

Acquisition Of Uneconomic Remnants

By David Cavanaugh

Implementation of the uneconomic remnant provision of the Uniform Act has been overlooked. This article discusses the continuing reluctance to implement this provision and suggests a new definition of aid implementation.

Background

A stated intention of Title III, Section 301 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) was to "expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts. . . ." To further this intent, Congress mandated that "Federal agencies shall to the greatest extent practicable under State law," offer to acquire any remaining tract considered to be an uneconomic remnant. As stated in Section 301(9):

If the acquisition of only part of a property would leave the owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property.¹

State agencies participating in a Federally assisted project must comply in accordance with assurances submitted to the Federal agency under Section 305 of the Act. These assurances mandate compliance unless specifically prohibited by State Law.

The uneconomic remnant provision of the Uniform Act was a result of agencies only acquiring property considered essential for construction of the public improvement. This resulted in numerous partial acquisitions; often leaving owners with property having little utility. Agency's responsibility would be limited to payment of damages to the remainder caused by the project. Only rarely, in clearly identifiable cases were project limits altered to include residual tracts outside the construction limits. More often, however, right-of-way limits were drawn to reduce acquisition and relocation costs with little consideration of the project impact on the owner's continued use of the remaining property.

Identification of uneconomic remnants involves recognition of what constitutes a "taking" requiring payment of just compensation. In the broad sense of the term, a "taking" is any substantial interference with the owner's right to use, enjoy, or dispose of property. If acquisition of the various interests in property is so pervasive as to render the remaining property useless to the owner, a taking has occurred. Clear examples include the acquisition of property itself or *loss of access* rights to remaining property. However, in other instances, a "taking" is less apparent. This occurs when the property is reduced in size or access to the remnant has been limited to such a degree that it has destroyed the continued use of the property by the owner. In those instances, Congress directed that the acquiring agency make an offer and that such a "taking" would not occur without consent of the owner.

To encourage agency consideration of potential project impacts which may constitute a taking of remaining property, Congress provided an exemption to the general rule of nonrecovery for litigation expenses in condemnation cases. Under Section 304 of the Uniform Act, acquiring agencies are required to pay reasonable legal, appraisal, and engineering fees incurred when an owner successfully brings an action in the nature of inverse condemnation and obtains an award of compensation. This provision imposes a potentially costly sanction on acquiring agencies that should be considered when determining uneconomic remnants on Federally assisted projects.

Definition

Congress recognized that the term "uneconomic remnant" may result in inconsistent implementation by acquiring agencies. Consequently, consideration was given to a definition presented to the Committee on Public Works who were reexamining needed changes in Federal property acquisition policy. The following definition was suggested by J. E. Moody, Deputy Administrator, General Services Administration:

The term "uneconomic remnant" means that portion of an ownership remaining after acquisition, the retention

of which provides no benefit to the owner because of difficulty of access, a changed Highest and Best Use, remoteness or any other reason resulting in burdening the owner thereof with expenses or responsibilities not commensurate with retention of such ownership.²

The proposed definition emphasized "no benefit to the owner" or "costs associated with burdening the owner." It was not intended that value to some potential purchaser or some nominal amount be established for determining an uneconomic remnant. Nor was small size or shape a necessary requirement. Instead, Congress sought to establish a general policy standard that an acquiring agency offer to acquire any property whose continued use by the owner was terminated or extremely limited by the public project. As noted in the Committee Study which initially proposed inclusion of this provision, an agency "should take human consideration as well as engineering and other factors into account in fixing project boundaries."³

To facilitate uniform implementation among the Federal agencies, the Relocation Assistance Implementation Committee (RAIC) was established in January 1972 by the Office of Management and Budget. Although agreements approved by the committee were not binding on the agencies represented, they did represent a consensus of opinion on many legal and procedural differences between the Federal agencies. In March 1973, the committee adopted the following definition:

"A parcel of land remaining in fee ownership as a result of a partial ac-

²Testimony presented by J. E. Moody, September 12, 1968, to the Committee on Public Works.

³Reference was made to a specific case in which a town was acquired for a reservoir project isolating an elderly woman and her daughter on a 15-acre tract which adjoined the former town. "Study of Compensation and Assistance for Persons Affected by Real Property Acquisition in Federal and Federally Assisted Programs." December 12, 1964.

