

**RIGHT OF WAY  
AND THE  
PROPERTY ACQUISITION PROCESS**

**A Guide for Property Owners and Tenants**



**CITY OF SUFFOLK**  
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## **INTRODUCTION**

The City of Suffolk (City) is responsible for building and maintaining the City's transportation system. Transportation improvements bring many advantages to an area – ranging from shorter commutes to increased business activity. To accomplish this, it is often necessary to acquire land from private property owners.

Private property rights are protected by both the Virginia and United States Constitutions. To provide uniform and equitable treatment for persons affected by a project, Congress passed the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and amended it in 1987. This law, called the Uniform Act, is the foundation for the information discussed in this brochure. The City respects these fundamental rights and is committed to treating all customers with fairness and respect.

This brochure will provide you with information about the City's process of acquiring rights of way for public improvement projects. In it you will find information on public hearings, the valuation process, negotiations between you and the right of way agent, and how the City will assist you if you have to move.

## **IMPORTANT TERMS USED IN THIS BROCHURE**

**Acquisition**—Acquisition is the process of acquiring real property (real estate) or some interest therein.

**Appraisal**—An appraisal is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

**Business**—Any lawful activity, with the exception of a farm operation, conducted primarily for the purchase, sale, lease, and rental of personal or real property; or for the manufacture, processing, and/or marketing of products, commodities, or any other personal property; or for the sale of services to the public; or solely for the purpose of the Uniform Relocation Assistance Act, an outdoor advertising display or displays, when the display(s) must be moved as a result of the project.

**Condemnation**—Condemnation is the legal process of acquiring private property for public use or purpose through the City's right of eminent domain. Condemnation is usually not used until all attempts to reach a mutually satisfactory agreement through negotiations have failed.

**Displaced Person**—Any person (individual, family, partnership, association or corporation) who is required to move from real property, or moves personal property from real property as a direct result of (1) the acquisition of the real property, in whole or in part, (2) the receipt of a written notice from the City of its intent to acquire, (3) the initiation of negotiations for the purchase of the real property by the City, or (4) a written notice requiring a person to vacate real property for the purpose of rehabilitation or demolition of improvements, provided the displacement is permanent and the property is needed for a transportation project.

**Easement**—An easement is the right of the City to use all or part of the property of a property owner for some specific purpose. Easements can be permanent or temporary (i.e., limited to a stated period of time). The term may be used to describe either the right itself or the document conferring the right. Examples are: permanent easement for utilities, permanent easement for perpetual maintenance of drainage structures, and temporary easement to allow reconstruction of slopes during construction.

**Eminent Domain**—Eminent domain is the right of the City to take private property for public use. In the United States, just compensation must be paid for the taking of private property.

**Farm**—Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

**Initiation of Negotiations**—The date the City makes the first personal contact with the owner of real property, or his/her representative, to provide a written offer to purchase the property being acquired.

**Interest**—An interest is a right, title, or legal share in something. People who share in the ownership of real property have an interest in the property.

**Just Compensation**—Just compensation is the price the City must pay to acquire real property. The City’s representative must make the estimate of just compensation to be offered to the landowner for the property needed. That amount may not be less than the amount established in the approved appraisal report as the fair market value for the property. If the landowner and the City cannot agree on the amount of just compensation to be paid for the property needed, and it becomes necessary for the City to use the condemnation process, the amount determined by the court will be the just compensation paid for the property.

**Market Value**—Market value is the sale price that a willing and informed seller and a willing and informed buyer agree to for a particular property.

**Negotiation**—Negotiation is the process used by the City to reach an amicable agreement with a property owner for the acquisition of needed property. An offer is made for the purchase of property in person, or by mail, and the offer is discussed with the owner.

**Nonprofit Organization**—A public or private entity that has established its nonprofit status under applicable Federal or State law.

**Person**—A person is an individual, partnership, corporation, or association.

**Personal Property**—In general, personal property is property that can be moved. It is not permanently attached to, or a part of, the real property. Personal property is not to be included and valued in the appraisal of real property.

**Small Business**—A business having not more than 500 employees working at a site which is the location of economic activity and which will be acquired for a program or project, or is displaced by a program or project. A site occupied solely by an outdoor advertising sign(s) does not qualify for purposes of the reestablishment expense benefit.

