



Date: August 22, 2017
To: Thomas J. Bonfield, City Manager
Through: W. Bowman Ferguson, Deputy City Manager
From: Steven W. Hicks, Director, General Services Department

Subject: Proposed Amendments to the City Manager’s Authority to Conduct Real Estate Transactions

Executive Summary

One of the primary functions of the Real Estate Division (RED) of the General Services Department is to acquire property for various City departments, predominantly for the Departments of Public Works and Water Management. These departments’ projects usually require the RED to acquire a variety of property interests from multiple property owners, and the volume of projects continues to increase. Staff has been reviewing the City’s real property acquisition process (Process) for ways to improve the RED’s project delivery schedules.

One way to improve the Process is for City Council (Council) to expand the City Manager’s authority to purchase real property. Resolution 7592, adopted October 7, 1991, authorizes the City Manager (Manager) to purchase real property or any interest in real property as long as the purchase price does not exceed \$20,000.00. The \$20,000.00 maximum amount has not been modified in more than 25 years, is significantly lower than the Manager’s authority to execute construction, repair, and select purchasing contracts, and is well below that of neighboring municipalities.

Additionally, Staff has reviewed Resolution 7978, adopted August 15, 1994, which authorizes the Manager to settle condemnation actions as long as the total compensation paid to acquire the real property in question does not exceed \$20,000.00. The maximum dollar amount was chosen based on the Manager’s authority to purchase real property for \$20,000.00 or less. Similar to purchases, the maximum dollar amount for settling condemnation actions has not been modified in more than 20 years.

Staff has also determined that the process by which the City conveys easements to certain requesting parties should be streamlined. The RED has recently received several inquiries from utility companies and governmental units asking to use City-owned property, and the RED expects the number of requests to increase.

Council approval is currently needed to convey easements, with the exception of utility easements. Resolution 9298 authorizes the Mayor to convey utility easements across City property. In order to maximize efficiency in handling these varied requests, Staff recommends that Council adopt a resolution delegating to the Manager or the Manager’s designees authority to convey easements affecting City-owned property that are requested by utility companies and governmental units.

Lastly, Staff evaluated the benefits of Council authorizing the Manager to execute all deeds for the sale of real property once Council has approved each sale. The current practice is for the Mayor to sign all deeds on the City's behalf, but Staff interacts with the Manager for the majority of the RED's transactions. Shifting signature authority from the Mayor to the Manager for all deeds will provide a more singular focus for Staff when seeking execution of documents to complete real estate transactions and is permissible pursuant to Charter Section 86.3. Section 86.3 permits Council to delegate to the Manager the "power to take any action that the city council is required or allowed to take to conclude the sale and conveyance" of City-owned real property once Council has approved the sale.

Recommendation

The General Services Department recommends that City Council

- Adopt a resolution delegating authority to the City Manager to purchase real property or any interest in real property, provided the purchase price does not exceed \$50,000.00.
- Adopt a resolution delegating authority to the City Manager to settle condemnation actions, provided the total compensation for the acquisition of the real property in question does not exceed \$50,000.00.
- Adopt a resolution delegating authority to the City Manager or the City Manager's designees to convey easements affecting City-owned property to utility companies and to governmental units, and to execute deeds after a sale of real property is approved by City Council.

Background

Council has previously adopted several resolutions authorizing the Manager to purchase real property or any interest in real property as long as the purchase price did not exceed varying maximum dollar amounts, and requiring that the Manager report use of this authority to Council within 45 days. The resolutions are listed below in chronological order.

- Resolution 1748, adopted May 6, 1974, authorized the Manager to purchase real property when the purchase price did not exceed \$1,000.00. This resolution is superseded by Resolution 2900.
- Resolution 2900, adopted October 6, 1980, authorized the Manager to purchase real property when the purchase price did not exceed \$2,500.00. This resolution is superseded by Resolution 5607.
- Resolution 5607, adopted October 17, 1983, authorized the Manager to purchase real property when the purchase price did not exceed \$5,000.00. This resolution is superseded by the resolution currently in effect, Resolution 7592.
- Resolution 7592, adopted October 7, 1991, authorizes the Manager to purchase real property when the purchase price does not exceed \$20,000.00.

The RED periodically receives requests from utility companies and other governmental units for easements on City-owned property. Given Durham's growth, particularly in downtown Durham, the RED expects the number of requests to increase.

For example, the North Carolina Department of Transportation (NCDOT) recently inquired about purchasing a temporary construction easement across City-owned property to facilitate

work related to its Alston Avenue widening project. NCDOT has also requested over the last three years a number of permanent easements on City-owned property for projects like the Rocky Creek bridge replacement project and the Little Lick Creek bridge project.

Additionally, Staff recently completed work with Duke Energy on two utility easements, one of which benefits the Durham Police Department's new headquarters building located on East Main Street.

