Roadway Rights of Way: Understanding the Legal and Practical Issues

Description:
Identify and avoid pitfalls that can delay or increase costs of right-of-way acquisition. State and local acquiring authority memory and understanding of land owner eminent domain rights and benefits change with time. They can disappear as the state licensed professionals who implemented the system leave. From 1990 through 2015 the legislature has continued to identify and pass an ongoing chain of eminent domain property owner protection laws. Documented needs for these land owner statutory protection laws continue to undermine the professional credibility of the Department of Transportation Engineering, Right of Way and Attorney General staff. All of this has the real potential to both delay construction of necessary public improvements and to increase the cost of project design, possession of rights-of-way and construction. This topic will discuss many past and some pending land owner protection legislative changes. Knowledge of these issues is the first step that any state and local acquiring authority can take to prevent them or fix them.

Contents:
- Early Project Planning, Landowner Rights and Acquisition Time Lining
  - Project Review: Legal Descriptions, Title and Relocation Issues
  - Environmental Design Review: Case Law Disasters and Unjust Defenses
  - Designed to Build Contracts: Impact on Right-Of-Way Acquisition
- Potential Legislative Fixes for Troublesome Acquisitions
  - Paying for a Land Owner Negotiations Appraisal, IC Section 6B.33
  - Replacement Residence and Business Site Payments, IC 316.2 Section
  - The Acquisition Process and Right to Take Possession, IC Section 6B.25
- Landowner Negotiation, Appraisal and Offer Process Rights
  - Possession 90-Day Notice, IC Section 6B .26 and 6B. 54 Subsection 4
  - Compensation for Moving Fences and Buildings, IC Section 6B .44
  - Acquisition of Unneeded Excess Property for Profit, IC Section 6B.33
- Compliance With Federal and State Property Acquisition and Relocation Obligations
  - Inform Landowners of Acquisition and Relocation Offers IC Section 6B .2B
  - Determining Payment to Displaced Persons, IC Section 6B .52
  - Mandatory Policy and Procedure for Acquiring Agencies, IC Section 6B .54
- Necessary State Administrative Rule, Legislative and Row Staff Changes
  - IDOT 2005 Inter-Governmental Study Committee Failure
  - Bar Association Failure to Provide Continuing Legal Education
  - The Direct and Simple Administrative and Legislative Solution

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