77555 PCL 008 Discussion on Items Wanted by Owner

**5311. Owner Retention of Improvements**

The owner retention process allows an owner to retain an improvement that is considered in the estimate of FMVE. The District Office must document the improvement was purchased by ODOT prior to allowing the owner to retain the improvement to ensure clearance of the right of way. The retention process is regulated at the Federal level by 49 CFR 24.103 (c) and at the State level by the Ohio Administrative Code, Section 5501:2-5-06 (C)(3). The regulations are identical and are:

If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall not be less than the difference between the amount determined to be just compensation for the owner’s entire interest in the real property and the salvage value of the retained improvement.

The following procedures implement these regulations and assure clearance of the required rights of way.

**5311.01 Procedure for Owner Retention**

1. An owner may request to retain an improvement the District Office is taking for the highway project. The District is obligated to consider the owner’s request and the District Real Estate Administrator (REA) makes the decision regarding the owner’s request to retain an improvement. The District is not obligated to accept any proposed modification but shall consider the merits of the request with respect to the clearance of the right of way, impact to the construction phase of the project and the affect to property management.
2. When the REA allows an owner to retain an improvement, the District must document that it purchased the improvement and then the District can release the improvement back to the property owner. Project managers must monitor the removal of the owner-retained improvement from the project area to ensure it does not adversely affect the construction phase of the project.
3. The amount ultimately paid to the owner at closing will be reduced by the Salvage Value of the item that is retained by the owner. Therefore, the District Office must ensure the Salvage Value of the item to be retained is estimated and, the property owner and the District must agree to the Salvage Value amount.
	1. Form RE 68 is the Salvage Value form used to estimate Salvage Value.
	2. See Section 5311.02 of these procedures for more detail about Salvage Value
4. Once the District and the owner agree to the Salvage Value amount, the contract is amended to reflect the amount the owner will actually be paid at closing. Additionally, the owner and District must complete the Agreement for Removal of Improvements form (RE 66).
	1. See Section 5311.03 of these procedures for more detail about amending the contract.
	2. The RE 66 details pertinent information about when the retained improvement is to be removed from the right of way. See Section 5311.04 of these procedures for more detail about the Agreement for Removal of Improvements form (RE 66).
5. The parcel then moves to closing where:
	1. The District must first document that it has purchased the improvement that will ultimately by retained by the owner. The purpose for this action is to protect the construction phase of the project. As the District can now document that it owns the improvement, its construction contractor does have the right to demolish the improvement if the owner does not remove the improvement per the terms stipulated in the RE 66.
	2. The contract or the bill of sale is used to document the purchase of the improvement to be retained. The correct form is dependent on ownership and type of taking.
	3. Funds are disbursed to the owner and the amount received by the owner is:
		* FMVE of the Entire Acquisition Parcel
		* ( - )  Salvage Value of Improvement to be Retained
		* =    The Amount Money Received by the Owner
	4. The owner conveys the property right needed for the project by signing the instrument.
6. The project manager must continue to track this acquisition parcel to ensure the improvement has been removed from the project area in the time frame and by the terms agreed to in the Agreement for Removal of Improvements form (RE 66).
7. The negotiator must adequately document the owner retention process to demonstrate compliance with the legal requirements for retention and ODOT’s procedure to implement these regulations.

**5311.02 Procedure for Salvage Value**

Salvage Value is defined in 49 CFR Subpart A, 24.2 (a) (23) and in the Ohio Administrative Code, Section 5501:2-5-01(B)(25). The definitions are identical and are:

The probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at the buyer’s expense (i.e., not eligible for relocation assistance). This includes items for re-use as well as items with components that can be reused or recycled when there is no reasonable prospect for sale except on this basis.

These procedures implement these regulations.

