

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	July 15, 2024
Action Required:	Acceptance of the City's Right of Way Acquisition Procedures and Policy Manual and the Virginia Department of Transportation Right of Manual to include templates.
Presenter:	Steven Hicks, Director of Public Works
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Title:	Resolution to accept Right of Way Acquisition and Eminent Domain/Quick Take Process and Procedures

Background

Successful right of way valuations and negotiations depend on three criteria: time management, cost containment, and a good relationship with the public. However, it is difficult to achieve all three objectives at once because of the complex nature of the process. While project plans, surveys, and construction have relatively finite timelines, condemnation proceedings often make the property acquisition phase of a transportation project last longer than expected or desired. Furthermore, a series of complex statutes, rules, and regulations creates additional challenges. Given the significance of right of way acquisition and its numerous challenges, it is crucial to evaluate and undertake effective strategies for successful negotiations and moving projects to closeout either by voluntary agreement or under eminent domain, (City Quick-Take Process).

The VDOT Right of Way Manual illustrates the basic steps for the negotiating process. After the completion of the appraisal and appraisal review for the property to be acquired, the negotiation is initiated with a written offer to the owner. If the offer is accepted by the property owner, the payment is arranged, and the process proceeds to closing. However, if the final offer is declined after several negotiation attempts and if the administrative settlement process has been denied, the acquisition process moves to the next phase: condemnation proceedings.

The VDOT Right of Way Manual and the Locally Administered Projects (LAP) Manual, Chapter 16, provides primary responsibility to local public agencies in determining right of way procedures to obtaining funds through various transportation programs administered by VDOT. These manuals were developed with oversight from the Federal Highways Administration and outline the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, as well as ensuring compliance with FHWA.

Both manuals (VDOT Right of Way Manual and the Locally Administered Projects (LAP) Manual, Chapter 16) have an important role in helping local governments with applying policies and

procedures for obtaining property rights. Attached is the draft policy (Acquisition Procedures and Policy Manual) submitted for acceptance that meets specific code requirements. This policy will provide predictability and safeguards to meet state and federal requirements for both City staff and consultants.

Eminent domain (also known as “condemnation”) is where a governmental entity (The City) seeks to acquire private property for a public purpose. Common examples are the acquisition of right of way/easements for road projects, utility easements, or land needed for a school, public safety, or parks/trails.

Steps to Condemn:

- Identifying the property the City needs to acquire. This requires surveys and possibly engineering studies, depending on the type of property.
- Contacting the landowner and informing them about the project and that the City may need to acquire portions of their land. Coordinate the surveys and appraisals with the landowners.
- Have a state certified appraiser value the property the City needs to acquire or utilize a basic appraisal report.
- Meet with the landowner and present the offer package including Initial Offer Letter, title report, plan sheets, appraisal of property, and the deed/easement document(s).
- Send the landowner a Final Offer Letter after a minimum of 30 days negotiation period if no voluntary agreement is reached.
- Receive/process rejection package and prepare for City Council consideration.

The City has the right to acquire the land needed for public projects and infrastructure guided by laws and regulations. The City may condemn property if a voluntary agreement to acquire property rights is not reached with the property owner. The process of condemning property is completed in accordance with Virginia laws and the approval of the City Council. Without this power, the City could not meet the needs of the people with adequate transportation facilities, utilities, drainage systems and other public desires to meet the demands of the City’s growing population and the traveling public. When eminent domain is used for a project, the City explores alternatives to reduce impacts while still allowing for a project to be constructed.

The City’s policy is to treat all property owners the same, in a fair and unbiased manner, while being courteous, and with as little inconvenience as possible. Sometimes agreements cannot be reached between a property owner and the City. When these situations arise, the property owners, as well as the City, have well-defined rights under the law. These rights safeguard the landowner from receiving less than fair market value for their property, and they protect the tax funds set aside by the City for right-of-way/easement purchases from impractical demands. When a voluntary transaction is unable to be used to acquire property rights that are needed for a project, the City may condemn the property. However, prior to doing so, a public hearing is held, and City Council approval is required.

When condemning property in Virginia, this often means using a “Quick Take” process. Under this process, the City can deposit its original offer amount made to a property owner with the Clerk of Court to be placed into escrow when recording a “Certificate of Take”. Once a Certificate of Take is recorded, the City has acquired defeasible title to the property rights that are needed for a project.

However, the City will still attempt to reach a mutually acceptable agreement with the property owner regarding compensation owed. While negotiations continue, the property owner may “drawdown” the funds that the City has placed into escrow with the court. The City can help provide guidance to a property owner about how to drawdown the funds. In many instances, the property owner may need to retain an attorney to assist them with a drawdown.

Discussion

Based on current projects, VDOT has provided the City with their report card:

- The City missed several target milestones, right of way being one of the recognized deficiency milestones.
- The City in its self-evaluation and consultation with VDOT, determined the City’s right of way procedures as the key delay point in finishing projects on-time.

While on time performance is being improved, the City needs to take measures to work internally to recognize known steps to deliver the current projects' performance, resources, and progress as graded by VDOT. Strong consideration that projects will follow the proposed right of way policy to ensure project delivery and funding requirements from VDOT.

Alignment with City Council's Vision and Strategic Plan

N/A

Community Engagement

During the Right of Way process and design phase, public hearings will be held to notify the community members and property owners regarding the scope of the projects and any property acquisitions.

Budgetary Impact

FHWA, VDOT and City Funded through CIP

Recommendation

Acceptance of the City's Right of Way Acquisition Procedures and Policy Manual and the Virginia Department of Transportation Right of Manual to include templates. This is to ensure the City's responsibility for right of way procedures based on the oversight from the Federal Highways Administration (FHWA) and the Virginia Department of Transportation (VDOT) which is outlined the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, as well as ensuring compliance with FHWA requirements.

Alternatives

N/A

Attachments

1. City ROW Policy_FINAL
2. Resolution_ROW Procedures