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POSTAL REAL ESTATE

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INTRODUCTION

The United States Postal Service (USPS) is an independent agency of the federal government tasked by Congress with delivering mail six days per week to every address in the nation. To carry out this mission, USPS operates approximately 31,000 post offices as well as a network of production and distribution centers and facilities to house postal management.[1] This represents a substantial reduction from the number of postal facilities USPS predecessor agencies operated prior to the popularization of home mail delivery. At its peak around 1901, the post office operated more than 70,000 retail post offices.[2]

Then, as now, the post office didn't own all of its retail outlets, but the agency has always had substantial real estate holdings. Whether this need be the case moving forward, however, is an open question for postal management and the congressional committees tasked with oversight of the agency. In light of this, the present brief explains the rationale for USPS real estate holdings, and proposes alternative arrangements postal policymakers could explore as they work to reform the cash-strapped agency.

HOW THE POSTAL SERVICE MANAGES REAL ESTATE

Since being reconfigured as an independent agency in 1970, the USPS has slowly pared down its landholdings.[3] Today, more than two-thirds of post offices are housed in properties the postal service leases from private landlords, totaling approximately 25,300 leased facilities spread across all 50 states.[4] It would be easy to attribute this shift to efforts to close small or otherwise duplicative post offices, but the scale of the move to leased facilities far outpaces any reduction in the total number of post offices in the last 50 years. Nor has the trend followed mail volumes, which peaked in the first half decade of the 21st century.

Instead, the decision to do away with most postal real estate should be viewed as part of a more general reconfiguration of federal office landholdings, where federal officials worked to obtain modern, efficient, cheaper-to-maintain workplaces for government employees to replace, rather than renovate, existing buildings. Over the last 25 years, federal agencies have formalized their real estate procurement practices in a quest to bring transparency, uniformity and accountability to government facility management and to ensure every decision to add or divest a property is in the long-term interest of the American people. For most federal entities, these regulations are created and overseen by the General Services Administration (GSA), the federal government's property management arm.[5] Where the postal service colocates facilities with other government bodies, GSA guidelines ensure shared facilities meet the needs of both parties, limiting interagency conflict. 52 postal facility leases fall into this category; mostly USPS field offices that house agency administrative functions outside of the Washington, D.C. area.[6] These offices cost the agency approximately $1 billion per year when they were last extensively studied.[7]

Despite the fact that they do not always own their buildings in which they are housed, the USPS maintains guidelines for the design of postal facilities to ensure its workers have neither too much, nor too little space to carry out the agency's mission. In recent times, the design of postal facilities has been dictated by two handbooks referred to as AS-503 and AS-504.[8] The former dictates building design; providing checklists, rubrics and other rules to make sure post offices are secure, accessible to all and suitable for their host communities. The latter—AS-504—covers space requirements for post office activity; giving postmasters certainty that their facilities have enough parking and work space to avoid localized congestion that slows mail delivery and deters retail customers. Importantly, these rules apply to both owned and leased facilities, an "ownership neutral" standard that allows the agency to reliably find buildings that meet its needs in both small, rural towns and dense, urban neighborhoods.

But, while these guidelines lay out the criteria the postal service uses to decide what postal facilities should look like, the decision of whether to rent or purchase a particular facility is left to the agency's finance staff, who follow a different handbook ("RE-1"), which includes procedures that are broadly analogous to those used by the GSA for other government buildings.[9] The standard postal facility lease has a term of five years, and includes a number of mandatory clauses that delineate responsibility for building upkeep, repairs and related matters.[10] As a low-risk tenant, the USPS is able to command certain concessions from its landlords that differentiate it from typical retail lessees. For example, those who lease to the postal service must obtain all state and local permits necessary to the ownership and operation of buildings the USPS rents—at no cost to the agency. In exchange, the agency and any contractors it hires agree to follow laws "to the extent enforceable against the Postal Service," and the clause continues by noting: "Nothing herein shall be construed as a waiver of the Postal Service's sovereign immunity."[11]

Section 311 of the RE-1 handbook spells out what sovereign immunity means in the context of USPS real property decision-making:

> As a federal entity, the Postal Service enjoys immunity from state and local regulation except where Congress has waived such immunity. However, despite this immunity, the Postal Service complies with local zoning, planning, and building codes to the extent practical and consistent with Postal Service operational needs in acquiring interests in real property.[12]

