



ACQUISITION TIPS AND STRATEGIES

By Larry Stevens, SR/WA

Benjamin Franklin, in writing to his son on May 12, 1784, confided that 60 years earlier Cotton Mather advanced the following advice: "You have the world before you. Stoop as you go through it, and you will miss many hard thumps." It is from the perspective of one with more than just a few gray hairs around the temples that I would like to share some thoughts from my personal school of "hard thumps." I am convinced, having read several books on negotiating techniques and drawing from my own experiences, that it is impossible to create a compendium of every scenario the negotiator will face and it's a fools game to think you can have a strategy in hand to avoid all the "slings and arrows" hurled by owners. Someone offered that the best offense is a good defense. What I offer are some of the basic elements that will permit you to be prepared to meet these negotiating challenges with preparation and knowledge. Seasoned veterans of the "Negotiating Wars" may find many of these tips and strategies as little more than common sense and second nature — if that is so, good job; you are not my prime target. It is my hope in writing this article to better prepare the neophyte, who is not as well girded for this mental joust, with the information and tools that will allow him or her to avoid the pitfalls that many novitiates fall prey.

PRE-OFFER

Preparation of the right of way contract requires the compilation of information from many different sources, including the appraiser's diary, the appraiser, the appraisal, the project designer, the right of way file, the right of way engineering files, the title report and even a review of the public records as it relates to title exceptions. In establishing credibility with the property owner and in responding to his or her questions and requests, it is essential that the agent have a thorough knowledge of the property, the project and the surrounding area.

APPRAISAL. The agent's first task should be a thorough reading of the appraisal with an eye toward the appraiser's analysis of the "construction in the manner proposed," the logic in the approach to value, the analysis of the comparable data and how these factors support the conclusion of value. Other information contained in the appraisal report, which should be of particular interest to the acquisition agent, is unrecorded interests (lessees or tenants owning realty), construction contract work, and cost-to-cure damages. The appraiser's diary and follow-up discussions with the appraiser are good sources for the unwritten story that may be significant to the acquisition agent's preparation of the contract and first call presentation. The diary may set out a number of facts that the agent should be aware of before he makes the first offer presentation, including the relations between the occupant of the property and the owner, personal property or appurtenance ownership disputes and the demeanor of the owner or lessee toward the agency or the project. In many cases, the appraiser will have copies of unrecorded documents obtained from the grantor at the time of the appraisal, e.g. leases and month-to-month agreements.

TITLE REPORT. The title report is the fundamental means of avoiding the acquisition of bad title and creating errors or omissions in the preparation of the right of way contract; and, as such, it is critical that the agent has an up-to-date title report. However, from experience, I know that a current title report is not always available and the agent is forced to improvise with the old title report pending receipt of the updated report. Because of this systemic deficiency, it is imperative that the agent questions the grantor regarding any encumbrances or vesting changes that might have occurred after the date of the old report.

The agent should also show due diligence in reviewing the title exceptions contained in the report. A preliminary determination should be made as to whether each exception will have an adverse impact on the agency's title, or not. Adverse exceptions in the title report should have a corresponding clause in the contract showing a positive method of clearing the item from the title, e.g. full or partial reconveyance, quitclaim deed, assignment of lease, etc. Careful contract crafting at this stage will avoid return trips for contract modifications and virtually eliminate misunderstandings.

DESIGN. Discussion with the Design engineer is an important preliminary step for all new file assignments, but it is particularly critical for the agent's understanding of a "partial take" acquisition. Prior to

preparing the right of way contract the agent should obtain data on changes of grade, access denial, temporary construction easements, methods of construction, duration of construction and specific construction features including the height of retaining and sound attenuation walls, construction staging, frontage roads, on and off ramps, interim and ultimate traffic patterns that may impact the use of the owner's property. The purpose of this discussion is two fold: first, it assures the agent that the design has not changed subsequent to the completion of the appraisal and, second, it will allow the agent to make a knowledgeable and convincing presentation to the owner. The agent

should make every effort to ask the questions the owner would ask if the owner were an active participant in the discussion.

RIGHT OF WAY FILE. The right of way file is an important source for background information. There may be a history of communication or political inquiries that would be useful knowledge in the agent's preparation for the first call.

RIGHT OF WAY ENGINEERING. The Right of Way Engineering unit is a vital source for historical information that may be pertinent to the current assignment. Most Right of Way Engineering units maintain data records on previous acquisitions, including deeds and title policies, they also maintain information on various recorded documents, such as street relinquishments, tract maps, easements, etc. In the case of partial acquisitions, establishing that recorded interests are outside the acquisition area can eliminate the need to clear many title exceptions. The resources and right of way engineering staff

can provide invaluable assistance in preparing an accurate contract document.

