

Kansas Department of Transportation

OCTOBER 9, 1992

BLP MEMO 92-15

MEMORANDUM TO: COUNTY ENGINEERS/ROAD SUPERVISORS
HIGHWAY ADMINISTRATORS
CITY ENGINEERS (GREATER THAN 5,000)
CITY ENGINEERS (LESS THAN 5,000 WITH PROJECTS)
COUNTY COMMISSIONERS

SUBJECT: RIGHT OF WAY ACQUISITION POLICIES
(RESCINDS BRUD MEMO 85-4, DATED 9-6-85)

The Federal Highway Administration has notified us of new regulations contained in 49 CFR, Part 24 entitled "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs". These regulations became effective April 2, 1989 and all right of way for city or county federal or state aid projects which has not been acquired at this time must be acquired in conformance with these regulations.

The attached procedures (3 pages) were developed for implementation of the new regulations on a typical project involving simple acquisitions. The procedures and use of attached forms are effective immediately for projects where federal or state funds will be used to participate in any part of the project costs. **If buildings, structures or other improvements are to be acquired, the Bureau of Local Projects must be contacted for guidance.** These procedures do not cover necessary relocation procedures.

Procedures have also been developed which give the local agencies the option of determining that an appraisal is not necessary, based on the review of available data, because the valuation problem is not complicated and the fair market value is estimated at \$2500 or less.

Prior to any project going to contract, the city or county is required to furnish the Bureau of Local Projects a Certification of Real Property Acquisition Procedures (see attached copy). All right of way transactions necessary for a project should be made in compliance with the certification including purchase of right of way by deed or permanent easement, easement for channel change maintenance and temporary construction easements. This certification will be reviewed by the Bureau of Local Projects engineer with the city or county representative at the time of the project's field check.

When federal or state funds are anticipated to be used in any phase of the project, these procedures should be followed in acquiring the right of way for the project.

The Kansas Department of Transportation (KDOT) will monitor right of way acquisition on a spot-check basis. The monitoring process will be conducted by personnel from KDOT's Bureau of Local Projects and Bureau of Right of Way. Some of the items which will be checked in the monitoring of right of way acquisitions are as follows:

1. Was proper interest acquired; releases obtained from liens and encumbrances affecting the right of way; and, the conveyance instruments recorded with the appropriate county offices?
2. Was the right of way acquired by donation? If yes, did owner sign the waiver?
3. Was a brochure furnished the property owner? (see attached brochure)
4. Was the owner given the opportunity to accompany the appraiser?
5. Was an acceptable appraisal completed?
6. Was a review appraisal completed and just compensation established?
7. Was a written, prompt offer of compensation made?
8. Are negotiator contact records in the file?
9. Was payment made prior to possession?
10. Was an offer made to acquire uneconomical remnants?
11. Other items on the certification which may be applicable to the particular project.

Again, we cannot stress too strongly the need to follow the requirements of federal and state regulations to which you are certifying and the need for documenting your contacts with the property owners or their representatives. **Non-compliance could mean the loss of federal or state funds to your county or city.** We urge you to review the enclosed attachments and if you have any questions, contact this office or bring your questions to any meeting at which we are in attendance.

LARRY W. EMIG, P.E.
CHIEF OF LOCAL PROJECTS

LWE:wp

Attachments

Attachments:

1. Procedures for Right of Way Acquisition on Simple Projects. (3 Pages)
- 2.* Certification of Real Property Acquisition Procedures (3 Pages)
- 3.* County Offer to Purchase Statement of Compensation (1 Page)
- 4.* City Offer to Purchase Statement of Compensation (1 Page)
- 5.* Partial Donation of Right of Way (1 Page)
- 6.* Donation of Right of Way (1 Page)
- 7.* Value Finding Appraisal (1 Page)
8. Brochure entitled, "Real Property Acquisition for Kansas Highways, Roads, Streets and Bridges."
9. 49 CFR Part 24 entitled, "Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs."

*Note: Attachments 2-7 are forms that may be copied as necessary to complete and return to the Bureau of Local Projects.

PROCEDURES FOR RIGHT OF WAY ACQUISITION ON SIMPLE PROJECTS

I. DONATION

Property owners whose real property is to be acquired for a highway project may make a gift or donation of the property, or any part of it, or of any of the compensation paid for it, to the acquiring agency.

