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THE PROCESS OF RIGHT OF WAY ACQUISITION

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ACQUISITION

The procedure for "right-of-way", property acquisition by the State Highway Department is frequently misunderstood. Since it is an operation that relatively few people are acquainted with, it is sometimes looked upon with apprehension and even suspicion. Actually the process is a simple one, quite the same in most instances as any individual would experience in conducting a private person-to-person sale of property — the exception being that the State, because it is acting in the public interest, has the right to require that the owner sell his property at a fair price.

THE PUBLIC INTEREST

An appropriate illustration of what is meant by the term "public interest" was recently contained in a Departmental study concerning one section of a proposed new urban freeway. The study pointed out that about 591,000 people will come within the facility's area of influence — but less than 2 percent of them will be involved in right-of-way transactions. The point illustrated is a basic tenet of government within a democracy — the benefits to the majority must take precedence over the inconveniences to a few.

POLICY AND RIGHTS

The State Highway Department's policy makes certain that all transactions are eminently fair and as convenient to the property owner as possible. Though occasionally deadlocks do arise, the Department is glad to say this occurs in less than 5 percent of its dealings. In these instances the individuals, as well as the Department, have well defined rights under the law. These rights safeguard the owner from getting less than fair market value and protect the tax funds appropriated for right-of-way purchases by the State from unrealistic demands.

RESEARCH

Several weeks before property owners are approached by Highway Department negotiators, the Department sends trained investigators into the field. They check each home and parcel of land that will be involved. In all instances buildings are photographed and lots are measured. The investigators also search county records and check recent bona fide land sales in the neighborhood in order to establish a basis for appraisal of each property's worth.

APPRAISALS

The investigator's reports are then turned over to experienced appraisers for their use when they examine the land and buildings prior to establishing what they believe to be the true value of the property. When only a portion of an entire property is to be acquired, the effect of the proposed taking on the remainder of the property is also taken into account by the ap-

Northern District
1259 Route 46
Parsippany, N. J.

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Routes 1, 21&22
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1035 Parkway Ave.
Trenton, N. J.

Trenton District
Suburban Shopping Center
Scotch Road
Trenton, N.J.

Central District
1147 Amboy Ave.
Metuchen, N. J.

Southern District
325 Lincoln Ave.
Haddonfield, N. J.

RIGHT OF WAY OFFICE LOCATIONS

DOUBLE CHECK

To evaluate a property that is to be acquired, one or more Department appraisers are assigned to work independently and each come up with an evaluation. Where required, at least one additional "outside" appraisal is obtained by the Department. This appraisal is made independently by a "fee appraiser" a qualified realtor experienced in evaluating the particular type of property involved in each instance. Often the Department will seek a further appraisal. This too is made by an experienced appraiser from "outside" the Department.

When the required appraisals have been submitted they are reviewed by a Department reviewer who upon completion of the review will establish a Fair Market Value Determination to be used as a basis of negotiations.

NEGOTIATION

With the appraisals at hand, a Department negotiator then calls on the property owner, generally in the evenings or on Saturdays or Sundays when the owner of the property is at home. Often several calls may be necessary before a transaction terminates in agreement as to price and a date when the buildings, home or business may be vacated.

PAYMENT PLAN

As an aid to property owners who must relocate, the Highway Department evolved a new plan. Under it the State will pay, shortly after an agreement is readied and approved by the Highway Commissioner, up to 25 percent of the agreed upon price — provided the 25 percent does not exceed 75 percent of the owner's equity in the property. If it does, this initial payment is scaled down until it does amount to 75 percent of equity.

BENEFITS

The benefits of this plan are that it provides the owner with ready funds to make his down payment on a new property. Formerly although an agreement was reached no money could be paid until the title was searched, proper papers filed and cleared, and the payment check authorized and drawn by the State Treasurer's office. This procedure frequently consumed weeks and months in some instances.

ADVISORY ASSISTANCE *

Relocation Advisory Assistance is available to families (and to individuals who are not members of families) who must relocate because highway construction requires that their residences be acquired. This service is available to both property owners and tenants. It is offered for those families and persons who may desire assistance in finding new housing, financial advice, or home construction data. In eligible cases, the Relocation Advisory Assistance service will establish contact with the appropriate public agency or organization best suited to provide the needed assistance. Those families and persons who are eligible for this service will at the proper time receive a letter and application from the Highway Department offering this Relocation Advisory Assistance and outlining the procedures.

