack of tools or innovative techniques after the unsuccessful initial negotiation to try to acquire land without recommending for condemnation;
3. Inexperienced agents often missing a legal instrument or not answering the property owner's questions in a timely manner, leading to frustration and distrust;
4. Lack of adequate cross training among ROW agents, resulting in misunderstanding or confusion;
5. ROW acquisition agents waiting for missing or revised instruments, such as deeds of trust or maps, that should have been available earlier in the process;
6. Because of the lack of transparency in the acquisition process, the MDOT failing to provide a copy of the appraisal report to

show the property owner how the appraiser arrived at the current fair market value; and

7. Nondisclosure status making sale verification more difficult and directly contributing to the delays in the ROW acquisition process. This is also one of the direct causes of suspicion, uncertainty, and time delays injected into the process of ROW acquisition.

An overwhelming majority (90%) of the ROW and private consultant staff indicated that state law and internal policies (transparency) directly affected the ROW acquisition process. According to the ROW staff from other states, Tennessee, Arkansas, and Louisiana, transparency gained by changing the nondisclosure status and local policies has contributed to the reduction of recommended for condemnation parcels in those states by an average of 25, 15, and 5%, respectively, which reduced overall acquisition duration (Aleithawe 2010).

Descriptive and Regression Analysis

The data set of the 21 randomly selected projects had 691 parcels that were used to examine the impact of the condemnation and transparency on the acquisition duration.

Table 1 represents the basic statistical distribution of the 21 randomly selected completed projects. As shown in Table 1, there was an average of 33 parcels per project.

Table 1. Descriptive Analysis Summary of the Data Sample

Measure	Number
Total completed projects	21
Total number of parcels	691
Mean parcels per project	33
Median parcels per project	15
SD of parcels per project	35
Range of parcels per project	3–126

Table 2. Primary Acquisition Method of Parcels

Procedure for acquiring ROW	Number of parcels	Percentage of parcels (%)
Negotiation	571	83.00
Condemnation	120	17.00
Total	691	100

Table 3. Acquisition Duration Summary in the Selected Data Set

Measure	Acquisition duration (days)	
	Condemnation (16 projects)	Negotiation (5 projects)
Mean	929	273
Median	958	251
SD	393	135
Range	1,327	354
Minimum	293	100
Maximum	1,620	454

Table 4. Stepwise Regression Summary

Regression summary for dependent variable: duration (data from 2008–2010)						
Variables	β	Standard error	B ^a	Standard error	<i>t</i> (19)	<i>p</i> -value
Condemnation	0.575173	0.187669	28.8754	9.42155	3.064821	0.006375

^aB is empirical coefficients determined by fitting to minimize the root mean square of the errors (RMSE).

The analysis showed that the primary acquisition method for the 691 parcels in the 21 projects was through negotiation, as shown in Table 2. This shows the acquisition of 17% by condemnation; most parcels, 83%, were acquired through negotiation.

Table 2 provides basic statistical data for the number of parcels that were acquired through condemnation and those that were acquired through the negotiation process.

Table 3 shows the substantial effect of condemnation on acquisition duration. The maximum duration for the condemnation cases, for 16 projects in which condemnation was involved, was 1,620 days (4.5 years), whereas the maximum project duration for the negotiation cases, five projects in which no condemnation was involved, was 454 days (1.2 years): a difference of 1,166 days (3.2 years) for negotiation versus condemnation.

As shown in Table 4, the multiregression *p*-value of the parcels acquired through condemnation was a statistically significant variable that impacted the acquisition duration to a 95% level of significance ($p < 0.05$). In addition, the results of this analysis were consistent with previous research results (Aleithawe 2012).

Online Survey Results

The nine questions in this online web based survey were sent electronically to 47 randomly selected private real estate business agents; in the survey, current and former MDOT agents asked questions directly related to the impact of transparency and disclosure status on the appraisal and acquisition and the condemnation processes in Mississippi. This survey was designed to measure the direct and indirect impacts of disclosure and transparency on the ROW acquisition process. The results presented in the following were based on the answers from 35 (74%) participants in this survey. Not only did the survey respondents provide perceived value ratings, but they also provided optional comments about the impact of disclosure on the appraisal and acquisition process. Out of the 35 respondents, the majority (81%) are agents that are licensed, state certified, or exempt from license requirements (state government staff), and 19% were retired or inactive agents.