- A. All owners must be fully informed of the right to receive just compensation for the acquisition of the property. One method of informing property owners is by providing them with a written document, such as a KDOT brochure, which explains the land acquisition process under Federal and State law and the owner's rights, privileges, and obligations. The information provided in the written document should be clearly presented in non-technical terms to the extent practicable. KDOT brochures are available upon request.
- B. The owners must also be fully informed that they are entitled to have an appraisal made of the property unless the property owner releases the agency from this obligation or the agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at \$2500 or less, based on a review of available data.
- C. The owner may donate the property or any portion of it and/or release the agency from the obligation to have an appraisal after being advised of his/her right to just compensation and the obligation of the agency to have an appraisal prepared. It is a property owner option. This can be accomplished by utilizing the attached donation or partial donation letter.

II. APPRAISAL AND APPRAISAL REVIEW

The acquiring agency should select a qualified appraiser and review appraiser. Their qualifications should be consistent with the level of difficulty. Simple project acquisitions can normally be done by a person familiar with real estate values in the community. Property owners must be provided the opportunity to accompany the appraiser.

The acquiring agency may determine that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at \$2500 or less, based on a review of available data. This determination should be made by a qualified individual after becoming familiar with the acquisition and property value. It is prudent that the determination and the calculation used in estimating just compensation be in writing and retained.

The attached approved KDOT appraisal form should be used by the appraiser on simple acquisitions. The form is consistent with the definition of appraisal and appraisal standards in the regulations. The form provides only a minimum of space for descriptions, support and explanations; however, it can be supplemented if desired. The acquiring agency shall contact the Bureau of Local Projects if the acquisition involves substantial damages to the remainder or other complex problems exist. The bureau will be able to provide other formats that are more appropriate for complex acquisitions and are consistent with Federal regulations. If the appraisal assignment requires the preparation of a detailed appraisal, and the acquiring agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be certified by the State of Kansas.

The appraisal shall be examined by qualified review appraisers to determine that the appraisal meets applicable appraisal requirements and approves an amount which is believed to represent just compensation. When the review appraiser is unable to approve an appraisal, he/she may independently develop and support an offer of just compensation. The bottom of the appraisal form must be completed by the review appraiser.

III. NEGOTIATION

The acquiring agency's primary goal during the acquisition process should be to acquire the required property interests by negotiation. The acquiring agency or negotiator plays an important role in achieving this goal. Negotiations shall be conducted by a qualified member of the agency's staff or a qualified consultant.

The negotiator shall make all reasonable efforts to personally contact each resident property owner or the owner's designated representative. The negotiator should attempt to make the appointment with the property owner at a time and place convenient to the owner. The property owner should receive an explanation of the acquisition process which could be provided by an acquisition brochure.

The owner must be provided with a written offer of the approved estimate of just compensation for the property to be acquired including a summary statement of the basis for the offer. The owner must be given a reasonable opportunity to consider the offer and present material which the owner believes is relevant to determine the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The acquiring agency must consider the owner's presentation.

If all reasonable efforts to make a personal contact with the owner have failed or if the owner is from out of state and personal contact is impracticable, the owner may be contacted by certified mail or other means appropriate to the situation.

The attached summary sheet should be utilized to make the written offer to the property owner. The agency may include any additional information that it deems appropriate.

Negotiations shall be conducted without any attempt to coerce the property owner into reaching agreement. The negotiator should be careful not to imply that the negotiation is a "take it or leave it" situation.

There may be instances warranting the need for an updated appraisal, or even a new appraisal, if new information is presented or if there are delays since the last appraisal or if there is a material change in the character or condition of the property.

The city or county may approve an administrative settlement when negotiations have failed and the purchase price exceeds the amount offered as just compensation. Written justification shall be prepared supporting such a settlement.

The negotiator shall maintain adequate records of negotiations on a parcel basis. Information on each contact should be included. The negotiation notes should specifically state the date and the fact that the written offer to purchase was hand delivered or mailed to the property owner. The record shall be signed and dated by the negotiator. The record shall become a part of the project file even when negotiations are unsuccessful.

In cases where the owner and the agency cannot reach amicable agreement after conducting negotiations over a reasonable period of time, the agency shall institute condemnation proceedings in accordance with State law.

