Local Programs Right of Way (ROW) Training

Appraisal Scoping

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September/October 2016
Housekeeping Items

- Presenter Introductions
- Safety Procedures
- Class Introductions
  - Name
  - Agency/firm
  - Connection with Right of Way
  - How much experience
Training Objectives

• Understand the importance of preparing a “good” scope of work
• Understand certain appraisal elements that need to be considered when creating a scope of work for valuation/appraisal work on federally funded projects
Eminent Domain Appraisal Scoping

Presented by:
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(d) Establishment and offer of just compensation. Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. An Agency official must establish the amount believed to be just compensation. (See §24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation. (See appendix A, §24.102(d).)
Appraisal Requirements

• Experienced, qualified appraiser
• Must be on WSDOT’s Approved Appraiser List
• Appraisal must be written document
• Appraiser must offer opportunity for property owner to accompany them on a site inspection and appraisal must document that owner contact
• If applicable, Administrative Offer Summary (AOS) – must inform property owner that an appraisal was not done
  – $10,000 or less – no requirement to provide property owner with an appraisal
  – $10,001 to $25,000 – must offer property owner the opportunity to have property appraised
Appraisal Requirements

From the Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book):

Essential in the appraiser’s conclusion of highest and best use is the determination of the *larger parcel*. The appraiser must make a larger parcel determination in every appraisal conducted under these Standards, even in the case of a minor partial acquisition where the client agency has determined a complete before and after appraisal is not necessary. The appraiser’s analysis that led to the larger parcel determination and the determination itself must both be reported. Because the ultimate determination of highest and best use is the appraiser’s to make, and that determination cannot be made until after considerable investigation and analysis has been completed, the appraiser’s conclusion as to the larger parcel is sometimes different from the specific parcel he or she was requested to appraise by the agency. In such an instance, the appraiser shall inform the agency of his or her determination of the larger parcel and the agency shall amend the appraisal assignment accordingly.
Appraisal Waiver Requirements

- Must be knowledgeable on appraisal principles and local real estate market
- Must be on Approved ROW Procedures (LPA-001)
- Can be used if-
  1. Property is donated and right to appraisal is waived in writing
  2. Valuation is uncomplicated \textbf{AND} estimated at less than $25,000
- Must have an approved Appraisal Waiver Policy (LPA-003)
- Must prepare a Project Funding Estimate (PFE)
  - Based on confirmed comparable sales
  - Must reflect current market data
- Administrative Offer Summary (AOS) – must inform property owner that an appraisal was not done
  - $10,000 or less – no requirement to provide property owner with an appraisal
  - $10,001 to $25,000 – must offer opportunity for appraisal
- Based on current data from the PFE
- Establishes Just Compensation
Appraisal Review Requirements

- Experienced, qualified appraiser
- Must be on WSDOT’s Approved Appraiser List
- If agency reviewer – must be a Certified General Appraiser in WA State & completed one review training class approved by WSDOT
- Estimate of Just Compensation
- Uneconomic Remainder determination
Timing of Appraisal

4-3.1 Appraisals, Authorization

WSDOT may authorize acquisition appraisals after the following:

A. Normal Approval

1. The corridor hearing has been held.
2. The final environmental approval has been obtained.
3. The right of way plan showing the parcels to be appraised has been submitted.
Scope of Work

• Importance of Creating a good scope of work
  – You won’t have to do the valuation process over
  – Complies with federal laws and regulations
  – No project delays in acquiring ROW
  – Insures the process is followed

• Improper instructions provided to appraisers could result in………………..
  – Not valuing benefits which occur as a result of construction
  – Not providing a reasonable opportunity for the property owner to accompany the appraiser during the inspection
  – Incorrect type of valuation (AOS)
  – Not providing enough information so appraiser can determine larger parcel – show all contiguous parcels which have unity of ownership on the ROW plan
  – Delay of project certification due to corrective actions
1) The client of this report is the Acquiring Agency, not the consulting firm that may have hired them as a sub-consultant. WSDOT requires that, in addition to compliance with USPAP this report must also meet the WSDOT Standards as set forth in the WSDOT R/W Manual Chapter 4, the WSDOT Appraisal Report Guide, and Federal Regulations as defined in 49 CFR part 24.

2) In the event of conflict or dispute in determining correct appraisal procedures that are not addressed in the standards noted above the Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book) will be the determining authority.

