

TOWN OF EATONVILLE

Agenda Staff Report

Agenda Item No.:	_____	Meeting Date:	<u>August 10, 2015</u>
Subject:	<u>Resolution No. 2015-S Approving and</u>	Prepared by:	<u>Town Attorney</u>
	<u>Adopting Right of Way Acquisition</u>		<u>Greg Jacoby</u>
	<u>Procedures and Delegating Authority to</u>	Atty Routing No:	<u>023-15</u>
	<u>The Town Administrator</u>	Atty Review Date:	<u>July 31, 2015</u>

Summary: When the town undertakes certain transportation-related improvements, it is sometimes necessary to acquire rights of way or other real property rights. Many transportation-related improvements involve the use of state and/or federal money. Both state and federal law have very specific requirements governing the acquisition of rights of way using state and/or federal money. One of the requirements is that the local jurisdiction must have right of way acquisition procedures in place that are consistent with state and federal law. Staff has worked with the Washington State Department of Transportation to ensure that the town has the appropriate procedures in place to acquire rights of way and other real property rights and to do so in an efficient and cost effective manner.

Recommendation: Staff recommends adoption of Resolution No. 2015-S approving right of way acquisition procedures and delegating authority to the Town Administrator to waive certain appraisals and to reach administrative settlements.

Motion for consideration: I move to adopt Resolution No. 2015-S approving right of way acquisition procedures and delegating authority to the Town Administrator to waive certain appraisals and to reach administrative settlements.

Fiscal Impact: None.

Attachments: Resolution No. 2015-S

RESOLUTION NO. 2015 - S

**A RESOLUTION OF THE TOWN OF EATONVILLE,
WASHINGTON, APPROVING AND ADOPTING RIGHT OF WAY
PROCEDURES AND DELEGATING TO THE TOWN
ADMINISTRATOR CERTAIN AUTHORITY TO WAIVE
APPRAISALS AND TO REACH ADMINISTRATIVE
SETTLEMENTS**

WHEREAS, when the Town of Eatonville undertakes certain transportation-related improvements, it is necessary for the Town to acquire rights of way and other real property rights; and

WHEREAS, the Town desires to ensure that rights of way and other real property rights associated with transportation-related improvements are acquired in accordance with the State Uniform Relocation Assistance and Real Property Acquisition Act, Chapter 8.26 RCW, and other applicable state and federal regulations; and

WHEREAS, The Town Council is required to approve right of way acquisition procedures in order to ensure that all rights of way and other real property rights are acquired in accordance with state and federal law; and

WHEREAS, in order to facilitate the acquisition of rights of way the Town desires to make use of the \$25,000 appraisal waiver process approved by the Federal Highway Administration; and

WHEREAS, in order to expeditiously acquire rights of way the Town desires to consider and maximize the use of administrative settlements in appropriate situations; now, therefore;

**THE TOWN COUNCIL OF THE TOWN OF EATONVILLE,
WASHINGTON, HEREBY RESOLVES AS FOLLOWS:**

THAT: The right of way acquisition procedures attached as Exhibit A hereto and incorporated by this reference are hereby approved and adopted; and

FURTHER THAT: The Mayor is authorized to execute such documents as the Washington State Department of Transportation may require to acknowledge and approve these right of way acquisition procedures.

PASSED by the Town Council of Town of Eatonville and attested by the Town Clerk
in authentication of such passage this 10th day of August 2015.

Mike Schaub, Mayor

ATTEST:

Kathy Linnemeyer, Town Clerk

Right-of-Way Procedures

The TOWN OF EATONVILLE, hereinafter referred to as "AGENCY", desiring to acquire Real Property in accordance with the state Uniform Relocation Assistance and Real Property Acquisition Act (Ch. 8.26 RCW) and state regulations (Ch. 468-100 WAC) and applicable federal regulations, hereby adopts the following procedures to implement the above statutes and Washington Administrative Code. The AGENCY is responsible for the real property acquisition and relocation activities on projects administered by the AGENCY. To fulfill the above requirements the AGENCY will acquire right-of-way in accordance with the policies set forth in the *Right of Way Manual M 26-01* and *Local Agency Guidelines*. The AGENCY has the following expertise and personnel capabilities to accomplish these functions:

1. The following relate to the AGENCY's request.

- a. Below is a list of responsible AGENCY positions for which the AGENCY has qualified staff to perform the specific right-of-way function(s). Attached is a listing of each individual on the AGENCY staff who currently fill those positions below, and a brief summary of their qualifications pertaining to the specific right-of-way function(s) for which they are listed. This list shall be updated whenever staffing changes occur. The AGENCY will be approved to acquire based upon staff qualifications.

