



# City of Norman, OK

Municipal Building  
Council Chambers  
201 West Gray  
Norman, OK 73069

## Master

**File Number: R-1920-80**

**File ID:** R-1920-80      **Type:** Resolution      **Status:** Non-Consent Items

**Version:** 1      **Reference:** Item 35      **In Control:** City Council

**Department:** Legal Department      **Cost:**      **File Created:** 12/05/2019

**File Name:** Rock Creek Road - Direction to File Eminent Domain on Parcel 3      **Final Action:**

**Title:** RESOLUTION R-1920-80: 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, OKLAHOMA, FOR THE PURPOSE OF THE ROCK CREEK ROAD IMPROVEMENT PROJECT IN THE CITY OF NORMAN; AND DECLARING THE NECESSITY FOR ACQUIRING SAID PROPERTY FOR ROADWAY, UTILITY AND DRAINAGE PURPOSES; AND AUTHORIZING INITIATION OF EMINENT DOMAIN PROCEEDINGS FOR THAT PURPOSE.

**Notes:** ACTION NEEDED: Motion to adopt or reject Resolution R-1920-80.

**ACTION TAKEN:** \_\_\_\_\_

**Agenda Date:** 12/10/2019

**Agenda Number:** 35

**Attachments:** R-1920-80 - Rock Creek EmDom - Parcel 3, Easement (Roadway) #3, Easement (Roadway) #3.1, Easement (Temp Drive) #3.2

**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:

### Text of Legislative File R-1920-80

body

**BACKGROUND:** The Rock Creek Road Improvement Project will improve the remaining unimproved ½ mile of Rock Creek Road from Grandview Avenue to 36th Avenue NW. The project was included in the City’s FYE 2018-2022 Capital Improvement Program and is anticipated to be constructed in Fall 2020. There has been significant development in the area that has generated the need for these improvements. Rock Creek Road currently carries 3,800

vehicles per day and an abundance of pedestrians and bicycle traffic.

On November 22, 2011, City Council approved Resolution R-1112-59, Programming Federal Surface Transportation Program Urbanized Area (STP-UZA) Funds for the widening and reconstruction of Rock Creek Road, from Grandview Avenue to 36th Avenue NW.

On May 27, 2014, City Council accepted \$246,009.99 in deferral funds from Brookhaven No. 41 Addition (\$158,289.50), The Falls at Brookhaven Addition (\$81,640) and C.P. Land Addition (\$6,080.49). City Council also appropriated these deferral funds in the amount of \$246,009.99 from the Site Improvement Cash (Account 010-0000-229-2411) to the Rock Creek Road Widening Project Design (Account 050-9552-431.62-01, Project TR0094).

On May 27, 2014, City Council approved engineering services Contract K-1314-127 with Freese and Nichols, Inc. of Oklahoma City, Oklahoma for the design of the Rock Creek Road Widening Project between Grandview Avenue and 36th Avenue NW in the amount of \$203,400.

On September 26, 2017, City Council approved Contract K-1718-62, a Right-of-Way and Utility Agreement with ODOT for the construction of the Rock Creek Road Widening Project from Grandview Avenue to 36th Avenue NW. On September 11, 2018, City Council approved Resolution No. R1718-115, which declared this project as a recoupment project.

Proposed improvements for the Rock Creek Road Widening Project include:

- Widening Rock Creek Road from 2-lane to 3-lane between Grandview Avenue and 36th Avenue NW
- Addition of 5-foot on-street bike lanes
- ADA Compliant sidewalks on both sides of Rock Creek Road
- Modern roundabout to replace 3-way stop at Grandview Avenue
- Stormwater improvements
- The estimated total cost of this project is \$2,800,000.

The City contracted with Smith Roberts Land Service Inc., acquisition agent, to acquire the necessary right-of-way and easements 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. Easements 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 located within the easement that may need to be replaced or relocated. 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 Rock Creek Road Improvement project is a single-phase project that requires the acquisition of right of way and easements from five (5) parcels. Two (2) of the required acquisitions have been resolved by agreement of the parties, both of which have already been approved by Council.

Discussions with the owner of this parcel regarding the City's offer to acquire portions of the parcel in right of way and easement have been ongoing for over a year. Though the parties intend to continue discussions in the hopes of achieving an amicable resolution, proceeding with the filing of eminent domain proceedings will allow the City to satisfy projected City timelines, avoid cost increase, and avoid devaluing funds already expended in pursuit of this project.

**DISCUSSION:** The appraisal of the property was 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.

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 acquisitions with respect to Parcels 3, 5 and 8 by voluntary agreement.

The City has: (1) followed both federal and state regulations concerning the acquisition of private property for this public project; (2) provided the property owners property rights information as required by the regulations; (3) conducted appraisals and review appraisals as required by the 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.

The City must complete property acquisition for this project by March 1, 2020, 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 the next available Federal Funding opportunity. 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 recommendation of the City Attorney's Office that proposed Resolution No. R-1920-80 concerning the necessity of acquiring the previously described tract of property located on Rock Creek Road, and authorizing the filing of eminent domain proceedings for the acquisition thereof be approved.