

ANOKA COUNTY
HIGHWAY DEPARTMENT

March 2008

Property Owners Guide

Understanding Your Rights



For the Residents of Anoka County

- How Property is acquired
- Relocation
- Eminent Domain
- Contact Information

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Guidelines For Property Owners

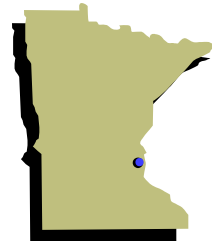
The primary responsibilities of the Anoka County Highway Department (ACHD) are the administration, planning, construction, maintenance and safety control of the Anoka County highway system. Improvements to the system are designed to reduce traffic congestion and accidents. As a result, the county is involved in purchasing land and property rights owned by individual citizens.

The purpose of this guide is to provide information to those individuals whose land and/or interests must be acquired of their basic legal rights, and to outline the procedures Anoka County follows:

GENERAL INFORMATION

How Anoka County Acquires Property

Under Minnesota law, the State and certain other Governmental Agencies may acquire property by a gift, direct purchase, or eminent domain proceedings. This right may be used to acquire private property for public purposes such as schools, parks, libraries, recreation facilities, airports, and highways.



Prior to Land Acquisition

Prior to the Department acquiring your property, a survey crew will be present to obtain information for the development of the proposed project.

A public hearing or informational meeting will give you a chance to comment on the process of determining the location and design of the highway. The time and place of these hearings or informational meetings will be mailed directly to you as well as advertised in local newspapers.

A staff member will contact you to discuss the nature and interest of those persons involved with the property. It is unlikely at this time that the agent will have complete knowledge of the final county proposal, as construction plans will be still in the development stage.

Sometime later, the county will send a qualified independent fee appraiser(s) to estimate the market value of the county's proposed acquisition. The appraiser will contact you and you will be given the opportunity to accompany the appraiser during the inspection of your property. Such appraisals are normally based on studies of recent similar sales or property in your area.

Additional contacts by authorized personnel are sometimes made to obtain other necessary information prior to the time that offers for purchasing can begin. Please be sure to ask for proper identification from anyone you do not personally know. If you have questions about a contact, call one of the staff people noted on page 14 of this guide.

Acquisition of Land or Rights by Direct Purchase



Direct purchase means that the property owners will be contacted by a representative of the county in an attempt to purchase the property for the estimated market value. At the beginning of this process, a written offer statement will be mailed to you by certified mail, which will set forth the amount being offered. In instances where only a part of the property is to be acquired, the offer statement will separate the amount of money to be paid for the property and the amount for damages (if any) to the remainder of the property.

In some instances, if the county determines there are minimal damages to the property, a short form appraisal or minimum damage assessment will be prepared.

The county will present the owner copies of all appraisal reports at the time of the offer.

For More Information: 763-323-5521

If the acquisition would leave you with an uneconomic remnant, the county will offer to purchase that remnant.

Every effort will be made to acquire your property through this direct purchase procedure.



If you accept the offer, you will sign a Memorandum of Agreement which sets the basic terms of the purchase. You will also sign the actual “Deed” which conveys the property to Anoka County. In certain cases the county will not need to purchase the actual property but will need to purchase certain “rights” from the property. These rights may include drainage easements, extinguishment of access, temporary easements, etc.

The county, at its own expense, will furnish all instruments necessary to complete the purchase, make the necessary examination of title, and record the documents of conveyance. All documents are subject to and are conditional upon written acceptance by the county.

After the legal instruments have been recorded, payment will be processed. If there is a mortgage and all or a major portion of the property is acquired, a separate check payable to the mortgage holder will be drawn for the remaining balance of the mortgage, plus interest to the date of payment. The check for your equity will be mailed directly to you. If only a part of your property is to be acquired, the county will ask for a partial release of the mortgage from the mortgagee. In this instance the mortgage holder may also be named on the check. It is strongly recommended that you contact your mortgage holder to determine distribution of the funds prior to the signing of legal instruments.

By agreement, you may retain and remove any or all improvements located on your property, but removal of such improvements must be made at your own expense and prior to a date set by the county. The salvage value of the improvements retained will be deducted from the amount of the offer.

You are also eligible for reimbursement of any reasonable appraisal costs performed by a licensed appraiser, up to a maximum of \$1,500 for single family and two-family residential property and minimum damage acquisitions and \$5,000 for other types of property, provided that the owner submits to the acquiring authority the information necessary for reimbursement, including a copy of the owner's appraisal.

If any of your property is being acquired, it will be necessary to have all other delinquent real estate taxes and special assessments brought current. The county, or other governmental agencies will be included as a payee on your check if taxes or assessments are not current.

The county may reimburse you for certain incidental expenses incurred in transferring the title to the county and will assist you in filing a claim. For instance:

- A. Service Fee charged by the mortgage holder for release of mortgage
- B. Abstract Costs
- C. Probate court costs

As owner you have the right to appeal any and all decisions reached by the county regarding the above expenses or procedure. This may be accomplished by writing to the chief right-of-way agent. Page 14 of this guide lists appropriate names and addresses.