**Waiver Valuation**—The term waiver valuation means an administrative process for estimating fair market value for non-complex acquisitions. A waiver valuation (Basic Administrative Report) is prepared in lieu of an appraisal.

### PUBLIC INVOLVEMENT

The majority of transportation projects are included and approved as part of the City's Capital Improvement Program (CIP) process. The City adopts a CIP budget each year, and holds a public hearing on the budget as a whole, where interested parties can come and speak for or against included projects.

Additional separate Public hearings are held for certain transportation projects. At these community meetings, the City representatives will answer your questions and provide information about the proposed project. You will be able to get an idea about how the project will affect you and your family. A part of the public hearing process allows you to review the project information and voice your opinions and propose alternatives or changes. After the hearing, you will have 10 calendar days to provide comment and/or written documents about the project.

All information received at and after the hearing will be carefully reviewed by the City and decisions will be made to continue, modify, or abandon the project.

The City decides whether to hold a hearing based on public interest and the magnitude of the project. A Notice of Willingness can be posted to satisfy the public hearing requirements for projects with minor improvements. If, as a result of a willingness posting, a request for a public hearing is received, notice of the date, time and place of the hearing will be posted in your local newspaper thirty days prior to the hearing date.

When a Notice of Willingness is posted and no request for a public hearing is received, a City representative will still be available to answer your questions and explain the planned road improvement.



### **PROPERTY APPRAISAL**

The City determines what specific property needs to be acquired after the project has been planned and all requirements have been met. If your property, or a portion of it, needs to be acquired, you, the property owner, will be notified as soon as possible of (1) the City's interest in acquiring your property, (2) the City's obligation to secure any necessary appraisals, and (3) any other useful information.

When the City begins the acquisition process, the first personal contact with you, the property owner, should be no later than during the appraisal of the property. An appraiser will contact you to make an appointment to inspect your property. The appraiser is responsible for determining the initial fair market value of the property. The City will have a review appraiser study and recommend approval of the appraisal report which will be used to establish the just compensation to be offered to you for the property needed.

You, or a representative that you designate, will be invited to accompany the appraiser when the appraiser inspects your property. You can point out any unusual or hidden features of the property that the appraiser could overlook. At this time, you should advise the appraiser if any of these conditions exist:

- There are other persons who have ownership or interest in the property.
- There are tenants on the property.
- Items of real or personal property that belong to someone else are located on your property.
- The presence of hazardous material, underground storage tanks or utilities.

This is your opportunity to tell the appraiser about anything relevant to your property, including other properties in your area that have recently sold.

The appraiser will inspect your property and note its physical characteristics. He or she will review sales of properties similar to yours in order to compare the facts of those sales with the facts about your property. The appraiser will analyze all elements that affect value. The appraisal report

will describe your property and the agency will determine a value based on the condition of the property on the day that the appraiser last inspected it, as compared with other similar properties that have sold.

You will be provided a copy of the appraisal when negotiations begin.

#### **JUST COMPENSATION**

Once the appraisal of fair market value is complete, a review appraiser will review the report to ensure that all applicable appraisal standards and requirements are met. When they are, the review appraiser will give the City the approved appraisal to use in determining the amount of just compensation to be offered for your real property. This amount will never be less than the fair market value established by the approved appraisal. If the City is only acquiring a part of your property, there may be damages or benefits to your remaining property. Any allowable damages or benefits will be reflected in the just compensation amount. The City will prepare a written offer of just compensation for you when negotiations begin.

#### **Buildings, Structures and Improvements**

Sometimes buildings, structures, or other improvements are located on the property to be acquired. If they are real property, the City must offer to acquire at least an equal interest in them if they must be removed or if the City determines that the improvements will be adversely affected by the project.

An improvement will be valued as real property regardless of who owns it.

#### **EXCEPTIONS TO THE APPRAISAL REQUIREMENT**

The Uniform Act requires that all real property to be acquired must be appraised, but it also authorizes waiving that requirement for certain acquisitions. Regulations provide that the appraisal may be waived:

- If you elect to donate the property and release the City from the obligation of performing an appraisal, or
- If the City believes the acquisition of your property is uncomplicated and a review of available data supports a fair market value likely to be less than the amount established by State law. Under these circumstances the City may prepare a waiver valuation (Basic Administrative report), rather than an appraisal, to estimate your fair market value.