Effectively, this means that the USPS follows such zoning, planning and building codes, but that these measures are voluntary rather than contractually bound. And, in this sense, sovereign immunity allows the USPS to earn a non-market advantage over other shipping companies that operate retail outlets and warehouse facilities, all of which must comply with zoning, building design rules and mandatory public comment and review periods—without exception. For instance, in March of 2020, the USPS began construction on a new sorting facility in Wisconsin, despite incomplete municipal approval and the objections of many local residents. While it held public meetings to explain its actions, it made clear that all consultation with and approval by lower levels of government were completely optional.[13]

In this way, even when the postal service leases a building, it operates in a sort of hybrid of ownership and tenancy that allows the agency to shift the burden of compliance with state law to private lessors, and limits direct conflict between the agency and state and local governments. In so doing, it also retains the ability to ignore laws from lower levels of government as it sees fit. But it also returns postal facilities to property tax rolls, creating a modest benefit for municipal governments that can help quiet local objections to public concerns, such as the added traffic post offices may generate. As Americans rely less on mail over time, issues like these become greater relative to the benefits of easy access and more reliable delivery times. Thus, by leasing facilities, this political risk is shared with private landlords and there is some benefit to the locality. And, considering that the postal service has over 25,000 facilities, when taken in the aggregate, this marginal benefit equates to a substantial amount of public goodwill, preserved on a national scale—all of which reinforces the agency's reputation as the most trusted federal agency.[14]

RISKS OF POSTAL PROPERTY MANAGEMENT

In a rare direct intervention in postal management, in 2016, Congress passed the Federal Property Management Reform Act, which mandated the USPS update and review its property management practices.[15] This law added a new chapter to the postal service's governing statute (Title 39). Here, Congress gave the agency the opportunity to set up a framework to regularly assess its real property needs, providing that it "may develop a 5-year management template that—(A) establishes goals and policies that will lead to the reduction of excess property and underutilized property in the inventory of the Postal Service."[16] It also recommend real property related changes to boost agency productivity. Such language makes clear that Congress believes that the USPS holds excess real property, and that it should seek to divest oversized and surplus facilities.

But, the USPS does not need a report to recognize the downsides associated with property management. In divesting much of its real estate portfolio, the agency has already accepted that owning and operating buildings as a non-specialist in building management carries substantial financial risk that makes it less likely to achieve its legislated goals.[17] This risk manifests both on the cost and revenue side of its balance sheet. For example, owned buildings must be maintained and renovated periodically. This creates operating expenses, which show up every quarter in the agency's financial reports, along with other real estate costs. And, while these generally align with the maintenance needs of leased facilities, with owned buildings, the USPS is also liable for capital expenses, as no one else is responsible for paying to renovate post offices and repave processing center parking lots. Leases include only a share of building capital costs. All of this is to say that although comparing leased and owned post office costs over the full building infrastructure lifecycle can be a challenge, the agency has made strides in doing so. In fact, recent financial filings add even more detail to the capital amortization of the postal service's leased facilities.[18]

Real property holdings, as part of general overhead costs, also factor into postal revenues inasmuch as, by law, every postal product must cover an "appropriate share" of joint postal service expenses, or be discontinued.[19] That is, excessive spending on facilities can make otherwise profitable postal products unprofitable, which would impact USPS revenues in the medium term. While the attributable cost share for most competitive products remains low, competitive products are important components of agency revenues. Cost-side threats to major revenue streams give the agency a powerful incentive not to allow real estate costs to eat up any more agency money than is necessary.

HOW THE USPS CAN MAKE THE MOST OF ITS REAL ESTATE

Because of its universal service obligation, every postal facility serves as a necessary part of the agency's overall mission. In light of this, the postal service's operational needs may be broadly defined to ensure each owned post office, and potentially some leased post offices, serve a similarly broad cross section of the agency's needs. As such, capturing the maximum return on real estate assets reduces overall postal service real estate (and more broadly, all postal overhead) costs.

This opens the door to the agency's use of sovereign immunity to sidestep local land-use laws that artificially constrain return on its remaining real estate assets by setting limits on the density, design and use of postal buildings. For example, if it so chose, the USPS could engage in value-capture real estate development agreements in a bid to monetize its otherwise underused landholdings. This would not be appropriate for every postal facility, as many are in low-demand areas, have limited utilities access or are on oddly-shaped property. But, out of about 8,000 owned properties, a few hundred are ripe for immediate redevelopment at much higher density than existing post offices and sorting centers using the USPS' "sovereign zoning variance."

