

Tenant Owned Improvements Revisited

by Dick Pyatt

The novelty and complexity of acquisitions involving tenant owned improvements compound the chance of error and owner/tenant complications.

Acquisition of tenant owned improvements is required by the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970. The following article is a synopsis of the Nevada Department of Transportation's experience in developing a policy and procedure to implement this aspect of the Act of 1970.

Acquisition of tenant owned improvements seems to have four distinct phases:

1. Discovery phase.
2. Preappraisal phase.
3. Appraisal phase.
4. Negotiation phase.

Discovery Phase

The discovery phase takes place early in the overall acquisition process. For the Nevada Department of Transportation, it seems to be more convenient just prior to requesting permission from the local office of the FHWA to appraise and acquire. We have found that properties with tenant owned improvements, on occasion, tend to "fall through the cracks", and the fact that tenant owned improvements exist on a particular parcel is not discovered until later on in the acquisition. This discovery phase consists of simply identifying those parcels with tenant owned improvements on them

and reporting this fact to Right-of-Way Headquarters in Carson City prior to requesting permission to appraise and acquire. This requirement puts the District Right-of-Way Office on notice as to which parcels in the project contain tenant owned improvements.

Preappraisal Phase

The second phase in the acquisition of a parcel containing tenant owned improvements is the preappraisal phase. This phase consists of the Department designating an agent to meet with the fee owner and tenant or tenants together or separately to explain the concept of tenant owned improvements.

At the conclusion of this explanation, the agent asks the parties to supply an inventory of those items that they consider tenant owned. Agreement and delivery of this inventory is given a specified period of time. The completed inventory must contain a certification of ownership from the tenant or tenants and a release of interest statement from the fee owner.

The receipt of this inventory does not require the Department to acquire all the items of the agreed upon inventory. Once the completed inventory has been received, it is reviewed by the agent, the assigned re-

Richard R. Pyatt is Staff Specialist of Appraisal and Negotiations for the State of Nevada Department of Transportation. Pyatt is a member of Sierra Nevada Chapter 46, exemplary hosts of the 1982 International Educational Seminar held in Reno, Nevada.

viewer, and the District Supervisory Right-of-Way Agent. Only those items that meet the Department's definition of tenant owned improvements are allowed to remain on the list.

Appraisal Phase

The approved inventory is supplied to the assigned appraiser. In those cases in which specialty items need to be valued, a specialty appraisal may be ordered by the Department. Upon completion, the specialty report is supplied to the real property appraiser for inclusion in his report. The appraiser is instructed to provide an inventory of items that contribute to the overall value of the real estate. The sum of the fee owner's portion, and the tenant's portion cannot equal more than the value of the whole property. (An exception to this statement would be when salvage value exceeded contributory value.) In estimating the value of the various parts, the State of Nevada does not compensate for leasehold/lease fee values, however, the appraiser can consider the terms contained in the lease. Again, that is not to say that the appraiser is to value leasehold/lease fee, but he is to consider the terms contained in the lease, i.e., the total term of the lease and the re-

maining term specifically.

The appraiser's final estimate of value is divided into the fee owner's portion and the tenant's portion. The inventory of items contributing to the overall value are likewise segregated. The final appraisal document is sent to review. Review follows their normal review procedure, except that they check the items claimed as tenant owned improvements to insure they comply with the Department's definition of tenant owned improvements, and that double payment does not occur. The finalized report is turned over to negotiations through the normal channels.

Negotiation's Phase

For a number of reasons, the agent involved in the preappraisal phase should probably be the assigned negotiating agent. The assigned negotiating agent must keep in mind that the tenant has all the same rights as the fee owner. Therefore, the negotiator must prepare a negotiations package for each of the tenants concerned. This includes a letter of offer, a public highway agreement, an approved inventory of tenant owned improvements to be acquired, and a title transfer document, i.e., Quitclaim Deed, or bill of sale.

Barring any kind of unforeseen problem, the negotiations and closing should be handled as any other acquisition.

Tenant Owned Improvement Complications

The novelty and complexity of acquisitions involving tenant owned improvements compounds the chance of error and owner/tenant complications.

One of the first areas for potential errors is in the discovery phase. Specifically, the Right-of-Way District concerned fails to discover the existence of tenant owned improvements on a particular parcel. This error is not normally discovered until the appraisal phase of acquisition. The discovery, at this late date, requires that the appraisal of the property in progress be placed on

hold while the preappraisal obligations are fulfilled. Once this phase has been accomplished, it must be recognized that the appraisal assignment has changed and will require a change in the appraisal instructions and possibly renegotiations of the appraisal fee.

There are a number of complications that can arise during the preappraisal phase. As mentioned earlier, the concept of tenant owned improvements is relatively new. Many leases contain clauses which state that at the termination of the lease all improvements revert to the lessor. In conjunction with this thought, most fee owners feel very strongly on this point. The State must acquire title from the fee owner first, and secondly, the tenant. No progress on the acquisition can be made without the fee owners accepting or rejecting an offer. Therefore, in the case of a failure to gain an understanding of the tenant owned improvements concept, the Department must work solely with the fee owner.

- A. The tenant or owner refuses to accept the tenant owned improvement concept in general.
- B. The owner or tenant refuses to provide a list of tenant owned improvements.
- C. The owner and tenant fail to come to agreement on the inventory of tenant owned improvements.

The Nevada Department of Transportation must first come to an agreement or understanding with the fee owner on tenant owned improvements. This agreement is a key to the progress and success of the total acquisition. Therefore, the assigned agent must insure that he or she has adequately explained the concept of tenant owned improvements to all parties concerned. If agreement cannot be obtained between the parties, the Nevada Department of Transportation has no alternative but to conduct the remaining negotiations with the fee owner. If agreement cannot be reached, the acquisition is headed for possible condemnation. The lack

DICK AVAZIAN
GENE SCHMOLL

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NATIONAL FIELD SERVICE CORP
TUXEDO SQUARE, TUXEDO, NY 10987 914-351-5128