



TECHNICAL SUMMARY

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LRRB PROJECT COST:

\$133,895



Early and frequent one-on-one meetings with property owners are an important way to build trust.



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How Agencies Can Reduce Right of Way Acquisition Costs and Delays

What Was the Need?

Local agencies often need to acquire land for transportation projects. Agencies typically attempt to directly purchase the land from owners. If negotiations to do so fail, however, agencies can acquire land through eminent domain—the right of a government to take private property for public use after providing compensation for the property’s value, as determined by court-appointed commissioners. In 2014, MnDOT acquired 101 parcels through eminent domain for \$27.5 million, nearly \$18 million more than the properties’ original appraisal costs.

Right of way (ROW) acquisition costs in Minnesota have increased sharply in recent years. In the early 2000s, eminent domain compensation awards were typically about 40 percent higher than agency appraisals, but that figure has trended steadily higher in the past decade. In some recent years, eminent domain awards averaged more than 130 percent higher than agency appraisals.

These costs are ultimately borne by the taxpayers, who are represented by the agency and who benefit from the transportation projects. Some cities and counties now report spending more than 30 percent of their transportation project budgets on ROW acquisition. The process is also becoming more time consuming and a barrier to getting projects built.

What Was Our Goal?

The objectives of this project were to identify factors in the ROW acquisition process that increase costs and delays, and to develop recommendations to improve the process for Minnesota public agencies.

What Did We Do?

This project had three phases. Researchers first synthesized the state of the practice through a literature search, a statewide survey of ROW professionals, structured interviews with representative survey respondents, and case studies. Next, they analyzed the data collected to document obstacles that can contribute to cost increases and delays, and the likely causes of such obstacles. Finally, researchers used that analysis plus information gathered from a workshop with metro-area ROW professionals to develop recommendations and implementation strategies to address the barriers identified.

What Did We Learn?

Researchers identified 22 barriers to smooth ROW acquisition. According to survey respondents, the most severe of these barriers were property owners’ distrust of the agency or its appraisal; poor communication between ROW staff and property owners; changes to ROW plans that delay an agency’s work; lack of knowledge, skills and experience among agency appraisers; and lack of experience among agency staff.

Many interviewees reported that changes made in 2006 to Minnesota’s eminent domain law have burdened agencies in the ROW acquisition process. One of those changes was effected by [Statute 117.031\(a\)](#), which requires a court to award attorney and expert fees

This project evaluated barriers that increase costs and delays in ROW acquisition for transportation projects and developed 25 recommendations to overcome those barriers. Many recommendations would require legislative changes, but others can be implemented by local agencies.

“While some of the recommendations that came out of this research require legislative changes, others should be fairly easy to implement if an agency examines its processes and gets its ROW staff involved as early as possible.”

—David Jeong,
Associate Professor,
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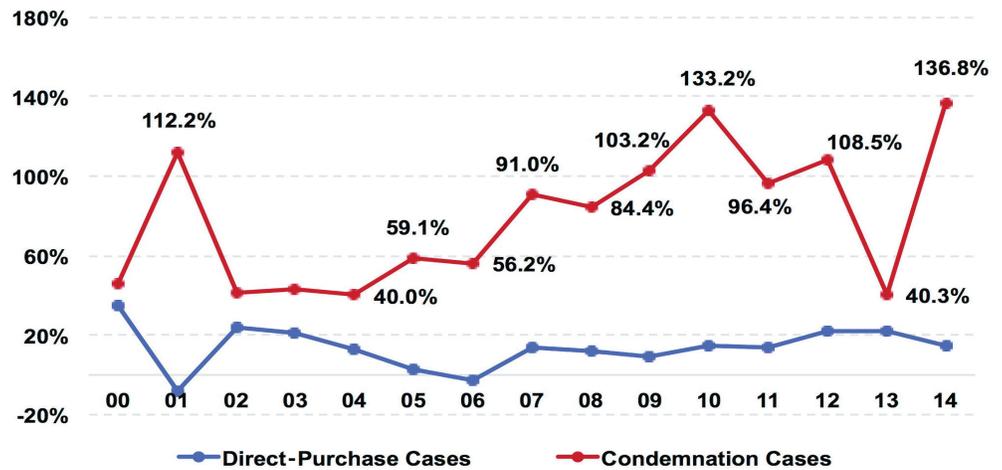
“Developing relationships with property owners early is hugely beneficial. If they believe an agency is treating them fairly, the process is likely to be much smoother.”

—Patrick Lambert,
Right of Way Agent,
Carver County Public
Works

Produced by CTC & Associates for:

Minnesota Department
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This graph shows how the average transportation ROW acquisition costs in Minnesota have compared to agency appraisals between 2000 and 2014. Average eminent domain acquisition costs (in red) have significantly exceeded agency appraisals and have trended upward, while direct-purchase costs (in blue) have remained stable and reasonably close to agency appraisals.

to a landowner if the final judgment is more than 40 percent greater than an agency’s written offer. Some interviewees argued that this provides incentives to a property owner’s appraiser to assign unreasonably high valuations in hopes of prompting final awards that exceed the 40 percent threshold.

Additionally, under [Statute 117.036 Subdivision 2](#), public agencies must submit appraisals at least 60 days before a condemnation hearing. Property owners, however, do not need to provide appraisals until five days before a condemnation hearing. Many survey respondents said the five-day rule does not give agencies enough time to properly review the property owner’s appraisal.

The project produced 25 recommendations to improve the ROW acquisition process. About half the recommendations were developed by the researchers, and half by the participants in the metro ROW workshop that the researchers conducted. Workshop participants identified five as having the greatest potential impact:

- Changing legislation so that attorney’s fees can only be awarded to a property owner if the owner’s appraisal is provided to the agency before it makes its last written offer.
- Requiring owners to submit appraisals 20 to 30 days before the condemnation hearing.
- Limiting awards of attorney’s fees.
- Involving ROW agents in the early stages of the project.
- Allowing agencies, after they receive the property owner’s appraisal, to (1) make an offer of judgment that improves the agency’s original appraisal and (2) assess penalties if the property owner rejects the offer of judgment, but the court’s final award is less than that offer. This provision would discourage unnecessary court hearings.

What’s Next?

Twelve of the 25 recommendations, including four of the five believed to have the greatest potential impact, require state legislative changes. Local agencies cannot make those changes independently. Of the recommendations that can be implemented by a local agency, the ones most easily carried out include involving ROW staff and attorneys early in the process, establishing incentives for property owners to settle early, arranging one-on-one meetings with property owners to build trust, and providing continuous cross-training for ROW staff. Local agencies can use the full research to review their own practices and to inform any strategies for future action.

This Technical Summary pertains to the LRRB-produced Report 2016-28, “Barriers to Right-of-Way Acquisition and Recommendations for Change,” published August 2016. The full report can be accessed at mndot.gov/research/TS/2016/201628.pdf.