

Highway Rights-of-Way

Provide Golden Opportunities

by Frank C. Turner

It may be said that the continuing growth of American cities is clear evidence of their success. But growth also spells problems and difficulties that must be overcome if cities are to be improved as places to live and work, and if they are to serve the greater demands that will likely be placed upon them in the future.

All of our cities are faced with very real limitations in space and money. In the hearts of our heavily built-up cities, there is intense competition for space, and as one community need is served, another must often be displaced. Urban land must be used more efficiently. Money is also limited and must be used wisely, on a priority basis. The demands of our cities for dollars are enormous and so each dollar must be made to do double or triple duty.

Program Catalyst

These limitations work against our own responsibility and efforts to provide cities with an adequate transportation system, as well as the many other needed accommodations. While the limitations are a problem, their solution can also afford us an opportunity. To assist in solving this problem, and to take advantage of the opportunity presented to rebuild our cities, the Bureau of Public Roads has developed a concept for the joint cooperative development of urban freeways simultaneously with provisions for other accommodations.

This is a program that could stimulate other local

programs by which the city can meet some of its needs for better housing, parks, playgrounds, open space, and other improvements, and for business and commercial redevelopment—by combining them with planned freeway improvement. Because of the advantages which can flow from joint development, several of these can be provided in less total space and at a lower total cost than would occur with separate development. In such a joint development, the concept is not merely one of thrusting a new highway through a built-up urban area, but rather it is one of making a plan which would improve an entire corridor having multiple and complementary uses.

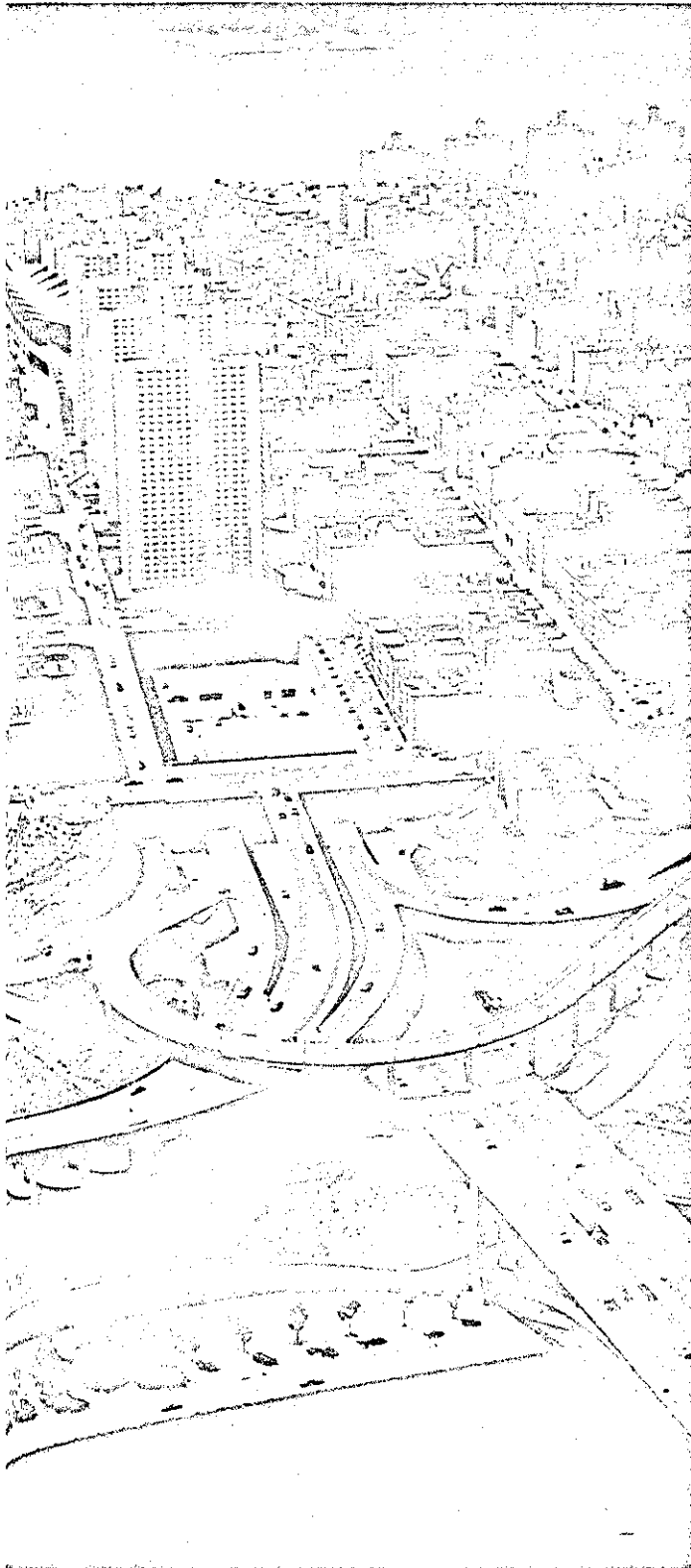
Such an approach can conserve space, money, and time for the city. In the same space that may have been devoted to substandard housing, or blighted commercial uses, for example, we can build a freeway, together with replacement housing for those displaced, provide at the same time for other vital community and commercial facilities, and still have space left for recreational areas or just plain open space. Within the area that might be acquired for joint development, the new highway can be constructed so as to require only a permanent three-dimensional easement, or an "air tunnel," leaving the remainder of the space available for other usages.

