

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §21.10, Negotiations, §21.13, Highway Right-of-Way Values, §21.14, Qualifications of Real Estate Appraisers and Other Technical Experts or Estimators, §21.111, Definitions and §21.118, Relocation Review Committee all relating to right of way to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, attached to this minute order as Exhibits A - C, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §21.10, §21.13, §21.14, §21.111, and §21.118 are adopted and are authorized for filing with the Office of the Secretary of State.

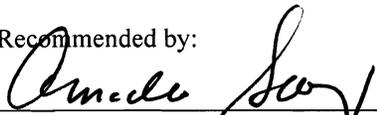
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:



General Counsel

Recommended by:



Executive Director

112780 AUG 25 11

Minute Date
Number Passed

Adoption Preamble

1
2 The Texas Department of Transportation (department) adopts
3 amendments to §21.10, Negotiations, §21.13, Highway Right-of-Way
4 Values, §21.14, Qualifications of Real Estate Appraisers and
5 Other Technical Experts or Estimators, §21.111, Definitions, and
6 §21.118, Relocation Review Committee, all concerning department
7 land acquisition procedures. The amendments to §21.10, §21.13,
8 §21.14, §21.111, and §21.118 are adopted without changes to the
9 proposed text as published in the July 15, 2011 issue of the
10 *Texas Register* (36 TexReg 4540) and will not be republished.

11
12 EXPLANATION OF ADOPTED AMENDMENTS

13 Title 43, Texas Administrative Code (TAC), Chapter 21,
14 Subchapter A, Land Acquisition Procedures, was adopted to
15 prescribe requirements for the acquisition of real property by
16 the department in accordance with Property Code, Chapter 21,
17 Subchapter B, Procedure. Senate Bill 18 (SB 18), 82nd
18 Legislature, Regular Session, 2011, amended Property Code,
19 §21.0111 and added Property Code, §21.0113 to require certain
20 procedures be followed in connection with offers for real
21 property made by entities with eminent domain authority, such as
22 the department. The adopted amendments are necessary to comply
23 with the provisions of SB 18 and to clarify existing language.

24
25 Amendments to §21.10 include multiple changes. The first change

1 in §21.10(a) deletes the provision that a property owner will be
2 provided with a copy of existing appraisal reports that were
3 used in determining the final valuation offer, as the provision
4 conflicts with the procedures required by SB 18. Second, new
5 §21.10 adds negotiation procedures required by SB 18.

6 Specifically, new subsection (b) requires the department to make
7 a bona fide offer to acquire real property voluntarily and
8 requires the offers be in writing and advise owners of their
9 disclosure rights.

10

11 New subsection (c) requires that an initial offer include copies
12 of all related appraisal reports prepared in the previous ten
13 years that were produced or acquired by the department and be
14 sent to the property owner by certified mail, return receipt
15 requested.

16

17 New subsection (d) requires that the final offer be equal to or
18 greater than the amount of an appraisal by a certified appraiser
19 of the value of the property being acquired and any damages to
20 any of the owner's remaining property. It also requires that
21 the final offer include a copy of the appraisal the final offer
22 is based on, the conveyance document to be signed by the
23 property owner, and a copy of the statutorily required
24 landowners' bill of rights statement, unless such items have
25 been previously provided. Finally, it provides that the

1 department will not make a final offer before the 30th day after
2 the date of delivery of the initial offer.

3

4 New subsection (e) requires the department to give the property
5 owner 14 days after the date of the final offer to respond to
6 the offer before filing a petition of condemnation.

7

8 The last sentence of current §21.10(a) and paragraphs
9 §21.10(a)(1), (2), and (3) are redesignated as new subsection
10 (f) and current §21.10(b) is redesignated as new subsection (g).

11

12 New subsection (h) of §21.10 provides that for the purposes of
13 §21.10 a document is considered delivered on the earlier of the
14 delivery date on the certified mail receipt or the fifth day
15 after the date the document, properly addressed with postage
16 paid, is deposited with the United States Postal Service. This
17 provision allows for certainty in determining when the
18 department can make a final offer or begin a condemnation
19 proceeding.

20

21 Amendments to §21.13 delete the original heading "Highway Right-
22 of-Way Values" and add new heading "Valuation for Real Property
23 to be Acquired", and delete the phrase "right-of-way" and
24 replace it with "real property", to clarify that the section
25 applies to all acquisitions of real property by the department.

1 A new provision is added providing that the approved values used
2 for the final offer will be determined based on a written
3 appraisal by a certified appraiser, as required by SB 18.

4
5 Amendments to §21.14 delete the phrase "In the acquisition of
6 highway right-of-way" and add the language "used in the
7 acquisition of real property for highway purposes" to clarify
8 that the section applies to all acquisitions of real property
9 for highway purposes, not just right-of-way. The word "are" is
10 deleted and replaced with "must be" to clarify that the
11 department must approve qualifications of real estate appraisers
12 and other technical experts or estimators. Finally, the
13 amendments add a requirement that the qualifications of a real
14 estate appraiser must include a requirement that the appraiser
15 be certified, as required by SB 18.