RELOCATION PAYMENTS *

A second service the Highway Department offers is Moving Cost Relocation Payments. Such Relocation Payments are authorized by Federal and State Laws for projects in which the Federal Government participates and are available to those individuals, families, business concerns (including the operation of a farm), and non-profit organizations who have occupied real property to

* Applies only to Federal Aid Projects

ACQUISITION PROCEDURES

NEED FOR NEW HIGHWAY OR IMPROVEMENT ESTABLISHED.

LOCATION AND PRELIMINARY DESIGN STUDIES.

PUBLIC HEARING ON PROPOSAL.

FINAL DESIGN STUDIES.

COMPLETION OF CONSTRUCTION & RIGHT OF WAY PLAN DRAWINGS.

ACQUISITION OF RIGHT OF WAY AUTHORIZED.

OWNERSHIP DATA OBTAINED.

LETTER NOTICES TO ALL OWNERS OF RECORD.

INDIVIDUAL PROPERTY DOCUMENTATIONS: PHOTOS, NEIGHBORHOOD CHARACTER, COMPARABLE SALES DATA ASSEMBLED.

INDIVIDUAL PROPERTY APPRAISALS.

INDIVIDUAL NEGOTIATIONS UNDERTAKEN AND OPTIONS SECURED.



IF AMICABLE AGREEMENT IS REACHED

STATE HIGHWAY COMMISSIONER APPROVES INDIVIDUAL OPTIONS.

DOWN PAYMENT MADE WHERE APPLICABLE.

RELOCATION ADVISORY ASSISTANCE PROVIDED.

TITLE SEARCHED AND CONVEYANCES DRAWN.

DEED SIGNED BY OWNER.

PROPERTY VACATED.

RELOCATION PAYMENTS MADE WHERE APPLICABLE.

FINAL PAYMENT FOR PROPERTY.

IF AMICABLE AGREEMENT IS NOT REACHED

COMMISSIONER GRANTS AUTHORITY TO CONDEMN.

"FORMAL OFFER" LETTER TO OWNER.

RELOCATION ADVISORY ASSISTANCE PROVIDED.

TITLE SEARCH COMPLETED.

CONDEMNATION MAP AND LEGAL DESCRIPTION PREPARED BY ENGINEERS.

FILE FORWARDED TO DEPARTMENT OF LAW.

COMPLAINT FILED WITH COURT.

COMMISSION HEARING HELD.

APPEAL TO JURY IF APPLICABLE.

OWNER VACATES IF HE HASN'T DONE SO PRIOR.

RELOCATION PAYMENTS MADE WHERE APPLICABLE.

TITLE BUREAU PAYS OWNER AMOUNT OF JUDGEMENT.

PROPERTY SECTION ATTEMPTS TO SELL IMPROVEMENT IF LEAD TIME PERMITS.

RELOCATION PAYMENTS (Continued)

be acquired for a Federal Aid Highway Project in New Jersey at least 60 days prior to written notice to the record owner that the property is officially to be acquired for a Federal Highway. Both owners and tenants are eligible for Relocation Payments. In the case of families and individuals, payments of moving costs will be made up to a maximum of \$200. In the case of business concerns (including the operation of farms) and non-profit organizations, payments of moving costs will be made up to a maximum of \$3,000 within a 50-mile radius of the point from which the move is made. Those eligible for Relocation Payments will receive application notices from the Highway Department at the proper time.

DISPOSAL OF BUILDINGS

If the owner does not desire to move his house, the agreement includes full value for the house and land and the specific date when they will be vacated and turned over to the State. The State then offers the buildings, usually along with several others in the vicinity, for sale at public auction. Failing its sale at the auction, which in most instances is held in the same town as the property's location, it is torn down as part of a Highway Department road construction contract.

THE AGREEMENT

Sometimes the owner may prefer to move his house to another location. In the instance of one new freeway section it is estimated that 60 percent of the agreements will be reached on this basis. In such cases the purchase price makes a substantial allowance for the value of the house and the owner makes his own deal with a mover. In such instances the State insists on the agreement including a date when the structure will be off the property.

