Outdoor Advertising: Solution for Right-of-Way Projects

by Tracy Graff, SR/WA

Tracy Graff, SR/WA, is a registered real estate broker in Florida holding associate degrees in business administration and real estate. He has more than 25 years of experience in relocation, acquisition and property management. Since 1985, he has been employed by ICF Kaiser Engineers, Inc., as director of relocation services for the I-595 Project in Ft. Lauderdale, Florida.

Most right-of-way practitioners sooner than later are involved in highway widening projects and have been confronted with problems caused by Outdoor Advertising (OA) in the proposed right of way. OA is second only to newspaper advertising as the most effective means of advertising products and services. Clearly, an industry this large is most certain to remain on the scene for years to come. Agencies have sought ways and means of dealing with signs in the proposed right of way for years; some successfully, others not.

Some of the procedures that have developed and been applied have fallen short and many seem impractical today, but are still in use by agencies. There are agencies today that declare all outdoor signs to be personal property. Other agencies declare all signs to be real property that are owned by the fee parcel owner. Other agencies view the base below ground as reality, the structure above ground as personal property. None of these approaches are the answer. The real or personal property test should be applied to each and every sign regardless of type construction, location or arbitrary terminology.

The standard personal reality test that is applied to any questionable item should be applied to all signs:

- Intent of party or parties.
- Manner in which the sign is installed, affixed and/or placed upon real property.
- Legality of agreements, contracts, leases, etc.

In most instances, accurately applying the aforementioned test should resolve the real or personal property question. However, if it is not clearly established, the intent of parties should prevail for obvious reasons. To further illustrate the significance of the realty personal property test, let's examine one agency's present procedure which places all signs, except monuments, in the personal property category without applying the test. With this procedure, the monument sign owner has lost his relocation options entirely and could receive equity only through litigation. Options for reimbursement of direct loss, moving and reinstallation, search, and the right of administrative appeal, are absent. In most instances, this inflexibility by the agency results in additional litigation expenses and delays.

Agencies have, from time to time, had problems with including or excluding certain types of advertising from the sign category. Agencies have made eligibility distinctions between onpremise advertising and off-premise advertising. Some states have laws and rules which regulate off-premise signs only. It makes no difference from a right-of-way/relocation standpoint what a sign is labeled. A sign is a sign is a sign. Generally, one would assume that signs would be in one category or the other, on- or off-premise, however, there is another category that must be dealt with, that is the illegal sign that occupies existing right of way. Often situation such as real estate sale and lease, bus benches, portable sidewalk signs, etc. However, you will discover major outdoor advertising structures that have been placed partly in existing right of way, as well as the on-premise sign a foot or two in existing right of way. The resolution to this type sign is removal enforcement.

Right-of-way practitioners involved with outdoor advertising on a project will find the parcel with sign(s) that are to be acquired, relocated or abandoned just as demanding on your time and expertise as any other improved parcel. Outdoor advertising has become one of the most regulated industries in existence. Federal, state and local governments have implemented volumes of rules, ordinances, statutes, policies and procedures in attempts to regulate and control the industry, all of which contribute to the difficulty of locating suitable replacement sites for the structure. Site selection is not the only problem that must be dealt with, for construction codes do not permit many existing signs to be relocated.

Continued on Page 8

Continued from Page 6

In addition to the sign owner, the right-of-way agent most likely will be addressing issues with governmental agencies having jurisdiction of the replacement site, sign contractors, site owners, your own agencies, and the court. What are some of the concerns and issues you may encounter with these agencies and individuals?

A sign owner's concerns likely will be related to dollars, site selection options, relocation entitlements, maximum exposure, minimum downtime, leaseback and the axial theory. The site owner will be considering maximum rent return, minimum disruption, or interference with remaining site use. Governmental agencies are concerned with permitting, zoning, blight, building codes, variances, buffer zones, safety, height, mass and density. Contractors are looking carefully at the scope of work, specifications, competitive bid proposals and lead time. You and your agency are pushing for a right-of-way clear date, production-ready dates, demolition contracts, acceptable compliance audits, and good public relations. Courts often are confronted with all of the above in addition to eviction orders.

Part of the outdoor sign problem in recent years has been arbitrarily categorizing signs into groups that tend to dictate manner of reimbursement for removal, relocation or purchase of the sign structure. Billboards, trade signs, on-premise, off-premise, business fixtures, monument, or severable appurtenances maybe real or personal property. Poster boards, painted and parasite signs could be on- or off-premise. Directories, business fixtures, metal, plastic and masonry could be owned by an outdoor advertising company, by the business offering the product or service, or by the site owner. The same options should apply to each company, business or individual regardless of the category. Because every type of sign is a means of indexing goods and services in a manner clear and compatible between the consumer and the environment for right-of-way acquisition purposes, we should be primarily concerned with the real or personal property classification.

Where can the right-of-way practitioners find specific answers to questions applicable to your locality? Sources that may provide solutions for specific problems you may encounter are: local, state, and federal ordinances; statutes; laws; stipulated verdicts; court decisions; compliance reviews; audit reports; appeal rulings; agency policy; and procedures.

Cataloging, classifying signs by construction types, location, on- or off-premise, message, appraisal terminology, and others may provide secondary useful data in the relocation and appraisal process, but it can be of little use if the real or personal property classification is not accurate.

By applying the appropriate measures following the initial tests of illegal, real or personal property, and the subsequent steps as applicable outlined on page 9, you have the solution to outdoor advertising removal on highway right-of-way acquisition projects. (IRWA)

SUGGESTED PROCEDURAL FLOW CHART FOR OUTDOOR ADVERTISING STRUCTURES