Issues and Analysis

Adopting a resolution increasing the Manager's authority to purchase real property

The Manager's purchasing authority of \$20,000.00 is no longer commensurate with real property values that form the basis of Staff's offers to property owners when purchasing their property for City projects. Since FY14, Staff has brought ten agenda items to Council that the Manager could have executed with increased purchase authority, as shown in Table 1. On average, it takes Staff two weeks to create a Council-ready agenda item (Item) and a minimum of four weeks for each Item to move through Council's approval process. The projects represented by these ten Items were affected collectively by 60 weeks, or 15 months, because the Manager cannot purchase real property costing more than \$20,000.00.

TABLE 1**FY 2014 - 2017 Real Property Purchases That Manager Could Have Made With Increased Authority**

Project Name	Property Address	Purchase Price	Council Meeting Date
Lake Michie Expansion	3803 Pat Tilley Road	\$65,000.00	August 5, 2013
Carver Street Extension	955 Old Oxford Road 937 Old Oxford Road	\$100,000.00	March 3, 2014
Carver Street Extension	3739 Cub Creek Road	\$86,800.00	March 3, 2014
*Carver Street Extension	0 Wiggins Street (4 parcels) 0 Armfield Street (4 parcels)	\$44,800.00	March 3, 2014
Fayetteville Street – Buxton Street – Riddle Road Realignment	4003 Fayetteville Street	\$275,000.00	May 5, 2014
Lake Michie Expansion	618 Buren Road 620 Buren Road	\$188,900.00	November 3, 2014
*West Ellerbe Creek Trail	1510 North Pointe Drive 1515 North Pointe Drive	\$38,000.00 \$18,000.00	June 1, 2015
Mist Lake Facility Expansion	1902 Camden Avenue	\$155,000.00	November 2, 2015
Lake Michie Expansion	3125 Pat Tilley Road	\$80,000.00	February 15, 2016
*Edgemont Park	906 Angier Avenue 908 Angier Avenue 910 Angier Avenue 201 S. Elm Street	\$30,000.00	March 21, 2016
*Mist Lake Facility Expansion	0 US Highway 15	\$37,500.00	August 1, 2016
*East Durham Outfall	925 N. Miami Boulevard 927 N. Miami Boulevard 931 N. Miami Boulevard	\$40,000.00	November 7, 2016

*These items could have been handled by the Manager with the recommended increase in authority.

The time sensitivity and complexity of projects have also increased over the years, making opportunities to advance the acquisition phase an important part of the overall project delivery lifecycle. Five of the ten Items were for projects providing direct benefit to the public, such as realignment of the Fayetteville-Buxton-Riddle intersection, extension of Carver Street, construction of a sewer outfall in East Durham, construction of the West Ellerbe Creek Trail, and expansion of Edgemont Park. By providing the Manager with more authority to purchase real property, Staff can complete transactions more quickly, allowing projects to move forward to the construction phase.

Increasing the Manager's authority to purchase real property comports with other Council-approved increases. For example, Resolution 9673, adopted by Council October 5, 2009, increased the Manager's authority to execute certain construction, repair, and purchasing contracts that do not exceed \$300,000.00.

Additionally, increasing the Manager’s authority would be a step towards providing a level of authority comparable to that enjoyed by employees of both the City of Raleigh and the Town of Cary. The following table is provided for benchmarking context after reviewing those municipalities’ real estate purchasing authority.

TABLE 2

Real Property Purchasing Authority for the Managers of the City of Durham and Neighboring Municipalities

GOVERNMENT	CITY/TOWN MANAGER	CITY/TOWN COUNCIL
Durham-current authority	\$20,000 or less	> \$20,000
Durham-proposed authority	\$50,000 or less	> \$50,000
Raleigh	Sole authority once Council approves the project	---
*Cary	Sole authority once Council approves the project	---

*Some authority is delegated down by Manager.

Both the Town of Cary and the City of Raleigh’s Real Estate Division staff have the authority to complete real property purchases in any amount once their respective councils have approved the project and budget. Further, Cary’s town manager has delegated authority to assistant town managers for acquisition of properties valued less than \$500,000.00 and has delegated authority to department directors for acquisition of properties valued less than \$90,000.00.

If the Manager could delegate purchase authority, the Process’s efficiency and speed would be improved even further. Accordingly, the ability of the Manager to delegate authority to the General Services Director to purchase real property will be pursued in the future as a charter amendment as part of the legislative program.

Adopting a resolution increasing the Manager’s authority to settle condemnation actions

Resolution 7978 authorizes the Manager to settle condemnation actions, provided the total compensation to be paid for the real property in question is not more than \$20,000.00. The resolution cites Resolution 7592, which authorizes the Manager to purchase real property for \$20,000.00 or less, suggesting that the Manager should be able to “purchase” condemned property using the same maximum dollar amount as a purchase of any other real property.

Accordingly, Staff requests that Council adopt a resolution increasing the Manager’s authority to settle condemnation actions up to \$50,000.00 in order to stay in line with the Manager’s purchase authority. One important difference, however, is that Council must still approve initiating all condemnation actions.

