



State of Louisiana

**OFFICE OF
STATE INSPECTOR GENERAL**

**DOTD OVERPAYMENT ON
KINDER PROPERTY**

Report by

Inspector General Bill Lynch

Prepared for

Governor M. J. "Mike" Foster, Jr.

October 25, 2001

File No. 1-01-0050



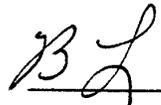
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DOTD OVERPAYMENT ON KINDER PROPERTY

The Department of Transportation and Development overpaid five individuals \$496,286 on property acquired on an improvement project on U.S. Highway 165 in Kinder. The overpayment was the result of a communication failure between the department's Real Estate Section and its Legal Section.

Background

The Real Estate Section of DOTD is responsible for right of way acquisition, relocation assistance and utility relocation for state and federal highways.

As part of an improvement project for Highway 165, a request was made on March 20, 1998, to have appraisals for required right-of-way on property owned by the Town of Kinder. A contract was executed on April 27, 1998, with two independent appraisers. The appraisal and negotiating process for purchase of land, improvements, and full extent of owner's loss continued until Feb. 29, 2000, when DOTD signed a sale agreement with the Town of Kinder.

The Town of Kinder was paid \$398,828 for seven parcels of land totaling 2.26 acres (98,454 square feet) of land by DOTD as follows:

Chart 1 Land Area By Parcel

Parcel	Square Feet	Acres
3-2	23,724.70	0.545
3-4	24,072.90	0.553
4-2	23,519.30	0.540
4-5	18,970.50	0.436
5-2	4,522.40	0.104
5-4	1,563.90	0.036
5-4-C-1	2,077.30	0.048
Total	98,451.00	2.262

The Town of Kinder leased this property to private individuals who constructed improvements on the land. Because some of the parcels were occupied by more than one person, DOTD further subdivided the four parcels into 10 sub-parcels, one for each individual lessee. For example parcel 3-2 was occupied by three individuals who each had improvements on the property. That parcel was subdivided into sub-parcels 3-2-A, 3-2-B and 3-2-C by DOTD. Four parcels were subleased to individuals who operated businesses from the improvements constructed on this property.

Following are details on the lease and sublease of the land owned by the Town of Kinder and privately owned improvements thereon:

Chart 2 Lease and Sublease Details

Parcel	Lease Signed	Lease Term (Years)	Total Paid per Year	Front Footage	Price Per Front Footage	Sublease of Improvements		
						Lease Signed	Lease Term (Years)	Total Paid per Year
3-2-A	07/13/1951	25	\$100	N/A	N/A	N/A	N/A	N/A
3-2-B	11/02/1992	10	\$250	100	\$2.50	N/A	N/A	N/A
3-2-C	11/02/1992	10	\$750	300	\$2.50	N/A	N/A	N/A
3-4-A	03/02/1979	20	\$316	180	\$2.00	N/A	N/A	N/A
3-4-C	08/05/1986	25	\$1,260	N/A	N/A	05/15/1992	10	\$8,400
4-2-A	1960	N/A	\$300	N/A	N/A	N/A	Year to Year	\$2,400
4-2-B*	N/A	N/A	\$0	N/A	N/A	N/A	N/A	N/A
4-2-C	05/10/1986	10	\$500	200	\$2.50	N/A	N/A	N/A
4-2-D	01/03/1950	50	\$75	N/A	N/A	01/01/1998	1	\$4,800
4-5-A	11/02/1992	10	\$250	100	\$2.50	05/15/1995	3	\$18,000

*Agape Lighthouse Church was not charged to use the land by the Town of Kinder.

Full Extent of Owner's Loss

Under Louisiana law, when the state takes property from a property owner, the property owner must be compensated for the full extent of his loss. Full extent is not limited to the market value of the property taken. In Department of Highways v. Constant, a leading case involving the expropriation of property from a property owner who operated a business on the property, the Louisiana Supreme Court concluded that the owner must be

put in “equivalent financial circumstances” after the taking. That is, the owner must be left in as good a financial position as he would have been had his property not been taken.

Where the property taken is unique and of indispensable value to the property owner’s business, calculation of full extent of the loss may have to take into account factors such as the cost of restoring a business’s facilities to the condition they were in prior to the taking or the replacement cost of new facilities, even if such costs exceed the capitalized value of the business.