16
17 Amendments to §21.111 clarify the definition of "Relocation
18 Review Committee" by removing provisions regarding the
19 appointment and composition of the committee and moving those
20 provisions to §21.118.

21
22 Amendments to §21.118 add new subsection (a) to set forth the
23 process for the appointment of members of the Relocation Review
24 Committee. The amendments require the executive director to
25 appoint at least three persons as members of the Relocation

1 Review Committee. The amendments also establish that in order
2 to be eligible for appointment to or service on the committee, a
3 person may not be below the level of department division
4 director, office director, or district engineer, and may not be
5 directly involved with the relocation assistance program. The
6 amendments designate the existing provisions of §21.118 as new
7 subsection (b).

8

9 COMMENTS

10 No comments on the proposed amendments were received.

11

12 STATUTORY AUTHORITY

13 The amendments are adopted under Transportation Code, §201.101,
14 which provides the commission with the authority to establish
15 rules for the conduct of the work of the department, and more
16 specifically, Transportation Code, §203.051, which provides the
17 commission with the authority to acquire real property on behalf
18 of the department.

19

20 CROSS REFERENCE TO STATUTE

21 Transportation Code, Chapter 203.

1 SUBCHAPTER A. LAND ACQUISITION PROCEDURES

2 §21.10. Negotiations.

3 (a) Every reasonable effort will be made to acquire real
4 property by negotiation and the full amount established as just
5 compensation will be offered for the property. [~~At the time an~~
6 ~~offer to purchase is made, an owner of real property will be~~
7 ~~provided with a copy of all existing appraisal reports that were~~
8 ~~used in determining the final valuation offer in accordance with~~
9 ~~Property Code, Section 21.0111.~~] Where appropriate, the just
10 compensation for the real property acquired and for damages to
11 remaining real property shall be separately stated. [~~No owner~~
12 ~~shall be required to surrender possession of real property~~
13 ~~before.~~]

14 [~~(1) payment of the agreed purchase price;~~]

15 [~~(2) in the case of condemnation, the amount of~~
16 ~~compensation stated in the final judgment is paid to the owner~~
17 ~~or deposited with a court for the benefit of the owner; or]~~

18 [~~(3) in the case of condemnation when possession is~~
19 ~~required by the department prior to a final judgment being~~
20 ~~entered, the department has deposited with the court, for the~~
21 ~~benefit of the owner, the amount of a special commissioners'~~
22 ~~award or the amount of the department's approved appraisal of~~
23 ~~the property, whichever is greater.]~~

1 (b) The department will make a bona fide offer to acquire
2 the real property from the property owner voluntarily, as
3 provided by Property Code, §21.0113. All offers will be in
4 writing, and will inform the owner of the owner's right to
5 discuss the offer with others or to keep the offer confidential,
6 as provided by Property Code, §21.0111. [~~In the case of~~
7 ~~condemnation where the department does not take possession until~~
8 ~~after a final judgment of the court has been entered, the amount~~
9 ~~of compensation paid to the owner of the property or deposited~~
10 ~~with a court for the benefit of the owner shall be the amount of~~
11 ~~compensation stated in the final judgment in the condemnation~~
12 ~~proceeding for the property. To the greatest extent~~
13 ~~practicable, no person lawfully occupying real property shall be~~
14 ~~required to move without at least 90 days written notice of the~~
15 ~~date by which the move is required.]~~

16 (c) An initial offer to purchase or lease will include
17 copies of all appraisal reports that relate to the real
18 property, that were prepared during the ten-year period
19 preceding the date that the offer was sent to the owner, and
20 that were produced or acquired by the department. The initial
21 offer will be sent to the owner of the real property by
22 certified mail, return receipt requested.

23 (d) The final offer must be equal to or greater than the

1 amount of an appraisal obtained by the department from a
2 certified appraiser of the value of the property being acquired
3 and the damages, if any, to any of the property owner's
4 remaining property. The department will include with the final
5 offer a copy of the appraisal on which the final offer is based,
6 the conveyance document that is to be signed by the property
7 owner, and a copy of the landowners' bill of rights statement
8 required by Property Code, §21.0112, unless the department has
9 provided a copy of the document to the owner before the final
10 offer is made. The department will not make the final offer
11 before the 30th day after the date that the initial offer was
12 delivered to the owner.

13 (e) Before filing a petition of condemnation, the
14 department will give the property owner at least 14 days after
15 the date that the final offer was delivered to the owner to
16 respond to that offer.

