

Ohio LPA Advisory Group - Right of Way Fact Sheet – May 15, 2015

Certified Appraisers are being check/reviewed by Certified Appraisers. Why?

This is law...Ohio Administrative Code (OAC) 5501:2-5-06; CFR Title 49; Part 24.104. Ohio/FHWA has adopted a Waiver of Appraisal process. This valuation process/document is known as the Low Value Analysis, and it is the most common valuation report utilized on transportation projects (state and local). Persons preparing and/or reviewing a Low Value Analysis are not required to be State certified Appraisers, but must be still pre-qualified with ODOT to perform these tasks. ODOT has one of the most comprehensive training schedules in the country. The LPA's always have the option of having staff trained to perform one or more of the various Real Estate Acquisition disciplines. All of the courses offered by ODOT are free to Local Public Agency employees. Many LPA's across Ohio have staff members that are "pre-qualified" for Real Estate tasks, and it has always proven to be cost effective for those entities.

Roadway Easement vs Warranty Deed

There is no law/requirement which states that an agency must acquire permanent rights of way by Warranty Deed, as opposed to Standard Highway Easement. However, the law does require that if any rights, which were acquired with federal funds, are disposed of than the agency must reimburse FHWA at current fair market value. The conflict is with State law. Ohio law states that the agency cannot charge a property owner when vacating easement rights. Thus, on projects utilizing federal funds to acquire property rights, Warranty Deed is used so that the agency may charge the property owner at current market value if rights of way are ever disposed. ODOT is currently discussing other options with FHWA and legal counsel. Outside of changing the State law, an LPA may utilize its own funds for the acquisition of property and acquire easement instead of warranty deed. The LPA may still utilize federal funds for the labor portion of the acquisition.

Quit Claim Deeds

An LPA may accept a Quit Claim Deed, and would be doing so at its own discretion. ODOT does not, generally, accept QC deeds and does not have a standardized QC form. However, the LPA is urged to review the Title Report closely, as the LPA will be held solely liable for any claims that arise from third parties as a result of accepting a QC deed.

Quick Take Authority for Bikeway Projects – Can this be enacted?

ODOT does not have and/or exercise quick take authority on bikeway projects, but a LPA may have such rights within its locale. The LPA should discuss these options with their own local legal counsel.

Establish a R/W Task Order for all Locals - This is being discussed internally.

Extreme expense to acquire a small amount of land - This is a direct result of supply and demand. Other/smaller Right of Way Acquisition consultants are doing work within Ohio. The LPA should work closely with the District Real Estate Office to explore options.

LPA's not allowed to speak to property owners when federal funds are involved

An LPA may speak to a property owner at any time it pleases. In fact, early (during project development/plan design) communication with property owners is encouraged, as information derived from discussions with effected property owners could impact final design. Additionally, an LPA may inquire as to a property owner's interest in donating property rights, as long as the LPA makes the property owner aware that they have the right to full and just compensation. However, an LPA may not discuss money/compensation with a property owner, or initiate any type of "negotiation" on compensation, until an appraisal has been completed and the Fair Market Value Estimate (FMVE) has been established.

Limited number of pre-qualified R/W consultants in the State.

ODOT realizes that the pool of Right of Way professionals is limited, and this is also impacting the State's program. ODOT Real Estate has taken steps to help R/W consultants bring on additional staff/trainees.

Questions regarding any of this information may be directed to:

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