Another key advantage of joint development is its potential for saving money—for making dollars do double duty.

Normally, we have been designing our urban freeways to use a minimum width of right-of-way, in order to minimize the displacement of people and businesses, and the disruption of other community

activities. In acquiring land for such a minimum right-of-way, however, we must pay not only for the land and improvements acquired, but also for damages to the remainder properties. In urban areas especially, such damages to the remainder, or severance damages, as they are often called, are repre-

DOWNTOWN AREAS expand vertically to overcome any space shortage with a new trend toward use of airspace above freeways, as in this view of high-rise apartments spanning New York's George Washington Bridge Expressway. (Part of New York Authority Photo)



sented by payments for the decreased value of the remaining property resulting from the taking of only a part of the entire original property for highway purposes. Studies have indicated that in many urban situations, the cost of acquiring a whole block of property would be only slightly higher than the cost of acquiring the minimum freeway right-of-way after having included the severance damages.

For example, a minimum freeway right-of-way might require only 40 per cent of the area of a city block for its construction needs. Because of severance damages, however, the cost of acquiring this right-of-way might actually equal 80 per cent or more of the cost of acquiring the entire block. If we assume, as in this example, that the minimum area for a freeway right-of-way would cost \$8 million, even though only 40 per cent of the block would be taken, then the entire block could very likely be acquired for not more than \$10 million.

In a case as this, some local agency, such as a public corporation or authority, could acquire and clear the full block, then sell to the highway department the space needed for the freeway for the \$8 million it would have had to pay if the department had acquired the land alone. Thus, for \$2 million, the local public agency would have available for development all of the remaining land which would have cost at least \$6 million, probably \$8 million, if purchased separately. In short, the highway improvement would thus contribute effectively toward underwriting the cost of other development, with no increase in its own planned highway expenditure. This accentuates the potential savings inherent in the joint development approach and shows how we can use the highway program to benefit other community projects while meeting our own needs.

Government Aid

A number of other federal, state, and local programs are available that might be used to help liquidate costs. The land might then be used for private, as well as public development, continuing its taxpaying status. Solutions in particular places are certain to vary with the laws, practices, and mores of each state and city, and with the politics and personalities of those who have the power of decision. But without regard to such differences, the common denominator in all such joint development projects can bring a new dimension in urban environment and surface transportation.

During the next few years, over \$10 billion is still proposed to be invested in providing the 2,500 miles of urban freeways now planned or underway in the Interstate program alone. The Bureau of Public Roads is ready to work through the state highway departments and other federal agencies to help our nation's cities in their search for solutions to the transportation problem. We believe that this concept can help to resolve several problems at one time.

