



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-2021-28

File ID: R-2021-28	Type: Resolution	Status: ATS Review
Version: 1	Reference: Item 14	In Control: City Council
Department: Legal Department	Cost:	File Created: 07/23/2020
File Name: Eminent Domain Direction for Porter Ave. Bond Project		Final Action:

Title: RESOLUTION R-2021-28: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING THE ACQUISITION OF CERTAIN REAL PROPERTY, MORE PARTICULARLY HEREINAFTER DESCRIBED, ALL WITHIN THE CITY OF NORMAN, COUNTY OF CLEVELAND, STATE OF OKLAHOMA, FOR THE PURPOSE OF THE PORTER AVENUE AND ACRES INTERSECTION BOND PROJECT IN THE CITY OF NORMAN; AND DECLARING THE NECESSITY FOR ACQUIRING SAID PROPERTY FOR ROADWAY PURPOSES, AND AUTHORIZING INITIATION OF EMINENT DOMAIN PROCEEDINGS FOR THAT PURPOSE.

Notes: ACTION NEEDED: Motion to adopt or reject Resolution R-1920-28.

ACTION TAKEN: _____

Agenda Date: 07/28/2020

Agenda Number: 14

Attachments: R-2021-28

Project Manager: Beth Muckala, Assistant City Attorney

Entered by: beth.muckala@normanok.gov

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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Text of Legislative File R-2021-28

body

BACKGROUND: On April 2, 2019, the citizens of Norman voted in favor of a \$72 million transportation bond issue, which includes nineteen (19) projects. With the anticipated \$67 million in federal dollars being leveraged for these projects, approximately \$139 million is budgeted for the nineteen (19) projects.

Proceeds from bond sale associated with the 2019 Transportation Bond Program, dated June

1, 2019, were received by the City and placed into the 2019 Transportation Bond Account, Account 50-29000. Upon adoption of the FYE 2020 Budget, funds were appropriated from the 2019 Transportation Bond account into fund accounts for several of the earliest scheduled projects within the 2019 Bond Program, including appropriation of funds for the Porter Avenue and Acres Intersection Bond Project.

Proposed improvements for this Project include:

1. New left turn lanes on Porter Avenue
2. New traffic signal and ADA-compliant pedestrian controls
3. Stormwater drainage system
4. Sidewalks and Accessibility
5. Streetscape Enhancements and Landscaping

The estimated total cost of this project is \$2,674,100.

The City contracted with Smith Roberts Land Service Inc., acquisition agent, to acquire the necessary property within the project boundaries to construct and maintain the proposed project. On acquisitions valued over \$10,000, an appraisal of the property is required to determine fair market value for the parcel. Acquisitions less than \$10,000 utilize values from recent comparable property sold in the area to establish a fair market value. In addition to paying landowners for the acquired property, they are paid for any damages including fence replacement, tree replacement and other items relating to the acquired property. After the easement values are determined, the acquisition agent meets with the landowner to discuss the purchase of the easement. If the landowner agrees with the terms, then the documents are signed and the landowner is compensated for the easement including any damages upon City Council approval.

If the landowner and appraiser cannot agree on a fair value for the property, the land may be acquired through a process called eminent domain, which allows a government to acquire private property for public use with compensation. In this process, a third party establishes an independent fair market value of the property being acquired, which becomes the purchase price of the property regardless of whether it is more or less than the original appraised value.

The Porter Avenue and Acres Intersection Bond Project is a single-phase project that requires the acquisition of right of way and easements from 11 parcels. Amicable acquisitions for other necessary parcels are currently underway or already completed. All remaining acquisitions are only partial and temporary easements on the parcels. Parcels 1 and 2 are located adjacent to Porter Avenue's intersection with Dawes and Acres, where construction of the project begins. Parcels 5, 6, 7 and 10 contain necessary right of way easements on either far end of the project; however, due to the small size of this single-phase project, all acquisitions must occur prior to the start of any construction to avoid interruption, delay and additional cost.