### **THE WRITTEN OFFER**

After the City approves the just compensation offer they will begin negotiations with you or your designated representative by delivering the written offer of just compensation for the purchase of the real property. If practical, this offer will be delivered in person by a representative of the City. Otherwise, the offer will be made by mail and followed up with a contact in person or by telephone. All owners of the property with known addresses will be contacted unless they collectively have designated one person to represent their interests.

The City's representative will explain the acquisition policies and procedures which are outlined in this brochure. The City's written offer will consist of a written summary statement that includes all of the following information:

- The amount offered as just compensation. (Usually includes plans or a plat).
- The description and location of the property and the interest to be acquired.
- The identification of the buildings and other improvements that are considered to be part of the real property.

The offer may list items of real property (such as small signs) that you may retain and remove from the property and their retention values. If you decide to retain any or all of these items, the offer will be reduced by the value of the items retained. You will be responsible for removing the items from the property in a timely manner. The City may elect to withhold a portion of the remaining offer until the retained items are removed from the property.

Any separately held ownership interests in the property, such as tenant owned improvements, will be identified by the City.

The City may negotiate with each person who holds a separate ownership interest, or, may negotiate with the primary owner and prepare a check payable jointly to all owners.

The City will give you a reasonable amount of time to consider the written offer and ask questions or seek clarification of anything that is not understood.

If you believe that all relevant material was not considered during the appraisal, you may present such information at this time. Modifications in the proposed terms and conditions of the purchase may be requested. The City will consider any reasonable requests that are made during negotiations.

### **Partial Acquisition**

Often the City does not need the entire parcel that you own. Therefore, the City may purchase only what it needs.

If the City intends to acquire only a portion of the property, it must state the amount to be paid for the part to be acquired. In addition, an amount will be stated separately for damages, if any, to the portion of the property you will keep.

If the City determines that the remainder property will have little or no value or use to you, the City will consider this remainder to be an uneconomic remnant and will offer to purchase it. You have the option of accepting the offer for purchase of the uneconomic remnant or keeping the property.

### **Agreement between You and the City**

When you reach an agreement with the City on just compensation, you will be asked to sign a purchase or easement agreement prepared by the City. Your signature will affirm that you and the City are in agreement concerning the acquisition of the property, including terms and conditions.

If you do not reach an agreement with the City because of some important point connected with the acquisition offer, state law requires mediation as a possible means of coming to agreement. This process is set by the courts.



### **PAYMENT**

The next step in the acquisition process is payment for your property. If there is a mortgage on the property, additional time may be required to contact your lender and secure a release to be sure your rights are protected before payment can be made by the City. Incidental expenses will also be paid or reimbursed by the City. Penalty costs and other charges for prepaying any preexisting recorded mortgage entered into in good faith encumbering the real property will be reimbursed.

### **SETTLEMENT**

The City will make every effort to reach an agreement with you during negotiations. You may provide additional information, and make reasonable counter offers and proposals for the City to consider. When it is in the public interest, the information provided will be used as a basis for administrative or legal settlements, as appropriate.

### **CONDEMNATION**

State law recognizes your right to refuse the purchase offer and to have the value of your property established by the courts.

The law also allows the City to acquire a property even when agreements cannot be reached, so that development of the project can continue. The right of a government to take private property for public use is called "eminent domain."

If you refuse the City's offer, the City files a legal document called a "certificate" with the Suffolk Circuit Court, indicating the need to obtain your property for project construction.

This allows the City to go ahead with the project. The City's monetary offer will still be available through the court, provided you have clear title to the property. Negotiations between you and the City do not end and should continue in efforts to reach a settlement. If a settlement still is not reached the attorney representing the City will initiate legal proceedings necessary to allow you to present evidence as to the value of your property and any losses which you feel will occur due to the project. After hearing testimony and viewing the property, the court will establish a value binding to you and the City. Either side may appeal if a legal error has been made or if the award is deemed unacceptable by the judge.

