

Highways and Your Property

As our cities, towns and state grows it becomes necessary to make changes and improvements to our roads and highways.

The Nebraska Department of Roads is faced with the responsibility of providing highways over which travel is made with speed and safety. The increasingly heavy pressure of traffic demands the improvement of existing highways and the construction of new highways. The task is monumental and never-ending.

To serve this broad public interest, it sometimes becomes necessary for the state to acquire private property to construct new highways or improve and modernize the existing ones. The citizens of the State of Nebraska, through their Legislature, have given the Department of Roads statutory permission to acquire private property for this purpose. It is unfortunate that a private property owner must be inconvenienced in any way, however, the accomplishment of modern public works projects would not be possible if the land necessary was not first acquired. There would be no highways, government buildings, railroads, irrigation systems, airports, military bases, or public convenience of transportation. Right-of-way acquisition is a necessary event in the normal course of progress.

The purpose of this brochure is to help you understand methods used by the Department of Roads to acquire the land needed. Hopefully, this will provide the information you need and be a basis for mutual understanding and cooperation.

Early Planning Involves Citizens' Input

The first suggestion that your property might be needed may be a newspaper report announcing the prospective highway route in your neighborhood. Hearings will be held where you can express your point of view.

Preliminary design work and other studies are made prior to public hearings by the Department's engineers or by professional engineering consultants which the Department may employ. As part of these studies, the ideas, plans and opinions of local, municipal, county and regional officials are solicited. Public hearings give you a

chance to be heard and enter your comments and recommendations for the record.

All suggestions made at the hearing are considered from every viewpoint—economic, cultural, aesthetic, safety and service, before final design work is completed by the Department and approved by the Federal Highway Administration.

During the design stage of each highway project, plans are developed by the Department. In urban areas, plans may be developed with the help of aerial photogrammetry with little evidence of physical activity by the Department in your neighborhood.

Procedures Used to Acquire Real Property for Public Use

Real property shall be appraised before the initiation of negotiations, unless the acquiring agency waives the necessity for an appraisal. The criteria for waiving the need for an appraisal is the valuation problem must be uncomplicated and the fair market value is estimated to be \$10,000 or less. For uncomplicated acquisitions, a "compensation estimate" will be prepared to determine "just compensation" for your property.

With the exception of when a "compensation estimate" is used, the owner of a subject tract, or owner's designated representative, shall be given an opportunity to accompany the appraiser during inspection of the subject property.

When the appraiser views your property, it is to your advantage to offer comments concerning your land or business, particularly local peculiarities and operational requirements. Please do not ask the appraiser for an opinion of value with reference to your property.

In preparing the appraisal, the appraiser may not consider an increase or decrease in the value of your property, prior to the date of valuation, which results from the highway project or the likelihood that your property will be acquired for the project. However, any physical deterioration within your reasonable control will be considered in the valuation of your property.

The appraiser's report is then thoroughly reviewed by a Department appraisal reviewer, who analyzes it and personally inspects your property. Based on the review, an amount will be established we believe to be the just compensation offered for your

property. You will then be contacted by the agent who will make a written offer for your property. If only a portion of your property is being acquired, this offer will separate the amount for property acquired and the amount, if any, for damages to the remainder.

If there is a portion of your property which is considered by the Department to be an uneconomic remnant, you will have the right to receive an offer from the Department to acquire the remnant.

Appraisals are made for the mutual benefit of property owners and the acquiring entity, the agent does not attempt to bargain or "horse trade" for a lesser amount. The agent is not authorized to go higher than the appraised value unless certain values or damage items have been overlooked in the appraisal. If this is the case, please bring it to the attention of the agent so it can be checked with the appraiser.

After the agent has explained the requirements of the Department and the offer is extended, most owners understand and accept the settlement. The agent will submit to the owner a contract providing for the payment price offered by the state, a deed providing for the conveyance of the necessary right-of-way, and a payment document. The owner will execute these documents.

These documents will then be returned to the Department by the agent for payment approval. The Department will pay all closing costs associated with the conveyance of the property required.

When the payment document is returned to the Department, it is forwarded to the Department of Administrative Services of the State of Nebraska where it is exchanged for a state warrant in payment. In signing the payment document, your social security number must be included. The payment is then mailed directly to you. The Department of Roads then proceeds with the recording of the deed in the county's record.

The State will pay the following reasonable and necessary costs directly, so that you don't have to:

- Recording fees, transfer taxes, documentary stamps, evidence of title, surveys, and similar expenses incidental to this property transaction.
- Penalty costs or charges for prepayment of pre-existing recorded mortgages.
- The pro rata share of real estate taxes allocated to the period after we own the property.