1. Salvage value is documented on form RE 68. Once the value is estimated any change must be based on reasoned and documented analysis (similar to the establishment of FMVE).
2. To implement the regulation requiring “The probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at the buyer’s expense”, the following steps are taken:
	* Step 1: Estimate the price a buyer would pay for an item as if it were sitting on the curb in front of the property available to be picked up by a buyer.
	* Step 2: Estimate the cost to disconnect the item and move it to the curb.
	* Step 3: Cost in Step 1 ( - ) Cost in Step 2 = Value A
3. The next part of the regulation is “When there is no reasonable prospect for sale, the value of components parts of the improvement that can be reused or recycled when there is no reasonable prospect for sale except on this basis”. Steps 4 through 6 do not have to be taken if it can be determined a purchaser would buy the improvement while it is on-site.
	* Step 4: Estimate the price a salvage dealer would pay for an item assuming the owner of the item had brought it to the dealer’s place of business.
	* Step 5: Estimate the cost to disconnect the item and transport it to the salvage dealer.
	* Step 6: Cost in Step 4 ( - ) Cost in Step 5 = Value B
4. Low Value (nominal) Salvage Value Estimates
	* It is the intention of ODOT that reasonable procedures be established for estimating salvage value. The District Offices do sell off improvements from time to time and it is incumbent that the person estimating salvage value analyzes prior sales of these kinds of properties in the determination of salvage value. Salvage value could also be estimated by utilizing the services of an expert in the field of the improvement that is to be salvaged.
	* The process to obtain experts that provide cost estimates can be time consuming and costly. For substantial improvements retained by the owner (over $10,000), these cost estimates are a necessity. However, for low value items which are to be retained, salvage value may be calculated as a percentage of the F.M.V.E. of the improvement to be retained. However, reason and caution must be exercised when developing this percentage and under no condition should the same percentage be used in all instances. Low value is defined as any improvement which is to be retained as having a contributory value of $10,000 or less.
5. Once the salvage value has been determined, the negotiator shall communicate this value to the owner and, the owner is to advise the negotiator if the salvage value price is acceptable. If the owner does not agree with the salvage value estimate, the District may consider reasons for disagreement and if valid, re-analyze the salvage value estimate. However, the support for any re-establishment of salvage value must be included in any revised RE 68. The District may also utilize the administrative settlement procedure for opinion differences in salvage value. If this process does not result in a salvage value agreeable to all sides, then the negotiator shall fall back to the District’s original offer. This process shall be documented in the Negotiator Notes.

**5311.03 Procedure for Amending Contract or Bill of Sale**

1. Negotiations will continue and eventually an agreement to price and terms should be reached. This amount can be the FMVE or an administrative settlement amount. In either case, the total amount paid for the property must be shown on the contract or the bill of sale. Then a paragraph pre-approved by the Ohio Attorney General’s Office is inserted into the contract or bill of sale. This pre-approved paragraph documents the amount paid to the owner at closing is reduced by the salvage value of the item retained. This paragraph, available from the Office of Real Estate’s web page and entitled “RE 220-1 Insertion for Owner Retention”, reads as follows:
	* “Seller and Purchaser agree that (i)Seller shall be permitted to retain improvements now situated on the real property to be conveyed (see RE 66/Agreement For Removal for details), (ii) the amount to be paid to the seller shall be reduced by the sum of $(insert: salvage value estimate), which is the salvage value of the retained improvement, (iii) the total amount Purchaser shall pay ultimately to the seller is $(insert: the difference between FMVE and Salvage Value); and (iv) the terms and conditions of Seller’s retention of improvements are set forth in the RE 66 Agreement for Removal, a copy which is attached hereto and by the reference incorporated herein.”
2. The Contract For Sale and Purchase is to be used when the fee owner of the property also owns the improvement to be retained. The selection of the RE 220-B or the RE 220-L is dependent upon if the improvement is a building or a structure. See Section 5200 of the Real Estate Manual for more detail regarding contracts.
	* Insert the pre-approved paragraph, RE 220-1, into the contract at the end of the first paragraph of 1. Price and Consideration.
3. The bill of sale form (RE 69 CC) is used when the improvement to be retained is owned by a tenant-owner.
	* Insert the pre-approved paragraph, RE 220-1, as a new second paragraph following the value of the tenant-owned improvement.
4. The amount established as FMVE is never changed and remains constant through the entire acquisition process.

**5311.04 Procedure for the Agreement for Removal of Improvements – RE 66**

1. The RE 66 details the terms for removing the improvement that is to be retained by the owner. The District Office can hold back money at closing to ensure the owner performs and moves the improvement out of the project area by the date that was mutually agreed to by the owner and District. Holdbacks may be used at the discretion of the District Office and should be based on the degree of risk that the owner will not remove the item to be retained.
2. The District Office needs to track the removal of the improvement to ensure it has been removed from the project area by the date stipulated in the RE 66 and the site has been left in a condition that is compliant with the terms of the RE 66 (i.e., the owner retained a house, moved the house, but had left the basement foundation open - contrary to the terms of the RE 66 which required the owner to fill the basement in.)
	* The RE 66 also requires:
		1. ODOT to pay the owner the agreed amount (FMVE less salvage value and less holdback; if applicable) within 90 days of the Agreement.
		2. After the owner receives payment, the owner must start work to move the improvement within 14 days.
		3. After the improvement is moved, the District Office must ensure that it was done in compliance with the terms in the RE 66 and any holdback money can then be released to the owner. ODOT must pay the owner this holdback money within 60 days after it has accepted the work.
3. If the owner did not comply with the terms of the RE 66, the District Office can go onto the property and remove the improvements. This is the reason why the District must document that it purchased the improvement. When confronted with this situation, the District should request guidance from the Ohio Attorney General’s Office. Any costs incurred by ODOT for removing the improvement can be deducted from the holdback money.
4. The Agreement for Removal of Improvement process must be adequately documented to demonstrate compliance with these procedures.