OTEC
October 28, 2008

Relocation and the New Law

OR

What I did the Summer of 2007!

Effect of New Law

- Only affects displaced businesses;
- Does not change any existing policy;
- Does add additional benefits which displaced businesses may be eligible;
- Major impact on Project Planning (only if businesses are displaced).

Two major Changes

- Loss of Goodwill
- Economic Loss

Loss of Goodwill

- The provision for Loss of Goodwill is in section 163.14 of the Ohio Revised Code.

Section 163.14 of the Ohio Revised Code

- The owner must prove that the Loss of Goodwill is caused by the acquisition of the property

Section 163.14 of the Ohio Revised Code

- The owner must prove that the Loss of Goodwill cannot be reasonably prevented by relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the Goodwill.

Section 163.14 of the Ohio Revised Code

- Compensation for the loss of Goodwill shall not be included in payments made under section 163.53 of the Revised Code, shall not be duplicated in any compensation otherwise awarded to the owner, shall not exceed $10,000, and shall not be awarded in appropriations of less than the entirety of the business property.

Definition of Goodwill

- *The **calculable** benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances that result in probable retention of old, or acquisition of, new patronage. (ORC 163.14(K))*

Eligibility for Loss of Goodwill

A. The entire business property must be acquired. However, the acquisition does not need to be a total take;

B. The business owner must prove that the Loss of Goodwill was caused by the taking of the property;

Eligibility for Loss of Goodwill

C. The business owner must prove that the Loss of Goodwill cannot be reasonably prevented by relocation of the business or by taking steps and adopting procedures that a reasonable prudent person would take and adopt in preserving Goodwill.

Eligibility for Loss of Goodwill

D. Business does not always have to reestablish to claim a loss of Goodwill, however to satisfy the requirements of the previous slide, the business must prove that suitable relocation sites were not available.

Eligibility for Loss of Goodwill

E. A business that operates only to rent or lease space at the displacement site is not eligible to claim Loss of Goodwill.

Claiming Loss of Goodwill

- RE 619-1 is used to claim loss of Goodwill
- Business owner must state
  - Amount of Goodwill attributed to the business prior to the taking
  - Amount of Goodwill attributed to the business after the taking

Claiming Loss of Goodwill

- Claims must be supported by financial information and related supplemental information.
- Section 6510.02(D) lists suggested financial information to be submitted with claims.

Time for Filing

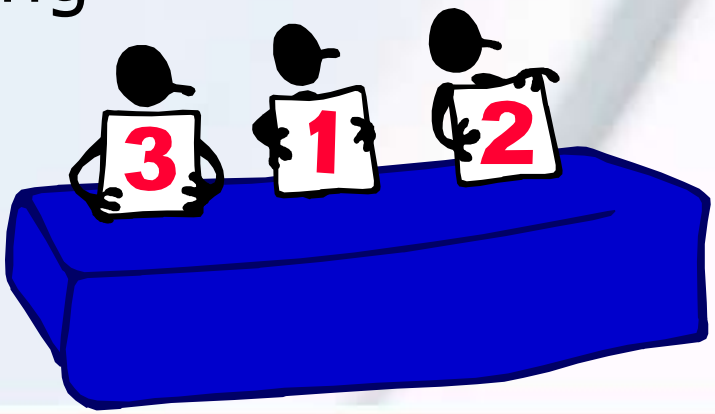
18 months after

- For tenant business, the date the move was complete; or
- For business that owned the displacement site, the latter of the date the move was complete, or the date of the final payment for the acquisition of the property.

Evaluation of Claims

Three person Review Panel

1. Administrator of the Office of Real Estate
2. ODOT Chief Legal Counsel
3. Deputy Director for Finance and Forecasting



Appropriation

- A displaced business owner has the right to argue Loss of Goodwill before a Jury.

Appropriation

- If the jury award or a settlement includes compensation for the Loss of Goodwill, or if the jury finds that the business is not entitled to compensation for the Loss of Goodwill, an additional claim for Loss of Goodwill cannot be filed.