(1) PROGRAM ADMINISTRATION

Doug Beagle, Town Administrator.

Title of AGENCY position (employee name & qualifications attached)

(2) APPRAISAL

No qualified staff.

Title of AGENCY position (employee name & qualifications attached)

(3) APPRAISAL REVIEW

No qualified staff.

Title of AGENCY position (employee name & qualifications attached)

(4) ACQUISITION

No qualified staff. Doug Beagle, Town Administrator – Donations only.

Title of AGENCY position (employee name & qualifications attached)

(5) RELOCATION

No qualified staff.

Title of AGENCY position (employee name & qualifications attached)

(6) PROPERTY MANAGEMENT

DOUG BEAGLE, TOWN ADMINISTRATOR

Title of AGENCY position (employee name & qualifications attached)

- b. Any functions for which the AGENCY does not have staff will be contracted for with the Washington State Department of Transportation (WSDOT), another local agency with approved procedures or an outside contractor. An AGENCY that proposes to use outside contractors for any of the above functions will need to work closely with the WSDOT Local Agency Coordinator (LAC) and Local Programs to ensure all requirements are met. When the AGENCY proposes to have a staff person negotiate who is not experienced in negotiation for Federal Highway Administration (FHWA) funded projects, the LAC must be given a reasonable opportunity to review all offers and supporting data before they are presented to the property owners.
 - c. An AGENCY wishing to take advantage of WSDOT’s Appraisal Waiver Procedure on properties valued up to \$25,000 or less should make their proposed waiver procedure a part of these procedures as an attachment. The procedure outlined in the LAG manual has already been approved using RES form LPA-003. The AGENCY may submit a procedure different than that shown, and it will be reviewed and approved if it provides sufficient information to determine value.
 - d. Attached is a copy of the AGENCY’s Administrative Settlement Procedure showing the approving authority(s) and the procedure involved in making administrative settlements.
2. All projects shall be available for review by FHWA and WSDOT at any time and all project documents shall be retained and available for inspection during the plan development, right-of-way and construction stages, and for a three year period following acceptance of the projects by WSDOT.
 3. Approval of the AGENCY’s procedures by WSDOT may be rescinded at any time the AGENCY is found to no longer have qualified staff or is found to be in non-compliance with the regulations. The rescission may be applied to all or part of the functions approved.

Mike Schaub, Mayor

Date

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

Approved By: _____

Local Programs Right of Way Manager

Date

**TOWN OF EATONVILLE
RIGHT OF WAY ACQUISITION
ADMINISTRATIVE SETTLEMENT POLICY**

The Town of Eatonville (“Town”) shall make every reasonable effort to expeditiously acquire real property by negotiation. Negotiation implies an honest effort by the Town to resolve differences with property owners. Offers can be flexible and negotiation should recognize the inexact nature of the process by which just compensation is determined. The Town shall endeavor to expedite the acquisition of real property by agreements with owners and to avoid litigation and relieve congestion in the courts.

The Town shall, to the greatest extent possible, expeditiously negotiate all fair market value offers (FMV) for the acquisition of right of way and other real property rights. However, the Town recognizes the fact that differences of FMV may occur with property owners. These differences typically exceed the FMV offered by the Town. In such cases, Administrative Settlement may be necessary where the Town will continue to negotiate considering all the information supporting just compensation in excess of FMVs. The Town shall carefully consider and maximize the use of Administrative Settlements in appropriate situations.

