

Resale of Surplus Right of Way Along I-485

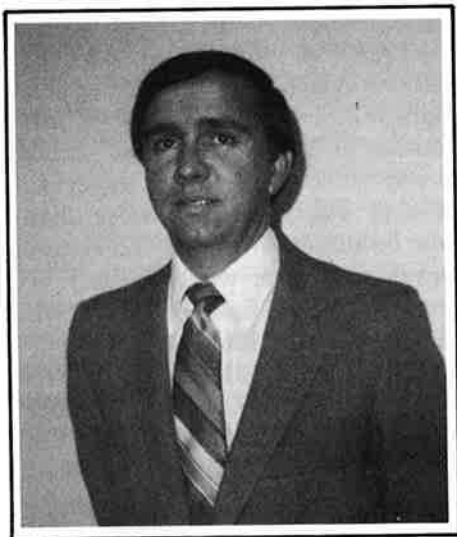
by H.D. Howard

In the early 1960's the Georgia Department of Transportation began planning and designing an interstate route known as I-485 to relieve traffic on the Downtown Freeway in the City of Atlanta. The overall design was a north-south route by-passing the downtown area, and an east-west route leading into the downtown freeway. After receiving design approval from the FHWA, the Department began right of way acquisition in the proposed interchange area. Local opposition to the highway was encountered in the late 1960's from various neighborhood organizations seeking compliance with the National Environmental Policy Act which would become effective on January 1, 1970. The FHWA concurred with the State that no environmental statement would be required since design approval was given on August 25, 1969 and the National Environmental Policy Act was not in effect at that time.

In U. S. District Court on November 12, 1971, Judge Charles Moyer imposed an injunction on the project and ruled that compliance with Sec. 102 of National Environmental Policy Act was required for federal projects on which substantial actions are yet to be taken, regardless of the date of critical Federal approval. After further studies by the Department and withdrawal of support by the City of Atlanta, the State Transportation Board adopted a resolution requesting the FHWA to remove I-485 from the Georgia Interstate System. The Department later received replacement funds from the FHWA, and portions of three major projects were constructed using this apportionment.

Prior to the injunction, the Department had acquired 1,270 total parcels, at a cost of over twenty-two (22) million dollars, and 991 houses had been removed. Within a 219-acre portion of the vacant land, located in the proposed interchange, the City of Atlanta proposed developing a Great Park. This plan was resisted by the Department until transportation needs were included in the overall plan. After years of controversy and numerous studies the State General Assembly created a special authority known as the Great Park Authority to study a comprised plan suggested by the Governor and developed by architect John Portman. The most recent development has been the plan to construct a Presidential Library on a portion of the land, and the Department is working with the Great Park Authority in an effort to develop an overall plan that will utilize the land to best serve the public interest.

On November 20, 1977, the State Transportation Board adopted a Resolution directing the disposal of 285 parcels in the north end of the I-485 corridor between St. Charles Avenue and I-85. Most remaining improved properties were within this section of the project, and the Department had abandoned all plans for construction within this area. The property included 132 parcels with houses remaining, 140 parcels where improvements had been removed and 13 easements or unimproved parcels. Three priority classifications were established, and all properties were divided and sold in the following order of priority: First, certain parcels were acquired as partial takes which left the house purchased by the Department



Dan Howard received his Bachelor of Business Administration degree from Georgia State University in 1970. He has been employed by the Right of Way Division of the Georgia Department of Transportation for 11 years and was appointed to the position of State Property Manager in 1977.

The following article was first presented at the Georgia Chapter 22 Legal Seminar held October 1981. It addresses a unique right of way problem, the disposal of property acquired for an interstate freeway that was terminated due to public pressure.

remaining partially on the remaining property not purchased as right of way. To relieve the hardship on the remaining property owner, these properties were considered on first priority. Second, 12 parcels were occupied by the owner or tenant that occupied the property at the time of our acquisition. The court injunction had restricted the Department from requiring these people to vacate. The basic requirement of state law was that previous owner of the surplus property receive the first opportunity to repurchase that property. However, the Department adopted a policy that no relocation benefits would be paid to the remaining occupants due to the approximate seven-year period of rent free occupancy. Also, the Department was not requesting the occupants to move, and many properties were sold while still occupied. The FHWA was advised of our decision and concurred in this action. Third, the remaining properties were directed to be sold individually block by block alternating from the north to south. Within this category, the parcels with remaining houses were considered first to prevent vandalism.