IV. SEPARATION OF FUNCTION

No appraiser shall act as a negotiator for real property which that person has appraised; however, the same person may both appraise and negotiate an acquisition where the value of the acquisition is \$2,500, or less. Likewise, no review appraiser shall act as an appraiser or a negotiator for real property which that person has examined and approved the amount of just compensation.

V. RETENTION OF RECORDS

The acquiring agency shall maintain in one location a separate parcel file for each acquisition of real property and each unit displaced. These records shall be sufficient to demonstrate compliance with applicable laws, regulations, and requirements and shall be available for inspection at reasonable times by authorized representatives of KDOT and the Federal Highway Administration.

The records shall be retained for at least three years after the county or city has been notified that the project has been accepted by the Kansas Department of Transportation.

CERTIFICATION OF REAL PROPERTY ACQUISITION PROCEDURES

_____ City/County, Kansas certifies that all real property for Project Number _____ was acquired, including legal and physical possession*, in compliance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and amendments thereto (42 U. S. C. 4601 et seq.), and BLP MEMOS 92-10 and 92-15 and attached forms and procedures, and the items listed below:

- 1) Real property shall be appraised before the initiation of negotiations and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.
- 2) Before the initiation of negotiations for real property, an amount shall be established which is reasonably believed to be just compensation therefore; and a prompt written offer shall be made to acquire the property for the full amount so established. In no event shall such amount be less than the approved appraisal of fair market value of such property.
- 3) Any decrease or increase of the fair market value of real property prior to the date of valuation caused by the project for which such property is acquired or by the likelihood that the property would be acquired for such project, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property.
- 4) Every reasonable effort shall be made to acquire, expeditiously, real property by negotiation.
- 5) The owner of the real property to be acquired shall be provided with a written statement of, and summary of the basis for, the amount established as just compensation. On partial acquisitions, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.
- 6) In no event shall coercive action be taken to compel an agreement on the price to be paid for the property.
- 7) No owner shall be required to surrender possession of real property before the agreed purchase price is paid or before there is deposited with the court the amount of the award of compensation in the condemnation proceedings for such property.

* This requires the conveyance document for R/W and/or permanent easement to be recorded in the Register of Deeds office.

CERTIFICATION OF REAL PROPERTY ACQUISITION PROCEDURES

- 8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring authority shall not intentionally make it necessary for an owner to prove the fact of taking his real property.
- 9) The project shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling or to move his business or farm operation without at least (90) ninety days written notice from the date by which such move is required.
- 10) If acquisition of only part of a property would leave its owner with an uneconomic remnant, an offer shall be made to acquire the remnant. The Bureau of Local Projects will be contacted should this situation arise.
- 11) If there are buildings, structures, or other improvements owned by a tenant or landowner which are to be acquired or relocated, the Kansas Department of Transportation's Bureau of Local Projects will be the contact for guidance as to proper procedures.

Buildings, structures, or other improvements are involved in this project.

YES _____ NO _____

- 12) Property owners are to be reimbursed to the extent determined fair and reasonable for expenses necessarily incurred for: (1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property; (2) penalty costs for prepayment of any pre-existing recorded mortgage encumbering such real property; (3) the eligible pro-rata portion of paid real property taxes.
- 13) If the final judgment is that the property cannot be acquired by condemnation or the proceeding is abandoned by the city/county, or if a property owner successfully maintains an inverse condemnation action, the property owner is to be reimbursed for reasonable costs awarded to the owner by the court for such items as attorney, appraiser and engineering fees actually incurred because of the condemnation proceedings. The Bureau of Local Projects will be contacted before payment is made to the landowner should this situation arise.

CERTIFICATION OF REAL PROPERTY ACQUISITION PROCEDURES

- 14) Property owners may donate right of way after they have been fully informed of their right to have the property to be acquired appraised and to receive an offer of just compensation based on the appraisal. The appropriate donation or partial donation form signed by grantor(s) must be placed in the file for nay donated parcel.

If the Grantor of donated property intends to claim a tax deduction for a charitable contribution, an appraisal must be provided to establish the amount of the deduction.

- 15) Records will be maintained on file for at least three years after the county/city has been notified that the project has been accepted by the Kansas Department of Transportation.

