



Office memorandum

Date: October 30, 2012

To: Shawn O'Leary, Director of Public Works

From: Leah Messner, Assistant City Attorney II *LM*

Subject: Robinson Street Grade Separation Project Surplus Property

BACKGROUND:

You have asked the City Attorney's Office several questions about the legalities of potentially selling surplus property that was initially acquired by the City of Norman as part of the Robinson Street Grade Separation Project. I understand your questions to be as follows:

1. Are there any federal or state statutes that impact whether the City of Norman may sell any surplus property initially acquired as part of this project?
2. What are the City of Norman Charter and Code of Ordinance provisions that impact whether the City of Norman may sell any surplus property initially acquired as part of this project?
3. Are there any restrictions in either the purchase agreements for the acquired parcels or in the grant of federal funds that impact whether the City of Norman may sell any surplus property initially acquired as part of this project?

DISCUSSION:

Question #1

As to whether there are federal laws that potentially impact whether the City of Norman may sell surplus property initially acquired for the Robinson Street Grade Separation Project, I did not find any applicable statutes. I reviewed the federal Uniform Relocation Assistance and Real Property Acquisition Act of 1970, and it does not have any provisions that would limit the sale of surplus property.

There are state laws that impact whether the City of Norman may sell any surplus property initially acquired as part of this project. Most generally, 11 O.S. § 22-101 gives municipalities the authority to: "sell and convey any real or personal property owned by the municipality and make orders respecting the same as may be conducive to the best interests of the municipality."

More specifically on the issue of the sale of surplus property initially acquired for a public purpose, Title 27 of the Oklahoma Statutes relates exclusively to Eminent Domain. Under 27 O.S. § 17, as amended in 2011, in the event that a portion of property taken by eminent domain is not used for the purposes under which it was condemned, a municipality may declare that property surplus and offer it for resale. However, before

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that surplus property may be offered for resale to the general public, it must first be offered to the person from whom the property was taken or to the heirs of that person at the appraised value or the original price at which that portion of the property was purchased, whichever is less. 27 O.S. § 17(A).

The statute also provides for how the previous owner is to be notified of their right of first refusal. Notification shall be sent by certified mail, return receipt requested, to the last-known address of the person as provided by the person. 27 O.S. § 17(B). If the mail is returned, notice of the right of first refusal shall be provided by publication in a newspaper of general circulation in the community where the property is located. *Id.* If the offer to repurchase is not accepted within ninety days from the date of the notice, the property may then be sold at public sale. *Id.*

Although Title 27 requires a public sale, it does not provide a procedure for such a public sale. Title 74 does have a procedure for the sale of state-owned surplus real property. As noted, Title 74 applies to state-owned real property, not real property owned by a municipality. However, the procedure in Title 74 could be used by the City of Norman to sell surplus real property. 74 O.S. § 129.4 requires a study to determine if the sale of a specific parcel is in the best interests of the state; an appraisal of the parcel; notice of the sale in a newspaper of general circulation in the county where the property is located; and then sale of the property by public auction or by accepting sealed bids. The property must then be sold to the highest bidder if that bid is for at least ninety percent of the appraised value. *Id.*

Question #2

The City of Norman Charter states that the City of Norman, organized as a municipal corporation, shall have the power to "hold, lease, mortgage, convey or otherwise dispose of any of its property within out without the limits of said city". Article I, §1. The Charter permits the sale of real property but does not provide a procedure for doing so. However, Chapter 8 of the Code of Ordinances does have a procedure for declaring property to be surplus and for selling such surplus property.

Under Chapter 8, § 8-301, Council must declare "any supplies, materials, or equipment" as surplus prior to the sale of such items if their value exceeds one thousand dollars. Subsequent to this declaration by Council, the property may then be sold through competitive bidding at a public auction that is conducted either in person or online. Chapter 8, § 8-302(a). Chapter 8, § 8-303 also requires the City Manager and/or his designee to advertise the property to be sold in a newspaper of general circulation in Norman or to give notice in another manner as he deems necessary. These Code provisions do not specifically list real property as an item that Council must declare surplus prior to the sale of that property. Though not specifically listed in Chapter 8, in *State ex rel. Remy v. Agar*, the Oklahoma Supreme Court ruled that real property owned by the municipality for the public use of its citizens must be declared to be surplus by the City Council as a prerequisite to the sale of such real property. 559 P.2d 1235 (Okla. Sup. Ct. 1977). Therefore, as Title 27 of the state statutes requires a public sale, using the process in Chapter 8 of the Code would be a way to comply with Title 27 and case law and use an established City process to do so.

