

NRHP Acquisition Scenario - Handling of Total Compensation

Requested By: State of Florida

Survey Deadline: July 20, 2012

The Florida Department of Transportation poses the following Acquisition question:

Background: A proposed road improvement project will require the partial acquisition of a church structure currently listed in the National Register of Historic Places. The remainder value of the church structure will be zero with just compensation estimated at \$977,700. An offer to acquire the uneconomic remnant will also be made totaling \$1,143,000. The cost to demolish the remaining structure is estimated at \$71,800 and the cost to move the church in its entirety back on the remaining land is estimated at \$417,500.

Negotiations have not been initiated with the owner and it is unknown whether the owner will want to: 1) retain the building and move it back on the remaining land, 2) require the department to acquire the needed part of the property and take the estimate of just compensation and demolish the remaining portion, or 3) opt to sell the uneconomic remnant to the department and the department take possession of the church. We anticipate the first option to be selected.

Question: Given this scenario and assuming the owners select to retain the church building, have you encountered similar situations and, if so, how was total compensation handled given the estimate of just compensation and the cost to move the church back on the remaining land?

ALABAMA

ALASKA

ARIZONA

Arizona DOT offers:

Unquestionably, the initial offer should be restricted to the 'move the church building' option. It appears to be what the owner wants, as well as the most cost effective solution for Florida DOT. It's unknown if the \$417,500 figure includes permits, costs to revamp building mechanical systems, and costs to reconnect utilities. These costs, along with unknown others should be part of the offer as a cost to cure.

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In Iowa, we have never encountered a situation exactly like this. With the church being on the National Register of Historic Places, our process in dealing with 4(f) properties requires extensive public involvement with the property owner and what is ultimately going to happen to the property is documented in the 4(f) document.

We have dealt with similar situations involving non 4(f) properties. In those situations, given the scenario that the owners want to move a structure back on the remaining land, we normally would buy what we need for the project paying the just compensation and then salvage the structure back to the property owner. The owner is then responsible for moving the structure. There could be some relocation assistance payments depending on the type of structure being moved.

So in this case, we would pay them the just compensation amount minus the salvage value (You state that it is \$0) $\$977,700 - \$0 = \$977,700$. The owner would then be responsible for and have to pay for moving the structure (\$417,500). So the owner would net $\$977,700 - \$0 - \$417,500 = \$560,200$ + any applicable relocation assistance payments.

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KANSAS
KENTUCKY

LOUISIANA

Since FDOT is acquiring or moving a church listed on the National Register, I presume they could not find a way to reengineer and avoid it altogether. It is my understanding that places on the register cannot be destroyed or substantially altered. In light of the register status, option 1 would be best for all parties involved in that the owner may ensure the church will remain in existence, and the state would not have disposition concerns. I hope it is exercised.

As you are no doubt well aware:

In accordance with Federal and Louisiana laws, LADOTD has developed procedures by which such matters are handled. A "retention value" is estimated for each improvement on any parcel to be acquired by the Department equal to approximately 75% (or whatever percentage is appropriate) of the appraised value of the improvement only, excluding value of the required parcel. And an alternate offer allowing for retention and removal of the improvement at the expense of the owner is presented to the owner at the initiation of negotiations on the parcel. Since the Department is not acquiring ownership of the church, payment of retention value for an improvement not being acquired allows for compensation for the expense of moving the improvement and other possible costs.

EXAMPLE:

Since the stated case did not separate value of the required parcel from the value for the church building, let's assume the value on the church (improvement only) was set at \$700,000.00. Retention value would then be set at \$525,000.00 ($\$700,000.00 \times .75 = \$525,000.00$) and the Parcel value is \$277,700.00 ($\$977,700.00 - \$700,000.00 = \$277,700.00$.) The alternate retention offer under option 1 would then be the value of the parcel plus the retention value of the improvement or \$802,700.00 ($\$277,700.00 + \$525,000.00$.) Option 1 allows the owner to retain ownership of the improvement with the expense to move it reimbursed, and the Department pays significantly less for the parcel with improvements.

The retention value of \$525,000.00 would remain the same if the owner elected to sell the remainder and move the church to another location; however, I don't know why the remainder was declared uneconomic if it is capable of accommodating relocation of the church. In Louisiana, uneconomic status is derived from its low or no value on the market and not from low or no value to the owner.

Please know the above does not include any possible relocation assistance benefits, and I am reluctant to address disposition of the improvements without knowledge of Florida law or jurisprudence. If the national register status prevents demolition and Department purchases the church, it will be responsible to move it, unless it can find another interested group. I hope this has been helpful.

Patrick Duet, Patrick.Duet@LA.GOV

We have had minor types of takings such as this. If there is sufficient room to move the structure back, plus any other curative cost, and still comply with all zoning then that is the route we would take. Our jurisprudence calls for us to cure on sight first if all possible. Of course we have compensation issues that go beyond the real estate. Even under that scenario cure on the remainder is the ultimate goal.

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Without having all of the necessary information, especially the requirements of the environmental clearance associated with the project, it's difficult to understand all of the details. With the structure being on the National Register I would assume that the environmental document would already have guidance as to how to approach the situation; avoidance, mitigation, preservation. There must be no other options except to impact the structure. A big question; if there is an option to move the structure back on the remaining property, then is the remainder really uneconomic? We aren't being provided with sufficient information for a comprehensive response, but there appear to be two approaches;

- Make an offer for acquisition, including the uneconomic remainder. Negotiate a settlement that is amenable to both parties, if necessary revising the offer to address relocation of the structure rather than acquisition. Just compensation isn't full acquisition value and retention.
- Make an offer for a partial acquisition that includes the cost-to-cure of relocating the structure to the remainder. If the cost-to-cure approach is less than 50% of the value of the remainder

this is most likely how we would commence negotiations. I am sure that the FDOT doesn't want to be seen as demolishing a structure on the National Register.

The most important aspect may be how the discussion is approached when the offer is made. Be straight forward with the property owners and advise them that both or several approaches were discussed and negotiations are just that, negotiations, not take it or leave it offers. The other aspect is that FDOT will have to be in a position to condemn based on one of the options should negotiations break down.

Sincerely,
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OREGON

PENNSYLVANIA

PUERTO RICO

RHODE ISLAND

SOUTH CAROLINA

We have not had that scenario in South Carolina; however, in looking at the options available to both FDOT and the landowner one possible solution might be to pay the offer of just compensation (\$977,000) and consider an administrative adjustment up to the \$417,500 for settlement purposes, which allows for the moving of the structure by the landowner. Given the historical significance of the building this may be a viable solution not only to the R/W acquisition, but also may address any environmental and/or cultural concerns in the EIS.

Kenneth Feaster, Right-of-Way Director

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