THE MAJORITY

It is worthy to note that on a Statewide basis amicable agreements are arrived at between the Department's negotiators and property owners in better than 90 percent of all cases. About six percent of all cases cannot be settled because of legally involved titles, ownership by a minor, unknown owners, extreme illness and similar instances where the law requires the courts to set the price and hold payment in escrow.

THE MINORITY

In less than 5 percent of all acquisitions, price is the barrier to reaching an agreement. Occasionally the owner sincerely believes he should receive more than was offered because of some unusual feature of his grounds, or his building's architecture. Where a vacant piece of land is concerned, failure to reach agreement may arise because of some special purpose to which the owner intended to put his property in the future. Sometimes it is simply an effort to make an extra profit.

CONDEMNATION

In these instances the Highway Department acquires the property by filing a complaint for condemnation in the State Superior Court. The court then appoints a three-member commission to establish the price to be paid by the State. The commission members view the property, hear testimony from both sides, and then arrive at their evaluation. If either the Highway Department or the property owner is dissatisfied with the price set by the commission, the matter is tried before a Superior Court judge and jury. The jury verdict is binding.

THE DIFFERENTIAL

Studies show that in most cases that go before a condemnation commission or even as far as a jury decision, the difference between the Highway Department's offer and the final price set is not material. In some instances the final price was even less than that offered originally.

RIGHT OF ENTRY

As far back as 1919 it was recognized by New Jersey laws that in some instances a considerable period of time might be required before even an amicable agreement might be reached between the Highway Department and property owners. Rather than have individual negotiations unnecessarily delay the date when a new facility could serve the general public the law provided that: "The State Highway Commission shall have the right and power to enter upon and take the property in advance of compensation therefor in any case where it cannot acquire land or other property by agreement with the owner".

In 1923 the New Jersey Court of Errors and Appeals supported this right and its application to contractors of the Highway Department on its construction projects. This right of entry prior to compensation is restated in the revision of New Jersey statutes under N.J.S.A. 27:7-22.

THE POLICY

In the interest of maintaining harmonious relations with all property owners affected by its construction projects, the Department's policy is to enforce these rights of entry over individual objection only when absolutely necessary in the public interest. Where possible, prosecution of the work is arranged to by-pass buildings not yet vacated when construction must begin before acquisition is completed or agreement reached with all property owners.

THE SITUATION

The reasons why construction operations must often begin before acquisition of all necessary rights of way has been completed are basically time and money. Because of the relatively limited funds and limited staff the Department can ill-afford wasted effort. Therefore, it must definitely know funds will be available to carry a project through before it can concentrate on developing the construction and right-of-way plans that will be necessary for a given project.

APPROVALS

In anticipation of the fiscal year that is to begin on the succeeding July 1, early each year the Highway Department submits to the State's Chief Executive an extensive listing of essential state highway system improvements and additions needed. With this as a basis the Chief Executive then recommends to the State Legislature, in his annual budget message, the extent of funds he believes should be appropriated for highway purposes.

LEGISLATIVE ACTION

It is often June before Legislative action definitely sets the amount of funds that will be available to the State Highway Department. The Department then, for the first time knowing its financial resources for the next fiscal year that is but a scant few weeks away, recommends to the Chief Executive specific projects to be undertaken. After review and possibly revision by the Chief Executive, the final listing constitutes the Department's construction program. Because of this compressed time element work on both construction drawings and right of way plans must often proceed simultaneously.

FEDERAL ACTION

Another factor enters when the Federal Government shares in the cost of a construction project — as is the case in most major highway construction jobs. In these instances there is a mandatory review, parcel by parcel, of all proposed Highway Department acquisitions on the project's right of way by the Federal Bureau of Public Roads Right of Way representatives before actual negotiations for properties may be undertaken. This review may extend several weeks.

THE RESULT

As a result of these combined circumstances the acquisition of at least a portion of the right-of-way then frequently becomes concurrent with actual construction operations. In the vast majority of such instances the Department finds the property owners to be understanding and cooperative. Only occasionally is it otherwise.