City/County Clerk

Mayor/Chairman of Board

Date

1 copy to Secretary of Transportation
1 copy to City/County

CITY
OFFER TO PURCHASE
STATEMENT OF COMPENSATION

Project _____ Date _____

City of _____ Tract No. _____

Location: Lot _____ Block _____ Sub/Add _____

Dear _____:

The City of _____, Kansas, has approved a program for the construction and improvements of the above mentioned project. To accomplish the anticipated highway improvements, it will be necessary to acquire certain real property as indicated on the engineering plan and more particularly described in the instruments which will be presented to you for proper signatures, if you are receptive to the offer.

Based upon the fair market value of such real property, as determined by established procedures, the City of _____, Kansas, offers you the sum of _____ Dollars (\$ _____), for your real property, which has been determined to be just compensation for your property, or the portion thereof to be acquired.

The amount quoted includes the following items:

Real property to be acquired as right of way _____
(Sq. Ft.), (Acres)

Buildings acquired with right of way _____

Other easements, if any:

	(Sq.Ft.)		(Sq.Ft.)
Permanent _____	(Acres),	Temporary _____	(Acres)

This offer is based on a review and analysis of an appraisal (s) of this property or analysis of available data by a qualified individual.

Value of the right of way to be acquired \$ _____

Damages \$ _____

TOTAL COMPENSATION \$ _____

City of _____

By: _____
Agent

Address: _____

Phone: _____

PARTIAL DONATION OF RIGHT OF WAY

Date _____

County _____

City _____

Project _____

Tract No. _____

Gentlemen:

This letter will serve to verify that we were fully informed and advised of our rights to receive just compensation for the acquisition of a portion of our property for the construction of the above noted project.

We further wish to acknowledge that because of the benefits to be derived from this highway improvement, we willingly accept \$ _____ as full compensation, realizing this may be less than just compensation for the property to be acquired. Any difference between the compensation we are receiving and what might be actual just compensation is considered by us to be a donation to the County/City. We also release the agency from the obligation to make an appraisal.*

Grantors

Orig. to County/City
Copy to Grantors

* If the owner wishes to donate but wants an appraisal for the purposes of establishing a tax deduction for a charitable contribution, cross out the last sentence.

DONATION OF RIGHT OF WAY

Date _____

County _____

City _____

Project _____

Tract No. _____

Gentlemen:

This letter will serve to verify that we were fully informed and advised of our rights to receive just compensation for the acquisition of a portion of our property for the construction of the above noted project.

We further wish to acknowledge that because of the benefits to be derived from this highway improvement project, we willingly waive all rights for compensation, release the agency from the obligation to make an appraisal* and will donate the necessary land to the County/City.

Grantors

Orig. to County/City
Copy to Grantors

* If the owner wishes to donate but wants an appraisal for the purposes of establishing a tax deduction for a charitable contribution, cross out the phrase "release the agency from the obligation to make an appraisal".

VALUE FINDING APPRAISAL

Owner _____ Tract _____
Address _____ Project No. _____
County _____

Purpose of Appraisal: The purpose of the appraisal is to estimate the compensation due the owner for, or as a result of, the acquisition of a part or all of his/her real property, or interest herein, for a highway or related purpose

Areas to be Acquired:

In Fee Simple Title:
_____ Ac. sq. ft. @ _____ per Ac/sq. ft. \$ _____
By Permanent Easement:
_____ Ac. sq. ft. @ _____ per Ac/sq. ft. \$ _____
By Temporary Easement:
_____ Ac. sq. ft. @ _____ per Ac/sq. ft. \$ _____
_____ Ac. sq. ft. @ _____ per Ac/sq. ft. \$ _____
_____ Ac. sq. ft. @ _____ per Ac/sq. ft. \$ _____

Improvement Acquired
_____ \$ _____
_____ \$ _____

Cost to Cure & Damage

Total Value of Land,
Improvements taken and Cost to Cure _____

List of Source Data and Explanation of Assigned Values for Land,
Improvement and Damage:

I _____, hereby certify, that I personally made a field inspection of the property herein appraised and have afforded the owner or a representative the opportunity to accompany me on this inspection. Property inspected with/without _____ on _____ date that my opinion of fair market value of property to be acquired as of _____ day of _____, is _____ based upon my independent appraisal and the exercise of my judgement.

_____ date _____ signature

REVIEW APPRAISAL

The above estimate of just compensation is approved _____.
The above estimate of just compensation is revised _____.
Support for said revision is attached.

Allocation

Land
Improvements
Damages

Total Compensation _____

I certify that a visual inspection of subject tract has been made and the above estimate of just compensation is approved.

_____ date _____ signature