



# Closing the Gap The Baton Pass from Site Acquisition to Construction

By John M. Rowe

**T**wo major disciplines that have contributed mightily to the growth of wireless facilities over the past thirty-eight years are site development (acquisition and permitting) and site construction, implementation, and installation. The great amount of detail involved with implementation mandates a great amount of planning preparation coordinated during the site acquisition and permitting processes. This relationship warrants a look at how these two disciplines harmonize.

*The goal of wireless facility site acquisition is to prepare properties for equipment installation, project implementation, and/or site construction.*

The ability to implement a wireless facility is contingent upon criteria such as RF suitability, zone-ability, lease-ability, property owner preferences, and constructability. Hence, the quality real estate entitlements that site acquisition agents are tasked to provide to the client-developer—whether a carrier, a towerco, a turf vendor, or another tower developer—depend upon satisfying the best interests of these sometimes diametrically opposed standards.

One purpose of site acquisition is to bring together the wide range of factors involved in

real estate development so the construction manager (CM) can make a clear assessment of what resources will be required to effectively deploy each wireless site. Close communication between site acquisition agents and CMs in the site search due diligence process regarding potentially pivotal construction issues can mitigate the construction time frame, pitfalls, and costs.

## Site Acquisition Due Diligence

The results of site acquisition due diligence research are two reports. The Search Area Report (SAR), which details the characteristics of the search area, including environmental considerations, topography, land use, maps, and demographics. It also includes several alternative site choices for the client-developer to consider, including details on how each characteristic applies to each site option. Based upon the SAR, the CM and RF Engineer (but not necessarily in that order) typically select which site(s) to develop and implement.

The second site acquisition report is the Site Candidate Information Package (SCIP). SCIPs may start as initial preliminary summary reports delivered with the SAR, one for each alternative site prospect proposed by site acquisition. Whether or not initiated with the SAR, SCIPs only are finalized for sites selected as agreed upon by the RF engineer and the CM.

## Site Selection

It is common for RF engineers and CMs to have

**John M. Rowe**  
is the Owner of Telecom  
Birddogs, LLC, and  
Communications  
Real Estate, Inc., in  
Centennial, Colorado.  
He can be reached at  
303-220-9100 or [jrowe@  
telecombirddogs.com](mailto:jrowe@telecombirddogs.com).

diametrically opposed criteria regarding site selection. For instance, RF engineers prefer a site as close as possible to the chosen target location and in rural areas on the highest location close to the target. RF engineers would prefer a location with a 50-foot higher ground elevation without regard for the need to construct a 500-foot access road from the public right-of-way to get there. Meanwhile, CMs would prefer to keep wireless facilities as close as possible to the public right-of-way even if it means the tower must be 50 feet taller. RF engineering goals are tied to providing the most ideal signal coverage. Construction management goals are tied to construction costs and guaranteeing easy ongoing access for operations personnel without the concern of road issues due to rain erosion, flooding, or winter blizzards.

### Site Development

Upon site selection, the site acquisition function evolves into site development activities. During this phase, due diligence responsibilities extend into the several other disciplines represented on the project management team. Underground utility identification, title search, site survey, site design, and collocation application (where applicable) typically begin before, during, or shortly after a macro site visit. During this visit, the CM and RF engineer confirm



with the property owner and the project architect and engineering (A&E) firm the location and layout of a proposed new macro tower site compound, along with any necessary access road and utility easements for local electrical power and fiber optic transport.

### Macro Cell Site New Tower Builds

A summary of the sequence of events after site selection of macro cell site new tower builds for site acquisition purposes goes something like this:

1. Advise the site/property owner while confirming the basic deal terms.
2. Complete and distribute SCIP due diligence materials to the project team.

