

Lidding of Right of Way Leads to Successful Lease

by Robert F. Peters

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Last issue, RIGHT OF WAY carried a news item that reported WSDOT coming to an agreement with 6th & Columbia Associates, enabling the firm to utilize an Interstate right-of-way through lidding. Here are the details of that agreement.

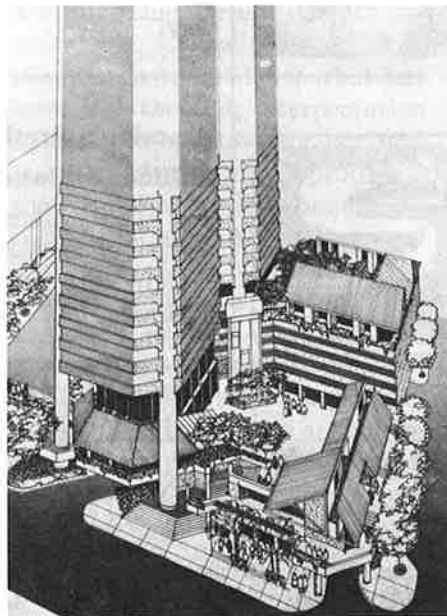
In 1975 the then Washington State Department of Highways, now Washington State Department of Transportation (WSDOT), inventoried sites statewide which were located within operating right-of-way limits and appeared to have multiple use potential. Among sites reviewed was a parcel westerly of I-5 in Seattle. The site is bordered by 5th and 6th Avenues, and Cherry and Columbia Streets (see Figure 1).

WSDOT had acquired three quarters of this block for construction of the Interstate 5 Cherry Street reversible ramps — a lane currently used for transit and carpools. The tunnel was constructed and the "left over" area is currently being maintained by the city as a park. The site appeared to the inventory team to have potential as a commercial site if lidded.

In 1978, 6th & Columbia Associates, a local development group, entered the scene. 6th & Columbia Associates owns the remaining quarter block on which two vacant apartment buildings were located. 6th & Columbia Associates proposed

tearing down its obsolete buildings and consolidating the block via a lease or purchase of the WSDOT right of way for a high rise office complex. 6th & Columbia Associates contacted WSDOT to determine whether WSDOT might be willing to make the site available for development and under what general conditions.

The first decision required was whether to lease or to sell. As an incentive to enhancing the multiple use of Federally funded highway



Preliminary study of high-rise that incorporates both ramps.

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right of way, the Federal Highway Administration allows states to retain all revenue generated under "airspace" lease. (The FHWA definition of airspace is any space within the operating right of way limits, not merely above or below the highway).

Had WSDOT chosen to sell the right of way to the developer and retain only an easement, the Federal Highway Administration would have required reimbursement in the same ratio as acquisition funds were contributed, in this case 90 percent. This question was therefore quickly answered. Realistically, there would be little incentive for such projects if the return were only 10 percent to states.

Upon receiving a favorable WSDOT reaction to the lease concept, 6th & Columbia's consultants prepared preliminary plans for evaluation by the City of Seattle. The problem was complex: Would construction of a lid over the public right of way itself create more lot area from which development rights might be calculated? Existing ordinances did not contemplate lidding of rights of way. It was determined by Director's interpretation of the Seattle Municipal Code dated October 8, 1981 that lidding of highway

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right of way could create development rights where such lids had the same utility as the underlying land. It was also determined that lidding could be used only to "re-create" platted lots and blocks which existed before the highway construction. Lidding could not be used to join two blocks for the purpose of creating development rights which might be transferred from one block to the other. Further, the city determined that under an existing ordinance requiring replacement of low income housing, 6th & Columbia would be required to provide a number of units of low income housing, or to pay a penalty in the form of a demolition license. This choice has not been made as yet.

After several years of preliminary negotiation, primarily between 6th and Columbia and the City of Seattle, 6th & Columbia's project proposal was taking shape. The developer had to meet the city alone in this issue, since WSDOT's policy is to refrain from attempting to influence local municipalities in land use

matters.

The proposal under consideration centers on a high rise office building of approximately 50 to 70 stories. Retail shops would be located on a public plaza which in part would serve as a lid over the freeway ramp. On site parking is proposed in a basement parking garage and in a parking garage located on the plaza. There would be more usable public open space in the new development than was available before. 3D/International has been project architect, while the architectural firm of Bassetti, Norton, Metler has been responsible for project design.

In late 1981, the serious negotiations between WSDOT and the developer were begun. A core team of WSDOT negotiators, including two state assistant attorneys general and myself, was formed. A secondary support team was formed, comprised of key district right of way personnel and engineers as well as Headquarters staff. Key engineers were directly involved as resource people in negotiating ses-

sions at such times as their respective areas of responsibility were the subject of discussion. Principally, WSDOT structural and soils engineers had greatest involvement among this group. All divisions which were to have a review interest were kept advised of progress and asked for review comments at progress points throughout negotiations.