Eminent domain or condemnation proceedings can have benefits:

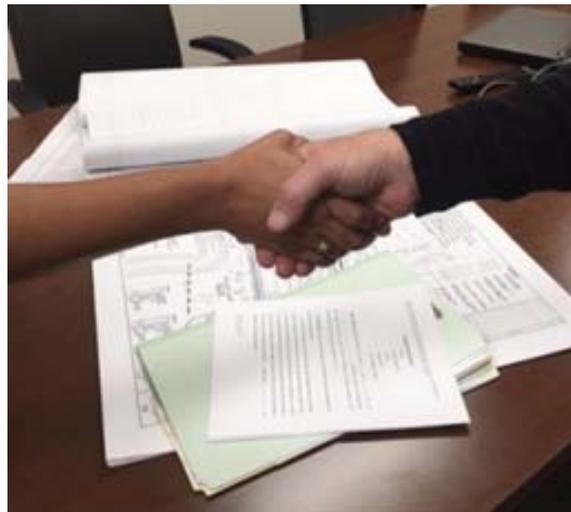
For you:

- You have additional time to consider the offer.
- By petitioning the court, you could get your money while negotiations continue if you have clear title to the property.

For the City:

- The project continues on schedule.
- There is more time to review the owner's expectations.

While condemnation proceedings may be necessary, mutual agreement is preferred.



### **RELOCATION ASSISTANCE AND ADVISORY SERVICES**

A City representative will contact you and offer relocation assistance and advisory services if it is determined that you are a displaced person. Any individual, family, business or farm that is displaced by a transportation project shall be offered relocation assistance services for the purpose of locating a suitable replacement property. Relocation services are provided by qualified City representatives. It is their goal and desire to be of service to you, and assist in any way possible to help you successfully relocate.

Remember, your City representative is there to help and advise you, so please be sure to make full use of their services. Do not hesitate to ask questions and be sure you fully understand all your rights and benefits. Individuals with disabilities will be provided the assistance needed to locate and move to a replacement dwelling or site. The individuals should notify the City of any special requirements for assistance.

Once the acquisition and relocation process begins for the property that you now occupy, you will receive a notice from the City giving an assurance that you will not have to move for at least 90 days. A final notice to vacate will be issued at least 30 days prior to the date you will be required to move.

#### **Residential Assistance**

A City representative will contact and interview you to find out your needs. Relocation services and payments will be explained in accordance with your eligibility. During the initial interview your housing needs and desires will be determined as well as your need for assistance. You will be provided with a current listing of comparable properties. You will also be provided a written determination of the amount of replacement housing payment for which you qualify.

If necessary, transportation will be offered to inspect replacement housing. The City will provide information or help you get assistance from other sources as a means of minimizing hardships in adjusting to your new location.

You will not be required to move unless at least one comparable decent, safe, and sanitary (DSS) replacement dwelling is made available to you. Please do not sign a sales contract or lease agreement for a new home until a City representative has inspected it and assured that it meets DSS standards.

### **Business, Farm, And Nonprofit Organization Assistance**

A City representative will contact and interview you to find out your needs and replacement site requirements and estimate the time needed to accomplish the move. Relocation services and payments will be explained in accordance with your eligibility. It is important to explain to the representative any anticipated problems. During the initial interview you will be asked questions pertaining to your business operation to determine the need for outside specialists to plan, move, and reinstall personal property, and to determine the need for assistance from other local, State, and Federal agencies.

You and the City representatives will identify and resolve any issues regarding what is real estate and what is personal property to be relocated. In addition, as needed, the representative will provide you with listings of commercial properties and farms available in your area.

The goal is to achieve a successful relocation back into the community.



## INDIVIDUALS AND FAMILIES

### **Moving Costs**

If you qualify as a displaced person, you are entitled to reimbursement of your moving costs and certain related moving expenses. Displaced individuals and families may choose to be paid either on the basis of actual, reasonable moving costs and related expenses, or according to a fixed moving cost schedule. To assure your eligibility and prompt payment of moving expenses, you should contact your City representative before you move.

All expenses must be considered necessary and reasonable and supported by paid receipts or other evidence of expenses incurred. Payment will not be made until the move is complete and the property has been inspected.

### **Replacement Housing**

There are three types of replacement housing payments: purchase supplement, rental assistance, and down payment. To understand replacement housing payments you first need to become familiar with the terms *Comparable*; *Financial Means*; and *Decent, Safe, and Sanitary (DSS)*.