When asked about the additional amount of time it takes to complete a single appraisal and obtain sale prices for comparable properties in states where sale prices are not available as a public record, the majority (84%) of participants who are licensed and certified indicated that it takes between one and four days to complete this task. Although only 3% of retired or inactive participants noted more than four days, 13% of participants who are licensed indicated that it takes a few hours to complete this task and four did not answer, as shown in Fig. 1.

Additionally, most of the additional participants' comments were similar and state that it depends on the property type and the various approaches to value. For land only, the process requires a couple of days; improved commercial properties can take more than four days. The participants were also asked if the sale prices of all real estate transactions in Mississippi were recorded as part of the public record, as in neighboring states, and how this impacts the time and costs directly associated with collecting and verifying sale prices for all appraisal purposes (tax assessment, government acquisition, and financing). The majority of participants (91%) who are licensed and certified indicated that it would significantly or

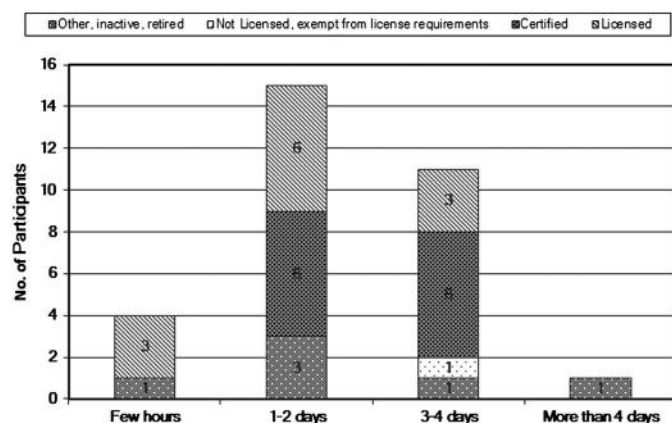


Fig. 1. Time required to obtain sale prices for a single property

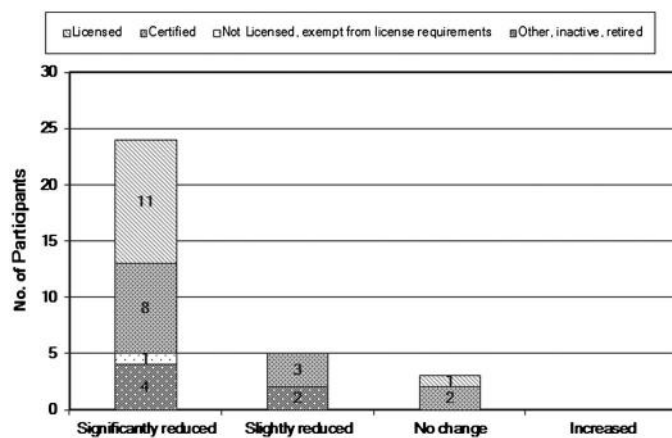


Fig. 2. Time and costs directly associated with collecting and verifying sale prices for appraisal purposes

slightly reduce both time and cost, and only 9% noted no impact on time and cost, as shown in Fig. 2.

Additional comments from some participants also indicated that half of the time required to appraise a property would be reduced if the sales price was listed on the deed at the courthouses or made available on another public document.

The participants were asked to provide their professional opinion about how the lack of disclosure of sale price impacts the costs of real property acquisition for public projects. The majority (54%) of certified and (33%) licensed participants agreed to both direct and indirect impacts, whereas only 9% indicated no impact and 15% were not sure.