The Town’s negotiator will work with Town staff and property owners towards a mutual and reasonable agreement of Just Compensation. All reasonable counter offers by the property owner will be submitted to the Town Administrator for review. If in agreement, the Town Administrator will coordinate with the assigned negotiator and other Town staff and prepare a letter of support and justification towards Administrative Settlement. The extent of the letter of support is a matter of judgment and will be consistent for all property owners, subject to the circumstances and the amount of money involved. In accordance with WSDOT *Local Agency Guidelines* §25.11 and WSDOT *Right of Way Manual* §6-12, considerations in the letter of support shall include but not be limited to:

- (1) All available appraisals, including the owner’s, and the probable range of testimony in a condemnation trial.
- (2) Ability of the Town to acquire the property, or possession, through the condemnations process to meet the construction schedule. Impact of construction delay pending acquisition.
- (3) The negotiator’s recorded information, including parcel details and the owners’ rationale for increased compensation.
- (4) Recent court awards and cases involving similar acquisition and appraisal problems.
- (5) Likelihood of obtaining an impartial jury in the local jurisdiction; opinion of legal counsel where appropriate.
- (6) Estimate of trial costs weighed against other factors.

Authority

The Town Administrator shall have authority to waive appraisals on properties valued at \$25,000.00 or less under the process outlined in the *WSDOT Local Agency Guidelines Manual* and the Town's approved Waiver of Appraisal Procedure.

The Town Administrator shall have the authority to sign Town concurrence with the waiver valuation as Just Compensation and authorize the commencement of negotiations.

The Town Administrator shall have the authority to sign Town concurrence with the Appraisal Review (Determination of Value) as Just Compensation and authorize the commencement of negotiations.

Administrative Settlements that do not exceed \$250 of the Town's Determination of Value may be approved by the Town's negotiator. The negotiator shall present any owner counter offers greater than \$250 to the Town Administrator.

Administrative Settlements that do not exceed \$1,000.00 of the Town's Determination of Value may be approved by the Town Administrator. A diary entry signed by the Town Administrator shall be placed in the file.

Administrative Settlements that exceed \$1,000.00 of the Town's Determination of Value shall be approved by the Town Council. A diary entry signed by the Town Administrator shall be placed in the file.

All Administrative Settlements will be documented, thoroughly justified, and shall be set forth in writing.

All expenditures will be approved by the Town Council prior to issuance of payment.

WAIVER OF APPRAISAL PROCEDURE

The TOWN OF EATONVILLE, hereinafter referred to as "AGENCY", desiring to acquire Real Property according to 23 CFR, Part 635, Subpart C and State directives, and desiring to take advantage of the \$25,000.00 appraisal waiver process approved by the Federal Highway Administration (FHWA) for Washington State, hereby agrees to follow the procedure approved for the Washington State Department of Transportation (WSDOT) as follows:

Rules

- A. The AGENCY may elect to waive the requirement for an appraisal if the acquisition is simple and the compensation estimate indicated on the Project Funding Estimate (PFE) is \$25,000.00 or less including cost-to-cure items. A True Cost Estimate shall not be used with this procedure.
- B. The AGENCY must make the property owner(s) aware that an appraisal has not been completed on the property for offers \$10,000 or less.
- C. The AGENCY must make the property owner(s) aware that an appraisal has not been completed on the property for offers over \$10,000 and up to \$25,000, and that an appraisal will be prepared if requested by the property owner(s).
- D. Special care should be taken in the preparation of the waiver. As no review is mandated, the preparer needs to assure that the compensation is fair and that all the calculations are correct.

Procedures

- A. An Administrative Offer Summary (AOS) is prepared using data from the PFE.
- B. The AOS is submitted to the TOWN ADMINISTRATOR for approval.
- C. The TOWN ADMINISTRATOR signs the AOS authorizing a first offer to the property owner(s).

AGENCY:
Town of Eatonville

APPROVED:

By: _____
Mike Schaub, Mayor

Local Programs Right of Way
Manager

Statement of Qualification – Doug Beagle, Town of Eatonville Town Administrator

Training:

FHWA-NHI-141047 – Local Public Agency Real Estate Acquisition

Experience:

Mr. Beagle has 4 ½ years of experience in local government administration and over 25 years of experience in engineering and construction management field. Successfully completing FHWA, ARRA audits on multiple project.



U.S. Department
of Transportation
**Federal Highway
Administration**

National Highway Institute

Certificate of Training



Doug Beagle

has participated in

NHI Course No. FHWA-NHI-141047

Local Public Agency Real Estate Acquisition - WEB-BASED

hosted by

National Highway Institute

Location: Web-Based Course

Hours of Instruction: 6 hours

Date: 5/27/2015

Valerie Briggs, Director
National Highway Institute