You are not required to surrender possession of your property until:

1. You have been paid the agreed purchase price, or
2. You have been paid an award of commissioners, or
3. An amount at least equal to the county's approved appraisal of the value of your property is deposited with the court for your benefit, or
4. The award resulting from a condemnation proceeding is deposited with the court.

For More Information: 763-323-5521

Relocation

In some circumstances, the new road design may require the purchase of an entire property, or enough of a property to make the remainder unusable.

If such a purchase requires that you move from your property, you may be entitled to certain additional relocation benefits under the provisions of the Federal Uniform Relocation and Acquisition Policies Act of 1970, and relevant subsequent legislation. These can include such things as a housing supplement payment, moving expenses, reestablishment costs, incidental expenses, and closing costs. The county will provide you with professional assistance and guidance regarding your eligibility and the filing of claims for relocation benefits.

An explanation of relocation payments and services can be found in a separate booklet entitled, "Relocation Assistance Information". This guide will address many of your questions and concerns. Please request a copy from the county if you have not received one.

Unless some unusual circumstance exists, you will be able to occupy your property for a period of 90 days from the date of acceptance. This period may be increased if the construction timetable permits such an extension.

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.

Minimum Compensation

Pursuant to Minnesota Statutes 117.178, when a person or entity that holds fee title "must relocate", the amount of damages payable at a minimum, must be sufficient for an owner to purchase a comparable property in the community and not less than the condemning authorities payment or deposit under section 117.042, to the extent that the damages will not be duplicated in the compensation otherwise awarded to the owner of the property.

Land Acquisition by Eminent Domain

Eminent domain is a legal process for acquiring property that is needed for a public purpose. Eminent domain or condemnation, as it is also called, is used when agreement on the price of the needed property cannot be reached or when title to the property is unmarketable. This process is started early enough so the county can be assured that the property will be acquired and vacated in time to meet the construction contract requirements. After an offer has been made, you will be given at least 30 days in which to consider it before the eminent domain process begins.

Eminent domain proceedings are commenced when the county files a petition with the court administrator. A date for the hearing on the petition will be set by the District Court. You will be personally served with notice of the hearing. Service must be made in the same manner as any civil action to fulfill the requirements of state law.

This notice of the hearing on the petition will inform you of the type of the acquisition needed by the county and of the date, place, and time that the hearing on the petition will be held. The notice will describe the property to be acquired and will contain a list of the names of all parties who are shown to have an interest in the property.

The hearing on the petition is held in the court house of the county in which the property is located. A lawyer will represent Anoka County and will present the petition to condemn to the court. Also present at the hearing on a petition will be a representative of the Anoka County Highway Department who will be available to answer questions regarding engineering details, design aspects of the project, and construction matters. The court will appoint three qualified and impartial people to act as commissioners to view each piece of property, hold valuation hearings, and in their opinion, determine the damages that the property will sustain, as a result of the taking in those instances when a negotiated agreement cannot be reached between Anoka County and the property owner. The commissioners should not have any financial interest in any of the properties nor should they be related to any of the property owners or involved in any business dealings with the property owner.

For More Information: 763-323-5521



After the three court-appointed commissioners have taken their oath of office, if necessary, they will arrange for viewings and hearings with you and other affected property owners. You will be notified of the date and time when a viewing or valuation hearing will be held.

It is the general policy of Anoka County to have present at the viewings and hearings a lawyer from the county and an engineer or a right-of-way professional whose function is to assist the commissioners and land owners by answering technical questions of a legal or engineering nature.

At the hearing, the chairman of the commission, who presides over the hearings, will invite you to express your opinion as to the amount of damages you feel your property has sustained, and to furnish such evidence as you may wish to present for purposes of assisting the commissioners in determining an award of damages. You may represent yourself at these hearings or you may choose to be represented by legal counsel. You should understand that you bear the cost of any attorney's fees subject to the provisions of Minnesota Law. Whether or not you hire an attorney is your decision.

The Constitutions of the United States and the State of Minnesota provide that property cannot be acquired, damaged, or destroyed for public purposes without payment of "Just Compensation".

Minnesota eminent domain law establishes procedures that guarantee full compliance with these requirements. The courts of our State have interpreted "Just Compensation" to mean that the owner is entitled to the fair market value of property that is acquired for public purposes.

Fair market value is generally defined to mean the amount that a willing buyer would pay and that a willing seller would accept when neither party is forced to sell or buy.

You may wish to retain a licensed real estate appraiser to provide you with an appraisal of the market value of your property. The commissioners may, in their discretion, allow reimbursement for an appraisal up to the statutory limit.

