

STAFF REPORT

To: PED Committee Date: April 15, 2014
From: Cathy Ball, PE, Executive Director
Via: Gary Jackson, City Manager
Subject: Right-of-Way (ROW) Acquisition Policy

Review: The City of Asheville is committed to infrastructure improvements including sidewalk installation, roadway improvements, and water and storm water infrastructure upgrades. In some cases, additional right-of-ways or easements are needed to make these improvements.

Many times staff is successful in obtaining easements through negotiations with the property owner. In some cases the property owners will donate the property at no cost to the City. Other times, the City will pay an assessed value for the property depending on the nature of the need (temporary or permanent). In a few cases it can become very difficult to negotiate with a property owner and other measures such as eminent domain are necessary to complete the project.

For the situations in which eminent domain is needed as a tool for obtaining right-of-way, staff has prepared an internal operating policy. The purpose of the policy is to provide consistency and documentation in the process in the event that eminent domain is necessary. The Metropolitan Sewerage District utilizes a similar policy to acquire easements for sewer installation and rehabilitation.

We have attached a draft of the policy and a flow chart detailing the process. Staff will be available for questions at the meeting.

Next Steps

Staff will be asking for recommendations from the PED Committee on whether this policy should be reviewed by the full body of City Council. It is not required as it is an administrative policy.

Attachments:

- (1) Draft ROW acquisition policy
- (2) Flow chart for ROW acquisition

DRAFT

ADMINISTRATIVE POLICY

SUBJECT: Sidewalks and Related Infrastructure Right of Way Acquisitions Policy and Procedure	Department: PUBLIC WORKS
Policy Number:	Effective Date:
Addendum Number:	
Issued By:	City Manager Approval
Cathy Ball, Executive Director	Gary W. Jackson, City Manager

Mission: In accordance with the meaning and intent of the N.C.G.S. §160A-296, it is the mission of the City of Asheville to acquire easements adequate for the installation, repair, rehabilitation and replacement of Sidewalks and related infrastructure improvements in the most fair and cost effective manner possible.

Policy: It is the policy of the City of Asheville to resolve right of way acquisition issues and concerns with private property owners in a fair and equitable manner, utilizing to the extent possible, out of court settlements, so as to minimize the need for judicial intervention.

Common Goal: The Asheville City Council on behalf of the citizens and residents of the City of Asheville, acknowledge that providing sidewalks and related infrastructure improvements to an area is a valuable service to the community. The City notes that it is not the City's intent to purchase the property, only the right to construct, operate, maintain or reconstruct infrastructure that benefit the community. In recognition of this common goal and public benefit, it is, as a general matter, contrary to City policy to provide compensation for such easements.

A. PURPOSE:

The purpose of this Policy is to establish procedures for the City of Asheville to acquire easements in connection with the construction, reconstruction, rehabilitation, operation and maintenance over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits except to the extent that authority and control is vested in the North Carolina Board of Transportation. General authority and control includes but is not limited to all of the following:

1. The duty to keep the public streets, sidewalks, alleys, and the bridges in proper repair.
2. The duty to keep the public streets, sidewalk, alleys, and bridges open for travel and free from unnecessary obstructions.
3. The power to open new streets and alleys, and to widen, extend, pave, clean, and otherwise improve existing streets, sidewalks, alleys, and bridges, and to acquire the necessary land therefor by dedication and acceptance, purchase, or eminent domain.
4. The power to close any street or alley either permanently or temporarily.
5. The power to regulate public streets, sidewalk, alleys, and bridges.
6. The power to regulate, license, and prohibit digging in the streets, sidewalks or alleys, or placing therein or thereon and pipes, poles, wires, fixtures, or appliances of any kind either on, above, or below the surface. To the extent a municipality is authorized under applicable law imposes a fee or charge with respect to activities conducted in its rights-of-way, the fee or charge must apply uniformly and on a competitively neutral and nondiscriminatory basis to all comparable activities by similarly situated users of the rights-of-way.
7. The power to provide for lighting the streets, alleys, and bridges of the city.
8. The power to grant easements in the street rights-of-way as permitted by G.S. 160A-273.

