

# INTERIM JOINT COMMITTEE ON TRANSPORTATION

## Minutes of the 6th Meeting of the 2018 Interim

November 19, 2018

### Call to Order and Roll Call

The 6th meeting of the Interim Joint Committee on Transportation was held on Monday, November 19, 2018, at 10:00 AM, in Room 154 of the Capitol Annex. Representative Ken Upchurch, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Ken Upchurch, Co-Chair; C.B. Embry Jr., Paul Hornback, Albert Robinson, Brandon Smith, and Mike Wilson; Representatives Tim Couch, Chris Fugate, Al Gentry, Robert Goforth, David Hale, Dennis Horlander, Suzanne Miles, Robby Mills, Tim Moore, Rick Rand, Sal Santoro, John Sims Jr, and Jim Stewart III,.

Guests: Paul Looney, Deputy Secretary Kentucky Transportation Cabinet (KYTC), John Moore, Assistant State Highway Engineer for Project Development KYTC, Dean Loy, Director of Right of Way and Utilities, KYTC, and Megan McLain, Innovative Finance Manager, KYTC

LRC Staff: John Snyder, Brandon White, Dana Fugazzi, and Christina Williams.

### Right of Way Process

Paul Looney, Deputy Secretary Kentucky Transportation Cabinet (KYTC) and John Moore, Assistant State Highway Engineer for Project Development KYTC, discussed the right of way process. Mr. Looney stated the most critical guide the KYTC utilizes to manage work at the Cabinet is the 6-Year Highway Plan. This plan, passed by the Legislature every 2 years, gives the direction and the funding needed for road projects across the Commonwealth. The process used by the KYTC for right of way acquisition was developed to fit within the Kentucky Constitution, Kentucky Statutes, and federal law. This allows KYTC to use a consistent process on all projects regardless of funding type. He stated the underlying promise and overwhelming objective is to protect property owners rights at all times throughout the process.

The first step is for KYTC to determine the type and size of the land needed. The owner(s) of the parcel must be determined. Finally, the value of the land and damages to the remaining land must be determined. Deputy Secretary Looney stated the steps to the overall right of way process includes determining the right of way needs for a project, issuing the official order and notice to proceed, a notice of acquisition letter is sent via certified mail, then a public meeting for effected property owners is held and initial contact with property owners to review existing conditions is made. An appraisal or minor acquisition review is prepared and then a just compensation offer is made in writing. The next step is to allow time for the property owner to consider, which typically is 45 days minimum. If the owner agrees, documents are then prepared for closing. If the owner rejects the offer, the process of condemnation (eminent domain) begins.

Deputy Secretary Looney described the appraisal process. The appraiser computes fair market value and the owner or representative can accompany the appraiser. All appraisals are reviewed and approved. Appraisal waivers are allowed if the value is less than \$10,000. Appraisals also follow industry standards. Deputy Secretary Looney stated appraisals are done with both in-house and outside staff. All external appraisers are certified appraisers by the Commonwealth.

Deputy Secretary Looney stated to show good faith and allow ample time for consideration, the Cabinet typically allows a minimum of 45 days for an owner to consider the initial offer. He added that the overwhelming majority of parcels for Cabinet projects are acquired by informal negotiation, and approximately 85 percent of all parcels are acquired by negotiations. He stated approximately 15 percent of parcels are condemned.

Eminent domain is used as a course of last resort when there is disagreement in value or to clear title of property. Most eminent domain parcels are quick take achieving right of entry. The Cabinet can proceed with projects by posting the Commissioner's award value, then the case continues to trial. Eminent Domain is used when defendants cannot be located. For right of way clearance, all parcels are to be signed or right of way obtained as required by KRS 176.070.

Deputy Secretary Looney stated that right of way staff has been reduced by 30 percent in the last ten years. Concerning staff turnover, there have been 27 separations within the last four years and 15 separations since January 2017, of which most of those were supervisory. About 25 percent of management employees are retirement eligible, and 31 percent of overall staff can retire in the next five years.

Concerning outsourcing right of way activities, between 2015 and 2017, approximately 50 percent of parcel acquisitions were done by consultants. In 2018, 65 percent of the projects were delivered by KYTC staff. Deputy Secretary Looney added that the Cabinet has been managing staff statewide to more efficiently deliver projects in-house.

In response to a question asked by Senator Hornback concerning the appraisal adjustments when there is limited access or an elimination of an access point, Dean Loy, Director of Right of Way and Utilities, KYTC stated two appraisals are usually given, one as before value, and a second one as an after value and within that appraisal process, there is allowance for a damage.

