Takings and Improved Traffic Flow: New Intersection Designs Can Reduce Property Value

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Introduction

As our population increases and the number of vehicles on existing roads goes up, state and local departments of transportation are facing the challenge of moving more vehicles along the same number of roads. Traffic engineers are searching for creative solutions to meet the demands of the increased flow of traffic, which can include the utilization of alternative intersections.

Alternative intersections may create the need for additional land adjoining the existing roadway or change the accessibility to the roads from adjoining property. These changes can impact the value of the land based upon detrimental impacts to the characteristics of the property. Government may need to acquire property from adjoining landowners, or landowners may file claims for inverse condemnation based upon perceived takings of property interests. When evaluating alternative intersection designs, government and city officials should consider the impact these configurations may have on adjacent property and the potential costly claims that could arise from affected property owners, including proximity damages and access damages.

Location, location, location

The mantra about what makes a piece of property desirable has not changed. The value of commercial property is dependent upon several characteristics, and location and accessibility are often key factors. Zoning ordinances dictate the general uses of property in the commercial arena, including different levels and intensity of use of property. There are vast differences between retail uses and office uses, although both generally fall into the category of "commercial property's." Other characteristics include the size, topography and available utilities.

However, location and access are intertwined. An advantageous location for a business owner will likely include convenient access to the property.

A real estate appraiser may distinguish commercial properties as being either a "destination" location or a "convenience" location. A destination location is one which people are aware of in advance such as a doctor's office. Generally, people traveling to a doctor have obtained directions or an address before they get into a car.

A convenience location, on the other hand, is a business which largely attracts its customers from people driving by, becoming aware of a particular product or service and desiring quick access and departure. Convenience locations include fast food restaurants and "convenience" stores, such as standalone small stores or gas stations with a store which sells food and beverage items, among other products generally associated with motor vehicles. Any change in the design of the roadway may affect access to adjoining properties and businesses, regardless of whether any land is taken for the road project.

Types of intersections

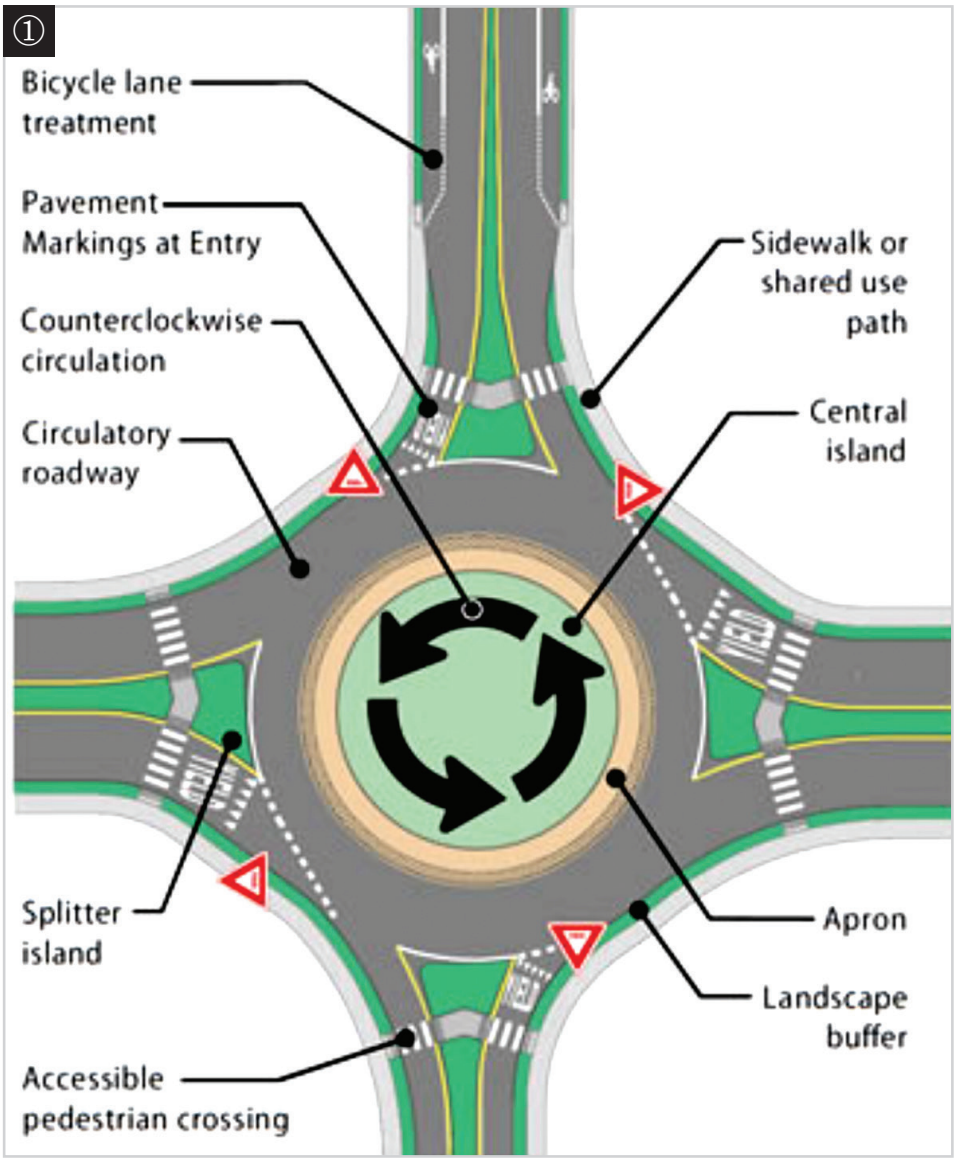
Two types of intersections generally may have an impact on adjoining properties: a roundabout and a displaced left turn intersection.

