

North Carolina
Department of Transportation

Property Acquisitions/Appraisal Waiver Valuation

Report to the Joint Legislative Transportation Oversight
Committee

December 31, 2017

Contents

Executive Summary	2
Current Appraisal Waiver Process	3
Proposed Appraisal Waiver Process	4
Chapter 93E Conformity	5
Stakeholder Concerns	6
Appendix	9

Executive Summary

Session Law 2017-57, Section 34.5(a) states:

- (a) Intent. – It is the intent of the General Assembly to provide the Department of Transportation with the resources and flexibility necessary to accelerate the time in which projects are completed while maintaining fairness to affected property owners and other citizens of this State. It is the belief of the General Assembly that providing the Department with the flexibility allowed under subsection (b) of this section will help toward achieving this intent. Therefore, the Department is encouraged to utilize the flexibility provided in subsection (b) of this section for all acquisitions of land in which the value of the acquisition is estimated at ten thousand dollars (\$10,000) or less.
- (b) Permissive Exception to Appraisal. – When the Department acquires land, and except as otherwise required by federal law, an appraisal is not required if the Department determines that the anticipated value of the proposed acquisition is estimated at forty thousand dollars (\$40,000) or less, based on a review of data available to the Department at the time the Department begins the acquisition process. If the Department determines that an appraisal is unnecessary, the Department may prepare an appraisal waiver valuation instead of an appraisal. The Department may contract with a qualified third party to prepare an appraisal waiver valuation. Any person performing an appraisal waiver valuation must have a sufficient understanding of the local real estate market to be qualified to perform the appraisal waiver valuation.
- (c) Construction. – Nothing in subsection (b) of this section shall be construed as superseding or altering any provision of federal law requiring the Department to obtain an appraisal of a property the Department is attempting to acquire.

In addition, Section 34.5(c) states:

The Department of Transportation, in consultation with the North Carolina Appraisal Board, the North Carolina Chapter of the Appraisal Institute, and the North Carolina Association of Realtors, shall develop a process for performing appraisal waiver valuations authorized under G.S. 136-19.6, as enacted by subsection (a) of this section. By December 31, 2017, the Department shall submit a report to the Joint Legislative Transportation Oversight Committee on the development of the appraisal waiver valuation process. The report required under this subsection shall include an explanation of how the appraisal waiver valuation process developed by the Department conforms with the provisions of Chapter 93E of the General Statutes.

Currently, the Department has an established appraisal waiver protocol in place as allowed by the federal Uniform Relocation Assistance and Real Property Acquisitions Act of 1970. Under this protocol, experienced Department Agents prepare appraisal waivers, also known as Claim Reports, and are authorized to negotiate claims on that basis when they are estimated to be \$25,000 or less, with certain restrictions in place. For claims of estimated value between \$10,000 and \$25,000, property owners may request an appraisal from the Department in lieu of negotiating on the basis of a Claim Report.

The Department's current Claim Report process is both effective and efficient when considering available Department and contractor resources, preparation time and associated costs. In fiscal year 2016, there were approximately 3000 right of way claims statewide; approximately ten percent of those claims were settled through the existing Claim Report process. The Department appreciates the ability to extend this protocol to projects that are solely State funded up to an anticipated claim value of \$40,000 as project delivery will be positively impacted. Implementation of protocol for appraisal waivers, on State funded projects, for anticipated values up to \$40,000 will closely mirror current processes.

As required by Session Law, on December 15, 2017, the Department consulted with representatives of the North Carolina Appraisal Board, the North Carolina Chapter of the Appraisal Institute and the North Carolina Association of Realtors to collaborate in the development of an appraisal waiver process for State funded projects as enacted by the legislation. While the stakeholders appreciated the efficiencies that could be obtained by the appraisal waiver valuation process, concern was voiced about perceived conflicts with existing General Statutes 93E and 93A and licensure requirements. In addition, more detail was requested about current protocol. In an attempt to address the latter additional detail was added to this report. All comments received from the stakeholders are documented verbatim later in this report.

The Department will continue to collaborate with representatives of the North Carolina Appraisal Board, the North Carolina Chapter of the Appraisal Institute and the North Carolina Association of Realtors in the development of an appraisal waiver process for State funded projects prior to implementation.

Current Appraisal Waiver Process

The Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (the Uniform Act) originally gave states the authority to use an appraisal waiver valuation for acquisitions up to two thousand five hundred dollars (\$2,500). An amendment dated January 4, 2005, raised the authoritative limit to \$10,000, but permitted the use of appraisal waiver valuations to a maximum of \$25,000. However, for those valuations between \$10,000 and \$25,000, the property owner has a right to an appraisal if so desired.