Negotiating this agreement was a rewarding experience for all concerned. In recent years, WSDOT has come under very progressive management. Proposals like this one which once might have been discouraged are heard and weighed. The positive attitude which has prevailed throughout on the part of management, staff and the developer was that the project was of great general benefit and that the developer and WSDOT were partners — not adversaries — in bringing it about. This philosophy reduced negotiations to "simple" problem solving—the "what ifs."

Perhaps surprisingly, there was a great deal of mutual concern for the

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Evaluation of Severance Damages

other party's interest throughout. This concern was an important factor in this successful negotiation.

Upon completion of negotiations, the negotiating team had developed a complete option to lease with the final lease attached as part of the option. This is a concept WSDOT has been moving toward for some years and one which was helped along by the IRWA Course 701 property management leasing.

At this stage, WSDOT has offered and committed to lease, subject to review and approval of the developer's plans, subject to the developer's securing all necessary permits and approvals, and subject to his presenting WSDOT evidence of his ability to finance the project. The terms of the lease chiefly include (1) reservation by the State of a tunnel corridor to assure ongoing integrity of the highway facility; (2) a term of 77 years; and last but not least, (3) payment of \$745,000 in rent annually when the project is complete. In addition to rent, the lease will generate 12 percent Leasehold Excise Tax, an "in lieu of" Real Estate Tax.

The appraisal was performed by Keith Riely, MAI, CRE, of Shorett and Riely based in Seattle. Essentially, the entire parcel was appraised as one building site. Deductions were made for the housing demolition penalty and for the cost to the developer of constructing the tunnel which will then be accepted by WSDOT for ongoing mainte-

nance. The penalties were prorated according to each party's ownership. The resultant document and opinion of value served as a basis for further rent negotiation.

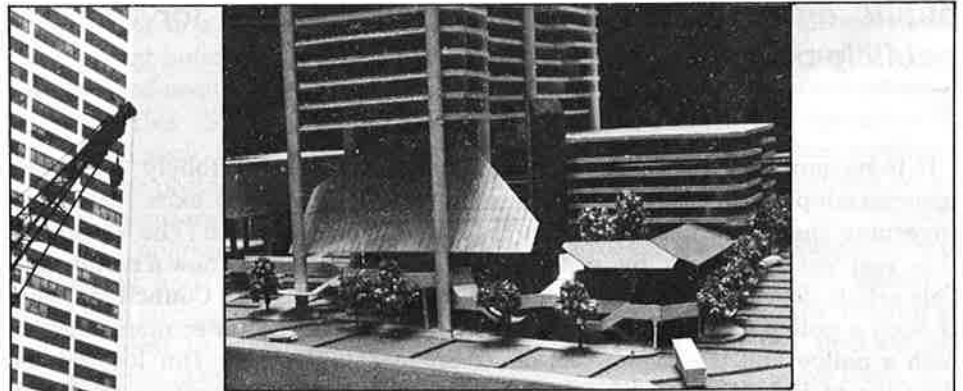
We expect to begin reviewing the developer's advanced plans shortly under the three-year option. A task force of representatives of those WSDOT disciplines directly interested in the project has been formed. Briefings are planned periodically, and direct communication between the developer's consultants and their counterparts within the agency is being encouraged to reduce costs to both parties and facilitate design.

While we realize we will probably

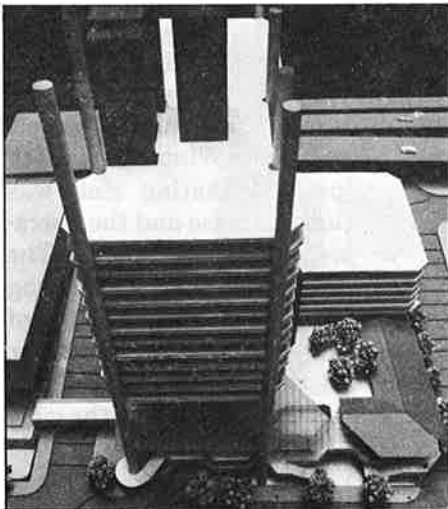
have problems to resolve before and even after the project is built and occupied, this agency is genuinely confident — even enthusiastic. WSDOT's staff is looking forward to the opportunity to broaden its horizons beyond routine highway design problems.

Oh yes, to illustrate this agency's progress in recognition of its real estate resource, the site in question initially was rejected from that 1975 inventory, since it obviously had no potential!

Inset: Early study model. Note truck entering ramp. Parking garage shown atop deck at right.



All photos and graphics by author.



The site. A bus is travelling south on 5th Avenue. Cherry runs uphill at right of project. I-5 is the elevated structure in midground. The developers vacant brick apartment buildings are above ramp.