The next question the participants were asked was that if the sale price of a property was disclosed in the recorded deed, and/or otherwise recorded as part of the public record, whether such disclosures generally improve the accuracy of county tax appraisals and the governmental property acquisition process. An overwhelming majority (83%) said yes or probably (63 and 20%, respectively). Only 11% indicated no improvement and 6% did not know. Furthermore, the participants were asked if changing Mississippi from a nondisclosure state to a disclosure state would assist in reducing the time needed to appraise and acquire property for a public project. Again, an overwhelming majority (80%) of participants said yes or probably (57 and 23%, respectively), whereas 11% did not know if it would assist and only 9% indicated that it would not assist, as shown in Fig. 3.

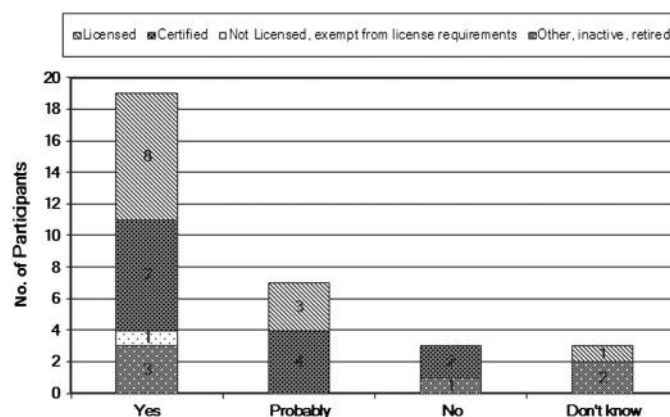


Fig. 3. Reduction of time needed to appraise and acquire property for a public project

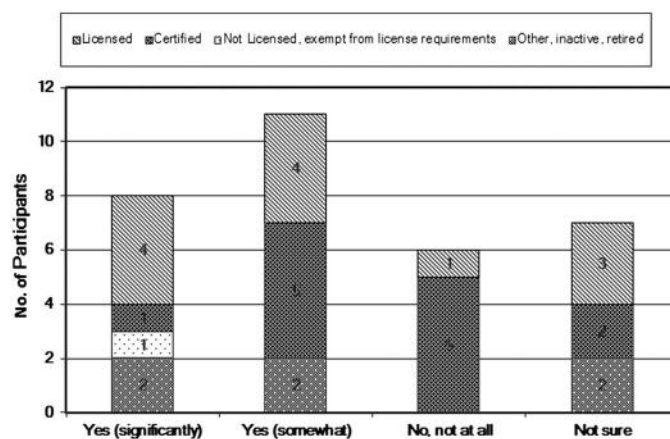


Fig. 4. Disclosure and transparency needed to reduce the number of condemnation court cases in Mississippi

Governmental and private real estate acquisition agents seek to build trust between themselves and property owners during the process of attempting to acquire properties for public projects. The participants were asked: in your professional opinion, does Mississippi's nondisclosure status diminish or negatively impact transparency? Although 14% said no, an overwhelming majority (83%) indicated that it did and only 3% did not know.

Finally, the participants were asked if, in their professional experience and judgment, the implementation of sale price disclosure, accompanied by improvements to transparency of the governmental property acquisition process, would reduce the number of condemnation court cases in Mississippi. The majority (60%) of licensed and certified participants said that (significantly/somewhat) it would reduce condemnation cases, 18% indicated that it would not at all, and 22% were not sure. However, participants who were certified were divided: 45% said yes (significantly/somewhat) and 38% said no, as shown in Fig. 4.

Discussion

A previous technical paper (Aleithawe 2012) indicated that parcels acquired through condemnation significantly impacted the duration to at least the 95% level of significance. This was consistent with the commonly stated belief among ROW administrators and managers, property owners, online survey participants,

a literature review, and interviews with current and former MDOT staff that condemnation is one of the major factors that influences the duration of ROW acquisition. ROW agents also identified condemnation as the primary factor of ROW acquisition delay. The effect is large, with condemnation adding approximately two (1.8) years to the duration of the project, compared with parcels obtained by negotiation, as shown in Table 3. Possible solutions to reduce the condemnation rate include a systematic plan, such as mediation or establishing an appeal process; adding transparency by providing a copy of the appraisal report to the property owner; or any other innovative techniques that need to be applied before the parcel is recommended for condemnation. A literature review confirms that some states have successfully used techniques such as mediation, appeal processes, and arbitration to reach a positive outcome before going through the lengthy and costly condemnation process.

