

Joint FHWA and State DOT Process/Peer Review

of

Mn/DOT Appraisal and Acquisition Practices

November 3-7, 2003

Prepared by

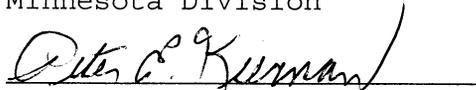
Reginald Bessmer  
Chief Appraiser  
Federal Highway Administration  
Washington, D.C.

  
Reginald K. Bessmer

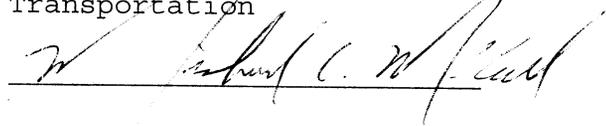
Don Keith  
Right-of-Way Program Manager  
Federal Highway Administration  
Illinois Division

  
Don Keith

Peter Kiernan  
Realty Officer  
Federal Highway Administration  
Minnesota Division

  
Peter C. Kiernan

Michael McCall  
Chief Appraiser  
Virginia Department of  
Transportation

  
Michael C. McCall

## **Purpose**

The purpose of this review was to evaluate the appraisal, appraisal review, and acquisition practices utilized by the Minnesota Department of Transportation (Mn/DOT) on the Trunk Highway 52 Design-Build Project in Rochester, Minnesota. Mn/DOT is required to adhere to the policies and procedures contained in their Right-of-Way Manual. This manual is approved by the Federal Highway Administration (FHWA) and incorporates the federal requirements of 49 CFR Part 24 that govern the appraisal and acquisition of right-of-way (r/w).

An additional purpose of the review was to examine from a peer perspective any innovative or expedited processes that Mn/DOT used to accelerate the acquisition of r/w.

## **Specific Review Objectives**

1. Evaluate Mn/DOT compliance with their r/w manual.
2. Identify strengths and weaknesses in the processes used by Mn/DOT.
3. Identify best practices and lessons learned from the peer evaluation of the expedited processes used by Mn/DOT.
4. Determine what effect, if any, the compressed time schedule of acquisition had on the appraisal and acquisition processes.

## **Scope**

The review team examined a representative sampling of appraisal and acquisition files at Mn/DOT's District 6 Rochester Office. We also drove through and viewed the project corridor.

In our review of appraisal files, we focused on issues of highest & best (H&B) use and whether the conclusions of fair market value (FMV) were properly supported and documented. We also examined the review appraisers' analyses and certifications of FMV to evaluate how this important function was carried out and whether consistency in values was maintained.

Our review of acquisition files entailed an examination of the course of negotiations with property owners from the initiation of negotiations to final settlement. We verified that the certified FMV was documented as being offered to property owners and evaluated the justification and documentation of administrative settlements.

We held an entrance meeting with the Mn/DOT Central Office R/W Director, Deputy Director, and Chief Review Appraiser. In order to clarify some appraisal questions, we later had a teleconference with Brian Watts, a fee appraiser with the firm of

Allen, Williford & Seale (AWS) that appraised most of the parcels on this project. We also interviewed the District 6 R/W Engineer and other members of his staff.

In our closeout meeting, we made a presentation of our review conclusions and recommendations to the R/W Director and review appraisers of the Central Office as well as the supervisors of the District 6 R/W Office.

**Review Team**

The review team consisted of the following individuals:

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|------------------|--|
| Reginald Bessmer | Chief Appraiser, FHWA<br>Washington, D.C.                      |
| Don Keith        | Right-of-Way Program Manager, FHWA<br>Illinois Division Office |
| Peter Kiernan    | Realty Officer, FHWA<br>Minnesota Division Office              |
| Michael McCall   | Chief Appraiser<br>Virginia Department of Transportation       |

**OBSERVATIONS AND COMMENTS**

**Appraisal**

Our review indicated that the appraisal work was in substantial compliance with the Mn/DOT r/w manual.

In general, the appraisers developed thorough and comprehensive market data for use in their reports. The conclusions they reached were drawn from a logical and well-reasoned analysis of the pertinent approaches to value. The final estimates of value appeared to be credible, reasonable, and adequately supported. Moreover, the quality of the appraisals appeared to be on par with typical appraisal work elsewhere. It is worthwhile to note that we found the appraisals completed by the firm of AWS to be superior to those done by other fee appraisers.