The current appraisal waiver valuation process utilized by the Department and described herein is based on, and in conformance with, The Uniform Act. An appraisal is not required if it is determined that the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is less than \$25,000. When the valuation problem is not uncomplicated, such as when proximity damages to the remainder exist, an appraisal waiver is not appropriate. Damages to the remainder such as these must be calculated by Appraisers as Agents are not qualified to determine the extent of damages to remainder. Damages to the remainder that are curable can be handled through the appraisal waiver process. Often, the cost to cure these types of damages is based on a figure provided by the property owner. Currently, no distinction is taken for projects that are funded solely with State funds.

An appraisal waiver valuation, also known as a Right of Way Claim Report, is prepared on form FRM4-N (as shown in the Appendix), if the value of the property area impacted is determined to be \$25,000 or less, and there are no damages to the remaining property. This procedure

complies with the waiver of appraisal procedure outlined in 49CFR Part 24 Subpart B, Section 24.102 of the Code of Federal Regulations. One of the Department's five regional Area Appraisers assists with determining which parcels are likely candidates for the Right of Way Claim Report usage. When an appraisal is determined to be unnecessary it is required that an experienced Agent, whether Department or contract employee, prepare the waiver valuation.

On claims where the valuation is \$10,000 or less, the Agent who prepares the FRM4-N may negotiate the claim directly with the property owner. On those claims exceeding the \$10,000 threshold, up to a maximum of \$25,000, the FRM4-N must be prepared by an Agent other than the Agent who will be negotiating the claim to eliminate possibility of any conflict of interest. In this case, per federal regulations, the Agent negotiating the claim must offer the property owner the option of having an appraisal prepared on the property. If the property owner elects to request an appraisal, then one must be prepared and used for negotiation purposes. If the property owner elects to negotiate on the basis of a FRM4-N, the negotiating Agent proceeds accordingly. If a settlement based on a FRM4-N cannot be reached, the Agent then requests an appraisal for the claim from the Department's Appraisal Unit.

All Right of Way Claim Reports must be reviewed and approved by a Department supervisor. While it is permissible for Agents or contractors to prepare the FRM4-N, a Department supervisor, such as a Senior Agent or Division Agent, must approve and sign the FRM4-N. This is consistent with the federal requirement that the agency set the just compensation amount.

In practice, an Agent or Senior Agent physically tours a project location and consults with the Department's regional Area Appraiser to identify any uncomplicated claims which are possible candidates for Claim Report usage. The Agent assesses the specific market area and accumulates data (especially land values) to support claim report amounts and prepares a Claim Report on Form FRM4-N for any amount up to \$25,000. The Claim Report is then approved by the Senior Agent or Division Agent before the Negotiating Agent makes the offer. The Negotiating Agent makes an offer for the Claim Report total. If the claim report is over \$10,000, the Negotiating Agent must make the property owner aware of their right to a certified appraisal. In actual practice, anytime a property owner refuses to settle for the claim report amount (even if adjusted), an appraisal is requested. This is due to the fact that a claim cannot be condemned based on a Claim Report value. A condemnation deposit must be based on a certified appraisal. If the property owner agrees to the offer (or an approved adjustment) on the basis of a Claim Report, then the claim can be settled and a final report is prepared and processed, just as with any other claim.

In Fiscal Year 2016, there were approximately 3,000 total right of way claims, of which approximately 10% were handled through the current Claim Report process.

Proposed Appraisal Waiver Process

Federal Aid projects: For projects that utilize federal funds the process will remain the same as described in the previous section, including the dollar threshold and the requirement to offer a certified appraisal when the claim is greater than \$10,000. Also, for a claim above \$10,000 the requirement that the report must be prepared by someone other than the negotiating agent is to be maintained.

State Funded Projects: For projects that utilize only State funds the overall process will remain the same as described in the previous section. However, an experienced Agent or contract employee will be able to prepare an appraisal waiver report using a right of way form similar to FRM4-N for estimated claims less than \$40,000.

Since the appraisal waiver valuation session law proposes that these claims may be prepared by a third party contractor with knowledge of local property values, to be considered for this work any firm will need to obtain prequalified status with the Department to perform the work.