Broadly, these developments break down into three categories: post offices in high-cost cities; postal sorting centers in high-cost cities; and post offices in town core areas. The first category includes all remaining owned post offices in New York, Boston, the Bay Area of California and some seaside communities. In these places, years of limited construction have led to extremely high land values that the USPS could take advantage of by offering postal facilities for new housing. However, small parcel sizes limit the overall scope of redevelopment to a double-digit number of housing units. In particular, New York City is home to a number of owned post offices that are substantially less dense than surrounding buildings. This makes the underutilized value clear to anyone who happens to walk past.[20] In these cases, sovereign immunity would allow the postal service to bypass the city's slow and failure-prone Uniform Land Use Review procedure to quickly reach agreements to capture the value of air rights above existing post offices.[21]

Similarly, postal sorting centers in the same high-cost cities sit on large parcels of land and have extensive parking lots available to mail handlers. Such properties are often larger than 500,000 square feet, and typically have excellent highway access that make them desirable as sites for podium-style construction that places housing atop parking or light industrial uses (which could potentially include mail processing). Large, contiguous parcels in major cities are extremely rare and desirable to developers even without the ability to build at greater density than cities would otherwise allow. For this reason, each of these properties stands to yield many millions of dollars for the agency, as well as adding hundreds or even thousands of housing units on the largest and most convenient sites.

One example of such a facility is Washington, D.C.'s Curseen-Morris Processing and Distribution Center, which sits on more than 1.6 million square feet (38.8 acres) of land immediately adjacent to the Washington Metro's Red Line.[22] The facility is currently developed at a .4 floor area ratio (FAR), or 680,000 square feet. The allowed density of the site in the Washington D.C. zoning code is FAR 6, or a total of 9.6 million square feet of interior space without any use of the USPS' sovereign zoning variance to build more densely.

Accordingly, even if the agency retains the entire facility and one floor of parking, current zoning would allow it to add as much as 8 million square feet of building to the site, or between 8,000 and 10,000 two-bedroom apartments, generating $100-250 million in revenue each year—even if rented only at a below-market $1,500 per unit.[23] If the agency were to use sovereign immunity to build at FAR 10, it could expect to earn between $300 and 400 million each year.[24] While these numbers may seem astronomical, one must consider that much of the initial revenue would need to cover construction costs, and that the agency would likely need to seek participation by private groups through some kind of public-private partnership to successfully execute redevelopment of this or other urban sorting centers.

The third type of potential postal development site is post offices in town core areas. Here, the total potential value to the USPS is low, but adding housing units on top of existing postal facilities could still benefit both the agency and its employees. Where USPS buildings are shorter than their neighbors or have excessive parking due to declining retail demand or a reduction in the number of supported mail routes, the postal service could add housing units above or behind the current facility, yielding modest rents that could offset local post office operation costs. Moreover, such units would be extremely desirable to postmasters and postal workers, shortening employee commutes. Alternatively, these spaces could be desirable as office space for mail-reliant small businesses, nonprofit mailers and municipal governments, all of which benefit from limiting staff time spent ferrying mail to the post office. The value in using sovereign immunity to engage in such facility developments would be in avoiding parking and traffic-related objections omnipresent in municipal land-use regulatory decision-making—something retail facility lessors cannot do.

Such a path would not be completely unprecedented. The military regularly engages in land development on bases at densities beyond what would be allowed in local zoning codes. Amtrak, an independent agency that is similar to the USPS, has a value-capture development program for its stations and rail yards that stands to cross-subsidize American passenger railroading. In light of this, the USPS would simply join its peer agencies in using the Constitution's Supremacy Clause to support its mission of national scope and importance and to comply with its governing statutes.

CONCLUSION

As politicians work toward a better idea of what Americans want out of the USPS moving forward, they must inevitably reckon with the costs and benefits of a mail agency owning and managing a multi-billion-dollar portfolio of real estate assets. Should the people decide that their mail agency is better off as a renter, the USPS has mechanisms in place to successfully offload the majority of owned holdings. However, if they instead determine that the nation would be better served by a postal service that owns and controls its properties entirely, that is also an option, as it has the power it would need to get every last dollar out of the land the government holds for its national mail carrier.

ABOUT THE AUTHOR

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