The analyses of H&B use were generally good. We observed several examples of good "larger parcel" analysis, and changes in H&B use were appropriately identified in the "after" condition. A weakness we noted is that different H&B uses on mixed-use parcels was not always clearly delineated in the appraisal report.

The analyses of comparable sales and the corresponding adjustments provided adequate support for value conclusions. However, within the appraisal reports there was no "explanation of the amount of the adjustments made by abstracting values from sales," as required by the r/w manual. We interviewed one of the fee appraisers to determine how he was able to justify some of the larger adjustments that were made. He indicated that he had done a separate "paired sales" analysis, but had not included it in the appraisal report. He then submitted copies of his informal analyses and other supporting documentation. While this certainly lends additional credibility to the adjustments that were made, this type of documentation should be included in the body of the appraisal report, as required by Mn/DOT's r/w manual.

### **Appraisal Review**

We were impressed with the quality of Mn/DOT's appraisal review. These reviews were thorough and contained good critical insight and analysis. The review appraisers detected errors in the appraisal reports and provided a valid explanation for making any adjustments to value.

However, we noted that the review appraisers did not update appraisals for time delays. There were two primary reasons for these delays, many of which lasted up to 4 months: 1) Appraisers did not complete and submit their reports in a timely manner after a date of valuation was established. 2) The large number of appraisals that arrived simultaneously or in rapid succession at the desk of the review appraisers precluded them from making a timely review. In essence, there was a bottleneck of work at the appraisal review level. To their credit, the review appraisers did not sacrifice the quality of review by merely "rubber stamping" appraisals to save time. Yet the compressed time schedule and parcel delivery dates did not allow time for the reviewers to contact the appraisers and ask them to consider whether an update to their appraisals was needed.

Apparently, a decision was made by Mn/DOT to account for upward time adjustments during negotiations with the property owner. This practice is unacceptable. Federal regulations require that a prompt offer be made to owners at the initiation of negotiations. An offer based on a four-month old valuation is not prompt. Moreover, there may be changes in the market that require further analysis.

If there is a time delay before the review appraiser is able to certify an appraisal, the review appraiser must evaluate the need

for an update. If an update is not necessary, the review appraiser should explain the reasoning in the Review Analysis and Certification. If an update is necessary, the review appraiser has two options available. The review appraiser can request the appraiser to reevaluate the conclusion of FMV. Alternatively, the review appraiser may make the update.

#### **Direct Purchase Negotiations**

Our review of acquisition files revealed strong documentation that negotiations with property owners were carried out in good faith and in compliance with Mn/DOT's r/w manual. The files contained appropriate offer letters reflecting the certified FMV as well as the required conveyance and payment documents.

Most acquisition diaries of the acquisition agents were also very well maintained. These diaries contained entries that noted the date of each contact and a summary of any significant discussions that took place between the property owner and the acquisition agent. Several of the diaries were especially well documented and provided an excellent overview of how negotiations were conducted.

In accordance with MnDOT's r/w manual, owners were given at least 30 days to consider an offer and there was no indication of any coercion to expedite the signing of a purchase agreement. All pertinent incidental expenses and closing costs related to the acquisition of a parcel were properly paid by Mn/DOT.

#### **Administrative Settlements**

The Uniform Act requires that every effort be made to acquire property through negotiations. Our review revealed that Mn/DOT complied with the intent of the law and used administrative settlements prudently and effectively to bring negotiations to a successful conclusion. The settlements were well documented and supported, primarily by additional market data that surfaced after the initiation of negotiations. Moreover, we were pleased to note that no arbitrary limit was placed on the dollar amount or the percentage of the settlement. This policy provided Mn/DOT the flexibility to settle these parcels expeditiously and avoid costly, contentious condemnation proceedings.

## INNOVATIVE AND EXPEDITED PROCESSES TO ACCELERATE R/W ACQUISITION

We identified the following noteworthy practices that were used successfully by Mn/DOT's District 6 R/W Office to accelerate parcel acquisitions.

### **1. *Right-of-Entry (ROE) Easement***

This tool to expedite acquisition was used on a pilot basis for this project after approval was received from FHWA.

After a property owner was given at least 30 days to consider the offer, Mn/DOT asked the owner to consider granting an immediate right-of-entry easement to the design-build (D/B) contractor in return for consideration of \$100. The right-of-entry easement is a superior practice to a right-of-entry permit in that the right-of-entry permit may be revocable at will by the property owner.