Adopting a resolution delegating authority to the Manager or the Manager’s designees to convey certain easements affecting City-owned property, and to execute all deeds after a sale of real property is approved by Council

The RED receives requests from utility companies and from governmental entities asking for a variety of easements affecting City-owned property. Given Durham’s growth, especially downtown, the RED expects the number of requests to increase.

Council approval is currently required to convey all easements, except for utility easements. This complicates and significantly delays potentially straightforward requests that can be fully evaluated outside of Council.

In order to maximize the City's efficiency and responsiveness in handling these requests, Staff recommends that Council adopt a resolution that authorizes the Manager or the Manager's designees to convey easements to utility companies and to other governmental entities, such as Duke Energy and NCDOT, respectively.

Additionally, the proposed resolution authorizes the Manager or the Manager's designees to execute all deeds for the sale of real property, once Council has approved the sale. The current practice is for the Mayor to execute these deeds. Shifting signature authority for deeds from the Mayor to the Manager is a logical step, given the Manager's current authority to execute the majority of the RED's documents, including development agreements, rights of entry, and certain leases.

Alternatives

Council has two alternatives to consider when reviewing Staff's recommendation to adopt a resolution increasing the property-purchasing authority from \$20,000.00 to \$50,000.00.

1. Council could choose to leave Resolution 7592 in place. This alternative is not recommended because the current maximum amount of \$20,000.00 does not permit Staff to work with property owners on City projects in an efficient, timely manner. The resolution is also out of step with the more streamlined processes used by neighboring municipalities.
2. Council could choose to establish a maximum dollar amount different from the recommended \$50,000.00, either higher or lower. Should Council choose this option in favor of a lower maximum dollar amount, Staff recommends that the maximum dollar amount be at least \$40,000.00 in order to noticeably improve the efficiency of the Process.

Council has two alternatives to consider when reviewing Staff's recommendation to adopt a resolution increasing the Manager's authority to settle condemnation actions.

1. Council could choose to leave Resolution 7978 in place. This alternative is not recommended if Council plans to increase the Manager's purchase authority to the recommended \$50,000.00. The language in Resolution 7978 implies that the maximum dollar amount established for "purchasing" condemned property directly correlates to the maximum dollar amount established to purchase any other real property. To increase the Manager's purchase authority but not the authority to settle condemnation claims frustrates the intention to keep these levels of authority in line with each other.
2. Council could choose to establish a maximum dollar amount different from the recommended \$50,000.00, either higher or lower. Should Council choose this option, Staff recommends that the maximum dollar amount be kept the same as that for purchasing real property that is not the subject of a condemnation action.

Council has two alternatives to consider when reviewing Staff's recommendation to adopt a resolution delegating authority to the Manager or the Manager's designees for conveyance of

easements to utility companies and to governmental units, as well as delegating authority to execute all deeds related to the sale of real property for Council-approved transactions.

1. Council could choose to not adopt the proposed resolution. This alternative is not recommended because requiring Council approval for easements to utility companies and governmental units prevents Staff from quickly handling straightforward requests. Additionally, choosing not to shift signature authority to the Manager for deeds related to real property sales overlooks an opportunity to provide increased efficiency and a more singular focus for Staff when seeking to have documents executed.
2. Council could choose to adopt a variation of the proposed resolution. This alternative is not recommended, as all the provisions in the proposed resolution are crafted to vastly increase the speed and efficiency with which Staff completes certain transactions.

Financial Impact

There would be no direct financial impact by agreeing to the requested actions. However, there would be operating efficiencies created that would add value to the use of City resources and personnel and would increase the quality and timeliness of service provided to the public.

SDBE Summary

This item does not require review by the Equal Opportunity/Equity Assurance Department.

Attachments

- Charter Section 17 (highlighting added)
- Resolution 7592 - Resolution Amending the Prescribed Conditions Upon Which the City Manager is Authorized to Purchase Real Property (highlighting added)
- Resolution 7978 – Resolution Authorizing the City Manager to Settle Condemnation Actions Within Specified Limits (highlighting added)
- Resolution 9673 – Resolution Delegating Authority to the City Manager With Respect to Making and Executing Contracts, Leases, and Grant Instruments; to Allow the City Manager to Delegate Certain Authority; and to Allow the City Manager to Take Actions Regarding Bids, Proposals, and Bonds (highlighting added)
- Resolution 9298 – Resolution Delegating Authority to the Mayor for Conveyance of Utility Easements (highlighting added)
- Proposed Resolution Prescribing Conditions Upon Which the City Manager is Authorized to Purchase Real Property
- Proposed Resolution Authorizing the City Manager to Settle Condemnation Actions Within Specified Limits
- Proposed Resolution Granting Authority to Convey Easements to Utility Companies and to Units of Government, and Authority to Execute Deeds After a Sale of Real Property is Approved