However, Department of Highways v. Constant provides limited directions on how the “full extent” requirement is applied in other cases, and courts have provided only limited guidance.

DOTD interprets the law and related cases as requiring full extent compensation to a business owner only where the business owner owns, rather than leases, the property in which the business is housed. In the case of the four sub-parcels discussed in this report, the land was owned by the city and the buildings and improvements were owned by private individuals who in turn leased the property to the business owners.

Charts

Charts 3 and 4 contain information taken from the appraisals. Chart 3 shows the amount paid for improvements and full extent of owner’s loss for all parcels. Also included is the square footage area of the improvements. The shaded areas are parcels which full extent was paid in error. Chart 4 gives a description of the physical condition of the building including the condition of the building, quality of materials and workmanship and estimated remaining economic life of the building.

The difference between the estimated cost for new improvements and land less the value of the land and depreciated value of the improvements was used as a factor by the department to determine full extent of owner’s loss.

Full extent is not a precise calculation. Many factors are taken into account such as condition of the improvements acquired and remaining economic life of the building. Thus, the owner of a large building may be paid less than the owner of a smaller building due to the differing conditions and quality of the structure. While a property owner with less quality improvements ordinarily receives less for the value of a building, under full extent he may receive more money to bring the new location to the same standard.

CHART 3 PAYMENTS FOR AND SQUARE FOOTAGE OF IMPROVEMENTS

Improvements Cost:	Parcel 3-2-A	Parcel 3-2-B	Parcel 3-2-C	Parcel 3-4-A	Parcel 3-4-C	Parcel 4-2-A	Parcel 4-2-B	Parcel 4-2-C	Parcel 4-2-D	Parcel 4-5-A	Total
Building(s)	\$59,543	\$51,900	\$47,086	\$144,800	\$52,793	\$65,669	\$15,006	\$24,266	\$63,197	\$84,469	\$608,729
Concrete			4,100	1,440	3,957				403	1,448	11,348
Gravel	4,950		8,688	760		1,556	769	250		1,013	17,986
Limestone		2,154									2,154
Sign				300				484	400	800	2,484
Sign Pipe				300							300
Steel Sink				500							500
Walk-in Cooler				5,000							5,000
Grease Trap				1,400							1,400
Total Improvements	\$64,493	\$54,054	\$59,874	\$154,500	\$56,750	\$67,725	\$15,775	\$25,000	\$64,000	\$87,730	\$649,901
Full Extent of Owner's Loss	136,413	33,856	75,500	188,000	94,078	140,300	41,200	69,750	207,763	54,145	1,041,005
Total Compensation	\$200,906	\$87,910	\$135,374	\$342,500	\$150,828	\$208,025	\$56,975	\$94,750	\$271,763	\$141,875	\$1,690,906

Lessees who incorrectly received full extent of owner's loss

\$94,078 \$140,300 \$207,763 \$54,145 \$496,286

Square Footage of Improvements

Building(s) Area	6,229.0	2,257.0	1,442.6	5,365.0	1,365.4	2,280.0	540.0	1,580.0	6,045.0	1,754.6
Concrete Surfacing		720.0	2,050.0	1,480.0	5,275.5			3,225.0	2,687.0	1,930.7
Gravel Surfacing	6,600.0	3,420.0		1,520.0		1,662.0	1,025.0			6,751.0
Asphalt Surfacing			6,947.0							
Cooler Enclosure					236.0					

CHART 4 DETAILS ON THE BUILDING ON EACH PARCEL OF LAND

Parcel	Square Feet of Land	Type of Use of Building:	Quality of Materials and Workmanship	Condition of Building:	Estimated Actual Age:	Estimated Effective Age:	Estimated Remaining Economical Life
3-2-A	14,175	Commercial warehouse/ retail use	Average	Fair to less than fair	49 years	33 years	7 years
3-2-B	4,950	Open commercial building/3 bay car wash use	Average	Fair	20 + years	18 years	12 years
3-2-C	9,040	Small convenience store	Average	Fair	20 + years	16 years	19 years
3-4-A	6,320	Commercial building/ retail use	Fair	Fair	30+ years	30 years	10 years
3-4-C	9,750	Convenience store	Fair	Fair	25 + years	18 years	17 years
4-2-A	6,300	Commercial building/ retail use	Average	Fair	30+ years	30 years	10 years
4-2-B	3,075	Commercial building/ institutional use	Fair	Fair	30+ years	34 years	6 years
4-2-C	8,200	Commercial building/ retail use	Average	Fair	30+ years	24 years	16 years
4-2-D	11,270	Commercial building/ retail use	Average	Fair	30+ years	28 years	7 years
4-5-A	18,970	Retail convenience store	Average	Good	19 years	15 years	20 years