Now I know that this is not an altogether new idea and that many of you have been doing some parts of it as a regular operation. I have seen joint use applications in the form of air-rights usages in many places throughout the world—and in research on this idea I have found many century-old references to applications of it in Europe. Successful examples are evident in many places here in our own country. We should build upon these successes and enlarge upon them in our current search for solutions.

The question of legal authority can be applied at both the federal and state levels. At the federal level, the answer may be a function of the extent of involvement. We can now participate, without restraint, in all expenditures necessary for highway purposes. Highway purpose has been broadly defined through the years and the definition is getting broader all the time. Right-of-way is part of that highway purpose. Certainly there is no question about our legal authority to participate in right-of-way acquisition to the same extent as we have in the past. This means that we could legally pay our pro rata of the cost of the whole block, such as in the illustration I sketched, if we judge that the width is reasonably necessary to permit construction of an appropriate facility.

In some instances, to facilitate a highway improvement in a congested urban area, it may be desirable to enlarge a highway right-of-way designation slightly, to shift it moderately in one direction or another, or to otherwise accommodate it to larger objectives. Legally this would not be challenged, and could not be overturned in the courts unless fraud, collusion, or gross abuse of discretion were involved.

In terms of state activity, a much more serious legal deficiency may be involved in some instances. Most states today have adequate legal authorization for the creation of local public or private corporations that can finance and construct low-cost housing or other kinds of stipulated public or private facilities. It is not entirely certain yet whether every legal "i" can be dotted or every legal "t" crossed in terms of each one of these existing authorities, but answers in these cases can come later as the specific need arises. One element of legal authority which seems to be germane to the proposal is that the state highway department and the local acquiring agency have the legal authority to condemn entireties involved or to acquire the lands on which the highway and facilities other than the physical highway appurtenances will be placed. In rural areas we have no problem with a right-of-way width greater than the road-bed. As matters now stand, there is sufficient legal validity to the proposal, and sufficient legal authority, so that we can begin to move forward in this concept.

Another key question is, of course, will the Bureau of Public Roads go along with the idea, when it comes to reimbursement? Again, the answer is "yes."

At this time, the bureau does not have a policy and procedures memorandum issued on the subject, although preliminary drafts are in process. In the District of Columbia we are now considering a project on the Center Leg freeway and it looks as though it may go forward.

BPR Approval

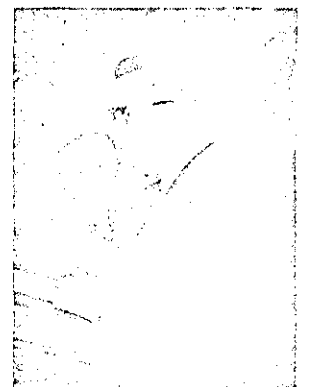
The bureau has already taken a step indicative of its position on putting this joint development concept into effect by its approval of the "whole-block takings" idea on a New Orleans Interstate project. Directly affected are seventy-eight property remainders which would normally be reduced to sub-standard lots that would be undesirable from the standpoint of good city planning; sub-standard in housing qualities, as well as detrimental to the values of adjacent properties. The cost of the remainders will approximate \$615,000 and constitute about 12.3 per cent of the aggregate right-of-way cost. These remainder areas will probably be converted into open space, or park and recreational areas, but with something other than highway monies.

In connection with this project, we asked the state whether it had authority to condemn entireties under these circumstances, and Louisiana assured us that it did. Both the city of New Orleans and the state assured the bureau that whole takings are what they both sought. The additional highway right-of-way width is justified on the basis of the need to design and build a type of facility which fits compatibly into its adjacent environment.

Will it cost more? The quick answer to this question is probably "yes." Perhaps more important than an affirmative answer is the magnitude of the excess cost. In the New Orleans case, the difference in cost will probably amount to \$500,000 on the entire project. Each case will need to be evaluated on its own merits, obviously, and I don't know that anybody is going to be able to set any fixed cost limits at this time, except "reasonableness." In many instances, the cost differential eventually will be paid out of sources other than highway funds.