¹"Entire property has been interpreted to apply only to the uneconomic remnant(s). For example, the acquiring agency must offer to acquire a 3-acre landlocked tract severed from a 240-acre remaining wheat farm."

quisition of the property and which has little or no utility or value to the owner."⁴

The provision of the Uniform Act only mandates that the acquiring agency offer to acquire uneconomic remnants. Therefore, identification of uneconomic remnants is left to the acquiring agency—the option of selling or retaining it is decided by the owner. Disagreement as to value and power to condemn must be settled in accordance with applicable State law.

The Relocation Advisory Implementation Committee did not intend to limit uneconomic remnants to land only. "Land" and "parcel" were commonplace terms used by committee members to include land as well as buildings. The primary issue they confronted was "did an uneconomic remnant refer to a remaining parcel having little or no value to the owner or must it have little or no value to any potential buyer in the open market?"

In a letter dated June 12, 1974, from Roy Bowman, Legal and Procedural Differences Subcommittee, the problem was clearly set forth.

The key difference occurs when a parcel's present use is altered or destroyed by the taking thus giving it little or no value to the present owner, but the land may still have value on the open market to a different buyer for an alternate use. The parcel would have value but only if sold on the open market, not for its continued use by the owner.⁵

The definition adopted by the Relocation Advisory Implementation Committee did not establish an easy standard for implementation. "Little or no utility or value to the owner" did not provide a relative standard that could be uniformly applied. Often, it was construed that if the remaining tract had *some* value it was not an uneconomic remnant.

The following definition sets a more practical standard for uneconomic remnants.

⁴Letter dated March 30, 1971, from Roy H. Bowman, Chairman, Legal and Procedural Differences Subcommittee to Joseph D. Cohen, Chairman, Relocation Assistance Implementation Committee Working Group.

⁵Letter dated June 12, 1974, from Roy Bowman to Henry A. Pike, Legal Coordinator, Relocation Assistance Implementation Committee Working Group.

A remaining property which has no utility to the owner for continuation of its present use.

Although similar to the RAIC definition, emphasis is placed on termination of the owner's present use as a result of the partial acquisition. "Little value or utility" is replaced by a more easily discernible standard—the likelihood that the taking would terminate the present use. This standard is more easily supported by an analysis of market data including zoning, likelihood of rezoning, compatible nearby land use, and comparable sales data which reflect location and physical characteristics considered essential for continuation of the property's present use.

There are four types of uneconomic remnants: Landlocked remainders; physically isolated remainders; remaining properties that no longer conform to existing zoning; remaining property which cannot accommodate reestablishment of the owner's existing use.

Implicit in each is the burdening effect of continued ownership by the affected property owner. If the owner accepts the agency's offer, that burden is alleviated providing the full measure of just compensation.

Summary

Implementation of the uneconomic remnant provision has been slow. This has been due to many agencies' unwillingness to acquire any additional property not essential for the project. Also, reliance on the market value standard for determining what is uneconomic has limited the benefits intended by Congress.

Uneconomic remnants result from the affects of the project *terminating* the existing use of the remaining property. This definition can be easily understood by agency officials and appraisers. Better identification would improve implementation and relieve the burdening effects of continued ownership. At the same time, offers to acquire may reduce "knotty" acquisition problems and provide opportunities for public use of remnants consistent with local development.

Right of Way Deadlines

Nov. 20, 1980
Jan. 20, 1981
March 20, 1981

February Issue
April Issue
June Issue

Buck Webb Succumbs

Mr. W.H. Webb, Jr., SR/WA, has passed away. Mr. Webb was a longtime member, friend, and supporter of Carolinas Chapter No. 31 of the International Right of Way Association. He believed in the ideas of the International Right of Way Association and supported its Code of Ethics. Mr. Webb retired as Manager of Right-of-Way from the N.C. Department of Transportation at the end of December, 1973. As Manager of Right-of-Way he strongly supported Carolinas Chapter 31 and was responsible for N.C. Department of Transportation Right-of-Way Branch employees attending seminars and educational opportunities offered by the Chapter. The International Right of Way Association, especially Carolinas Chapter No. 31, will miss its association with Mr. W.H. (Buck) Webb, Jr.

Future Seminar Sites

1981—June 21–25

27th Annual International Educational Seminar
Red Lion Inn/Sea Tac
Seattle, Washington
Host: Chapter 4

1982—June 13–17

28th Annual International Educational Seminar
MGM Hotel
Reno, Nevada
Host: Chapter 46

1983—June 19–24

29th Annual International Educational Seminar
Albuquerque, New Mexico
Host: Chapter 53

1984—June 17–22

30th International Educational Seminar
Disneyland Hotel
Anaheim, California
Host: Chapter 1

1985—June 15–20

31st International Educational Seminar
Opryland Hotel
Nashville, Tennessee
Host: Chapter 32