The study results quantitatively expressed the common knowledge that condemnation cases have the largest impact on the duration of ROW acquisition (Aleithaw 2012), adding an average of 656 days to the duration. The results also provide a comparative evaluation of the other factors affecting duration.

Although there are many reasons for delays in the property acquisition process, one of the more challenging reasons stems from information that is not publicly available. A lack of transparency occurs when critical information is not readily available. As it pertains to the ROW acquisition process and its duration, nondisclosure directly affects appraisers, ROW acquisition agents, and property owners. For all parties, nondisclosure operates as a barrier to obtaining information, transparency, and reducing the costs of ROW acquisition. For the property owner, arriving at their own opinion for the fair market value of their property is complicated by the lack of disclosure. It is also one of the direct causes of suspicion, uncertainty, additional costs, and time delays to the ROW acquisition process. Changing Mississippi from a nondisclosure state to a disclosure state would require action of the Mississippi legislature: a new law. However, price disclosure would undeniably create a more transparent environment for all parties. Adopting a more transparent process, combined with price disclosure, would have direct and immediate beneficial impacts on the ROW acquisition process for both state agencies and property owners in terms of: (1) less time spent searching for sale prices, (2) reduction in the overall duration of acquisition, (3) reduction in the number of parcels recommended for condemnation and addition of efficiency and better communication to the acquisition process between all parties involved, and (4) opportunities for trust building between property owners and public agencies by showing the property owners that the agencies have nothing to hide.

Another change that would increase transparency involves providing the property owner with a copy of the appraisal report. Currently, property owners are presented a fair market value offer (FMVO) by ROW acquisition agents. It is part of the internal policy of MDOT that field agents are not allowed to provide the property owner with a copy of the appraisal report. 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 may feel compelled to complete their own appraisal at their own expense or to accept 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 that the agent must be hiding something, which is why they are not providing a copy of the report. Uncertainty is certain to follow when an offer is made in this manner; hence, there is an increase in condemnation cases. Changing the internal policy of MDOT would promote better communication and transparency to the process. In addition,

encouraging the field agents to go the extra mile to address the property owners' questions and concerns in a timely manner to avoid the lengthy condemnation process would be good tools to enhance the acquisition process.

Recommended Process

On the basis of the analysis findings, interviews, online survey results, and reviews of other states, a new process was developed and incorporated into an agreement form. This newly recommended process starts after unsuccessful negotiation between ROW acquisition agents and property owners to focus on the specific issues that prevented the property owner from accepting the agency's FMVO. 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. The new process will allow the property owners to explicitly list the issues, questions, and concerns that prevent them from accepting the FMVO offered by the transportation agency. Some of the issues that have prevented property owners from accepting the FMVO include, but are not limited to, property value, damages, ownership information, the law, relocation assistance, design and maintenance, and utility issues, as shown in Fig. 5.

The issues and concerns listed on the form will be forwarded to all ROW section managers so that they can then be effectively addressed as priority matters to prevent parcels from being recommended for condemnation. Not all property owners want more money for their parcels. Some property owners have legitimate concerns and questions that were not addressed in a timely manner by the acquisition agent or management, which resulted in parcels being recommended for condemnation. Some of the issues and questions that property owners have raised with the ROW acquisition agents that were unanswered in the past included (but were not limited to):

1. How did you arrive at current fair market value?
2. May I have a copy of the appraisal report?
3. Where is the ROW marker going to be placed on the property?
4. Is the agency going to purchase the remainder of property?
5. Is the driveway going to be repaired?
6. Is the fence going to be moved?

