

# CITY OF TALLAHASSEE

## **CITY COMMISSION AGENDA ITEM**

<b>ACTION REQUESTED ON:</b>	October 25, 2006
<b>SUBJECT/TITLE:</b>	Approval of Modification to the Real Estate Policy (City Commission Policy #136)
<b>TARGET ISSUE:</b>	N/A

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### **STATEMENT OF ISSUE**

It has become apparent there are situations when the City may wish to voluntarily acquire property for a Capital Improvement Project. The current wording in the policy indicates that property needed for capital projects “shall” be acquired under the threat of condemnation. Staff recommends the change from “shall” to “may.”

### **RECOMMENDED ACTION**

Option 1 – Approve the recommended revision to the City Real Estate Policy. This option will allow departmental discretion in the use of eminent domain.

### **FISCAL IMPACT**

None.

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Gabriel P. Menendez, Director  
Public Works Department

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Anita R. Favors Thompson  
City Manager

For information, please contact: Mark Beaudoin, Public Works Department, Real Estate Division, 891-8711

- a. Developing uniform and clear procedures for all real property transactions.
  - b. Assuring uniform and clear documentation of all real property transactions.
  - c. Assuring all real property transactions are negotiated equitably and in good faith and in accordance with all applicable state and federal laws.
  - d. Assuring cost effective management of all real property not currently in use by a City department.
  - e. Assuring that all departments involved in the acquisition or disposition of real property are provided current Real Estate Policy and Procedures.
  - f. Assuring that, in those instances when negotiations for the acquisition of real property under the threat of condemnation are unsuccessful, all information necessary for the filing of an eminent domain lawsuit is provided to the City Attorney.
  - g. Maintain documentation of all acquisitions or dispositions with a standardized checklist that includes but is not limited to; appraisals, contracts, environmental audits, Real Estate Committee, City Manager or City Commission approvals and check requests.
  - h. Maintaining an accurate inventory of all City owned real property.
2. The City Attorney or his/her designee is responsible for acquiring real property through the use of the City's eminent domain power in those instances when negotiations for the acquisition of real property under the threat of condemnation are unsuccessful.
  3. Purchases by the City's Electric Department, which are subject to Section 403.501(Power Plant Site Location), Florida Statutes are exempt from this Policy.

#### **136.06 Appraisals and other City Estimates.**

1. For all real property transactions, the City shall prepare or obtain a value determination or an appraisal which estimates the fair market value of the real property interest involved in the transaction in accordance with the following procedures:
  - a. For acquisitions, sales, or dispositions in which the estimated value of the real property does not exceed \$25,000, an in house value determination or an independent appraisal shall be prepared.
  - b. For acquisitions, sales, or dispositions in which the estimated value of the real property does not exceed \$300,000, an independent state-certified appraiser shall be retained to prepare an appraisal with an estimate of the fair market value of the real property.
  - c. For acquisitions, sales, or dispositions in which the estimated value of the real property exceeds \$300,000, two independent state-certified appraisers shall be retained to each prepare an appraisal with an estimate of the fair market value of the real property.
  - d. Appraisal information shall be disclosed to all parties in the approval process, unless confidentiality is provided for by operation of law.
2. The Public Works Director or his/her designee shall determine the scope of the appraisal assignment and the form of the appraisal report to be prepared. When an appraisal report(s) is being obtained for property under the threat of condemnation the City Attorney or his/her designee shall determine the scope and form of the appraisal report(s) to be prepared.

#### **136.07 Acquisitions by the City of Tallahassee of Real Property for Capital Improvement Projects.**

If a City department desires to implement an approved capital improvements project that requires the acquisition of real property, the department shall establish the necessary work order to budget funds needed to identify location(s) or locational criteria to be used to identify the real property, and provide for the cost to purchase the real property. This information must be submitted to the Public Works Department, Real Estate Division, who will evaluate real property alternatives, research the ownership of each parcel and estimate property values. The Real Estate Division in concert with the responsible department head or designated contact shall attempt to negotiate with the property owner to finalize a purchase price and secure a purchase and sale agreement.