A disposal plan was submitted to the FHWA on January 12, 1978 and approval was received on February 8, 1978 with the requirement that appraisal and appraisal review be the same as for a normal Federal-Aid project. A final resolution on FHWA policy for payback of federal funds was pending at the time, and the decision on this matter was delayed. The final determination was that the State would reimburse the FHWA 90% of the net proceeds received from the sale of property, and the Department deducted all administrative cost from the sale proceeds prior to reimbursement of the FHWA.

The first property was sold on November 21, 1978, and the Department planned for the total disposal program to be completed over a two-year period. This time period was advantageous for two

primary reasons. First, a staggered release of properties prevented a flood of the market in this concentrated area and helped not only stabilize prices but boost market interest and prices. Second, the administrative work load was more easily absorbed with no additional personnel being employed for this project.

Certain areas of State Law pertaining to the sale of property had not previously been tested, and the Department found it necessary to file for a Declaratory Judgement in Fulton Superior Court to obtain clarification on certain matters such as:

A. Does DOT hold fee simple title to the property?

B. Is DOT required to recover price equal to price paid at acquisition?

C. When the previous owner is deceased, are the heirs to the estate entitled to repurchase?

D. Is the former owner legally entitled to contest DOT's determination of fair market value?

Judge Osgood Williams' ruling stated that the Department does hold fee simple title, and upholding previous court rulings stated the property does not revert to the former owners simply because the project had been abandoned.

Initially, the Department had estimated that the present value of



This is a tract of land exchanged to the City of Atlanta for a community park.

the property would be less than the price paid for acquisition due to the removal of houses and the depreciation of remaining structures, and state law would not allow sale of an entire parcel for less than the price paid for its acquisition. However, remnants of the original acquisition could be sold at the present market value, and the court was asked to rule whether the vacant houses in need of repair to restore their original condition could be considered as a remnant of the original acquisition. The court did rule that "remnants or portions of the original acquisition does not refer only to the land that is being offered for sale but also the improvements". This ruling allowed the Department to dispose of all parcels at the present fair market value.

If the former owner of a property at the time of its acquisition by the Department is deceased when the

I-485-1 (46) Fulton County

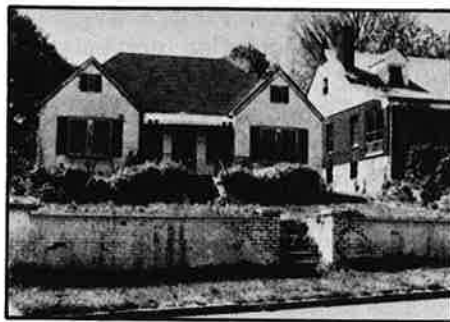
St. Charles Avenue to Interstate 85

Total Parcels 285

| | Number of Parcels | Original Amount Paid | Present Appraised Value | Sale Price |
|-------------------------------|-------------------------|----------------------------|-------------------------------|-------------|
| Sold to Previous Owners | 142 | \$3,489,666 | \$3,631,345 | \$3,551,859 |
| Sold at Public Bid | 97 | \$2,288,290 | \$1,923,890 | \$2,598,268 |

Parcels Exchanged to the City of Atlanta - 35
Parcels Retained by the DOT - 2
Easements not Repurchased - 5

“ . . . the community was beginning a revitalization period primarily due to a current trend of rehabilitation of close-in urban properties.”



These slides indicate the condition of the vacant houses at the time of our sale and after renovation.

property is declared no longer needed, the Department of Transportation may proceed to sell the property by placing it up for public bids. The Court found that the right of repurchase is not inheritable.

The opinion expressed by the Court was that the previous owner should receive “the first bite at the apple”, and the Department was directed to negotiate in good faith and come to an agreement on the fair market value. If an agreement could not be reached within 60 days, the Department was directed to sell the property at public bid.

In general, the homes in this neighborhood were constructed in the 1930's and 1940's and the community was beginning a revitalization period primarily due to a current trend of rehabilitation of close-in urban properties. Zoning was primarily single family residential with some multi-family locations, and only 3 parcels were zoned commercial.

Due to a state of disrepair that many of the houses were in at the time of appraisal, evaluation of the properties was made with local independent contractors assisting staff appraisers to determine the cost of renovation. A final value was established using estimated value after renovation and deducting the renovation cost. The assignment of appraisal personnel was normally 3 staff appraisers and one reviewing appraiser.