**Comparable**

A comparable replacement dwelling must be DSS and functionally equivalent to your present dwelling. While not necessarily identical to your present dwelling, a comparable replacement dwelling should provide for the same utility and function as the dwelling from which you are being displaced. In addition, a comparable replacement dwelling should be adequate in size to accommodate the occupants and should be within your financial means.

**Financial Means**

For a homeowner, if a purchase supplement is needed and provided, in addition to the acquisition price for your dwelling, then the replacement dwelling is considered to be within your financial means.

For a tenant, the monthly rent and estimated average monthly utility (electricity, gas, other heating and cooking fuels, water and sewer) cost for a comparable replacement dwelling is considered to be within financial means if, after receiving rental assistance, this amount does not exceed the base monthly rent (including average monthly utility cost) for the dwelling from which the tenant is displaced.

The City may need to calculate the base monthly rent using 30% of the displaced tenant's total monthly gross household income, if that income qualifies as low income as determined by the U.S. Department of Housing and Urban Development (HUD).

**Decent, Safe, and Sanitary**

The DSS standard means the replacement dwelling meets the minimum requirements established by Federal and State regulations and conforms to applicable local housing and occupancy codes.

**Length of Occupancy - Basic Occupancy Requirements**

The type of payment you are eligible for depends on whether you are an owner or a tenant, and how long you have lived in the property being acquired prior to the initiation of negotiations. "Length of occupancy" simply means counting the number of days that you occupied the dwelling before the date of initiation of negotiations by the City for the purchase of the property.

### **Purchase Supplement For Owner Occupants of 90 Days or More**

If you are an owner and occupied your home for 90 days or more immediately prior to the initiation of negotiations for your property, you may be eligible - in addition to the fair market value of your property - for a supplemental payment for costs necessary to purchase a comparable DSS replacement dwelling. The City will compute the maximum payment you are eligible to receive. You must purchase and occupy a DSS replacement dwelling within one year. A purchase supplement has three components: a price differential, an amount for increased mortgage interest and incidental expenses. The purchase supplement is in addition to the acquisition price paid for your property.

#### **Price Differential**

The price differential payment is the amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling.

#### **Increased Mortgage Interest**

You may be reimbursed for increased mortgage interest costs if the interest rate on your new mortgage exceeds that of your present mortgage.

#### **Incidental Expenses**

You may be reimbursed for other expenses such as reasonable costs incurred for title search, recording fees, and certain other closing costs, but not for pre-paid expenses such as real estate taxes and property insurance.

### **Rental Assistance For Owner Occupants and Tenants of 90 Days or More**

Owner occupants and tenants of 90 days or more may be eligible for a rental assistance payment. To be eligible for a rental assistance payment, tenants and owners must have been in occupancy at least 90 days immediately preceding the initiation of negotiations for the acquisition of the property.

This payment is designed to enable you to rent a comparable decent, safe, and sanitary replacement dwelling for a 42-month period. If you choose to rent a replacement dwelling and the cost of rent and utilities are higher than you were paying, you may be eligible for a rental assistance payment. This rental assistance payment may be used for a down payment toward the purchase of a replacement dwelling. The City will determine the maximum payment you may be eligible to receive.

### **Fair Housing Laws**

Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968 set forth the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. These Acts make discriminatory practices in the purchase and rental of residential units illegal if based on race, color, religion, sex, or national origin.

### **BUSINESSES, FARMS AND NONPROFIT ORGANIZATIONS**

#### **Moving Cost Expenses**

Business owners may be paid on the basis of actual, reasonable moving costs and related expenses or, under certain circumstances, a fixed payment. Related expenses, such as personal property losses, expenses in finding a replacement site, and reestablishment expenses may also be reimbursable.

You must provide the City with an inventory of the personal property to be moved and advance notice of the approximate date of the move.

#### **Actual Cost Move**

You may be paid the actual, reasonable and necessary cost of your move when the move is performed by a professional mover or when you elect to move yourself, however, all your moving costs must be supported by paid receipts or other evidence of expenses incurred. In addition to the transportation costs of your personal property, certain other expenses may be reimbursable, such as packing, crating, unpacking and uncrating, and the disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment and other personal property.

Other expenses such as professional services necessary for planning and carrying out the move, temporary storage costs, and the cost of licenses, permits and certifications may also be reimbursable. This is not an inclusive list of moving related expenses. Your City representative will provide you with a complete explanation of reimbursable expenses.

