

MCDOT

*Montgomery County
Department of Transportation*



THE PROPERTY ACQUISITION PROCESS & YOUR RIGHTS AS A PROPERTY OWNER



Division of Transportation Engineering

100 Edison Park Drive, 4th Floor, Gaithersburg, MD 20878 · 240-777-7220
www.montgomerycountymd.gov/dot-dte/

Introduction

At the Montgomery County Department of Transportation (MCDOT), we are committed to delivering the first-rate, multimodal transportation system that Montgomery County needs. As part of this commitment, MCDOT is supporting travel alternatives, improving safety and embracing cutting edge solutions through our work each day.

Having a range of high-quality transportation options - including bicycle, pedestrian and transit facilities - benefits everyone. By increasing travel alternative, we can move more people in fewer vehicles and advance our Mission of "mov[ing] people and connect[ing] places with the best transportation choices and services."

Many of these travel alternatives can be implemented within the County's current Right of Way (ROW). However, it is sometimes necessary for MCDOT to acquire private property for public use. This information booklet briefly explains the property acquisition process, as well as your rights and options. The information within this booklet is general in nature. We ask that you direct specific questions to your property acquisition specialist:

Place Business Card Here

Table of Contents

Why is my property needed?	1
Know Your Rights!	1
Property Acquisition Process	2
Introduction	2
Property Appraisal & Formal Offer	2-3
Negotiations	4
Settlement / Closing	5
Alternative Methods of Settlement	6
Condemnation	6
Advance Taking	7
Acquisition Flow Chart	8

Why is my property needed?

Numerous factors are considered when planning transportation improvement projects. Whenever possible, the Department will attempt to build these projects within its own ROW. However, some improvements simply cannot be completed within the existing ROW. In these circumstances, it is necessary for the Department to acquire land and other property rights from private owners. As the owner of real estate needed for construction of a transportation project, you become a major contributor to the improvement of Montgomery County's transportation system.

Transportation engineering involves long-range planning to assure that new transportation options are designed to serve Montgomery County today and in the future. The coordinated efforts of Planners, Real Estate Specialists, Design Engineers, Traffic Engineers, and members of the community are necessary to design a project with the greatest benefit to the public.

Know Your Rights!

Under the U.S. Constitution and Maryland Code, the County has the right to acquire private property for public use. This is not a right that is exercised lightly and is limited by your rights as guaranteed by those same documents. The rights explained in this booklet are derived from Title 12 of the Maryland Code and Chapter 49 of the Montgomery County Code.

Property Acquisition Process

INTRODUCTION

The Property Acquisition Section (PAS) of MCDOT's Division of Transportation Engineering is responsible for the acquisition of property or property interests needed to advance a Montgomery County transportation project. If it has been determined through the design process that all or a portion of your property is needed for a County transportation project, you will receive a letter in the mail that includes information about the specific transportation project and the property interests we are seeking to acquire. The letter will introduce you to the Real Estate Specialist responsible for the acquisition and provide you with his or her contact information. This specialist will be your primary point of contact throughout the acquisition process.

The Specialist will be able to provide you with plans for the project and other documents related to the land or property interests that are to be acquired.

PROPERTY APPRAISAL & FORMAL OFFER

The County is required to pay "just compensation" when acquiring private property for a public use. To determine just compensation, it is first necessary to estimate the fair market value of the property or property rights to be acquired. This is generally done by having a licensed real estate appraiser perform an appraisal of your property.

The first step in the appraisal process is to inspect the property. Prior to the inspection, you will be contacted by the appraiser to schedule an appointment to inspect the property.

PROPERTY APPRAISAL & FORMAL OFFER **(CONTINUED)**

You, or a representative that you designate, will be given an opportunity to accompany the appraiser on this inspection. We encourage you to be present to provide information you believe may affect the value of your property.

Depending upon the complexity and nature of the acquisition, an Appraisal Waiver may be made, instead of a formal appraisal. Similar to a formal appraisal, the Appraisal Waiver process involves the analysis of recent sales of similar properties in your area in order to provide an estimate of the fair market value of the property or property interests to be acquired.