FIELD REVIEW. Perhaps the most critical element of the pre-offer preparation is a review of the neighborhood. The review allows the agent to get a real sense of the dynamics of the project on the community — how will the project affect schools, stores, transportation patterns, etc.? Through observation and communication with the neighborhood, the agent can assess the reception he or she is likely to receive at the door. Project related blight or anti-project signs in the vicinity of the project could be red flags that will allow the agent to anticipate and be prepared.

Also, the agent should spend time looking at the comparable sales and checking the neighborhood for recent sales activity. The agent can bet that the owner will be on top of the latest sales especially if they are favorable to a higher settlement amount. By the same token, the agent can use static or falling market information to demonstrate the fairness of the offer and bring the owner back to reality if his settlement expectations are overly ambitious.



FIRST IMPRESSIONS ARE LASTING

Since first impressions are often lasting, the agent should take extreme care in placing himself or herself and their employer in the best possible light. Here are some thoughts for the agent to consider before that all-important first meeting with the owner:

- **The Contact Call.** In making the initial call to the owner for the appointment the agent should:
 - Convey a friendly, calm, relaxed, polite and empathetic attitude – never pushy, arrogant, demeaning or insensitive.
 - Refer to yourself as an acquisition agent rather than as a negotiator.
 - Never use the term “take,” use terms such as “purchase” or “acquisition.”
 - State a clear purpose for the call: “I would like to arrange an appointment to discuss the acquisition of your property for the _____ project.”
 - Be flexible. The government’s need for the property has already placed the owner under some degree of stress; the agent should minimize the owner’s apprehension by selecting a time and place convenient to the owner.
 - Listen for information and learn about the owner’s attitude – anger, uneasiness, lack of responsiveness, emotional outbursts, negative thoughts about the project, etc.
- **What should I wear?** The agent should consider the type of ownership, the time of day, the meeting location, and the owner’s economic, social and educational background to determine appropriate attire. For instance, it would be perfectly logical to meet a banker at his office in a three-piece suit, while that same attire in acquiring a farm or salvage yard would probably be very out of place. Since the intent is to establish rapport with the owner, it is important to place the owner at ease by not wearing clothing that will set you apart – you don’t want to be shunned as “the man” or a government bureaucrat who has little understanding of the neighborhood or the people who live there. And, regardless of the level of attire worn, it should always be neat, clean and presentable – just because you are purchasing a machine shop, doesn’t mean that you should have patches on your sleeves and frayed cuffs.
- **Automobile.** One of my colleagues suggested that agents never drive anything better than a late model Taurus because it makes us look too “prosperous.” This may be taking it a bit far but the agent’s car should be neat and clean. While a minor point, the appearance of the agent’s car may influence how some owners view your professionalism.
- **Demeanor.** The agent should be friendly, calm, relaxed and polite – never pushy, arrogant or insensitive. Unless a cultural barrier exists, the agent should extend a warm, firm (not bone crushing) handshake to the owner. With respect to the owner’s wife, current etiquette leans toward shaking her hand if she extends it, otherwise, probably not.
- **Tenor of negotiations.** The agent should never give the owner the impression that our discussions are bargaining sessions. The agent should introduce himself as an “acquisition agent,” not as a “negotiator,” since most people view negotiations as a “give and take” or bargaining process.



SETTING THE STAGE

Before effective negotiations can take place, the stage must be set; and the successful negotiator knows that the first step in the process is to obtain information. This activity includes looking at the property, listening to the owner, observing and attempting to read the owner’s nonverbal communication (body language – arms crossed and closed, voice inflections – high pitched, animated and nervous, or taciturn and smoldering with anger).

- **Tour the property with owner.** A tour accomplishes several things, first it allows you to see the property and make mental notes on the appraiser’s analysis and opinion of value. Second, it allows the owners to share information that they feel is important about the property – listen attentively. Third, if the owner is upset, your tour allows him to vent before the actual presentation begins. Fourth, a review should allow you to make personal observations that will promote interaction and establish rapport. By noting family photos, a lovingly cared for garden or a novel interior design can assist in finding common ground and a receptive ear. Discuss the owner’s job, hobbies, neighborhood,

anything that will stimulate interaction and rapport.

- **Choose the field of battle.** Since you have papers that you will want to review with the owner, you will want a flat surface with sufficient seating and appropriate lighting. While relaxing and less confrontational, avoid sinking into that comfortable couch in a living room; there is no way to keep the owner focused on the your presentation and maintain effective control of your documents. You should make every effort to find a table, a

counter, a desk, and some hard surface that can be a unifying object that will allow the agent to limit the owner’s range of focus and engage the owner through the presentation and review of documents in close proximity. A hard surface, eye contact and interaction are critical if an effective first offer presentation is to be made.