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3. Order the preliminary title commitment to arrive in time for a site walk.
4. Schedule a site walk with the property owner and certain members of the project team.
5. Forward the completed draft of the proposed space rights agreement to the property owner.
6. Obtain the property owner–signed right of entry consent for on-property due diligence.
7. Obtain utility locates in time for the site walk.
8. Confirm site location and layout among the property owner, CM, RF engineer, and A&E firm.
9. Obtain the site sketch document from the A&E firm and approve it with the CM, the RF engineer, and the property owner.
10. Track completion of engineered drawings and reports, including the survey.
11. Track completion of title commitment and ensure harmony with the final survey.
12. Utilize engineered drawings and reports in formalizing space rights agreement(s).
13. Utilize engineered drawings and reports in formalizing local permit application(s).
14. Obtain space rights executable agreements and get them fully executed and recorded.
15. Submit local permit package(s), gain approval(s), and all final permit documentation.

### Macro Cell Site Collocation New Builds

To be familiar with and understand the above sequence is helpful to understand macro cell site collocation new builds since most of the original due diligence work for each site, in theory and under master lease agreement (MLA) contract, is guaranteed by the tower owner and should remain valid. Typically, this means no new title commitment needs to be ordered, the terms of the space agreement have primarily been decided, underground utility locations may not need to be identified, and a final survey is already done and hopefully harmonized with the title. The availability of a desired tower elevation for new antennas must be approved by the tower owner to qualify the tower as useful for the carrier before further tower due diligence is conducted. SCIPs still need to be completed, a site sketch is required for the proposed ground and



tower space, and a deposit is sent to the tower owner with a detailed application. Instead of a right of entry consent (ROE), a preformatted entry and test agreement (E&T) will be signed between the tower owner and the carrier.

Upon preliminary approval of the collocation application, the tower owner will usually forward a preformatted site lease or license agreement (SLA) to the carrier or site acquisition agent and upon receipt of the fee order a structural analysis based on the details in the collocation application. The site acquisition agent is tasked with securing a host of due diligence documents from the tower owner, including environmental documents, and the title commitment, final survey, as-built construction drawings and reports, previous structural analysis, existing permit documentation, and underlying space rights agreement. All due diligence information from the tower owner needs to be reviewed and accepted by the carrier to proceed. For instance, the terms of the underlying agreement(s) may create a need for the tower owner to give notice(s) to, obtain approval(s) from, or even to negotiate an amendment with the underlying property owner for, say, the compliance to sublease space on the site, to extend the lease term, or to expand the compound to include ground space for the new tenant. Tower owners that are also competitors may require the new tower tenant to obtain its own adjacent ground space. So, while it seems that less needs to be done to process a collocation, there are many details that need to be reviewed closely to assure successful congruence.

Before the collocation site acquisition can be completed, the results of a structural analysis must determine if modifications need to be made to accommodate the new antenna system, how that will impact the commencement of tower space rights, and who will pay for the modifications (contractually changing the SLA). A structural analysis to determine proposed modifications requires another fee. To obtain the tower owner's notice to proceed (NTP) with the implementation project, the site acquisition agent must provide the tower owner with details about the proposed work. The tower owner requires documentation that local permit authorities have approved a building permit for the changes proposed. This may include an internal review of structural calculations. Local jurisdictions are not supposed to require any discretionary permits for collocations; however, some may find ways around FCC regulations. A

document waiving further zoning actions is requested in order to obtain the NTP.

In order to secure an NTP, the site acquisition agent provides the tower owner with additional final information, such as a schedule for proposed installation and/or construction work to take place, the name of tower-approved contractors proposed to do the work, the structural analysis, approved construction drawings, the fully executed SLA, and certificates of insurance (COIs) for the carrier and its contractors naming the tower company as additional insured and referencing the specific property.

### Small Cell New Builds

The third general type of wireless site development involves small cell new builds. Regulations from the FCC and more than half of states now allow installations that qualify as small cells according to cubic dimensions by merely a building permit process, not a discretionary zoning or land use procedure. Site acquisition efforts to develop small cell installations are complicated by the fact that the fallout of not being able to develop one macro cell site for a given search area results in the need for five, ten, fifteen, twenty, or more separate small cells to replace the coverage of a

single macro cell site. Site acquisition efforts to develop small cell installations are simplified by the approach that many can be secured from one or two single entities per market, those being a political jurisdiction owner of public right-of-way and/or the owner of utility poles.