Once an estimate of the fair market value of the property to be acquired is received, the Real Estate Specialist assigned to your property will send you a written offer to purchase the property or property interest. Your offer will include the following information:

- 1. The amount offered as just compensation for the required property, including compensation for damages and benefits to the property, if any.**
- 2. A description or location identification of the property to be acquired. (Physical Address and/or Account Number)**
- 3. An identification of any buildings, structures and/or other improvements which are part of the acquisition.**

NEGOTIATIONS

After a Formal Offer has been presented to you, the Real Estate Specialist will give you a reasonable amount of time to consider the offer. A meeting, at your convenience, may be scheduled to discuss the acquisition and begin negotiations towards the purchase price. This appointment can be either at your home, place of business, or a mutually agreeable location. If you believe that any relevant material was not considered during the evaluation process, you may present such information at this time. This stage of the process is extremely important to the overall success of the project. We encourage you to ask questions or seek clarification of the acquisition process and your rights as a property owner. The Real Estate Specialist is trained to guide you through these processes.

If there are co-owners to the property, they should also be present for the negotiations, unless you have been specified as the primary point of contact for the property. Should you desire to retain the services of an attorney or other third party, please notify the Real Estate Specialist immediately. Once an attorney has been retained, please be advised that negotiations will then be carried out with your representative solely, unless otherwise specified. Under certain circumstances, if you are an owner living outside of the County, the negotiations can be carried out by mail or other means.

The Real Estate Specialist will make every effort possible to acquire the property through amicable negotiations.

SETTLEMENT / CLOSING

If/when an agreement is reached on the purchase price for the subject property, the Real Estate Specialist will provide you with an Option Contract or Easement document formalizing the agreement. The contract is then submitted to the County Executive's office for acceptance and authorization to pay the agreed-upon purchase price. In most cases, a closing or settlement of the contract will be scheduled with an independent settlement attorney to complete the acquisition and record the appropriate conveyance document (in most cases either a Deed or an Easement) in the Land Records.

For smaller acquisitions, typically where the property interest being acquired is a temporary easement, the County may elect to make payments directly to the impacted property owner. In these cases, you may be required to electronically register in the County's Central Vender Registration System (CVRS). Your Real Estate Specialist will provide you with a hyperlink to the CVRS and provide you with instructions on how to register.

In Maryland, proceeds from the sale of your property to the government is considered income and for any payments issued by the County, you will receive an IRS Form 1099. Please consult your income tax preparer, or the IRS, on how to declare these funds on your income tax forms.

Alternative Methods of Settlement

Montgomery County is one of several jurisdictions in Maryland that is authorized to use the right of Eminent Domain to acquire private property for public use. The power to exercise Eminent Domain is derived from the 5th Amendment to the United States Constitution, which states that "nor shall private property be taken for public use without just compensation."

The process by which the right of Eminent Domain is exercised by the government is called condemnation. In Montgomery County, there are two methods of condemnation that may be pursued in the event that the Department and the impacted property owner are unable to resolve the acquisition amicably.

CONDEMNATION

Condemnation is the legal process by which the County acquires a title interest in the property that it is seeking to acquire. Upon a finding that there is a public need for the subject property, the County may initiate a condemnation action by filing in the Circuit Court for Montgomery County a Complaint for Condemnation that, among other things, describes the property interests to be acquired, identifies all persons with an interest in the subject property, and states that despite reasonable efforts, the parties have been unable to agree upon the terms of the acquisition. In some cases, a property owner may request that the County file a condemnation action. Once the Complaint is filed, the case proceeds through the Circuit Court process and is ultimately litigated before a jury, who decides on the amount of just compensation to be awarded for the property being acquired.

ADVANCE TAKING

In Montgomery County, there is an alternative method of condemnation, known generally as the Advance Taking method. Under this method, upon finding that there is an immediate need for the subject property, the Montgomery County Council can authorize the Department to file in the Circuit Court a Petition of Advance Taking and Deposit of Funds through which the County deposits with the Circuit Court funds representing the County's opinion of the subject property's fair market value as determined by an appraisal prepared by a licensed real estate appraiser.

Upon the filing of the Petition and Deposit of Funds, the County obtains a right to occupy the necessary property and proceed with construction of the applicable transportation project. The property owner is entitled to withdraw the funds deposited in the Circuit Court without foregoing his or her right to seek additional compensation for the property being taken.

The Advance Taking methods is limited to acquisitions for land only; it may not be used when the acquisition includes structures located on the property.

Acquisition Flow Chart