Payment Error

Five owners of buildings and improvements were improperly paid \$496,286 for full extent of owner's loss due to a miscommunication between DOTD's Real Estate Section and its Legal Section. Compensation for full extent should have been paid only to those individuals who owned buildings and improvements and operated a business on those premises.

Full extent of owner's loss is defined as putting a business owner in as good a pecuniary position as he would have been had his business property not been taken.

According to DOTD officials, the U.S. Highway 165 right-of way acquisition in Kinder presented an unusual situation where the land, the improvements and the businesses were owned by three separate parties.

David Pourciau, DOTD Real Estate Appraisal Manager, said that based on advice from the DOTD Legal Section, the full extent factor was applied to all lessees, including non business owners.

Mr. Pourciau said based on conversations with Ed Michel, who was at the time in charge of condemnation law at DOTD for the southern portion of the state, the Real Estate Section made offers to individuals for improvements and full extent of owner's loss. The offers for improvements and full extent were accepted by the property owners.

After the offers for improvements and full extent were accepted by the owners, Bernie Malone, then an attorney with the DOTD Legal Section, informed the Real Estate Section that full extent should only be paid if the individual both owns the improvements and the business on the property.

After review of the process concerning the offer and acceptance by Mike Unkel, a non business owner of improvements, Sharon Lyles, DOTD Deputy Legal Counsel, said in a letter to James Dousay, DOTD Real Estate Administrator, that the improper payment for full extent was an error in interpreting law and not one in calculation. Ms. Lyles advised that if DOTD rescinded it's offer to Mr. Unkel, and if Mr. Unkel were to sue for breach of contract, DOTD would not likely prevail in court.

Mr. Michel said he does not recall telling Mr. Pourciau to apply full extent to all lessees of the Town of Kinder. Mr. Michel further stated, if Mr. Pourciau had requested an opinion on a whole project, he would have asked Mr. Pourciau to request an opinion in writing.

Following is a list of the individuals who received payments for full extent of owner's loss to which they were not due.

Parcel 3-4-C

Jack Karam	\$47,039.00	
Rose Marie Karam Abide	15,679.67	
David Karam	<u>31,359.33</u>	
		94,078.00

Parcel 4-2-A

Mike Unkel		140,300.00
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Parcel 4-2-D

Mike Unkel		207,763.00
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Parcel 4-5-A

Raymond and Patsy Croak		<u>54,145.00</u>
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Total Paid		<u><u>\$496,286.00</u></u>
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Conclusion:

1. Due to an error in communication between DOTD's Legal Section and its Real Estate Section, DOTD improperly paid five individuals \$496,286 for the full extent of the loss.

Recommendation:

1. DOTD should consider adopting guidelines that will ensure written legal opinions are prepared on issues of significant impact.

Management Response:

See attached.

BL/LS/rp
1-01-0050



M. J. "MIKE" FOSTER, JR.
GOVERNOR

STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
P. O. Box 94245
Baton Rouge, Louisiana 70804-9245



KAM K. MOVASSAGHI
SECRETARY

October 18, 2001

Mr. Bill Lynch
State Inspector General
P.O. Box 94095
Baton Rouge, LA 70804-9095

Dear Mr. Lynch:

This is in response to your report (File No. 1-01-0050). We concur with your findings and regret that the lack of communications resulted in an over compensation having been paid.

The Department intends to develop detailed procedures to safeguard against the potential for a reoccurrence. This will require the Department to promulgate rules in accordance with the Administrative Procedures Act. Work will begin immediately on these rules.

Thank you for the opportunity to respond and for bringing this matter to our attention.

Please call if I can be of additional service.

Sincerely,


Kam K. Movassaghi, Ph.D., P.E.
Secretary

KKM/JBj/fa

Cc: Mr. Rodney Braxton
Mr. William Temple
Mr. Larry Durant
Mr. Robert Boagni
Mr. James Dousay