1. Any real property to be acquired pursuant to this section that has been identified on a right of way map or survey as being necessary to implement a Capital Improvement Project shall may be acquired under the threat of condemnation pursuant to the guidelines provided in Section 73.015, Florida Statutes, titled Presuit Negotiations, and pursuant to the following authority and procedure:
  - a. The City's licensed real estate agents shall have the responsibility to secure purchase and sale agreements for any presuit voluntary acquisitions of property required for City projects.
  - b. The City Manager shall have the authority to approve and to execute all documents necessary to complete the presuit acquisition of any parcel of real property necessary to implement a Capital Improvement Project for which the settlement amount to a property owner is no greater than \$250,000, exclusive of attorney's fees and costs, if any, regardless of the City's last approved appraisal. The City Manager shall also have full authority to approve all presuit settlements between \$250,000 and \$500,000, exclusive of attorney's fees and costs if the settlement amount does not exceed 25% above the last approved appraisal. If a presuit settlement between \$250,000 to \$500,000 is 25% above the City's last approved appraisal or the total settlement amount is over \$500,000, the proposed settlement will be presented to the Real Estate Committee.
  - c. The Real Estate Committee shall review and evaluate the terms and conditions of the proposed settlement and present to the City Commission for approval as an agenda item on single parcel acquisitions greater than \$500,000, exclusive of attorneys fees and costs and single parcel acquisitions over \$250,000, exclusive of attorney fees and costs, that exceed the City's last approved appraisal by 25% or more.
2. Property under the threat of condemnation not acquired through presuit acquisition will be transferred to the City Attorney's Office to be acquired through the exercise of the City's power of eminent domain pursuant to Chapter 73 and 74, Florida Statutes according to the following procedure:
  - a. The City Attorney or his/her designee shall prepare a condemnation resolution for approval by the City Commission stating the public purpose of the project and the necessity of obtaining the parcels identified for acquisition and upon City Commission approval file a petition with the appropriate Court to obtain title to the property.
  - b. The City Attorney shall have the authority to approve all condemnation settlements, whether land or business claims, for which the settlement amount to a property owner is no greater than \$250,000, exclusive of attorneys' fees and costs, and non-monetary benefits, if any, regardless of the City's last approved appraisal. The City Attorney shall also have full authority to approve all condemnation settlements between \$250,000 and \$500,000, exclusive of attorneys' fees and costs, if the settlement amount does not exceed 25% above the last approved appraisal. If a condemnation settlement between \$250,000 and \$500,000 is 25% above the City's last approved appraisal, or the total settlement amount is over \$500,000, the proposed settlement will be presented to the Real Estate Committee and City Commission for approval.
  - c. The City Attorney shall have full authority to commit to legal settlements of all items and amounts which are subject to a court ordered mediation or trial proceeding, upon the recommendation of approval from the Project Manager or Department Head. Authority to commit to legal settlements, which result from non-court ordered mediations, shall be in accordance with the thresholds established in this section, and as set forth in Section 136.07 (3). For settlements exceeding \$500,000, excluding fees and costs, with an increase 25% above the last approved appraisal, which are achieved in a court ordered mediation, the City Attorney shall submit a report documenting the settlement to the City Manager for review within forty-five days after entry of the settlement by appropriate court
3. Summary of approval authority – Capital Improvement Projects. The following table summarizes the approval process for real estate acquisitions under the threat of condemnation:

**ITEM TITLE:** Approval of Modification to the Real Estate Policy (City Commission Policy #136)

**SUPPLEMENTAL MATERIAL/ISSUE ANALYSIS**

**HISTORY/FACTS & ISSUES**

The City Commission approved major revisions to the Real Estate Policy (City Commission Policy #136) on December 6, 2005, and February 22, 2006.

The revised policy has been in effect since that date, and it has become evident there is a need to clarify Section 136.07; “Acquisitions by the City of Tallahassee of Real Property for Capital Improvement Projects”, Sub-Section 136.07 (1), in order to allow flexibility by the various departments in the decision to pursue an eminent domain action under Section 73.015, Florida Statutes, “Presuit Negotiations.”

The current language with proposed changes in bold is as follows:

“Any real property to be acquired pursuant to this section that has been identified on a right of way map **or survey** as being necessary to implement a Capital Improvement Project ~~shall~~ **may** be acquired under the threat of condemnation pursuant to the guidelines provided in Section 73.015, Florida Statutes, titled Pre-suit Negotiations, and pursuant to the following authority and procedure...”

**OPTIONS**

Option 1 – Approve the recommended modification to the City’s Real Estate Policy. This option will allow departmental discretion in the use of eminent domain.

Option 2 – Do not approve the recommended modification and provide alternative direction to staff.

**ATTACHMENTS/REFERENCES**

City Commission Real Estate Policy #136, Revised February 22, 2006, Pages 3-4  
(Complete Copies of the Policy will be available in the City Commission Conference Room)