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Question #3

Lastly, you asked if there are any restrictions in either the purchase agreements for the acquired parcels or in the grant of federal funds that impact whether the City of Norman may sell any surplus property initially acquired as part of this project. I have reviewed the deeds provided to me by Public Works staff. These deeds do not contain any provisions that would limit the City's options with the subject properties as the deeds appear to be standard warranty deeds conveying fee simple title for the parcels to the City of Norman.

As to the grant of federal funds, John Clink, Capital Projects Engineer for the City of Norman, advises me that the federal funds were allocated through an earmark contained within the federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Bill, and, as such, there is not a grant application or document to review. However, I have also reviewed the Right-of-Way, Public Utility and Encroachment Agreement between the City of Norman and the Oklahoma Department of Transportation for the Robinson Street Underpass Project. Under Section 4(e) of that Agreement, the City of Norman may sell any lands which were acquired for highway purposes so long as such a sale is conducted in accordance with 69 O.S. § 1001 and § 1004. In addition, prior written permission for the sale is required from the Right-of-Way Division Chief for the Oklahoma Department of Transportation.

69 O.S. § 1001 specifies the procedure for the sale of any lands which were acquired for highway purposes by the State of Oklahoma. However, by execution of the above Agreement with the Oklahoma Department of Transportation, the City of Norman has agreed to follow this statutory process. Under 69 O.S. § 1001(C), any surplus property shall be sold for cash to the highest and best bidder after notice by publication in a newspaper in the county where the property is located. The notice must be published in two consecutive weekly issues. *Id.*

The statute goes onto require:

If the land to be disposed of originally comprised a total taking leaving no abutting remainder, then such shall be sold to the highest bidder, or as otherwise herein provided except that if the land to be disposed of originally comprised a total taking of less than one (1) acre leaving only one abutting property owner of record, then prior to conducting such advertisement and solicitation of bids for the sale of any such lands or interest therein, the Commission shall notify the sole abutting property owner of record to the taking that such has been declared surplus and is to be offered for sale. 69 O.S. § 1001(D)(2).

A definition for "abutting owner" is not provided within the statute. In addition, I did not find any Oklahoma case law on point. If a statute does not provide a definition, the rules of statutory construction require the statute to be construed using the common meaning of the word or term in question, and that common meaning may be provided by a dictionary definition. As to the

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word "abut", the *Merriam-Webster Dictionary* defines it to mean "to touch along a border". Using that meaning, there are no abutting parcels to the properties to be potentially declared surplus as all the neighboring parcels are across a street from either of them, and they do not share a border. Therefore, these properties to be potentially declared surplus and sold are not required to be offered to abutting owners prior to offering them at a public sale.

RECOMMENDATION:

If City Council chooses to sell property that is no longer needed for the Robinson Street Grade Separation project, I recommend following the steps listed below in order to comply with the statutes and ordinances listed above:

1. Acquire written permission for the sale from the Right-of-Way Division Chief for the Oklahoma Department of Transportation as required by the Right-of-Way, Public Utility and Encroachment Agreement.
2. Prepare an item for Council to declare the property surplus pursuant to Chapter 8, § 8-301 of the Code of Ordinances.
3. Once Council declares the property surplus, offer the surplus property to the person from whom the property was taken or those persons' heirs pursuant to 27 O.S. § 17(A).
 - a. The offer should be for the appraised value of the surplus property or the original price at which that portion of the property was purchased, whichever is less.
 - b. Notification shall be sent by certified mail, return receipt requested, to the last-known address of the person as provided by the person. 27 O.S. § 17(B).
 - c. If the mail is returned, notice of the right of first refusal shall be provided by publication in a newspaper of general circulation in the community where the property is located. *Id.*
 - d. If the offer to repurchase is not accepted within ninety days from the date of the notice, the property may then be sold at public sale. *Id.*
4. Sell the property for cash to the highest and best bidder after notice by publication in a newspaper in the county where the property is located pursuant to 69 O.S. 1001(C). The notice must be published in two consecutive weekly issues.
 - a. Under Chapter 8 of the Code of Ordinances, this sale could be through competitive bidding at a public auction that is conducted either in person or online. Chapter 8, § 8-302(a); however, I recommend conducting a public auction as that method is more consistent with 69 O.S. §1001.

In the above list of steps, I recommend using the process for a public sale in Chapter 8 of the Code of Ordinances, rather than the Title 74 process the State of Oklahoma uses, as it is simpler and most likely more familiar to both City Council and City Staff. Please let me know if I can do anything else.

Reviewed By: Jeff Bryant, City Attorney *JHB*