In response to a question asked by Senator Wilson, Mr. Loy stated when establishing right-of-way, KYTC utilizes plans that are on file with the Cabinet. When no plans are found, KRS 178.025 is used which states in the absence of any record, the width of a public road right-of-way shall be presumed to extend to and include that area lying outside the shoulders and ditch lines and within any landmarks such as fences, fence posts, cornerstones, or other similar monuments indicating the boundary lines. In the absence of both record or landmark, the right-of-way of a public road shall be deemed to extend to and include the shoulders and ditch lines adjacent to said road and to the top of cuts or toe of fills where such exist.

In response to a question asked by Representative Mills concerning the process of hiring outside appraisers, Mr. Loy stated currently appraisals are set up through the Division of Professional Services which uses a rotation when there is a need for services.

### **Utility Relocations**

John Moore, Assistant State Highway Engineer for Project Development KYTC, discussed the utility relocation process. The law covers how compensation is given for the relocation of utilities. The Federal Highway Administration requires for agreements to be in place prior to advertising. KYTC fully reimburses the cost of relocating the utilities, except for private utilities that have been permitted on public land, and they relocate at their own expense.

Mr. Moore stated the general principles of the utility relocation process include identifying all utilities and the impacts and coordinating with the utility operators to avoid and minimize any impacts that are had. Then an agreement to relocate is reached and the relocation is monitored and reimbursements are given if appropriate.

Mr. Moore stated when KYTC is identifying utilities, project managers will utilize 811 or a before you dig service, as well as the utilities not participating in 811, they will touch base with each utility that they are aware of to determine who has facilities in the area of the improvement. During the identification process, service maps are utilized, as well as a possible use of subsurface utility exploration. Once utility locations are known, and conflicts are identified, the utility coordinator in the district will review those conflicts with the utility operator and will continue to do so until the relocation agreement is executed. Once the operator has an idea of where to go outside of the conflict area the operator will propose a relocation plan with a contact that will include timelines and compensation. In the situation where utility company relocates their own lines, KYTC will

monitor that relocation to make sure there is no other conflicts and that the schedule is being adhered to. Invoices are then reviewed and repayments are initiated.

Mr. Moore stated there are several causes of delays such as trust issues as KYTC faces revolving priorities and short commitment horizons, resource limitations, seasonal limitations, regional emergencies, and unbudgeted relocations. The impacts of those delays include delayed construction and balancing the risk of construction inflation and contract delay claims.

Utility delay improvement efforts include having a balanced highway plan, early coordination between all parties, acquiring easements for utilities, utilizing a utility coordination system, having a quarterly utility council, and having statewide guidance on priority moves.

In response to a question asked by Chairman Upchurch, Mr. Moore stated the road fund is over programmed by 8 percent for the current biennium as opposed to the previous 300 percent in the previous biennium.

Representative Santoro suggested having a utility commissioner to aide in the utility relocation process.

### **Tolling system for the Louisville Bridges**

Megan McLain, Innovative Finance Manager, KYTC gave an update on the tolling system for the Louisville bridges. She stated to date there has been \$168 million collected in tolls, which greatly exceeds the margins expected. The amount of traffic crossing the bridges is also exceeding projections. It was expected there would be approximately 25 million annual trips across the bridges and there have been 33 million trips. Customer service has also improved. There are currently 85 people performing customer service functions. Call wait times are under one minute, response time to emails is approximately one day and response times to letters is approximately three days.

Ms. McLain stated beginning January 2018, registration holds were placed on vehicles for non-payment of tolls. Some new developments include a toll rate increase of 2 1/2 percent and website updates to allow for a more user-friendly interface.

In response to a question asked by Representative Santoro concerning complaints by the Kentucky Trucking Association, Ms. McLain stated any changes to the tolling system must come before and be approved by the tolling board.

In response to a second question asked by Representative Santoro, Ms. McLain stated there has been talk of a uniform transponder system across the United States. EZ Pass is a system that is widely used adding that \$52 million of tolling revenue collected has been because of the EZ Pass and Riverlink collaboration.

In response to an inquiry made by Representative Gentry concerning efficiencies in collecting tolls and ensuring maximum funds are collected, Ms. McLain stated adjustments have been made to camera lighting and positioning to ensure pictures of license plates are seen more clearly. Approximately 3 percent of images taken of license plates cannot be seen clearly. Periodic audits are performed to ensure that each vehicle that crosses is counted and tolls are assessed accordingly. The collection of tolls has a very good return rate.

In response to a question asked by Representative Mills, Ms. McLain stated she believed the lessons learned on the Louisville bridges and initiating that tolling system will be applied to the I- 69 bridge project.

Chairman Upchurch recognized members who would no longer be a part of the Transportation Committee and thanked them for their legislative service. With no further business, Chairman Upchurch adjourned the meeting at 11:00 A.M.