3) Under 49 CFR, the acquiring agency is required to take an active role in developing the scope of work. However it is the ultimate responsibility of the appraiser to develop a complete scope of work and produce a credible appraisal report.
Bundle of Rights
Eminent Domain Appraisal Information and Definitions – Larger Parcel

Larger parcel - three conditions that establish the larger parcel for consideration of severance damages
• unity of ownership,
• contiguity, and
• unity of use,

Larger parcel analysis should always be left up to the appraiser. We should facilitate this in any way possible but should not dictate. Whenever possible all questionable parcels should be packaged up and given to one appraiser to analyze.
In condemnation, the larger parcel is the portion of a property that has unity of ownership, contiguity, and unity of use, the three conditions that establish the larger parcel for consideration of severance damages. Larger parcel analysis should always be left up to the appraiser. We should facilitate this in any way possible but should not dictate. Whenever possible all questionable parcels should be packaged up and given to one appraiser to analyze.
Bundle of Rights:

Enter
Use and Occupy
Convey – Sell or Donate
Mortgage
Lease
Exclude Others
Fee Simple Absolute
Unit Rule

We are to value the fee simple interest, or the whole bundle of rights.

The Unit Rule has two parts:

1) Value all interests in the property as a whole – can later allocate the total

2) Value all elements of the property as a whole – don’t add each item which results in an unacceptable summation appraisal

Appurtenant Easements are the sole exception to the unit rule. Yellow Book is a good resource on this issue.
Figure 16.4 Appurtenant Easement

Parcel A

Parcel B

Easement to Parcel A for Access

Acquisition for Limited-Access Highway
Larger Parcel

Figure 16.5 Taking of an Appurtenant Easement

Parcel A

Parcel B

Easement to Parcel A for Access

Street

Acquisition for Limited-Access Highway

N
• Damage is the mathematical difference between the value of the remainder after the acquisition and the value of the remainder as a part of the whole prior to the acquisition if no benefits are found to exist.

• The Appraiser is required to fully explain the physical facts which cause the remainder to suffer a loss in value (damages) and the market facts that justify such a conclusion.
In *Campbell v. United States*, the U.S. Supreme Court held that "just compensation to an owner, a part of whose land is taken for a public use, does not include diminution in value of the remainder caused by the acquisition and use of adjoining lands not owned by the landowner for the same undertaking."
Damages – “Campbell Rule”
Damages – Cost-to-Cure

• Legally permissible
• Physically possible
• Financially feasible
• Maximally productive
Non-compensable items

There are items that are **not compensable** as Damages under Washington State law.

Appraisal reports and Determinations of Value must exclude these items, which include:
Non-compensable Items:

Bankruptcy

Business Loss
Non-compensable Items:

Annoyance and inconvenience suffered by the public in common
Non-compensable Items:

A re-routing or diversion of traffic
Non-compensable Items:

Circuity or impairment of travel caused by a divided highway.
Compensable Damage
Item:

Re-design on-site parking and traffic flow
Benefits: What they are

1. Enhancement – Increase in real estate values in advance of right of way acquisition created by knowledge of a pending highway improvement.

2. Special Benefits – Value accruing to the remainder of a property by reason of acquisition and use by the state of a portion of such property where such value is special to said remainder and not enjoyed by the general public. Benefits may be special even if other owners on the facility receive similar benefits.

3. General Benefits – Washington law does not clearly define general benefits. Because of this we have only attempted to explain special benefits and will assume that any benefits that are not “special” may be properly considered to be “general” benefits.
Benefits: State vs. Federal

Under both state and federal procedures, an owner may not receive compensation based on values due to “enhancement.”

In federal condemnation cases, both special and general benefits must be offset against compensation for the part being acquired and/or damages to the remainder property.

In Washington state condemnation cases, only special benefits are to be offset against compensation for the part being acquired and/or damages.
Special Benefits

- In Washington, Special Benefits are offset not only against the actual part taken, but also against any Damages.
- In Oregon, Special Benefits cannot be offset against the value of the part taken, however.
Hypothetical Conditions and Extraordinary Assumptions
Hypothetical Condition

USPAP Definition:
A condition which is contrary to what is known by the appraiser to exist, but is used for the purpose of analysis.

Hypothetical conditions are contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.
Hypothetical Condition
Hypothetical Condition
Extraordinary Assumption

USPAP Definition:
An assumption which, if found to be false, could alter the appraiser’s opinions or conclusions.

Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.
Extraordinary Assumption
Extraordinary Assumption
Hypothetical Conditions and Extraordinary Assumptions