While roundabouts are popular in New England, they are relatively novel in other parts of the U.S. A roundabout simply exchanges a four-way intersection with a form of concrete or solid round structure in the middle of the intersection. Cars enter the circle under a yield guideline for cars already in the circle, and travel around the circle to the road intended. The advantage of the roundabout is that there are no lights; traffic can theoretically move continuously through the intersection. Typically, a roundabout is used at intersections on two-lane roads and requires some additional land on all four corners of the intersection to accommodate the size of the circle and traffic lanes. A governing authority will negotiate with adjoining landowners to purchase the property or take the property through eminent domain.

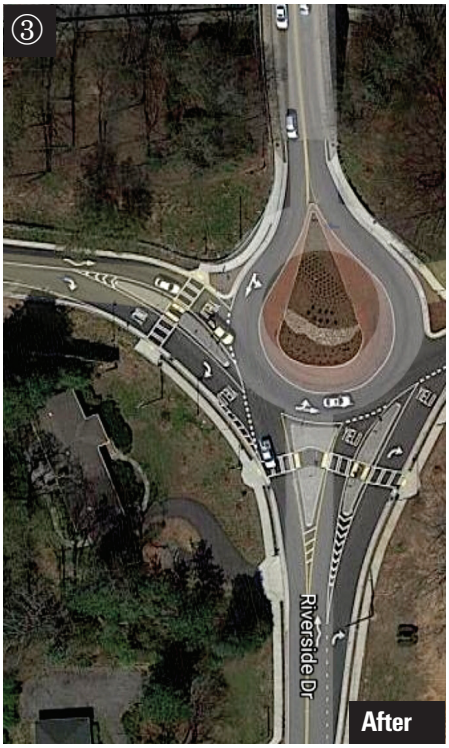
A displaced left turn intersection (DLT) is also used at a four-way intersection, but best used at larger intersections with at least two lanes in each direction on at least one of the two roads at the intersection.

The DLT differs from a standard four-way intersection because on at least

The roundabout is a relatively simple design. A general diagram is shown below.







one road, the left turn lane shifts from the center of the roadway, alongside the main artery, to the far left of the intersection, starting from a point before the actual intersection. In essence, a DLT siphons off left turn traffic into another lane that travels up to the intersection and moves according to signals at the intersection.

The movement of left turn traffic requires signals before the intersection because the left turn traffic crosses over traffic headed in the opposite direction. Studies have claimed that this is a more efficient movement of traffic as well as a safer option due to minimizing the number of crash points at the intersection.

As can be seen in diagram ① there are no impediments to car movement other than other traffic in the intersection. The diagram shows the potential need for additional property, depending upon how much existing right-of-way already is present in the intersection. Typically, the creation of a roundabout will be affecting the closest corner of adjoining property owners.

Adjoining property owners could experience several different impacts from a roundabout. Separate from the loss of land needed for the actual construction, the roundabout will bring traffic closer to buildings or structures situated on the property. For commercial property, this could impact the number of parking spaces. For residential property, the home could be situated closer to traffic.

Parking spaces are usually compensable in one form or another in a condemnation. For a residential owner, closer traffic may give rise to what appraisers call proximity damages. Proximity damages reflect the loss of fair market value of the remaining property arising from closer traffic.

In diagram ② and ③, the property owner lost his driveway because it was within the curve of the roundabout. The designer moved the driveway onto adjoining property away from the roundabout for safety reasons.