Appropriation

- Coordination with Attorney General's Office is necessary to assure that we do not duplicate payments.

Responsibilities of the Relocation Agent

- Fully explain the provisions for Loss of Goodwill at the Pre Acquisition Survey;

Responsibilities of the Relocation Agent

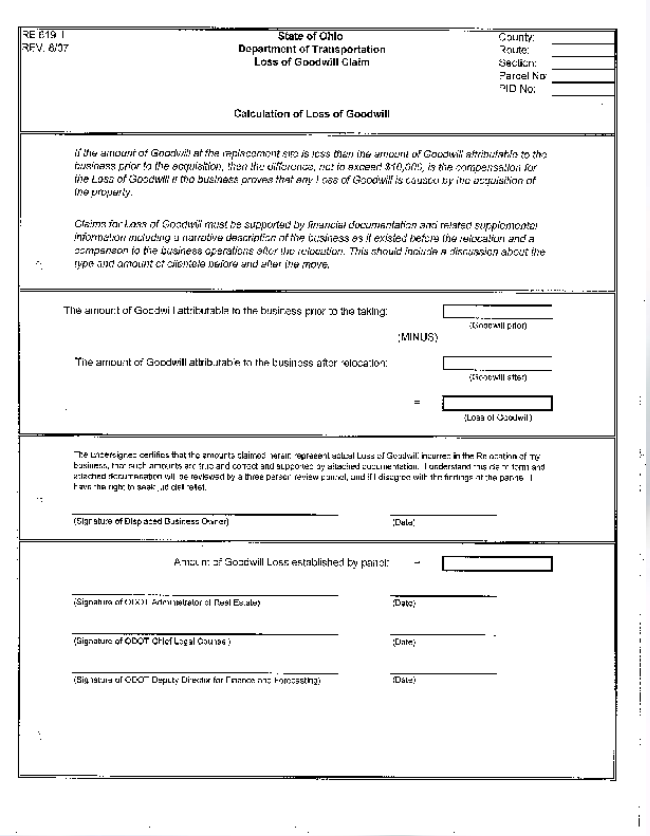
- Fully explain the provisions for Loss of Goodwill at the Relocation Offer;

Responsibilities of the Relocation Agent

- Provide the business owner with a copy of the Loss of Goodwill Claim Form;

Responsibilities of the Relocation Agent

- Assist the business owner with filing the Claim form with the Relocation Unit in ODOT Central Office.



RE 619 1
REV. 8/07

State of Ohio
Department of Transportation
Loss of Goodwill Claim

County:
Route:
Section:
Parcel No:
PID No:

Calculation of Loss of Goodwill

If the amount of Goodwill at the replacement site is less than the amount of Goodwill attributable to the business prior to the acquisition, then the difference, not to exceed $10,000, is the compensation for the Loss of Goodwill if the business proves that any Loss of Goodwill is caused by the acquisition of the property.

Claims for Loss of Goodwill must be supported by financial documentation and related supplemental information including a narrative description of the business as it existed before the relocation and a comparison to the business operations after the relocation. This should include a discussion about the type and amount of clientele before and after the move.

The amount of Goodwill attributable to the business prior to the taking: _____ (Goodwill prior)

(MINUS)

The amount of Goodwill attributable to the business after relocation: _____ (Goodwill after)

= _____ (Loss of Goodwill)

The undersigned certifies that the amounts claimed herein represent actual Loss of Goodwill incurred in the Relocation of my business, that such amounts are true and correct and supported by attached documentation. I understand this claim form and attached documentation will be reviewed by a three person review panel, and if I disagree with the findings of the panel, I have the right to seek judicial relief.