Discussions with the owner of Parcels 1 and 2 have been ongoing for several months and the City's first formal acquisition offer was conveyed in February. Ongoing discussions and a desire to lessen the perceived burden of the project on the property owner prompted the City to

generate and offer alternative designs; however the property owner has not provided a response to the proposed alternative. The City intends to continue discussions on the proposal, but wishes to avoid delay if those discussions are not fruitful. Initiating eminent domain proceedings will keep the project on a timely track while allowing the parties to continue attempts at amicable resolution.

Discussions with the owner of Parcels 5, 6, 7, and 10 have been very amicable; however that owner has opted to obtain private appraisals for the property, which process could potentially result in significant delay. Out of an abundance of caution, and guarding against an unforeseen situation where the parties are unable to resolve these acquisitions by agreement, the City wishes to initiate eminent domain proceedings while continuing discussions with the property owner, and allowing the property owner to obtain its appraisals.

DISCUSSION: Though this project is 100% funded by the City of Norman, the City and its consultant still strive to provide the highest level of professionalism during the acquisition process by adhering to procedures compliant with the requirements of the Oklahoma Department of Transportation (ODOT). Thus, appraisals of Parcels 1, 25 and 10 were conducted by an Oklahoma Department of Transportation (ODOT) Certified Appraiser. Following completion of the appraisal, another appraiser certified by ODOT conducted a review appraisal. The purpose of the “review appraisal” is to evaluate the appraisal in order to correct any deficiencies and to insure that the appraisal of the property is in order. Due to their small size, and based on ODOT and City procedures, Parcels 6 and 7 were given offers based on average value for other parcels within the project.

The basis of requiring an appraisal and a review appraisal is that it insures that the provisions of the Fifth Amendment of the United States Constitution and the Constitution of the State of Oklahoma are met. The Fifth Amendment provides in part: “. . . nor shall private property be taken for public use without just compensation.” Further, the Constitution of the State of Oklahoma provides: “Private property shall not be taken or damaged for public use without just compensation. Just compensation shall mean the value of the property taken.”

Finally, 11 O.S. § 22-104 provides that “every municipality shall have a right to...(3) exercise the right of eminent domain for any municipal purpose,...”

Section 22-105 provides:

Private property may be taken for public use, or for the purpose of giving a right-of-way or other privilege for any necessary purpose, in the manner provided by law; but in every case the municipality shall make adequate compensation to the person or persons whose property shall be taken or injured thereby as provided by law.

By requiring the appraisal and a review of the appraisal, it helps insure that the offer to the property owner is adequate. The Courts have viewed “just compensation” as the fair market value of the property taken... fair market value ... means money which [the] purchaser willing but not obligated to buy property would pay to the owner willing but not obligated to sell it.” *Grand River Dam Authority v. Bonford*, 111 P.2d 182 (Okla. 1941).

The City of Norman, through its right-of-way agents, has been working with the property owners' agents to address any concerns they might have regarding the acquisitions. However, the City and its agents have not yet been able to complete the acquisition of this subject parcel.

The City has: (1) followed both federal and state regulations concerning the acquisition of private property for this public project, even where such law does not control; (2) provided the property owners property rights information as required by the regulations; (3) conducted appraisals and review appraisals per these regulations; (4) provided the property owners with all requested information with respect to this Project and their property; (5) representatives of the City and City Staff have been available at all times to discuss any issue with the property owners; and (6) requested information from the property owners that would assist City Staff in resolving the issue of acquiring these properties, some of which has still not been provided by the property owner.

The City must complete property acquisition for this project immediately, in order to meet the projected fiscal timelines, to avoid significant cost increase, and to avoid devaluing funds already invested in this project. Although Staff desires to settle the acquisition process with the property owners, it is necessary to take the next step and file for condemnation to have this project ready for construction in the scheduled year to meet the Transportation Bond time lines. Filing condemnation does not mean that efforts toward settlement will cease. It will ensure however, that the property is acquired in a timely fashion.

RECOMMENDATION: Based upon the above and foregoing, it is the recommended that proposed Resolution R-2021-28 concerning the necessity of acquiring the previously described tract of property located within the Porter Avenue and Acres Intersection Bond Project, and authorizing the filing of eminent domain proceedings for the acquisition thereof, be approved.