Negotiations with previous owners were conducted in the same

manner as the negotiation process for acquisition. Personal contact provided an opportunity to explain our position and answer questions concerning repurchase. The negotiator was confronted with explaining how the Department had arrived at this position of reselling their property and why our plan to construct the highway was abandoned. In general, most individuals were satisfied with their present location and were not interested in returning to their former property, and to our knowledge no one moved back to their former property. Due to inflation and increase in property values in this neighborhood, all properties had increased in value, from the time of acquisition by the Department. Many individuals initially expressed their opinion that the property should be offered to them based on the value at the time of acquisition. However, due to changes in all the properties over the past eight years, a determination of present fair market value was the only equitable approach as the Declaratory Judgement stated. Approximately 71% of the properties offered back to the original owners were repurchased, and 10% of the parcels repurchased were purchased at a negotiated price slightly less than the appraised fair market value.

Due to the location of certain houses partially on property of the Department and partially at remaining property, the Department was confronted with selling to the person owning the remainder or completely removing the house from the site. These properties were

appraised on the fair market value including the value of the house with the value of the remainder lot deducted. All nine properties situated in this manner were sold to the remaining property owners at a negotiated price 22% less than our appraised value. The counter offer settlements were accepted due to the alternative action of removing the house and attempting to sell one-half of a vacant lot at public bid.

Such a sale would have been difficult and could have created lawsuits from the remaining property owners that would have been landlocked.

As a matter of practical experience, the Department found that approximately 83% of the previous owners that repurchased their former property resold the property immediately thereafter without making any improvements. Many of the purchasers were able to resell the property simultaneously with the sale from the Department, and in these cases obtain a profit on the property. Some individuals elected to repurchase the property for investment purposes.

The public sale of property was conducted through advertisement and receiving of sealed bids. The first sale of property included 12 parcels, and the public response after the first advertisement quickly generated a mailing list in excess of 2,000 prospective bidders. Classified and legal advertisements were placed in the local newspaper on two occasions, and signs were placed on the individual properties listed for sale. Additional coverage of this project by local television news and newspaper features



Vacant lots where houses were removed and new homes constructed are depicted in this set of photos.

created significant public interest in the property potential.

The advertisement period for each sale was 4 weeks, and all properties were made available for inspection on a daily basis. Prospective bidders were furnished bid forms which upon award of the high bid became the sales contract. The basic terms of the bid sale were the submission of a bid deposit on each property and payment of the balance within 75 days. Upon final payment, the Department conveyed the property by quitclaim deed as required by state law and the Department did not place any restrictions on the number of properties purchased or require occupancy and/or renovation of the houses.

The Department held 8 public sales throughout this project and received bids which were consistently in excess of our estimated values. The number of bids received was varied and relative to the mortgage market at the time, however, bid prices remained at a constant high level despite increasing rates. Bidders included contractors, real estate agents and individuals. The bidding was completely open to the public. Approximately 57% of the high bids were awarded to building contractors or real estate developers.

Buyers were totally responsible for obtaining financing to purchase these properties, and no government program was available for assistance. At the beginning of the project, only two of the major banks were providing loan assistance for rehabilitation of the properties.

However, after many of the houses had been renovated and resold, other lending institutions made loans available at the conventional rate of approximately 17 to 20% for construction loans to renovate and 12 to 15% for permanent mortgages.

After completion of this project, it was determined that the Department had received a total of \$6,150,127. The acquisition cost was \$5,777,956. The appraised value for the property was \$5,555,235. The sale price of the 97 properties sold at public bid was \$2,598,268 or 35% higher than the appraised fair market value of \$1,923,890.

A survey of property resales indicated that property renovation exceeded our estimates and resale prices after renovation was approximately 47% higher than our appraisal estimate.

The City of Atlanta submitted a request for 22 vacant lot parcels to be developed into two neighborhood parks. However, State Law would not allow transfer of the property without receiving property of equal or greater value in exchange. Additional right of way was being purchased at this time to expand I-75, and a tract of land owned by the City valued at \$289,000 was required. After approval from the FHWA, the 22 parcels valued at \$274,000 was exchanged for the required right of way.

The Department is presently considering a request from the Atlanta School Board of conveyance of 17 parcels to be utilized for expansion of a school adjacent to the vacant lot properties, and the completion of this transaction will

“ . . . a neighborhood impacted by termination of a highway project can recover stability and experience new growth.”

depend upon the School Board's ability to provide equal property that is needed for highway purposes.

One commercial tract of land consisting of two parcels was retained by the Department and developed into a maintenance facility to serve Metro Atlanta. The FHWA approved this retention without any payback of federal funds on the condition that the property would be used for highway purposes.

In summary, the Department was successful in obtaining a fair resale and return of the tax money spent for the property, the rights of previous owners were carefully protected, the neighborhood is being revitalized due largely to renovation and new construction, and through a cooperative effort neighborhood parks have been established. This program has proven that a neighborhood impacted by termination of a highway project can recover stability and experience new growth.



This photo shows an example of new construction on a vacant lot that was sold.