B. RESPONSIBILITY

1. Establishment of Right of Way Committee: There is hereby created a three (3) member Right of Way Committee, consisting of three City

Department Directors appointed by the City Manager. This Committee shall work under the general direction and control of the City Manager.

2. *Duties of Right of Way Committee:* The Right of Way Committee is charged with reviewing proposed acquisitions, making recommendations regarding easement acquisitions whether voluntary or involuntary to the City Manager.
3. *Project Manager:* In all right of way acquisitions, there shall be a project manager who shall initially determine the need for the acquisition of right-of-way in order to meet the purpose above. The project manager shall work under the direction of the Director of Public Works and shall be responsible for acquiring easements in accordance with the procedures set forth herein.
4. *City Council:* Prior to the beginning of each fiscal year, the project manager shall provide the City Manager with a list of projects, highlighting those projects that may require the acquisition of easements. The City Manager shall present to the City Council prior to the adoption of the fiscal year budget a budget for those projects that may require the acquisition of easements. Council may or may not approve the requested budget. With the exception of exigent circumstances, no project for which Council has declined funding for easement acquisition shall be presented to Council for authorization to proceed with condemnation.

C. COMPENSATION

In cases where compensation becomes necessary, the following method may be used to establish a budget for each project and compensation which the Project Manager may negotiate. The current land value (excluding improvement values) established by the Buncombe County Tax Assessor shall be used as a base value for compensations. Permanent Easement areas shall be compensated at fifty percent (50%) of value for the net new square footage. Temporary Construction Easement areas shall be compensated at a ten percent (10%) annual rate of return on the value of the new square footage for the duration of the project. In determining compensation under this policy the Department Director may consider the fact that the property is already encumbered by an existing easement agreement.

D. PROCEDURE FOR EASEMENT ACQUISITION

1. Pre-negotiation process:
 - a. The Project Manager shall prepare a schedule for easement acquisition if right-of-way is needed to complete the project.

- b. The Project Manager will provide the City's Attorney with an easement plat. The attorney shall search or cause to be searched the title to each parcel of real property upon which an easement is needed, the extent, duration and scope of which shall be within the purview of the City Attorney's Office. The attorney shall issue a preliminary legal opinion on title and such other legal data that the City Attorney deem to be in the City's best legal interest.
- c. Upon receipt of the preliminary title opinion from the City Attorney's Office, the Project Manager shall either commence negotiations for easement acquisition with the assistance of the City's property manager or contract such negotiations to a 3rd party.
- d. If the project manager determines that it is in the City's best interest to contract easement negotiations to a 3rd party, the project manager shall follow North Carolina bidding laws and City policy in submitting a proposal(s) for such professional services to the Department Director for approval. The project manager or the 3rd party contractor assigned to the project shall hereinafter be referred to as the "Right of Way Agent, (RWA)."
- e. The project manager shall mail notice of upcoming projects to affected neighborhood associations. Notice shall describe the project and if desired by the neighborhood, offer an opportunity to the neighborhood and other interested persons for a public meeting conducted by Departmental staff to present the preliminary project design.

- 2. Public meeting: Public meeting notices shall comply with applicable City policies.

E. NEGOTIATION

- 1. Following a public meeting, if requested by the neighborhood, and after receipt of the preliminary title opinion, the RWA will send a "Letter of Interest" to each affected property owner. The Letter of Interest will present the need for an assessment, briefly explain negotiation procedures, state negotiation schedule and request an appointment with the owner to discuss acquisition of the easement.
- 2. The RWA will make all reasonable efforts to meet with the affected property owner or the property owner's representative to discuss:
 - (a) the City's acquisition policy and procedure;
 - (b) review the Easement Agreement and easement plan;

- (c) to invite affected property owner(s) input; and
- (d) address specific concerns the Owner may have

A minimum of three documented, substantial meetings must occur between the RWA and affected property owner. A substantial meeting is defined as personal contact with the affected property owner, or the affected property owner's representative or appointed agent, where all aspects of the project are reviewed, discussed, and understandings reduced to writing. In the case of a non-local owner, where personal contact may not be possible, substantial meetings may also include but not limited to several telephone conversations or attempted telephone contact, or several certified letters where receipt of service is received back from the post office. The RWA may schedule and hold as many additional meetings as deemed necessary to reach agreement within the confines of the project schedule.

