

Excess Property Policy

Illinois Tollway

November 2015

ILLINOIS STATE TOLL HIGHWAY AUTHORITY

Land Acquisition

EXCESS REAL PROPERTY DECLARATION AND DISPOSAL

I. Authority:

The Tollway is empowered to dispose of excess real property or partial interests in real property by the Toll Highway Act. 605 ILSC 10/8(a). The Tollway's Trust Indenture (Amended and Restated May 31, 1999), provides that: "The Tollway may from time to time sell, exchange or otherwise dispose of any real property or release, relinquish or extinguish any interest in it as the Tollway by resolution shall declare is not needed in connection with the maintenance and operation of the Tollway System, and, in the judgment of the Tollway, will not in the future be needed for any foreseeable improvement to the Tollway System." (Trust Indenture, §708).

Definitions:

A. Disposal:

The transfer of a Tollway real property interest through the appropriate conveyance document.

B. Inter-Governmental Agreement (IGA)-Public Entity:

Occurs when the excess real property is to be transferred to another governmental entity. The property must be transferred for maintenance, liability shifting or other public purpose.

C. Public Purpose:

The use of land for a park, sidewalk, roadway, municipal utility or when supported by public policy. Public Purpose could also include consolidation of multiple parcels for a private development.

D. Private Party or Private Entity:

Sealed Bid Method:

This method applies when a private entity requests a parcel to be declared excess. Potential Disposal shall be by public sale - sealed bid method.

i) If there is a highest bidder, that bid and any contract related to that bid, shall be subject to Tollway Board of Directors' ("Board") approval. Where an excess property has been offered for public sale, and no bids have been received or no contract has been approved by the Board, alternative procedures may be recommended. Alternatives could include 1) offering the parcel a second time for public sale; 2) soliciting offers directly from owners of contiguous properties at the minimum bid amount; or 3) obtaining another appraisal. However, any such alternative disposal requires final approval by the Board.

ii) Excess real property will not be sold to a private party or other non-governmental entity for less than fair market value as determined by an Illinois Certified General Appraiser contracted by the Tollway.

iii) Anticipated disposals of the subject real property will follow a sealed bid process. The property will be advertised as provided by law. Advertising methods may include publication in a newspaper of general circulation or posting on the Tollway or Illinois Procurement Bulletin websites. In addition, the Tollway may posts signs on the property being offered for sale. Receipt and opening of bids will be handled by the Procurement Department consistent with State law and its usual practices. The bid opening date shall be scheduled to allow a reasonable time for prospective bidders to fully evaluate the property.

iv) The minimum acceptable bid shall be the amount of the Tollway's approved appraisal plus anticipated costs and shall be included in the advertisement. If the legal description of the excess property is not available to be included in the advertisement, sufficient information shall be included to allow potential purchasers to locate and identify the excess property. The notice to bidders for public sale shall, at a minimum, include the following information:

- a) Time, date and place for receiving bids;
- b) Description or address of the property to be sold;
- c) Required Deposit (there is a required deposit due from the bidder/ highest bidder; the amount thereof shall be set by the Tollway).

v) A deposit will be required from the successful bidder; the amount thereof shall be set by the Tollway. The required deposit shall be in the form of a certified check, cashier's check or money order and must be submitted within a reasonable amount of time following the completion of bidding. The deposit will be retained by the Tollway pending delivery of

the deed and closing of the transaction. The Tollway reserves the right to retain such deposit as liquidated damages in the event the successful bidder fails to complete the transaction through no fault of the Tollway.

E. Prior Ownership; Adjacent or Contiguous Property Owner:

When the Requestor is either the original owner(s) from whom the Tollway acquired the original parcel, or some portion thereof, now to be declared excess, or the Requestor owns the only adjacent or contiguous real property, the disposal of property to be declared as excess does not have to be by public sale - sealed bids. Disposal in that instance may be by direct sale. However, it must be for no less than the fair market value of the property as determined by a licensed real estate appraiser plus any costs of the disposal, and must be approved by the Board. Such a disposal shall follow the Informal Review, Formal Review and Declaration of Excess processes.