There is a strong probability that legislative action

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in the near future will require our highway program to appraise property takings on the basis of replacement costs, or require whole takings, so that it is quite likely that these increased costs are going to be incurred in any event.

Project Focus

In order to make a start of this activity, it is necessary to focus, almost immediately, on specific projects in specific areas. Otherwise, we can generalize from now until doomsday and nothing much would happen. I suggest that you identify those projects where you are already having or may anticipate relocation problems or where redevelopment is otherwise desirable. Then arrange for a meeting as soon as practicable in that city, and make sure that all persons and agencies which may have a direct interest in the subject are invited. This would include representatives of the state highway department, Bureau of Public Roads, local housing and redevelopment agencies, local housing coordinator if any exists, mayor's office, local planning bodies, and others. At such meetings, after the general joint development concept is presented, focus as quickly as possible on the specifics of actual or planned sections of highway to be improved. Try to identify those portions of projects where normal taking lines would leave substantial remainders of properties, or where slivers of land can be found between the outer limits of the project and the next adjoining street.

At such sessions, some of the following matters might be considered: To what extent are partial takings and severed parcels involved in a particular urban highway improvement project? Are the remnants of sufficient size and nature to provide opportunities for application of the joint development concept or for small parks or open spaces? To what extent are families and businesses to be displaced? Are replacement housing and other facilities available outside of the project limits? What deficiencies exist? What is the economic level of the replacement housing needed: is it low-cost housing, medium-priced, etc.? Is it possible for a joint development plan to be executed? What are the specific legal obstacles, if any, that are involved? What financial elements need to be considered? If low-cost housing is involved, a subsidy may be necessary, and if so, will the local housing agency be willing to cooperate to make the provision of such facilities possible? Certainly there are a thousand more questions.

Stage Development

It may be that if the specifics of a particular portion of a project examined would permit the possible application of the joint development concept, a special study of reasonable dimension could then be undertaken. The costs of such a special study would be reimbursable, it being preliminary engineering

if the location is already determined, of course, and highway planning and research if it has not been so determined. The undertaking of such a study would be a showing of good faith on the part of the highway officials, and would do much to get the proposal off the ground, and generate interest in its execution.

My final comment concerns the application of stage development to the joint venture concept. As highway builders we have traditionally used stage construction, perhaps more effectively than has any other public works undertaking. In the relocation of persons and businesses, we can continue to make good use of the stage development concept.

Let us say we have six blocks of slum and blighted residences involved. The joint development project can be timed so that first an appropriate area of one block could be cleared for a new residence structure. Admittedly, if there are occupants in this area, they will need to be temporarily relocated, perhaps outside of the highway project limits. But from that point on, most of the remaining relocatees could be housed in the new structures as they are constructed. If several successive structures are involved, the completion of these can be timed appropriately, so that a minimum of disruption and relocation becomes necessary.

Perhaps the principal stumbling-block which presently prevents some of our major urban segments from moving is the lack of any provision for the people being displaced. This concept was created in order to meet this need—a need, I might add, which is rapidly becoming critical. In fact, unless the highway officials can solve the relocation problem, and solve it quickly and adequately, all of these projects are probably dead.

This urgency aside, there is need, now more than ever before within my professional lifetime, for us to expand the area of our competence and interest and to be responsive to the tenor of the times with new and bold solutions to our problems. Unless we do so, and with sufficient promptness, we may find ourselves outflanked and superseded by a layer of authority and professionalism which can and will respond to the needs and demands of a dynamic economy and population.

It is my belief that this joint development concept can materially assist in these directions. While I have used as an illustration such examples as substandard housing, blighted or marginal industrial areas, and have implied replacing each of these with high-rise housing apartments, the concept can be made equally applicable to low-density high-class residential areas, industrial parks, offices and stores, schools, public buildings, parking, and an unlimited list of other uses. A creative and imaginative approach to the particular problem, coupled with a real and serious purpose to find a solution, will likely produce both a solution to that problem and simultaneously provide a number of collateral benefits.