Chapter 93E Conformity

The following definitions and clarifications are relevant to Chapter 93E conformity:

G.S. 93E

"Appraisal" or "real estate appraisal" means an analysis, opinion, or conclusion as to the value of identified real estate or specified interests therein performed for compensation or other valuable consideration

"Comparative market analysis" and "broker price opinion" mean an estimate prepared by a licensed real estate broker that details the probable selling price or leasing price of a particular parcel of or interest in property and provides a varying level of detail about the property's condition, market, and neighborhood, and information on comparable properties, but does not include an automated valuation model.

G.S. 40A-64

Except as provided in subsection (b), the measure of compensation for a taking of property is its fair market value.

G.S. 93A-83

A disclaimer stating that "This opinion is not an appraisal of the market value of the property, and may not be used in lieu of an appraisal. If an appraisal is desired, the services of a licensed or certified appraiser shall be obtained.

Notwithstanding any provisions to the contrary, a person licensed pursuant to this chapter may not knowingly prepare a BPO or CMA for any purpose in lieu of an appraisal when an appraisal is required by Federal or State Law. A BPO or CMA that estimates the value of or worth of a parcel of or interest in real estate rather than sales or leasing price shall be deemed to be an appraisal and may not be prepared by a licensed broker under the authority of this article, but may only be prepared by a duly licensed or certified appraiser, and shall meet the regulations adopted by the NC Appraisal Board. A BPO or CMA shall not under any circumstances be referred to as a valuation or appraisal.

The appraiser waiver valuation as written is not intended to be an "appraisal" and therefore should not be under any restrictions shown in Chapter 93E of the NC General Statutes.

Stakeholder Concerns

On December 15, 2017, the Department met with representatives of the North Carolina Appraisal Board, the North Carolina Chapter of the Appraisal Institute and the North Carolina Association of Realtors. After the meeting written comments were provided to the Department; they are included herein verbatim:

North Carolina Appraisal Board

Section 34.5(a) of the budget would allow DOT staff or third party contractors to prepare an appraisal waiver valuation instead of an appraisal for claims less than \$40,000. It is our understanding that these waivers may be done by right of way agents or third party contractors that are not appraisers. G.S. 93E prohibits anyone from the providing value of a specified property in North Carolina without first being licensed by the Appraisal Board. Pursuant to both G.S. 93E and G.S. 93A (the Real Estate Commission statute), real estate brokers cannot determine value, so if they prepare an appraisal waiver valuation they would violate both statutes.

Section 34.5(b) requires that any person who performs an appraisal waiver valuation “must have a sufficient understanding of the local real estate market to be qualified to perform the appraisal waiver valuation.” Since real estate brokers are not allowed to do them, and appraisers cannot do them without providing an appraisal, it is not clear who else would have a sufficient understanding of the local real estate market.

This statute is in direct conflict with the Appraiser’s Act. Anyone performing these waiver valuations who is not licensed by the Appraisal Board may be subject to litigation for unlicensed practice.

North Carolina Appraisal Institute

The North Carolina Chapter of the Appraisal Institute (NCAI) appreciates the opportunity to provide comments to the North Carolina Department of Transportation (NCDOT) regarding their proposal to create an appraisal waiver valuation process to be used in certain property acquisition activities by NCDOT. We understand and can appreciate what NCDOT is trying to accomplish with the appraisal wavier valuation process. As we mentioned during our in-person meeting with NCDOT on December 15, 2017, NCAI has a number of questions and concerns about NCDOT’s proposal that was provided to NCAI on November 21, 2017, including whether it is consistent with existing licensing statutes, who will perform the valuation activities described in the Session Law, when the process will be used (state only projects), how damages to the remainder are to be address in this process, whether the valuation activities will be performed by and/or supervised by a certified appraiser, and how the process would work from an operational standpoint. We understand the North Carolina Appraisal Board has raised concerns with unlicensed activity as contemplated by NCDOT’s proposed process, and we share that concern. We understand from NCDOT that although they must submit a report to the Joint Legislative Transportation Oversight Committee on or before December 31, 2017, NCDOT will continue to work with NCAI and the stakeholders to arrive at a process that is consistent with existing licensing statutes and will work operationally for the stakeholders involved and the public.

North Carolina Association of Realtors

On behalf of NC REALTORS®, we appreciated the opportunity to participate in the December 15, 2017 stakeholder meeting regarding the Appraisal Waiver Valuation proposal included in Session Law 2017-57, Section 34.5 (a through c). As was illustrated during the meeting, the issue has significant interest from real estate industry participants, especially those engaged in the appraisal practice and consumer protection.

While the statute outlines a required report to the Joint Legislative Transportation Oversight Committee by December 31, 2017, we would encourage the Department to communicate with Committee leadership the need for additional time to allow for further analysis and stakeholder engagement prior to the implementation of this program.