II. Purpose:

From time to time, the Tollway grants or sells excess properties to other governmental entities or individuals. To be fair and consistent, the Tollway is documenting its excess property and disposal policy. The Tollway will dispose of its real property in accordance with the procedures and practices outlined herein.

III. Policy Guidelines:

Real estate owned by the Tollway may be considered excess if:

- a. It has no current use for toll highway or appurtenant purposes;
- b. It has no presently planned use;
- c. There is no foreseeable improvement to the system which would require its use; and
- d. It is an uneconomic remnant (discussed below).

e. Any other public purpose

Excess real property may consist of 1) the “uneconomic remnant” of a larger parcel taken for a project; 2) a parcel rendered unnecessary by a change in design plans; 3) a parcel acquired for a project which was constructed and the parcel is no longer needed for Tollway purposes; 4) or the parcel is part of one or more contiguous parcels which, by virtue of changes in surrounding zoning or uses, is no longer needed for its original Tollway purpose.

If any of the above criteria have been satisfied and public policy favors the transfer, the property may be disposed of as excess.

IV. Identification of Potential Excess Properties:

Excess property may be identified in any one of several ways, which include, but are not limited to the following:

- a. Land Acquisition may review land acquisition holdings to identify potential excess properties. In addition, other departments or units within the Tollway may make inquiry about land owned by the Tollway, which they believe may be excess.
- b. Upon completion of Tollway projects or capital programs, an Intergovernmental Agreement “IGA” may require the transfer of portions of excess land to the governmental entity with jurisdiction over the parcel or that otherwise has a public purpose or use for the property.
- c. A private party or governmental entity may make a formal written inquiry as to the existence and availability of excess property at any specific area of the system.

V. Procedure:

A private party or governmental agency may make a formal written inquiry as to the availability of excess property in a specific area of land owned by the Tollway and whether it is available to be sold or transferred. Upon receipt of such a

request, Land Acquisition will evaluate the subject property and determine whether it could be considered excess property.

Private and public inquiries for excess property must be in writing and substantially include the following:

1. The name of the party submitting the written request;
2. The property interest to be acquired;
3. How the anticipated title is to be held;
4. The anticipated and intended use of the property; and finally,
5. Why transfer of the ownership to the requestor would be in the public interest.

In addition, the Tollway may require:

- 1) The title commitment showing the Tollway in title;
- 2) A survey showing the area in question;
- 3) An aerial map showing the area in question;
- 4) An economic impact analysis;
- 5) Letter of concurrence from jurisdictional entity where property is located;
- 6) Any other relevant materials.

Upon receipt of all required materials, Land Acquisition will then conduct its informal review of the application.

VI. Informal Review Process:

When potential excess is identified, an informal review will be conducted by Tollway's Land Acquisition Section ("Land Acquisition"). Land Acquisition's informal review of excess may include a review of some or all of the following considerations and documents:

- a. The requesting party's written request;
- b. An aerial map showing the area in question;
- c. Materials provided by the Requestor;

- d. Any relevant legacy / historical records (original land acquisition file);
- e. The Tollway's plat of highways;
- f. The Highway Beautification Act of 1965;
- g. A visual inspection of the area in question;
- h. Public policy considerations;
- i. A comparison between the survey provided by the Requestor and the Tollway's survey;
- j. Any special status or conditions associated with the property that require the declaration of the excess property be made subject to special conditions or limitation (see additional discussion below);
- k. local governmental entity concerns or considerations;
- l. Any other information that may have been requested by Land Acquisition.

Further, if the informal review has been initiated pursuant to a formal written inquiry by any private party, including a former owner of the property or the owner of contiguous property, the Requestor shall provide evidence of written notice to the municipality in which the property is located or the county, if the property is situated in an unincorporated area, of the request to have the property declared excess. The notice shall advise the municipality or county that certain property is being considered for designation as excess property, and in the event of an objection or concern, that the municipality or county advise Land Acquisition of its concern and any interest that it may have in the acquisition of the property.

VII. Disposal of Excess Property at the Completion of a Tollway Construction Project:

When the review is in conjunction with the completion of a capital program or project, the terms of an IGA may require the transfer of excess properties.