Nonetheless, the property owner was given additional compensation for the loss of a dedicated driveway by the

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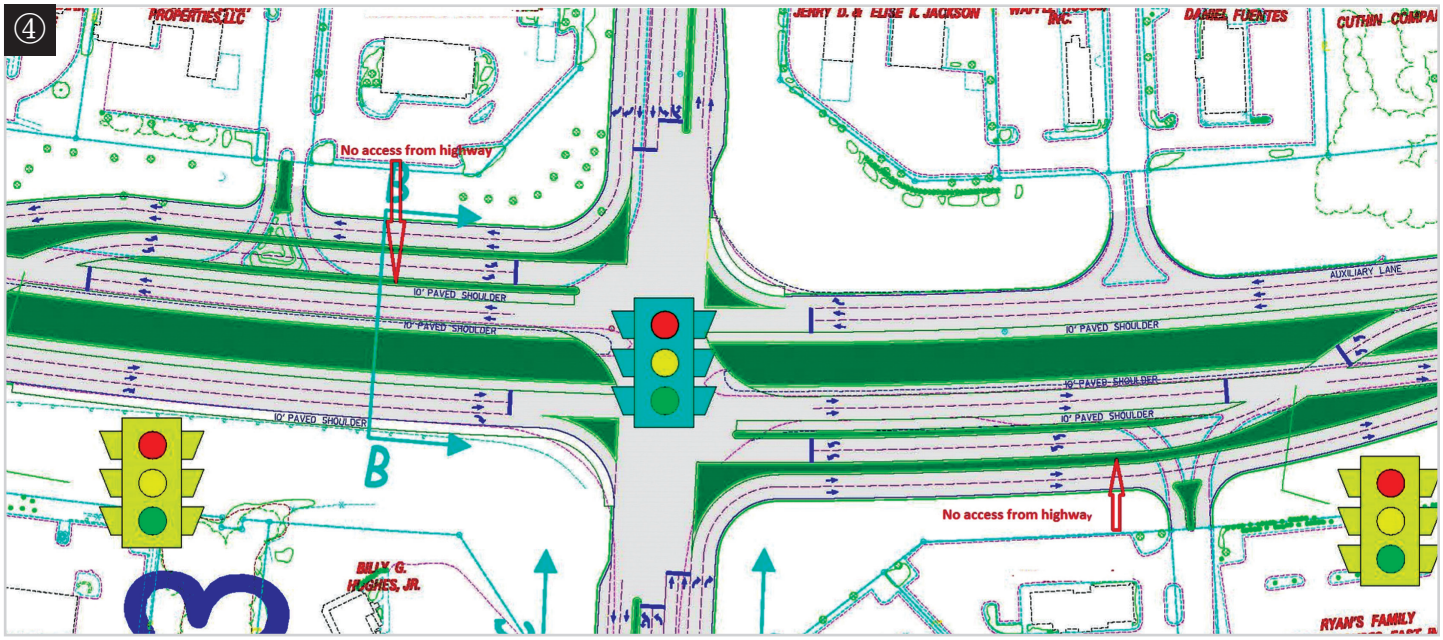
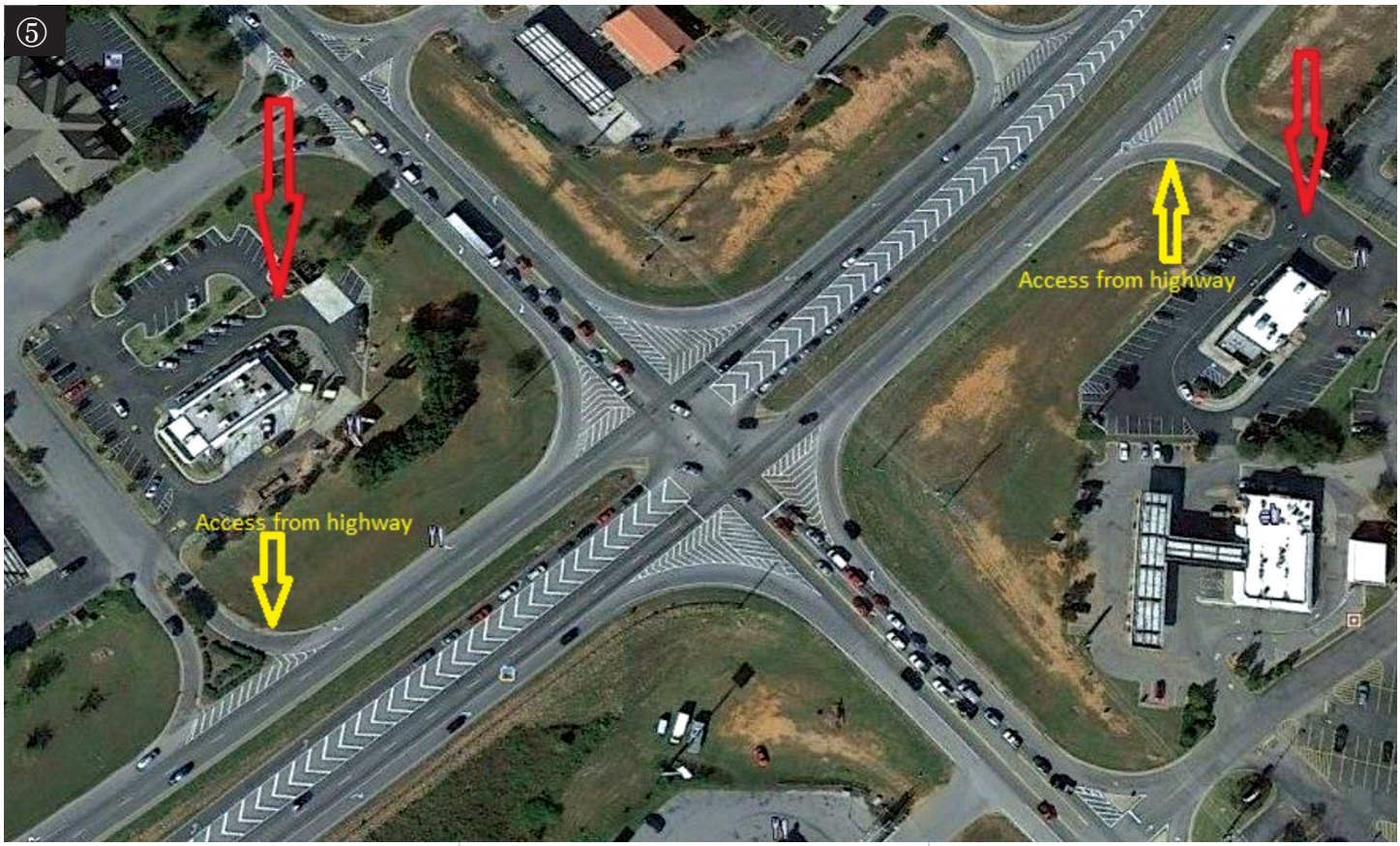