The D/B contractor accompanied the direct purchase agent to explain any aspects of the acquisition and possibly accommodate any minor changes to the taking requested by the property owner. If the owner agreed to sign the document, the D/B contractor wrote a check to the owner on the spot and gained immediate entry to work on the property. The D/B contractor was later reimbursed by Mn/DOT.

The time savings here is readily apparent. The contractor gains immediate entry to work on the property instead of having to wait until the property is fully acquired by Mn/DOT. The key factor necessary to validate this process is that the property owner must not be coerced in any way to sign the ROE easement.

Mn/DOT personnel indicated that this acquisition tool was very successful. Many property owners opted to grant the ROE, while others simply declined. Once again, the caveat is that there be not even a hint of coercion on the part of the acquiring agency.

We would also like to note that during the time when these ROEs were solicited, the D/B contractor wanted to explore the possibility of paying additional consideration beyond the \$100 to owners whose properties were a high priority because they complemented the contractor's work schedule. After consulting with FHWA, Mn/DOT informed the D/B contractor that paying additional consideration to selected property owners would

violate the equitable treatment of property owners required under the Uniform Act.

## **2. Weekly R/W Status and Settlement Meetings**

The weekly r/w status and settlement meetings were a vital component for expediting the r/w acquisition process. These meetings were attended by the following individuals:

- Design and construction engineering staff of the D/B contractor
- Mn/DOT project management engineer
- Mn/DOT District r/w staff
- R/W consultant staff
- Mn/DOT Deputy Director, Office of Land Management
- Mn/DOT review appraisers

All of the above attendees played a unique and essential role in advancing the pace of acquisition and this forum provided a framework for effective communication and cooperation. The status of each parcel was discussed and all participants were able to add value to the discussion based on their particular area of responsibility. For example, the engineering staff of the D/B contractor was able to identify high priority parcels, give immediate feedback on possible modifications to the amount of r/w needed on a particular parcel, and also address various construction engineering issues.

A particularly effective means of expediting the approval of proposed administrative settlements was to have Mn/DOT's Deputy Director of R/W in attendance at these meetings. He was delegated the authority to approve all administrative settlements and was able to review and approve a settlement proposal on the same day it was proposed. Required paperwork and signatures were gathered during the following week. This innovative practice reduced the normal 3-week processing time to one week.

## **3. Overall Effective Communication and Coordination**

The success in reducing the time needed to acquire r/w could not have been achieved without effective communication and coordination among the Mn/DOT District 6 Office, the Mn/DOT Central Office, the Design-Build Contractor, the R/W Consultant team hired by Mn/DOT and, of course, the property owners. The most efficient processes and innovative practices will break down and languish if effective communication and coordination is lacking.

**4. Staff Support from Other Mn/DOT Offices**

The staff support that the Mn/DOT District 6 R/W Office received from other Mn/DOT Offices was essential to supplement their work force and complete the expeditious acquisition of remaining parcels. For example, review appraisers from the Willmar District and the Central Office assisted in evaluating and providing justification for administrative settlements. Additionally, Direct Purchase agents from other Mn/DOT Districts assisted in obtaining ROE easements and in other acquisition activities.

**5. Expedited Contracting for Appraisal Services**

The Mn/DOT District 6 Office was able to amend an existing contract for r/w services to include appraisal services as well. This action eliminated the need to develop a new Request for Proposals (RFP) and avoided a three-month time delay.

**6. Flexibility in Mn/DOT Management Structure to Maximize Efficiency and Mobilize Statewide R/W Resources**

We noted that the Mn/DOT District 6 Office signed a Service Agreement with the Central Office to provide property descriptions and platting services. This was done during organizational restructuring when these responsibilities were in the midst of being delegated to District Offices. We also learned that by designating TH 52 as the highest priority in the state, Mn/DOT management enabled other r/w offices statewide to mobilize their resources to assist in the timely delivery of r/w to the D/B contractor.

The maximization of r/w resources brought to bear on this project is a singular accomplishment. However, the risk in the future is that there may be insufficient resources to accommodate more than one project of this magnitude at the same time.

**7. Scheduling Flexibility between the Design-Build Contractor and the District 6 Office.**

The District 6 Office was not able to deliver all of the parcels to the D/B contractor in accordance with the schedule listed in the RFP that was issued. However, the D/B contractor demonstrated flexibility by working with the District to identify the highest priority parcels. He also demonstrated flexibility in the scheduling of staged construction activities (e.g., mainline lane construction prior to frontage road construction in situations where key parcels were not

cleared). The District then focused their efforts to acquire these parcels as soon as possible.