VIII. Covenants, Easements, Restrictions and Conditions:

Consideration will be made to address relevant or unique circumstances that make it advisable for the Tollway to make the declaration of excess subject to certain covenants, conditions, and restrictions and/or retain a lesser interest in the parcel. Examples of retained interests include, but are not limited to: an access control line, drainage or detention easement, a right of reverter if the parcel is not used for roadway purposes, an easement for maintenance purposes. In these instances, a recommendation will be made that the declaration of excess be “subject to” or that there is a “reservation” of a retained interest.

IX. Financial Consideration/Unjust Enrichment:

When a parcel is transferred to a governmental entity pursuant to the terms of an IGA for an amount less than fair market value, a provision will be included in the IGA requiring that in the event the property is ever transferred for a non-public purpose, that any financial gain in excess of the amount originally paid, if any, to the Tollway for the property will become payable to the Tollway.

X. Billboard Deed Limitations:

All excess requests recommended by Land Acquisition shall contain the following billboard restriction in the deed conveying the property: “Grantee, it’s successors and assigns agree not to build or cause to be built or erected upon the subject property any advertising sign or structure directed, whether in whole or part, to users or patrons on the adjacent toll highway including any structure that, in the opinion of the Chief Engineer of the Illinois State Toll Highway Authority, Grantor, would in any way interfere with the safe operation of the Illinois State Toll Highway Authority system.”

XI. Public Policy:

If the informal review reveals that the Tollway has a current or contemplated use for the subject property, or that there is another readily apparent reason for retaining the subject property (for example the Tollway staff and or consulting engineer does not recommend excess declaration), Land Acquisition shall respond to the Requestor indicating that the subject property is not available to be declared excess.

XII. Formal Review by the Excess Committee:

At the conclusion of its Informal Review, if it is recommended that the property be declared excess, Land Acquisition will prepare a package addressed to the Excess Committee (sometimes referred to as the “Committee”) that includes a memo identifying the excess property and all relevant background information about the parcel including why the parcel was originally acquired. The Committee shall be established by the Chief Engineer. At a minimum, the Committee membership shall include the Deputy Chief of Engineering for Planning, the General Manager of Maintenance, the Tollway’s Consulting Engineer; and any other individual(s) deemed necessary or appropriate by the Chief Engineer. The Committee will determine whether to recommend to the Board that the property be declared excess.

XIII. Plats of Survey, Appraisal, and other Documents that may be Necessary for Transfer:

In the event the property is declared excess, Land Acquisition may obtain a survey and/or an appraisal in the event one has not already been provided. Any such costs incurred by the Tollway will be passed onto the Requestor or the highest bidder.

XIV. Declaration of Excess:

When the Excess Committee finds the subject property has no present, contemplated, or foreseeable use for the Tollway system, is an uneconomic remnant, and that there is no other readily apparent reason precluding disposal,

the Committee may recommend that the property be declared excess and prepare an Approval for Excess Declaration.

If circumstances warrant, the Declaration of Excess may be subject to certain covenants, conditions, restrictions and/or the Tollway may retain an interest in the parcel (e.g., an access control line, drainage or detention easement, reverter, etc.).

XV. Tollway Board Approval:

Pursuant to the terms and requirements of the Tollway's Trust Indenture, final review and approval of the disposal of excess property must be made by the Board.

XVI. Federal Approval:

In the event that the property at issue was originally purchased with federal funds and/or to the extent required by federal law, the consent or approval of the Federal Highway Administration or other federal agency may be required to complete the property transfer.

XVII. Abandonment:

When a property has not been disposed of within two years of the date of the formal Excess Declaration, the Excess Declaration shall terminate and have no further effect.

XVIII. Beneficial Interest Disclosure:

When appropriate, when legally required, or requested by Tollway, a Requestor shall provide a disclosure of beneficial ownership affidavit which will become part of any bid. The affidavit of disclosure of ownership interests shall be in the Tollway's format.

Unless otherwise agreed, conveyance of the excess parcel shall be by quitclaim deed in the Tollway's format.

Once the deed has been delivered, and payment has been received for the property, the Tollway will advise the Tollway Finance Department to update its inventory in accordance with its usual procedures.