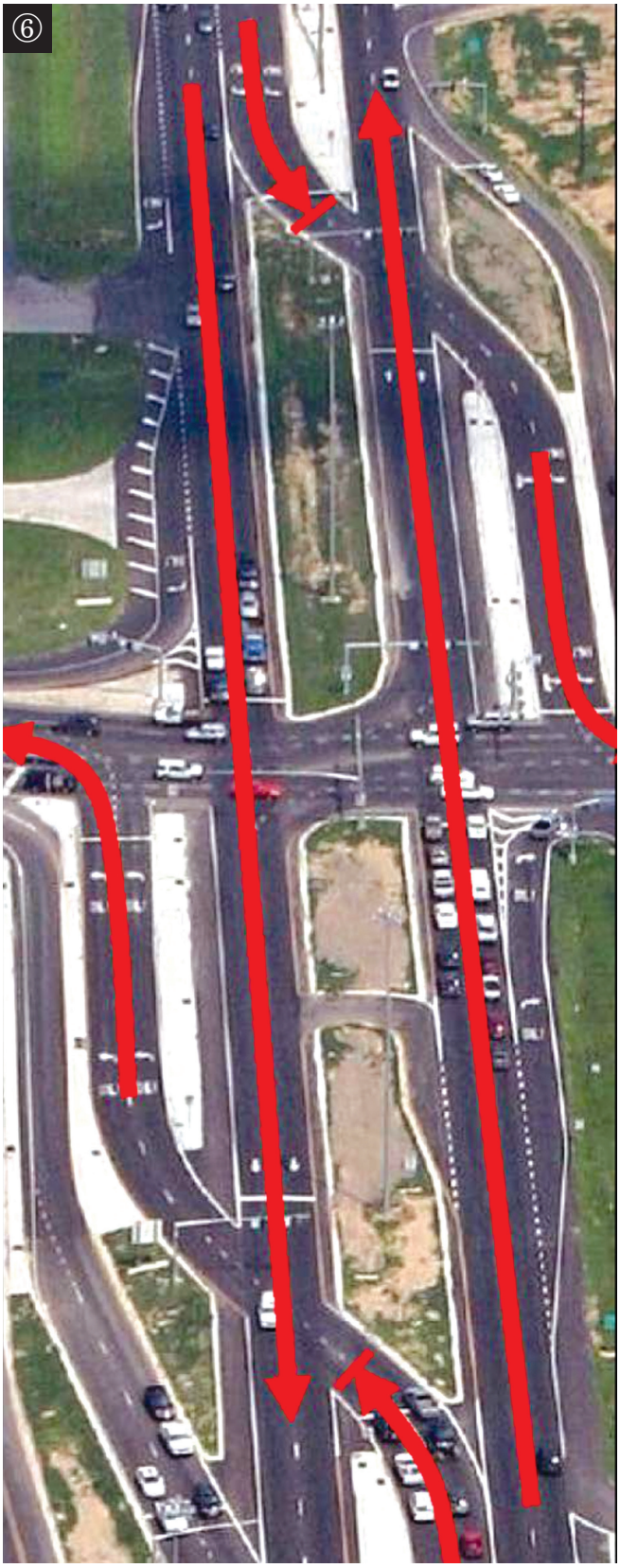
DOT's appraiser. The concept of a shared driveway was viewed by the appraiser as being less advantageous than a dedicated driveway.