Similarly, the District demonstrated flexibility by delivering other high priority parcels to the D/B contractor earlier than scheduled. This mutual cooperation and scheduling flexibility improved the working relationship and helped to avoid costly delays.

It should be noted that the D/B contractor might have been more flexible than expected on this first major D/B project in order to maintain a good relationship with Mn/DOT so that they might continue to use the D/B concept on future construction projects.

**8. *Setting a R/W Footprint and Staying Within that Footprint***

The District 6 Office developed a footprint of anticipated r/w needs as early as possible during project development. After these r/w limits were finalized, no additional changes were allowed. This practice saved anywhere from 12-18 months because it eliminated the time consuming task of rewriting property descriptions and documents to accommodate design changes. Since the D/B contractor was obliged to stay within the existing footprint, the onus was on him to ensure that the design of the highway facility fit within the prescribed limits.

**9. *Nationwide solicitation with an RFP for an experienced, reputable, high quality, r/w acquisition consultant.***

Mn/DOT took the initiative to solicit a r/w acquisition consultant with national stature and the requisite credentials to carry out the various r/w acquisition activities. They were very pleased with the competence and quality of the work that their r/w consultant performed. We commend Mn/DOT for their foresight in contracting with a firm that has a proven track record and encourage them to continue this policy of casting a wide net to solicit proposals nationwide from quality firms.

**SUGGESTED IMPROVEMENTS TO RIGHT-OF-WAY PRACTICES**

- 1. *Reduce the time lapse between the appraisal valuation date and the initiation of negotiations.*** Offers to property owners should be made within a few weeks of valuation rather than months, particularly when property values are rapidly rising. When appraisals become stale, they may not reflect current FMV

that must be offered to the property owner in accordance with the Uniform Act. Appraisers doing work for Mn/DOT should submit their reports shortly after the valuation date so that the review appraisers have adequate time to complete their review and a prompt offer can be made to the property owner.

2. **Address** the review appraiser **bottleneck**. As noted previously, a bottleneck occurred on this project simply because there were too many appraisals for the assigned review appraisers to review. This problem was exacerbated because some appraisers were tardy in submitting their reports. To their credit, the review appraisers on this project were able to sustain a high level of quality in their reviews. However, there was a time lapse of up to four months before some appraisals were certified.

In our opinion, the solution to relieving the bottleneck is to ensure there is an adequate number of review appraisers to perform a timely review. If additional review appraisers are brought in, the quality of the reviews must not be compromised and there must be sufficient time for the reviewer to contact the appraiser and resolve or clarify any issues in the appraisal that may come to light. We also reiterate the necessity for effective and ongoing communication among the review appraisers so that they maintain consistency in values throughout the project corridor.

3. **Use highly qualified, reputable, experienced licensed, certified appraisers that can deliver the appraisal product on time.** Whether using staff or fee appraisers, on-time delivery of a quality appraisal is imperative. Ideally, it would be best to contract with local, reputable appraisers, as Mn/DOT tried to do. However, if local appraisers cannot meet the need, acquiring agencies may have no other option but to follow Mn/DOT's example and immediately proceed to expand their search, nationwide if necessary, for qualified appraisers.

4. **Set realistic time frames in the RFP for r/w delivery.** When the RFP on this project was being drafted, the r/w staff in District 6 was asked to develop a schedule for delivering parcels that was based on a best case scenario. Therefore, the parcel delivery dates were overly optimistic. This posed a significant problem during construction because several parcels were not available to the D/B contractor as stated in the RFP. As a result, the contractor had to modify his work until those parcels were ultimately acquired. Fortunately, the

District had developed an excellent working relationship with the D/B contractor and there was flexibility on the part of all parties. However, there is no guarantee that future D/B contractors will be as cooperative. Therefore, in future RFPs, we recommend that Mn/DOT set realistic time frames for r/w delivery to avoid any possible contractor claims.

## CONCLUSION

Mn/DOT is administering its appraisal, appraisal review, and r/w acquisition programs in substantial compliance with its right-of-way manual and governing federal regulations. Our review identified some weaknesses that should be addressed by implementing the recommendations that we developed.

The innovative r/w practices that Mn/DOT used to expedite acquisition enabled them to meet demanding time schedules. However, it is of paramount importance that Mn/DOT continue to be very circumspect when accelerating acquisition. The rights of property owners protected under the Uniform Act must not be abridged.