At this time, NC REALTORS® presents the following comments and concerns related to the Appraisal Waiver Valuation program as currently proposed.

- 1. Additional analysis is required to determine the conformity of the proposed “Appraisal Waiver Valuation” program with Chapter 93E of the North Carolina General Statutes [“North Carolina Appraisers Act”] and the Uniform Standards of Professional Appraisal Practice (USPAP).*
- 2. We request that additional stakeholders in the real estate industry, including but not limited to the North Carolina Real Estate Commission, be engaged to provide additional perspective as to the impact of the implementation of the “Appraisal Waiver Valuation” program.*
- 3. There needs to be additional information provided regarding the Department’s current standard operating procedures for right-of-way acquisition and utilization of the Federal Highway Administration (FHWA) “Appraisal Waiver Valuation” program, as well as the general procedures for determination of valuation during all acquisition or encroachment actions completed by either NCDOT Right of Way Agents or engaged contractors.*
- 4. NC REALTORS need to understand the standards and training requirements for individuals employed as NCDOT Right of Way Agents, as well as for the contractors and their agents engaged by the Department.*
- 5. Additionally, there are many questions left unanswered. Some of those are as follows:*
 - a. To whom is the contractor responsible?*
 - b. Are they told the contractors are not employed by the state?*
 - c. What happens when a complaint is made about a contractor?*
 - d. When is an appraiser engaged by the Department to state a determination of valuation, outside of a request from an aggrieved property owner?*

- e. *What portion of all Department projects would this proposed valuation flexibility apply?*
- f. *How are property owners' rights conveyed to them Who determines the initial valuation?*
- g. *To what extent may the contractors and right of way agents negotiate onsite with property owners? And, to what extent does this violate the current Appraisal Laws and Rules in NC?*
- h. *What processes are in place to assure the contractors are knowledgeable about the area and the property values?*

These are just a few of the questions we have, and feel the report should address much more than it did as of December 15. However, appreciate the opportunity to share our concerns and look forward to continued discussions.

Appendix

RIGHT OF WAY CLAIM REPORT

TIP/PARCEL # _____ WBS _____ COUNTY _____

CLAIM OF _____ PLAN SHEET _____

1 Land Area to be Acquired (Payment per acre supported by recent land sales on file.)

RIGHT OF WAY	R/W	AC	x	\$	-	x	100%	=	0.00	®	\$	-
PERM Drainage Easement	PDE	AC	x	\$	-	x	100%	=	0.00			
PERM Utility Easement	PUE	AC	x	\$	-	x	100%	=	0.00			
PERM Drainage/Utility Easement	DUE	AC	x	\$	-	x	100%	=	0.00			
PERM Aerial Utility Easement	AUE	AC	x	\$	-	x	100%	=	0.00			
PERM Construction Easement	PCE	AC	x	\$	-	x	100%	=	0.00			
PERM OTHER	OTH	AC	x	\$	-	x	100%	=	0.00			
										PERM TOTAL	®	\$ -
TEMP Construction Easement	TCE	AC	x	\$	-	x	100%	=	0.00			
TEMP Drainage Easement	TDE	AC	x	\$	-	x	100%	=	0.00			
TEMP Utility Easement	TUE	AC	x	\$	-	x	100%	=	0.00			
TEMP OTHER	OTH	AC	x	\$	-	x	100%	=	0.00			
										TEMP TOTAL	®	\$ -
												LAND TOTAL
												\$ -

2 Payment for improvement(s) to be acquired. Material and labor cost documented in the State's files.

	\$	-
	\$	-
	\$	-
IMPROVEMENTS TOTAL	\$	-

3 Cost to cure (Damage to Remainder)

	\$	-
COST TO CURE TOTAL	\$	-
GRAND TOTAL	\$	-

Comments

Certificate of Preparer and Approver: I hereby certify that I am familiar with the property which is the subject of this estimate; that this estimate is based on data contained in the files of the agency and that I have no direct or indirect, present or contemplated future personal interest in this property or in any benefit from the acquisition of this property. **If the total of this estimate is over \$10,000, (1) this estimate must be prepared by someone other than the negotiating agent and (2) the owner must be advised of his/her right to have their property appraised.**

Preparer Signature: _____ Date _____
(Type Name Here)

NCDOT Approval Signature: _____ Date _____
(Type Name Here)

TEMPORARY EASEMENT TOTAL \$ - PERMANENT EASEMENT TOTAL \$ -

FRM4-N

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