- **Let’s do dinner.** Dinner type meetings should be avoided, as there are far too many distractions, not the least of which might be soy sauce spilled in the middle of your contract. To remain clear-headed, focused and professional, offers of alcoholic beverages, whether at a lunch, dinner meeting, or an owner’s home should be avoided. If your perception is that rejection of the owner’s hospitality would place the negotiations at risk, ask for water or soda.

SHOWTIME – THE FIRST WRITTEN OFFER

Through the school of hard knocks, I have found that the following tips to be most useful in avoiding some of the worst pitfalls during the first offer presentation.

- **Always be prepared.** Prior to meeting with the owner take some time and review the file, your notes, the appraisal, design features and any other documents that may be subject to discussion. While you should have obtained the information in advance, it can’t hurt to refresh your memory.
- **Get organized.** The agent should have all of the material to be presented organized and in sequential order. Using paper clips and folders to segregate material can be an effective means of making a cohesive, smooth, and succinct presentation, as each part of the material is completed, it is recapped or returned to its respective

folder. Turning pages over as they are completed eliminates the potential for confusing the material.

- Know your product. Even though I have made first offer presentations dozens of times before, I always review the entitlement letters, the contracts and other brochures in advance of meeting the owners to be sure I have the concepts clearly in mind. Nothing is more embarrassing than to have an owner who knows more about the project, the relocation entitlement programs and the law than the agent. It is important to remember that virtually everything you know can be found in cyber space, and more and more owners are reading the material before you arrive.
- Be honest. If you're like most of us you aren't paid enough to be anything else. If you are uncertain of your facts, or don't know the answer, admit your shortcoming and make the commitment to research the matter and supply the owner with the correct answer. Never cast yourself in the role of a shyster who will twist or shade the facts to make the deal.
- Be yourself. Trying to play a part will only make you appear insincere, use the techniques and strategies that feel natural and discard those that feel awkward or estranged from your usual persona.
- Follow the Golden Rule. It is important to remember that owners have been placed in a situation not of their choosing, they may be under a great deal of stress and may not act as they would in normal social situations. The agent on the other hand should be professional and treat the owner, as he would like to be treated if he or she was caught in the same difficult situation. Remember, until you have walked in the other person's shoes, it is impossible to understand the journey he is struggling through. Your charge is to attempt to place yourself in the owner's shoes.
- Use the Funnel Technique. The funnel technique, which is thoroughly discussed in the IRWA publication *Principles of Right of Way*, is an effective means of focusing the negotiation process on exploring and resolving those issues that are preventing the owner from signing the contracts.
- Review the benefits of the purchase. In the case of all federally funded acquisitions, there are no title charges, no escrow fees, no sales commission, the transaction is an all cash deal with no contingencies, no property defect disclosure is required or warranty fees to protect the buyer (except for hazardous waste cleanup), there are relocation benefits (after verifying legal residency), potential income tax deferment on the involuntary conversion of an asset, and, in the case of California, involuntary

conversions for government projects transfer the existing property tax base (with some restrictions) to the replacement property. These are powerful positives in support of government agency purchases and the agent should use them to advantage by pointing them out to the owner during the negotiating process.

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- Write it down. Time has a way of distorting and clouding one's memory; paper and ink remain clear and incontrovertible. Always write your thoughts and observations down; never rely on your memory. One caveat to capturing the mood of the moment, keep your remarks professional. In many states, those personal thoughts that seemed purifying at the moment, can be turned up through discovery and may end up as an embarrassment to you and your agency in court.

- Listening. One of the most critical skills an agent brings to the negotiating table is the ability to listen and genuinely try to understand the other person's point of view. It is very important that the agent remain objective, listen without interrupting or reacting defensively. Paraphrasing or asking questions is a form of active listening that will generate trust, clarify misunderstandings and promote rapport that will assist in resolving issues.
- Don't take the bait. Owners will sometimes test the agent with statements that are designed to exact a reaction and test whether he/she can be trusted. The agent should make every effort to ignore the barbs and meet the challenge with empathy and interest in the problem. Never ignore or attack the owner's position.
- When things heat up, call for a cooling off period. If the owners, or you, are losing perspective and objectivity because of anger, it is time for a cooling off period. State your observation that things seem to be getting out of hand and propose that another meeting be scheduled when a more temperate discussion can take place. Often the mere recognition is enough to restore rationality to the discussion.
- The power of silence. There are times when saying nothing is the most effective tool in the agent's toolbox. Agents must be aware of those times when they have presented their case and the floor belongs to others. Winston Churchill once said, "Silence enhances one's authority." Louis Nizer in his book *Thinking on Your Feet* stated, "The artful performer knows that rhythm patterns require silence too, and nothing is more dramatic and effective than a long motionless pause after a statement. It permits absorption of the thought. It permits reflection. But more important, it compels attention to what has been said as if an italicized finger had been pointed at it."
- Be observant. Since it has been noted that between 80 percent to 90 percent of communication is nonverbal, the agent should always be vigilant to observe body language – closed arms, pursed lips, edginess, loss of focus, etc. that indicates that the owner is not receiving your message. If you sense you are losing the owner, stop, regroup, ask the owner for input, and attempt to deal with the issue that is causing the distress or loss of focus.
- Encourage questions. If a negotiated settlement is to occur, it is necessary that the owner understand what has been placed on the table as an offer and terms. One good way to find out if the message has been received is to ask for feedback from the owner. At the conclusion of each