If a business or trade is destroyed by a taking, the owner may be compensated for loss of going concern. The owner must notify the county of the owner's intent to claim compensation for loss of going concern within 60 days of the first hearing before the court. Documentation related to a loss of going concern claim must not be used or considered in a condemnation commissioners hearing unless the documentation is provided to the opposing party at least 14 days before the hearing.

Title and possession of the property will pass to the county upon filing of the award by the court appointed commissioners. Whenever the county will require title and possession of all or part of the owner's property prior to the filing of an award by the court appointed commissioners, the county will, at least 90 days prior to the date on which possession is to be taken, notify the owner of the intent to possess the property. Prior to taking title and possession the county **will pay to the owner or deposit with the court an amount equal to the county's approved appraisal of value.** This language is found in Minnesota Statutes Section 117.042. This is commonly referred to as the "Quick-Take" Law of the State of Minnesota.

Appealing the Commissioners Award

It is important to note that if you are dissatisfied with the commissioner's award, you have the right to appeal to the District Court. The county also has the right to appeal the award.



Any appeal must be filed within 40 days from the date the commissioners file their award and must be filed with the court administrator.

For More Information: 763-323-5521

A notice of such appeal must be mailed to all parties of record having an interest in lands described in the appeal. Within 10 days of such mailing, any other party may appeal. (Note: The 40 days are counted from the date of the filing of the commissioner's award with the court administrator, not from the date you receive notice of the award from the county).

If the county appeals the award, you will be notified by letter from the Office of the County Attorney. The law provides that unless an appeal is filed by either party within 40 days, neither party can amend or adjust the amount, terms, or conditions of the award. If no appeal is filed, payment will be made following the expiration of the 40-day appeal period.

About three weeks after the filing of an appeal by either party, partial payment may be made. Maximum partial payment normally cannot exceed 75% of the award of the court-appointed commissioners. If you so request, the county will pay 75% of the award; the county may, however, request the court to reduce the amount of partial payment. A partial payment, when no request has been made, will be in the amount of the county's appeal figure or an amount that is 75% of the award, whichever is the smaller amount. In no event will the partial payments be less than the county's estimate of fair market value



'Just Compensation by a Jury'

If you or the county, or both, appeal the amount of the commissioner's award to the District Court, the compensation to which you are entitled becomes a question to be decided in a trial by jury. Simply because an appeal is filed by either party does not necessarily mean the matter will go to jury trial; the county will make a diligent effort to settle the case prior to trial. However, as noted earlier, the law provides that the county cannot amend or adjust the amount of the commissioner's award unless proper appeal is filed by either party within the time allowed.

If the appeal is settled out of court, you can expect final payment within 45 days of receipt by the county of a properly signed stipulation and settlement. If the appeal goes to trial in District Court, final payment will be made within 45 days after a judgment.

If the jury verdict is appealed to a higher court, final payment will await the disposition of that appeal.

When Can Construction Start

If negotiations have been successful and a deed has been signed, and the legal date of continued occupancy has expired, the county has the right to begin construction.

If a parcel is being acquired through eminent domain, Minnesota law provides that once the court appointed commissioners have filed their award with the court, or notice has been serviced pursuant to Minnesota Statutes 117.042, title to the subject property has passed to the county and construction may begin.



You may also grant permission to the county for it to enter your property and begin construction prior to title and possession passing. You could do this by signing a Right of Entry.

For More Information: 763-323-5521

Additional Information

Taxpayer Identification Numbers

In accordance with current Internal Revenue Service regulations, the county will issue a 1099 form for the value of the property acquired. You will be asked to complete and sign a W-9 form before payment can be made.



Minnesota Well Disclosure

State law requires that sellers of real estate inform prospective buyers of any and all wells located on the property even if those wells are not in use. A formal well disclosure certificate will be provided by the property owner to the county at the time of the sale, if any wells are present.

Summary and Conclusion

The information in this Guide for Property Owners is brief and general. If you desire additional information please request assistance from the County's Right-of-Way Office at 763-323-5521.

All representatives of the county are committed to the responsibility of providing better and safer highways for the public use. We realize we owe an obligation to all owners of property to be respectful of your rights while carrying out the duties of highway construction. We are ready to assist you in any way we can and we hope our contacts with you can be carried out in a spirit of cooperation.

If at any time you have questions, you are invited to seek the services of the County's Right-of-Way Office.

Contact Information

Doug Fischer, P.E., County Engineer
1440 Bunker Lake Boulevard
Andover, MN 55304
763-862-4213
Doug.Fischer@co.anoka..mn.us

Andrew Witter, P.E., Assistant County Engineer
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Michael R. Kelly, Chief Right-of-Way Agent
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**Anoka County
Highway Department
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**Anoka County
Right-of-Way Department
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Anoka, MN 55303
763-323-5521**



For More Information: 763-323-5521

Notes

Guide Prepared by:



TMO

Your Commuting Resource

**Carpool * Vanpool
Transit Information**

www.AnokaCountyTMO.com