Compared to the zoning and/or building permit processes associated with macro site new tower and collocation new builds, small cell new builds entail local permission to work in public right-of-way based upon plans to ensure safety by design, especially in regard to vehicular and pedestrian traffic. As with macro sites, small cell sites involve a transfer of planning efforts from A&E firms and site acquisition agents to CMs.

### Construction and Road Use Agreements

In the course of site search and selection, the opportunity may exist to utilize a location with an existing structure that needs to be removed and replaced, raising issues about who will install the new structure, who will own it, how the existing structure will be removed, disposed of, and replaced, and how these decisions will impact rent. An expeditious win-win solution for all parties can be to have the client-developer remove the old structure, erect a new

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one, and then turn over the new structure's ownership to the property or site owner in exchange for a rent rebate based on the cost of the removal and replacement. In other situations, it may be appropriate to replace or install facilities ancillary or even unrelated to the proposed new facility in order to secure the space agreement.

Depending upon the level of detail involved, agreements made to perform specific supplemental construction activities can be documented in the CDs, the site space agreement, a letter, and/or a separate construction agreement. The site acquisition agent is responsible for communicating all details impacting installation(s) being negotiated with a property or site owner for approval by the CM, incorporating these into the A&E firm's plans, and gaining the project attorney's approval of the final agreement.

Similarly, site acquisition agents coordinate road use agreements with CMs, A&E firms, and project attorneys, where joint use with other users is intended and where the use of private rights of way during construction present maintenance issues.

### Summary

In summary, the relationship between site acquisition research and the criteria for facility implementation and construction management begins early, as communicated in the site search assignment and in the SAR, and as documented in the SCIP. Some of the first issues addressed are what kind of site is to be developed, what type of structure is most appropriate, and how different search area locations or jurisdictions affect the answers to these questions. Potential site locations are impacted by RF suitability, zone-ability, constructability, lease-ability, and the disposition of the property owner. Different jurisdictions handle the process of granting permit entitlements differently. Variations in these circumstances impact how CMs manage implementation. Site acquisition agents operate as conduits of this information in the development process.

While the CM drives the construction plans, the site acquisition agent shares the responsibility of ensuring that the plans are suitable to the site and its owner. While RF, the A&E firm, and the CM provide critical input to collocation applications and subsequent structural analyses, the site acquisition agent shares in the responsibility to ensure their accuracy. The site acquisition agent, the A&E firm, and the CM similarly are jointly responsible for the oversight of supplemental drawings and reports not required for every site.

Site acquisition agents must keep property access rights open for contractors late in the process, for instance when conducting soil tests needed for tower plans. When special construction considerations, including existing tower modifications, are discussed with the site owner, the site acquisition agent must coordinate details with and have approval from the CM. In the late stages of securing entitlements for space and permits, the site acquisition agent's focus shifts to preparing communications for the CM to start the construction and implementation. This may include actions that can only be completed by the CM or the construction contractors. It also includes summaries of permit details that the CM or construction contractors must accomplish, or information needed to secure final building permit rights and to work in the jurisdiction.

Site acquisition agents proactively coordinate supplemental construction plans such as developing agreements to replace old towers and road use maintenance issues.

### Conclusion

Site acquisition agents are responsible for providing tower owners with data obtained from the CM to satisfy the tower owner's NTP requirements. Site acquisition agents also provide CMs with the knowledge needed to access the site, conduct a pre-construction site walk with a tower owner representative, contact local building officials, and understand final space rights and government permit rights. Some wireless construction projects call for building permit application and receipt by the site acquisition agent months or more before tower plans are finalized or actual contractors have been selected. Local building permit departments are sometimes prone to misplace permit approval packages that languish waiting to be completed. The site acquisition agent may be required to drive the development of construction agreements in coordination with the CM for such projects as removing and replacing an antenna structure, performing ancillary construction activities, and utilizing joint use right-of-way. For all of the above reasons, strong relationships built on quality communication between CMs and site acquisition agents are vital to a smooth transition from the development phase to the facility implementation of each project. ●