17 (f) No owner shall be required to surrender possession of
18 real property before:

19 (1) payment of the agreed purchase price;

20 (2) in the case of condemnation, the amount of
21 compensation stated in the final judgment is paid to the owner
22 or deposited with a court for the benefit of the owner; or

23 (3) in the case of condemnation when possession is

1 required by the department prior to a final judgment being
2 entered, the department has deposited with the court, for the
3 benefit of the owner, the amount of a special commissioners'
4 award or the amount of the department's approved appraisal of
5 the property, whichever is greater.

6 (g) In the case of condemnation where the department does
7 not take possession until after a final judgment of the court
8 has been entered, the amount of compensation paid to the owner
9 of the property or deposited with a court for the benefit of the
10 owner shall be the amount of compensation stated in the final
11 judgment in the condemnation proceeding for the property. To
12 the greatest extent practicable, no person lawfully occupying
13 real property shall be required to move without at least 90 days
14 written notice of the date by which the move is required.

15 (h) For the purposes of this section, a document is
16 considered to be delivered on the earlier of the delivery date
17 indicated on the certified mail receipt or the fifth day after
18 the date that the document, properly addressed with postage
19 prepaid, is deposited with the United States Postal Service.

20

21 §21.13. Valuation for Real Property to be Acquired [~~Highway~~
22 ~~Right of Way Values~~]. Prior to the making of an offer [~~offers~~]
23 to purchase real property [~~right-of-way~~] for highway purposes by

1 the department, approved values are determined based upon
2 appraisals (including short form appraisals, memorandums of
3 value, or opinions of value) of the real property to be
4 acquired. The approved values used for the final offer are
5 determined based upon a written appraisal by a certified
6 appraiser. The owner or the owner's designated representative
7 is given the opportunity to accompany the appraiser during the
8 inspection of the property being appraised.

9
10 §21.14. Qualifications of Real Estate Appraisers and Other
11 Technical Experts or Estimators. The [~~In the acquisition of~~
12 ~~highway right of way, the~~] qualifications of real estate
13 appraisers, and other technical experts or estimators used in
14 the acquisition of real property for highway purposes must be
15 [are] approved by the department. The qualifications of a real
16 estate appraiser must include a requirement that the appraiser
17 be certified.

1 SUBCHAPTER G. RELOCATION ASSISTANCE AND BENEFITS

2 §21.111. Definitions. The following words and terms, when used
3 in this subchapter, shall have the following meanings, unless
4 the context clearly indicates otherwise.

5 (1) Commission--The Texas Transportation Commission.

6 (2) Department--The Texas Department of Transportation.

7 (3) Displacee--A person lawfully present in the United
8 States who, as a result of the acquisition of property for
9 highway right of way purposes, is required to move from a
10 dwelling, business, or farm.

11 (4) District engineer--The chief administrative officer
12 in charge of a district of the department, or the designee.

13 (5) Executive director--The chief executive officer of
14 the Texas Department of Transportation.

15 (6) Relocation Review Committee--A [~~An administrative~~]
16 committee whose members are appointed under §21.118 of this
17 subchapter (relating to Relocation Review Committee)[~~by the~~
18 ~~executive director and include the deputy executive director~~
19 ~~(chair) and at least two other department employees who are not~~
20 ~~directly involved with the relocation assistance program~~].

21
22 §21.118. Relocation Review Committee.

23 (a) The executive director will appoint at least three

1 persons as members of the Relocation Review Committee. To be
2 eligible for appointment to or service on the committee, a
3 person may not be:

4 (1) below the level of department division director,
5 office director, or district engineer; and

6 (2) directly involved with the relocation assistance
7 program.

8 (b) A displacee who is dissatisfied with the department's
9 determination of eligibility or relocation payments and services
10 may request a review by the Relocation Review Committee. The
11 review procedures are as follows.

12 (1) Applications must be filed with the appropriate
13 district office within 90 days after the displacee receives
14 notice of relocation entitlements.

15 (2) The district engineer will promptly and carefully
16 review the facts and attempt to resolve the matter at the
17 district level. The displacee will be promptly notified in
18 writing of the results of the district engineer's review.

19 (3) A displacee who is still dissatisfied after the first
20 review may request that the district engineer's decision be
21 reviewed by the department's Relocation Review Committee.

22 (4) The district shall promptly forward the application
23 together with all the information the district has relating to

1 the displacee's application and the district engineer's personal
2 recommendation to the department's Right of Way Division. The
3 division will review the materials, make a determination on the
4 application, and prepare a written statement as to the issues
5 involved for the relocation assistance appeal file. If the
6 division does not find in favor of the displacee's claim, the
7 division will promptly forward the file to the Relocation Review
8 Committee.

9 (5) The Relocation Review Committee shall give each
10 displacee a full opportunity to be heard, carefully review all
11 facts presented, and render a prompt decision. The decision
12 will be supported by the necessary rationale and will be
13 documented in the parcel file.

14 (6) The committee may discuss an application with the
15 executive director. The executive director shall make the final
16 ruling or may counsel with the commission if necessary.