3. Any special provisions for construction or restoration must be noted on a "Special Provisions Detail Sheet." A copy of the Special Provisions Detail Sheet shall be placed in the file and a copy provided to the affected property owner. A Special Provisions Summary Report with individual detail sheets attached will be provided to the Project Manager and/or Department Director for inclusion in the special conditions of the project specifications. The RWA shall have the authority to offer in lieu of cash compensation, reasonable improvements, trees, plants or other reasonable provisions agreed upon with the Owner.
4. If the City and affected property owner reach an agreement for acquisition of an easement, the RWA is hereby authorized to obtain the signature of the affected property owner(s) as reflected in the preliminary title opinion.
5. Upon execution of the easement agreement by the affected property owner(s), the easement agreement will be forwarded to City attorney to update the title, cause the City to officially accept the easement and prepare a final title opinion. The City's attorney shall return the fully executed and accepted easement along with the final title opinion to the project manager to finalize the process needed to compensate the affected property owner(s), including securing as needed, a 1099S for reporting to the IRS.
6. The project manager shall send copies of the recorded easement agreement, the Right of Way Use Policy and the special provisions detail sheet (if negotiated) to the affected property owner(s). All other remaining documentation pertaining to the project shall be completed and inserted into the file for closing. The cover sheet of the closed file shall contain the name of the project, the number of easements obtained by parcel and the compensation paid if any, the deed book and page number of the recorded easements.

F. CONDEMNATION

If, after reasonable efforts by the RWA, negotiations fail and the parties are unable to agree to either the acquisition of an easement or the terms of an easement, the RWA may request authority for condemnation as follows:

1. The right of way agent shall report to the project manager that negotiations have failed unless the project manager is the RWA, in which event, the project manager shall report the Department Director. The Department Director, in considering among other things, the purpose of the project, the benefit of the project to the community, etc., shall then determine whether it is in the City's best interest to proceed with condemnation. If the Department Director recommends condemnation, then the project manager shall arrange for an appraisal of the property.
2. Upon receipt and review of the appraisal report, the project manager shall make a final offer to the affected property owner(s) in the amount of damages determined by the appraisal. If the offer is accepted, the procedures outlined above shall be followed.
3. If the offer is not accepted, the project manager shall then request authorization to proceed with condemnation from the ROW Committee, the City Manager, the Finance Committee of City Council and City Council.
4. If condemnation is supported by all of the entities as referenced in the preceding paragraph, the project manager shall work with the City's attorney to start the statutory condemnation process as set forth in Article 3 of Chapter 40A of the North Carolina General Statutes.
5. After complying with the statutory procedural condemnation process, the City's attorney upon filing the Complaint, Declaration of Taking and Deposit of just compensation funds with the Buncombe County Clerk of Superior Court shall inform the project manager. Further, no entry shall be made upon the affected condemned parcel until the City's attorney advise the project manager that the City may access the easement area taken.

G. ADVERTISEMENT AND BIDDING OF PROJECT

Once the project manager determines that all required easements including the filing of the Complaint, Declaration of Taking and Deposit of just compensation funds with the Buncombe County Clerk of Superior Court, for the successful completion of the project have been obtained, the project manager shall advise the Department Director that the acquisition process has been completed. The project

shall not be advertised for construction until the Project Manager provides written notice to the department director that all required easements have been acquired.

ROW Acquisition

