



Kansas LTAP Fact Sheet

A Service of The University of Kansas Transportation Center for Road & Bridge Agencies

ROW Acquisition Using Local Only Funds

By Norm Bowers

A tutorial from the Kansas Association of Counties.

As reported previously in the *Kansas LTAP* newsletter, projects using federal funds and those under KDOT's Federal Funds Exchange Program require that the local agency follow federal regulations referred to as the Uniform Act. (See sidebar on next page).

For projects that are funded solely with local funds there are fewer rules about how the right-of-way (ROW) is acquired. State laws and regulations may apply, but not federal. However, it can be a complicated process if you are not familiar with land transactions.

When a local agency is acquiring an interest in land for use as right-of-way, that interest has to be acquired in writing to have legal effect. Generally a notarized document signed by the owners of the land has to be recorded at the Register of Deeds Office. But the recording is the easy part; the hard part is the process. For agencies not familiar with acquiring right-of-way, the assistance of a local attorney or title company will be essential to get the process developed.

Contact the landowner early-on.

The right-of-way acquisition process really starts at the beginning of a project. Land owner participation in development of the project builds goodwill with the landowner and avoids surprises and changes after plans are developed.

It is usually not a good situation when a landowner discovers that a project is being planned when the surveying is underway. Prior to that time the local agency has selected a



Above, Kansas is a community property state and the spouse has certain marital interest in land even though he or she may not be named in the deed. It is essential to have both the husband and wife sign the deed.



consulting engineer and decided on the basic scope of the project, and the landowner may feel he or she does not have a voice in the project.

Research ownership. There are a number of ways to determine ownership of land adjacent to a project. The scope of services with the consultant may provide for the engineer to research the ownership and pull deeds for adjacent landowners—and perhaps pull addresses

from the tax records. Some agencies have people on staff who will research the ownership.

No matter who searches the records, they should know that not all land records are easily accessible. For instance, court orders such as divorce settlements and estates are located in the district court, and these records are not indexed to the land. It is always safer to have a title company determine the ownership. If the engineer or local agency researches the ownership, a title company should be contacted at any hint of a problem.

After the ownership is determined, the adjacent landowners should be informed of the project and that a survey crew will need access to their property.

Input during the design process.

Many agencies meet with adjacent landowners during the design process. This gives the landowners some input on the final design, and affords the opportunity to discuss issues important to the landowners. This meeting is also a good time to discuss right-of-way issues such as fence replacement, driveways, slopes and landscaping that might be affected.

Near the end of the design of the process, the exact amount of additional right-of-way is determined. Most engineering agreements state that the consultant will provide legal descriptions to the local agency and stake the new right-of-way lines. State regulations require that these legal descriptions are to be stamped by the land surveyor who prepared the descriptions.



Determine the cost of the land.

So far you have determined ownership, developed legal descriptions, and have had the right-of-way staked. The next step is to determine the value of the land to be acquired, sometimes referred to as the “taking.” There is no law in Kansas that specifies how the value of the taking is determined, but the landowner will want assurances that the process is fair. You also don’t want your local government paying more for the land than it is worth.

Some agencies have their employees research comparable sales. In rural areas where the acquisition is simple, the county commission may set standard purchase rates for cultivated land and pasture. Certainly, for more complicated takings, a formal appraisal is necessary. A licensed appraiser can provide a formal appraisal or perhaps an estimate of value.

The offer. Once the value of the taking has been determined, normal practice is to meet with each landowner individually and make an offer based on the value. Often a landowner is not satisfied with the offer and will want to negotiate a higher amount. If you can’t reach an agreement with the landowner, eminent domain legal proceedings (condemnation) will be necessary, so to avoid that cost, most agencies try to negotiate a reasonable settlement with the landowner.

The written agreement. When a price is negotiated, it will be necessary to develop a written agreement detailing the terms of the settlement. The agreement will usually state the amount of the taking, the agreed price, and any other considerations that might be part of the settlement, such as fence replacement, retaining wall, driveway paving, etc. The agreement is the basis for getting a check cut to the landowner. Many agencies have a standard agreement form that is modified to fit the situation.

The easement form. The endgame is getting the easement form signed by the landowner. The easement form will have to be notarized so that it can be recorded at the Register of Deeds. Many agencies have standard easement forms

If Using State or Federal Funds...

The federal Uniform Act (49 CFR Part 24) has many requirements including the following:

- Appraisal by a certified appraiser if the value of the taking exceeds a certain amount,
- An offer to the landowner of “just compensation,”
- Documentation of good faith effort at negotiation,
- Recording of the easements on the public record.

Failure to follow federal regulations can lead to the local community having to refund federal or state funds. For those agencies without experience or expertise to follow federal regulations there are consulting firms that specialize in right-of-way acquisition. There are also classes available each year through Kansas LTAP. Advice is also available from KDOT’s Bureau of Local Projects at (785) 296-0413.

Permit of Entry:

Sometimes a formal easement is not necessary for minor work off the right-of-way, such as channel cleaning. In this case a simple form that gives permission to do certain work with a set termination date may be adequate. This is a less formal method than a temporary easement and is kept on file but not recorded at the Register of Deeds.

that record details such as landowner names and the legal description. There are different forms of ownership and the easement form has to reflect the particular type of ownership. The most common types of ownership are by a single person, a husband and wife, a type of corporation, a trust, or a partnership. If in doubt on how to prepare the easement form, it is always a good idea to contact an attorney or title person.

Close the transaction. Most of us have purchased a home and have gone through the closing procedure. The closing procedure for a taking is simpler, as there are no loan papers or other forms required. You basically need to exchange the signed and notarized easement document for a check in the agreed amount. A W-9 form will need to be processed, as the payment to the landowner could be taxable income. Normally the finance department of the local agency will send the landowner a 1099 Form at the end of the year and report the payment to the IRS.

Once you have the signed and notarized easement document, it should be recorded at the Register of Deeds.

Seek help when you need it. While the acquisition process may not seem complicated, a small error can have significant consequences. For instance, if all the individuals with an interest in the land do not sign the easement form, you will not have a clear title. If you are not sure of what you are doing, always contact a professional for advice. If your department does not have the staff or expertise to acquire right-of-way, there are firms that specialize in acquisition for public projects.

Sample forms. The Kansas County Highway Association has helpful sample forms for acquiring right-of-way. Go to the Right-of-Way folder in the Document Center of the KCHA website at <http://www.kansascountyhighway.org/DocumentCenterii.aspx>.

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