(Signature of Displaced Business Owner) (Date)

Amount of Goodwill Loss established by panel: _____

(Signature of ODOT Administrator of Real Estate) (Date)

(Signature of ODOT Chief Legal Counsel) (Date)

(Signature of ODOT Deputy Director for Finance and Forecasting) (Date)

RE 619-1 Claim for Loss of Goodwill

RE 619-1
REV. 8/07

State of Ohio
Department of Transportation
Loss of Goodwill Claim

County:
Route:
Section:
Parcel No:
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Calculation of Loss of Goodwill

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Amount of Goodwill Loss established by panel: = _____

_____ (Signature of ODOT Administrator of Real Estate) _____ (Date)

_____ (Signature of ODOT Chief Legal Counsel) _____ (Date)

_____ (Signature of ODOT Deputy Director for Finance and Forecasting) _____ (Date)

Judicial Review

- If the displaced business disagrees with the panel's decision they have the right to seek judicial relief from the courts.

Goodwill and Fixed Payment

- The Ohio Revised Code classifies the reimbursement for Loss of Goodwill as an acquisition cost
- It is not a duplication of payments if a business owner claims Loss of Goodwill and a Fixed Payment.

Economic Loss

Section 6511

Economic Loss

- Section 163.15(B)(3)(a) of the Ohio Revised Code allows an owner of a displaced business to recover damages for the owner's actual Economic Loss resulting from the displacement of the business. The Economic Loss is a loss of annualized net profit to the business during relocation.

Limit of Economic Loss

- The amount of reimbursement for Economic Loss cannot exceed twelve months net profit of the business on an annualized basis.

Annualized Profit

- Based on the Tax year prior to displacement
- Must be documented by certified IRS Tax Forms obtained directly from the IRS
- Strongly encouraged to discuss this with the owner and obtain documentation early in the process

Eligibility for Reimbursement of Economic Loss

- Business must show a net profit for the tax year preceding the agency's offer to purchase the property;
- Business owner **must prove** that the business sustained an Economic Loss and that the loss was as a result of the business relocation

Two Components for Economic Loss

- Maximum Amount which may be claimed
  - Based on the net annual business profit, prorated on a daily bases;
  - Based on a time period which reflects the amount of time the business had to plan and accomplish their move.
- Actual Economic Loss
  - Based on actual economic loss supported with financial documentation.

Time Period

- The time period to calculate the maximum economic loss is based on the amount of time between the Letter of Intent and the Good Faith Offer being presented to the owner and the date that ODOT files for appropriation.

Time Period

- 12 months minus the number of days between the Notice of Intent to Acquire and the date the agency files for appropriation.

Time Period

- The time period cannot be less than 15 days. Therefore, if ODOT allows the one year time period (or more) between Notice of Intent to Acquire and appropriation, the time period to calculate maximum economic loss will be 15 days.

Time Period

- If the owner and ODOT reach agreement and the parcel is not appropriated the time period is 15 days.

Time Period

- If the relocation is unusually complex the owner of the business may request that ODOT increase the 15 day time period to up to 30 days.

Calculating the Maximum Payment for Economic Loss

	Economic Loss Time Period
(x)	Net annualized business profit stated as a daily rate
(=)	Maximum Reimbursement Payment for Economic Loss

Non Residential Tenants

Business tenants will not receive the Notice of Intent to acquire from the acquisition agent. Therefore a new notice has been developed for business tenants.

Notice of Intent to Acquire and Relocation Assistance Offer (RE-TB)

Actual Economic Loss

- *Owner may recover damages for the owner's ACTUAL economic loss resulting from the appropriation of the property, as proven by the owner by a preponderance of the evidence. Compensation shall not include any attorney's fees and shall not duplicate any other compensation or Relocation payment. (ORC 163.15(3)(a))*

Actual Economic Loss

- Must be supported by financial documentation and related supplemental information
- Cannot exceed the maximum amount of Economic loss as calculated.
- Cannot be a duplication of payments received through acquisition and relocation

Duplication of Payments

- When a claim for economic Loss is filed, the Relocation Agent must prepare a memo to file listing all relocation payments with a brief description of each payment. The memo to file will be attached to the claim prior to the claim being forwarded to ODOT Central Office.

