

# Resale of Surplus Right of Way Along I-485

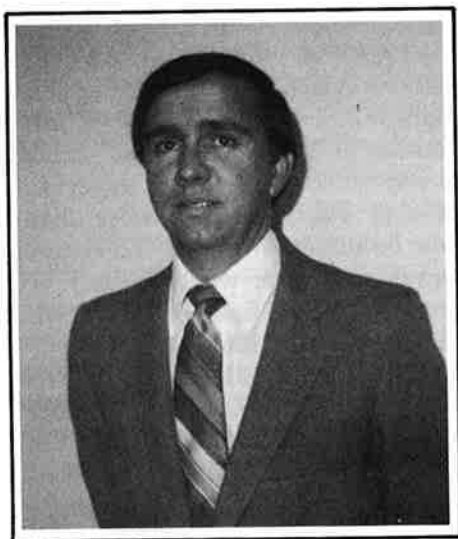
by H.D. Howard

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 Moye 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



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*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