segment of the presentation, ask the owner for his reaction to what has been said. By doing this the agent can determine whether the message has been received and what issues might need further discussion.

SEARCHING FOR COMMON GROUND

- **Win-Win Negotiations (Problem Solving).** Although our flexibility as acquisition agents is limited in many ways to the appraisal product we receive, the agent should listen to the owner's concerns and attempt to develop creative solutions that will resolve the issues that are stymieing the settlement. The agent should solicit solutions from the owner and be willing to think outside the box to find a win-win solution. Many times the issue is not about money; the owner may need a larger driveway than the one proposed or assistance in finding qualified consultants to complete the cost to cure work.
- **Establish negotiation goals in advance.** Although "equal protection" provisions of the law limit the flexibility government negotiators have in reaching settlements that differ from the approved appraisal amounts, the agent should be ready to give ground where law or policy will not be breached. Whenever an owner indicates an offer is unacceptable, the agent should review the owner's demands, establish a negotiation goals list and then prioritize each item from the insignificant to the nonnegotiable. Beginning with the minor issues, the agent should continue a quid pro quo action until either agreement or bedrock issues have been reached. Quite often if some of the small issues, such as clause language modifications, can be accommodated, rapport is established and a spirit of teamwork is fostered so that some of the more strident issues become tempered or eliminated all together. The agent must remain flexible, open and responsive to the owner's ideas, while acknowledging the agency's legal and policy constraints.
- **Weigh the consequences.** Federal regulation, 49 CFR 24.102(i), provides for administrative settlements when such settlements are "reasonable, prudent and in the public interest." It makes little sense for the agency to prosecute a case to court when a minimal adjustment will satisfy the owner. The agent, and the agency for that matter, should carefully weigh the cost of holding to a potentially tenuous position that may be validated in court versus an administrative settlement that can be justified by "available information (e.g., appraisals, recent court awards, estimated trial costs, or valuation problems) [that] supports such a settlement." Over the years, I have noted that many program managers seem to feel that the money they are spending is coming from their personal checking

account and that there is only one true opinion of value, and that is the one arrived at by their appraiser. I suggest from courtroom experience, nothing could be farther from the truth.

- **Review date and time.** Never terminate a dialogue without setting a date and time for a follow up discussion that will review progress or provide a response to issues raised. The contact can be in person or through a telephone conversation, but the agent should never leave a meeting with the owner without obtaining a commitment from the owner to a review date and time.



CLOSURE

- **Never put off until tomorrow what you can do today.** Many owners are loath to make a decision. The agent, without being pushy, should attempt to resolve the owner's issues and move to closure. But, many times owners just need a night to think the decision through, if this is your perception, don't press the issue, give them some space. However, don't allow the owner to drift into (what I refer to as) "avoidance" or "denial." Be sure that you make an appointment to review the issues a few days hence.
- **Gentle persuasion.** The agent should have the documents and a pen in front of, close to and in clear view of the property owner. For some people the act of signing is easier than making a verbal commitment.
- **Closing the deal.** Vital to the acquisition process and one of the most difficult for the new agent, is finding an effective means of closing the deal. The first thing to remember is not to oversell the deal. Once you feel you have reached a point where the owner's concerns have been answered and he has no further issues — stop negotiating and make the deal. The simplest and most direct method to close the deal is to simply say, "I believe we have resolved all the issues on your list of concerns, shall we sign the documents?"

A FINAL THOUGHT

- **Never forget for whom you work.** Even though our paycheck comes either directly or indirectly from a governmental agency and we represent the taxpayers or ratepayers as a whole, you are equally charged with being a representative for the owner; after all, he is a taxpayer or a ratepayer as well. The owner is reliant on you to be the conduit for his concerns, his questions and his needs, and as such, you must be empathic to these issues and be an effective advocate for a mutually

acceptable resolution of any issue within the rules of the agency for whom you are employed.

Margaret Minor and Hugh Rawson, *The New International Dictionary of Quotations*, Second Edition (Penguin Books, U.S.A., 1993, p. 287)
Louis Nizer, *THINKING ON YOUR FEET* (New York: Pyramid Publications, Inc., 1963, pg. 26)