



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-2021-77

File ID: R-2021-77 **Type:** Resolution **Status:** Consent Item

Version: 1 **Reference:** Item 43 **In Control:** City Council

Department: Legal Department **Cost:** **File Created:** 01/06/2021

File Name: Eminent Domain Resolution for 36th Ave NW Bond Project **Final Action:**

Title: RESOLUTION R-2021-77: 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 36TH AVENUE NW BOND 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-2021-77.

ACTION TAKEN: _____

Agenda Date: 01/12/2021

Agenda Number: 43

Attachments: R-2021-77

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-2021-77

body

BACKGROUND: On August 28, 2012, the citizens of Norman voted in favor of a Bond Issue to finance the local share of eight transportation/stormwater improvement projects. One of the eight 2012 bond projects is the 36th Avenue NW Bond Project between Tecumseh Road and Indian Hills Road (please see the attached location map showing the project boundaries).

On November 22, 2011, the Norman City Council approved Programming Resolution

R-1112-64, requesting federal funds for the 36th Avenue NW Bond Project. This resolution states the City's commitment to adhere to the terms and conditions of a federally funded project including engineering design, acquisition of all necessary rights-of-way and relocation of utilities and encroachments at 100% the City's cost. In return, the Association of Central Oklahoma Governments (ACOG), through the Oklahoma Department of Transportation (ODOT), agrees to provide 80% of the construction cost, estimated at \$11,500,000, and administration of the construction with the matching share from the City of Norman.

On March 12, 2013, City Council approved engineering services Contract K-1213-170 with the engineering firm of CP&Y in the amount of \$703,878.50 to design 36th Avenue NW Bond project from Tecumseh Road to Indian Hills Road.

On June 26, 2018, City Council approved Resolution R-1819-12 declaring the 36th Avenue NW Project a recoupment project.

Proposed improvements for the 36h Avenue NW Bond Project include:

- Widen two miles of roadway from two lanes to four lanes
- New traffic signals at 36th Avenue NW and Franklin Road and 36th Avenue NW and Indian Hills Road
- Interconnect signals between Tecumseh Road and Indian Hills Road
- Dedicated left turn lanes at All Saints Catholic School
- Fifth lane north of Indian Hills Road to Market Place
- Storm water improvements
- Continuous sidewalks along both sides of the roadway with the 10 foot wide legacy trail from Tecumseh Road to Franklin Road on the east side
- Bicycling facilities as listed in the Norman Bike Plan

On February 26, 2019, City Council approved Authorization for Expenditure No. One from Contract K-1314-102 with Smith-Roberts Land Services, Inc., for the 36th Avenue NW Bond Project - Phase 1, in the amount of \$54,324, for right-of-way acquisition services.

On May 28, 2019, City Council approved Amendment One to Contract K-1213-170 for engineering design of the 36th Avenue NW Widening Bond Project from Tecumseh Road to Market Place, with CP&Y, Inc., in the amount of \$193,895.

On November 12, 2019, City Council approved Authorization for Expenditure Three under contract K-1314-102 with Smith-Roberts Land Services, Inc., for right of way acquisition services for Phase Two of the 36th Avenue Northwest Widening Bond Project, from Franklin Road to Market Place, in the amount of \$130,116.

On February 11, 2020, City Council accepted the last of the easements required for parcels one through eleven, completing the required right-of-way acquisition for Phase One of the 36th Avenue Northwest Widening Bond Project.

On August 25, 2020, City Council approved Authorization for Expenditure Four, under Contract K-1314-102, with Smith-Roberts Land Services, Inc., in the amount of \$20,180, for additional

right-of-way acquisition services due to an increase in the number of parcels and appraisals included in Phase Two of the 36th Avenue Northwest Widening Bond Project.

On October 27, 2020, City Council accepted easements for Parcels 17,18,19,20 and 30, for Phase 2 of the 36th Avenue NW Widening Bond Project. Also on this agenda are items for the consideration of three more easements from two additional parcels within the project.

Right-of-way acquisition necessary for Phase Two of the 36th Avenue Northwest Widening Bond Project, consists of twenty-five (25) separate easements on twenty (20) parcels. Smith-Roberts Land Services (SRLS) oversaw and reviewed the appraisal of each parcel, and assisted the City of Norman staff in the preparation of offer letters to each property owner affected, based on the appraised values and damages.

The offer letters were sent on August 24, 2020 and contained information identifying the project as a recoupment project and encouraged each property owner to consider donation of the property. The City staff and SRLS have begun to meet with the affected property owners individually, to answer questions and aid them in understanding the right-of-way acquisition process, as well as the affect it will have on their properties. The City has previously accepted for five (5) parcels, and are considering the acceptance of easements for two (2) additional parcels on this agenda.

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 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, directly and/or 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 twelve parcels: Parcels 12 through 16, 21, 22, 24, 25, 27, 28, and 31.

Discussions with the owners of Parcels 21 and 22 are progressing well, although slowly. The parties hope and anticipate that amicable resolution can be reached before there is a need to file a formal eminent domain action; nonetheless, permission is sought for the purposes of time and economy in the case that discussions are not ultimately fruitful.

The City and its consultants have provided information, hosted meetings, and attempted to reach the owners of Parcels 14, 15, 16, and 31 in multiple ways, and have been unsuccessful in engaging these parcel owners in conversations regarding the City’s necessary acquisitions for this project.

The City and its consultants have engaged in extensive discussions with the owners of Parcels 12, 13, 24, 25, 27, and 28. However, the parties’ positions remain sufficiently divided such that an amicable resolution is not foreseeable at this time and permission to pursue eminent domain is requested for the purposes of time and economy.

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.

Staff believes that pursuing eminent domain may serve to avoid significant cost increases and 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 eminent domain to have this project ready for the next available Federal Funding opportunity. Filing an eminent domain action does not mean that efforts toward settlement will cease. It will ensure, rather, that the property is acquired in a timely fashion.

RECOMMENDATION: Based upon the above and foregoing, it is the recommendation of Staff that proposed Resolution R-2021-77 concerning the necessity of acquiring the previously described tract of property located on 36th Avenue NW, and authorizing the filing of eminent domain proceedings for the acquisition thereof, be approved.