What if a price cannot be agreed upon?

If agreement cannot be reached, the eminent domain law must be used. The Department prepares all the applications and other documents necessary to institute formal condemnation proceedings. They are filed with the office of the county judge in the county where the land is located.

With proper notification to you, the county judge appoints three local property owners as county appraisers. After viewing your property, the appointed appraisers listen to your statements, or those of your representative, and the Department's representative. A formal report of their findings of value is filed with the county judge. This hearing is conducted at no expense to you unless you hire an attorney or other representative.

If you or the state are not satisfied with the report of the appointed appraisers, either may appeal to the District Court for determination by a jury. The prospects of a condemnation should not cause fear or apprehension. The eminent domain law provides a means of settlement of honest disagreement and protects you as well as the Department of Roads.

In some extreme and seldom occurring circumstances, you may be eligible for certain expenses if a court decides that we can not condemn your property, if we abandon a condemnation of your property, or if you are successful in an adverse condemnation action. You may appeal our decision of eligibility for these expenses. Your written appeal must be filed with us within 60 days after we have given you written notice of our original decision. If you are still dissatisfied after our review or your appeal, you may seek judicial review of our final decision.

Donations

Another acquisition method is through the donation of property by civic-minded property owners. Entire sections of highways have been built on properties, all of which were donated.

Suppose only a part of my property is needed?

Sometimes only a portion of land may be needed and none of the buildings; or sometimes a dwelling or other buildings and only part of the land. A partial property acquisition is considered as fairly as an entire property purchase in all stages of the acquisition. This is true whether the acquisition is by direct purchase or condemnation. The appraiser estimates the part of the property to be acquired, and any loss in value or utility to the remainder is considered. The circumstances which will apply to your property will be explained by the agent.

May I keep my building and move it?

You may desire to keep a building and move it if possible. The offer to you will be reduced by an amount estimated by the state to be the salvage value during negotiations, and you will be given the date by which the property must be vacated and the structure moved. However, you must retain your own mover at your own expense. A building that an owner does not retain is disposed of by the state, either by public sale or demolition by a contractor or state forces.

When will I be paid?

After you have accepted the agreement of sale, the Department processes it as soon as possible so that an early payment may be made to you. There are basic administrative tasks which must be performed before payment can actually be tendered, but every effort is made to insure you receive payment in the most expeditious manner. Where an improvement is to be acquired by the Department, priority will be given to expedite payment.

In the process of condemnation, the award estimated in the formal report by the court appointed appraisers is paid by the state directly to the county judge. You may then secure your payment from the county judge's office after the specified appeal period has lapsed. In the event either you or the Department should elect to appeal the award, special arrangements will be made through the Department's attorneys to withdraw from the award deposited with the county judge the amount of the state's fair market value determination. If a lesser amount is later agreed upon by settlement or by verdict of a jury, then you must refund the excess amount plus interest at the legal rate.

Must I pay a capital gain tax or an income tax?

The sale of property to the state for public purposes, in most instances, is considered "involuntary conversion" by the U.S. Internal Revenue Service. You may not have to pay a capital gains tax on any profits you make in the sale of your property, provided you reinvest at least the same amount of money you received in a similar property in accordance with the Internal Revenue code.

However, federal tax laws and official interpretations may vary from time to time; thus it is best to check with your tax advisor or the Internal Revenue Service officials.

Possession

If you must move because your home has been acquired, or if you must relocate your business or farm operation because of the acquisition of your property, you will be given at least 90 days written advance notice of the date by which you are required to move. If you have to move from your home, a decent, safe and sanitary replacement dwelling must be available to you, on a nondiscriminatory basis, prior to your displacement. A "Relocation Assistance in Nebraska" brochure explains the payments and requirements for eligibility.

At Your Service

From your first notice to the final payment, you will be kept informed of all developments concerning the acquisition of your property. Every representative of the Nebraska Department of Roads is sincerely interested in cooperating with you, as with every other owner or tenant affected by our highway program. We offer you assistance and understanding and will appreciate your confidence and good will.

After all, most of us are property owners, and all of us are stockholders in the State of Nebraska and are joined in a common concern for the best interest of the public.

Right-of-Way Division
Department of Roads
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Lincoln, NE 68509-4759

Project _____

Tract _____

Persons I have talked to representing the Department of Roads:

Name Position

Notes

Highway Progress and Your Property

*Prepared by
Nebraska Department of Roads
Right-of-Way Division*