The design of the roundabout may also impact actual access from adjoining property onto the roadway. In another case, the design of the roundabout provided for a thru lane and a right turn lane for traffic that simply made a right turn. In the plat below, the right turn lane was in the same area as the homeowner's driveway. Given traffic on a busy road and additional street markings, the homeowner was being relegated to a right turn only onto an entrance ramp to an interstate highway.

The homeowner in that case was not only compensated for the land he lost, but substantial damages were paid in a settlement for the impacts to his driveway and access. The DLT is best explained in diagram ④.

This diagram shows a two-way displaced left turn on the main roadway. Drivers approaching the intersection intending to make a left turn are funneled off the main roadway and moved to the other side of oncoming traffic through an at-grade crossover. They then stack up in a lane or lanes at the intersection until the lights change to permit vehicles on the main roadway to travel forward and the left turn stacking lanes to empty into the side road.

The DLT design impacts properties sit-



uated on the corner of the intersection, where the stacking lanes for vehicles turning left are created. Corner properties no longer have immediate access to the main roadway from both directions. The dedicated right turn lane causes those properties to lose the ingress from the main road. Apart from being a taking of access, a DLT may also change the nature and use of the property at the corner. Typically, corner properties are advantageous to convenience businesses. However, as alternative fuel vehicles increase in popularity, new gas stations no longer depend on gas sales for profit. Instead, gas stations instead aim to entice customers to go inside to purchase food and drinks. The markups on products at convenience stores are normally higher than those made in a grocery store, but customers are paying for the convenient ease of entry and departure from the site. As can be seen by the diagram, a driver would have a more difficult time anticipating access to the location or getting back to the location after having passed it on the main road. In diagram ⑤ two fast food restaurants on opposite corners of an intersection have made claims asserting an inverse condemnation of access rights caused by the construction of a DLT. Before the original condemnation, the intersection was a four-lane highway intersection with a two-lane state road. The photo below shows the original condition.

After construction was completed, diagram ⑥ both restaurants no longer had access into their properties from the highway.

Departure to the state highway was maintained by an adjoining road; however, it was the result of installing a dedicated right turn from the two-lane state road that gave the access. The new displaced left turn lane interferes with ingress from the highway to the restaurants. The latest aerial photo shows the intersection during the late stages of construction, while the diagram below shows how the roads will be marked after completion.

Entitlement to Compensation Arising from a New Intersection

An owner's right to compensation for impacts to property arises in both the U.S. Constitution and state constitutions. Generally, interests in real property cannot be taken without payment of just and adequate compensation. All of the elements and characteristics of real property that give it value are protected against government interference.

There are two elements of damages when a government exercises its power of eminent domain. First, there is the value of the land taken. Generally determined by the fair market value of property, the owner is entitled to that compensation.

The property owner may also be entitled to consequential damages for the impacts to the value of the remaining property. Where the property taken impacts the utility or other attributes of the remaining property, the owner may recover for the diminution of the fair market value. For example, if the taking of a strip in the front of the property also takes access, the remaining property will have a diminished value because it is landlocked.

Access is a key element of value. Depending on how much land is taken for the project, the remaining property may no longer be useful for a commercial purpose and can add significant costs to roadwork projects. While there are no reported cases in my state regarding compensation for impacts arising from these intersections, it is inevitable that the issue of compensation will be litigated. The legal principles that will apply are long-standing. It is their application to the specific facts that has not yet occurred in the appellate courts. The impacts are real to the property owners. ML



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