#### **Searching Expenses for Replacement Property**

Displaced businesses, farms, and nonprofit organizations are entitled to reimbursement for actual, reasonable expenses incurred in searching for a replacement property, not to exceed \$2,500.

### **Reestablishment Expenses**

A small business, farm, or nonprofit organization may be eligible for a payment, not to exceed \$25,000, for expenses actually incurred in relocating and reestablishing the business at a replacement site. To qualify, the business, farm, or nonprofit organization must have not more than 500 employees working at the site who will be displaced by the transportation project.

### **Fixed Payment For Actual Moving Expenses (In Lieu Payment)**

*A business may be entitled to a fixed payment in lieu of payment for actual moving and related expenses of \$1,000 minimum and a maximum of \$75,000 if:*

- The business vacates or relocates from the displacement site.
- The business cannot be relocated without a substantial loss of clientele or net earnings.
- The business is not a part of a commercial enterprise having more than 3 other entities which are not being acquired by the City.
- It is a source of income for the displaced owner.

*A farm operation also can receive a minimum of \$1,000 or a maximum of \$75,000 if:*

- The farm operation stops or is relocated elsewhere on the remaining property.
- The project impedes the efficiency of the farm operation.
- The project makes it economically unfeasible to operate the remaining property as a farm.

The fixed payment for a displaced business or farm is based upon the average annual net earnings of the operation for the two taxable years immediately preceding the taxable year in which it was displaced. You must provide the City with proof of net earnings to support your claim. Proof of net earnings can be documented by income tax returns or certified financial statements.

*A non-profit organization can receive a minimum of \$1,000 or a maximum of \$75,000 if:*

- It cannot be relocated without a substantial loss of clientele or membership.

Eligibility requirements for nonprofit organizations are slightly different than business requirements. The computation for nonprofit organizations differs in that the payment is computed on the basis of average annual gross revenues less administrative expenses for the two year period specified.

**RELOCATION PAYMENTS ARE NOT CONSIDERED TO BE INCOME**

No relocation payment received will be considered as income for the purpose of the Internal Revenue Code. No relocation payment received will be considered income for the purposes of determining eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law (except for any Federal law providing low income housing assistance).

**RIGHT TO APPEAL**

If you do not agree with the relocation services you have received, you may appeal in writing to the Director of Public Works of the City of Suffolk within 90 days of the date the City makes its relocation offer or notifies you of your eligibility to receive a payment.

If you find the Director of Public Works' decision unacceptable, you have 10 days to appeal in writing to the City Manager. The City will appoint a panel to review your case. You will have an opportunity to present supporting evidence to the panel, which will give a written report to the City Manager. The City Manager will render a decision and advise you in writing. If that decision is unacceptable, you have thirty days to seek recourse through the courts.



### **CONTACT INFORMATION**

From the public involvement stage until the time you are contacted personally by a City representative, you may get additional information by calling the number for your area listed on the next page. After you have been contacted in person, your best source of assistance is through your City representative.

### **IMPORTANT INFORMATION TO REMEMBER...**

- Stay in touch with your City representative.
- All transactions involving the exchange of property will be reported to the Internal Revenue Service.
- Relocation Payments Have No Adverse Effects On:
  - Social Security Eligibility
  - Welfare Eligibility
  - Income Taxes



**CITY CONTACT**

**City of Suffolk, Virginia  
Department of Public Works-Engineering  
442 West Washington Street  
Suffolk, Virginia 23434  
1-757-514-7725**

**CITY REPRESENTATIVE/PERSONAL CONTACT:**

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Note: An amendment to the Virginia Constitution, effective January 1, 2013, provides for the body determining just compensation to include payment of lost profits from a business or farm operation suffered as a result of a taking of the property on which the business or farm operation is located, provided that 1) the business or farm is owned by the owner of the property taken, or by a tenant whose leasehold interest grants tenant exclusive possession of substantially all the property taken, and that the loss is directly and proximately caused by the taking of the property through the exercise of eminent domain.

More terms of eligibility are outlined in Sections 25.1-100 in the Code of Virginia under "Definitions" and in Sections 25.1-230.1 in the Code of Virginia "Lost Access and Lost Profits".

Please consult your legal counsel regarding your potential rights under these code sections.