Inexperienced ROW agents may forget to follow up and provide answers to the property owner's questions and concerns in a timely manner. Such actions result in resentment and frustrations by the property owners, which usually results in a refusal to accept the FMVO, thus leading to condemnation. Once the issues/questions listed on the form are addressed to the property owner's satisfaction and in a timely manner, their prompt decision about conveying the parcel to the agency will follow, as stated on the agreement form. Additionally, this new process can build trust and promote transparency and effective communications between agency staff and property owners.

Finally, this new process was tested on an active project that contained 32 parcels. Ten of the 32 parcels (10 parcels, 31%) were recommended for condemnation after an unsuccessful initial attempt to reach an agreement between ROW acquisition agents and property owners. However, after using the new process to list the specific reasons that prevented an agreement, and having those issues addressed promptly, only one parcel (3%) was condemned. The other nine parcels (28%) were resolved through further negotiation. Thus, this process has proved to be a useful tool for reducing condemnation cases, thus saving time and money. Continued use of the process will provide data for statistical analysis of the average effectiveness of the new process.

ROW Acquisition Agreement Form

Project Number: _____

Date: _____

Parcel/File Number _____

County: _____

I, _____ would like to have an answer to the specific issue I am describing on the form below regarding the Mississippi Department of Transportation interest in the acquisition of my property for transportation projects. Issue supporting materials will be provided as needed.

Upon receiving the proper response to my listed issues, my prompt decision about conveying the parcel of land to the Mississippi Department of Transportation for transportation projects will follow.

The specific issue that I need an answer to is with:

☐ Appraisal Issues

Fig. 5. Example of the new ROW agreement form

Another recommended process was to change the state law to change Mississippi from a nondisclosure status state to a disclosure status state, which will ultimately affect internal MDOT policy by providing the property owner with a copy of the appraisal report. This process would require the state legislature to change the existing disclosure status, which is opposed by an interest group in the state of Mississippi. In past years, the special interest group has exerted a lot of pressure to kill the measure at the committee level.

Every ROW administrator and acquisition manager would like to see zero condemnations to any project, but from a practical standpoint, this would be unrealistic given the nature of the ROW acquisition process. By increasing transparency and using the newly developed process of acquisition agreement, DOT ROW divisions interested in reducing condemnation cases can reduce condemnation cases and overall acquisition duration.

Conclusion

Previously reported interviews of ROW agents, interviews with the ROW staff of other states, and statistical analyses of completed projects were performed to evaluate the factors that affected the number of condemnation cases and, by extension, contributed to delays in the acquisition process (Aleithawe et al. 2012). The analysis identified (1) parcels that went to condemnation for resolution, (2) transparency concerns, and (3) that state laws were significantly associated with increasing the duration of the overall acquisition process.

Condemnation was shown to profoundly affect the duration of acquisitions. Ideally, all ROWs should be acquired via negotiation, rather than condemnation and litigation. This approach reflects the Uniform Act's requirement that agencies "... make every reasonable effort to acquire expeditiously real property by negotiation" (FHWA 1971). Reducing condemnation cases is the goal of any ROW administrator to prevent any delay to the delivery of the ROW acquisition. The average time to acquire projects in 2008–2010 in

which condemnation was involved was 929 days, versus 273 days through negotiation.

The lack of transparency and the nondisclosure of real estate prices in Mississippi are two of the causes of suspicion, uncertainty, additional costs, and time delays in the ROW acquisition process. Changing Mississippi's status from a nondisclosure state to a price disclosure state (requiring a new law) and adopting improved transparency processes would have direct and immediate beneficial impacts on the ROW acquisition process for both state agencies and the property owners. The majority of the online survey participants (76%) indicated that disclosure and transparency have directly and indirectly impacted the acquisition process.

A newly recommended process was developed that is consistent with the Uniform Act and is intended to reduce the duration of acquisition by reducing the number of parcels recommended for condemnation for new projects. This new process was validated against one active project and demonstrated effectiveness in reducing parcels recommended for condemnation to avoid costly and lengthy litigation process. The process can be utilized by ROW divisions in any agency to reduce condemnation cases, thereby reducing the duration of ROW acquisition for new projects. This analysis did not review cost savings or additional expenditures in the acquisition process.

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