Time for Filing

18 months after

- For tenant business, the date the move was complete; or

- For business that owned the displacement site, the latter of the date the move was complete, or the date of the final payment for the acquisition of the property.

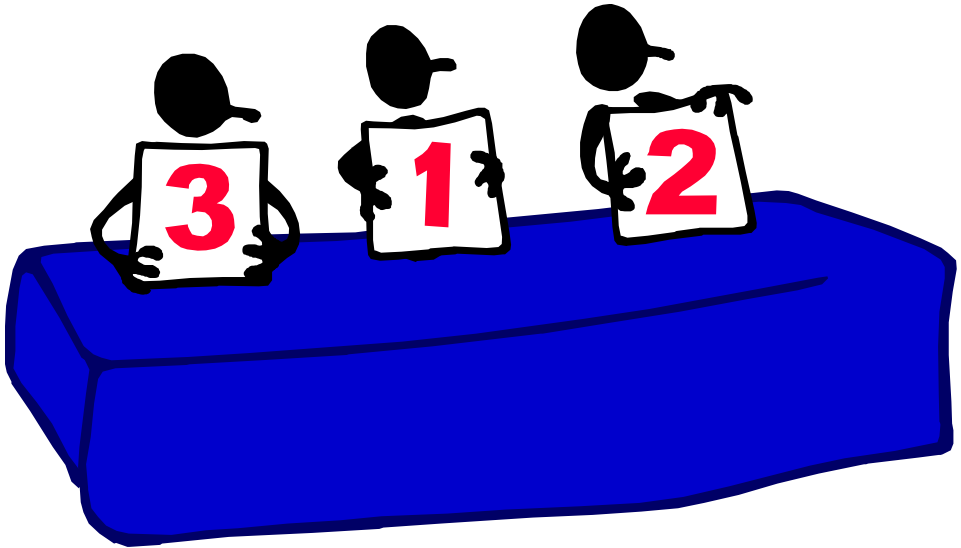
Appropriation

- A displaced business owner has the right to argue Economic Loss before a Jury.
- If the jury award or a settlement includes compensation for Economic Loss , or if the jury finds that the business is not entitled to compensation for Economic Loss , an additional claim for Economic Loss cannot be filed.

Evaluation of Claims

Three person Review Panel

1. Administrator of the Office of Real Estate
2. ODOT Chief Legal Counsel
3. Deputy Director for Finance and Forecasting



Responsibilities of the Relocation Agent

1. Fully explain the provisions for Economic Loss at the Pre-Acquisition Survey;
2. Fully explain the provisions for Economic Loss at the Relocation Offer;
3. Provide the business owner with a copy of the Economic Loss Claim form (RE 621-1);
4. Assist the business owner with filing the Claim form with the Relocation Unit in ODOT Central Office Real Estate.

Review of Economic Loss

1. Determine the business net annual profit;
2. Establish the time period to calculate the Maximum Economic Loss
3. Calculate the Maximum Economic Loss
4. Business will claim the Actual Economic Loss
5. Claim will be evaluated by the three person review panel.

Judicial Relief

Any displaced business can seek judicial relief if they disagree with:

- The time period
- The amount of reimbursement

Economic Loss and Fixed Payments

- The Ohio Revised Code classifies the reimbursement for Economic Loss as a Relocation Benefit
- Therefore, it would be a duplication of payments for a business to receive both a Fixed Payment in lieu of actual move costs and a payment for Economic Loss.

Project Planning

- To minimize the effect of Economic Loss on project cost we must plan for 12 months between the acquisition offer and filing for appropriation.
- Therefore, we must allow for at least **18 MONTHS** from final plans until clear date.

Current Parcels

- Have not received the Notice of Intent to Acquire and Good Faith Offer
- Need to evaluate on a parcel to parcel basis
- Call Central Office

Garage Law

Relocation and Garage Law

If the Garage Law applies, a relocation offer must be presented to the owner of the Real Estate prior to the owner waiving the requirement that ODOT purchases the entire property. If the owner does waive this requirement they are no longer eligible for a Replacement Housing Payment.