



City of Norman, OK

Municipal Building Council
Chambers
201 West Gray Street
Norman, OK 73069

Text File

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Title

RESOLUTION NO. R-1213-152: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, DECLARING THE NECESSITY FOR ACQUIRING CERTAIN REAL PROPERTY, MORE PARTICULARLY HEREINAFTER DESCRIBED, ALL WITHIN THE CITY OF NORMAN, COUNTY OF CLEVELAND, STATE OF OKLAHOMA, FOR THE PURPOSE OF THE CEDAR LANE ROAD WIDENING PROJECT IN THE CITY OF NORMAN; DECLARING THE NECESSITY FOR ACQUIRING SAID PROPERTY FOR ROADWAY PURPOSES; AND DECLARING AN EMERGENCY.

Body

BACKGROUND: On August 28, 2012, the City of Norman voters approved a \$42.5 million bond project that includes eight major transportation/storm water projects. These eight projects are anticipated to cost \$89 million with federal funds paying over 50% of the costs. The projects include:

- West Lindsey Street widening and storm water improvements (2016)
- 24th Avenue SE widening and new traffic signal (2017)
- 36th Avenue NW widening and 2 new traffic signals (2018)
- 12th Avenue SE widening and improved traffic signal at SH-9 (2015)
- Main Street Bridge replacement over Brookhaven Creek and storm water improvements (2014)
- Alameda Street widening (2015)
- Cedar Lane widening and new traffic signal (2013)
- Franklin Road Bridge replacement over Little River (2014)

The first planned project is the Cedar Lane Widening Project. This project is included in this year's Transportation Improvement Plan. If the City can finalize land acquisition, utility relocation and project design by August 2013, the City will receive approximately \$6.2 million in federal funds for this project.

The Cedar Lane Widening Project requires the acquisition of forty-seven (47) easements from twenty (20) property owners. On May 14, 2013, Council accepted ten (10) easements representing seven (7) property owners. On May 28, 2013 City Council accepted 17 additional easements needed for the Project.

The May 28, 2013 agenda also included Resolution No. R-1213-108 declaring a recoupment project so that the City of Norman could recover right of way acquisition costs should recipient property owners decide to develop their property over the next 15-20 years. After a protest from some of the property owners along Cedar Lane, Council voted to delay action on Recoupment Resolution No. R-1213-108 until June 11, 2013.

Following Council's decision to delay action on the Recoupment Resolution, Mr. Harold Heiple, representative of the property owners of Cedar Lane Project Parcels 9.0, 9.1, 10.0, 10.1, 21.0, 21.1 and 21.2, asked Council to vote to reconsider its acceptance of the easements associated with those parcels because those parcels were donated to the City based on its plans to adopt a Recoupment Resolution for the Project. Although this reconsideration request was not approved by a majority of Council, Mr. Heiple has advised that with the possibility of there being no recoupment project, his clients no longer agree to the easement donations Council accepted.

As discussed with Council previously, acquisition of the easements in a timely fashion is critical for the City to be in a position to acquire federal funding for the Project. In order to meet the goal of completing the land acquisition for this project by August 31, 2013, the Legal Department has prepared Resolution

R-12131-152 concerning the necessity of acquiring these parcels for the Cedar Lane Widening Project. This Resolution will authorize the City to initiate eminent domain proceedings. Mr. Heiple does not object to the eminent domain authorization in that there is no dispute that the easements are necessary for the public improvement project. The process will allow the City to acquire the easements even if the issue of valuation of or donation of the property is still pending.

DISCUSSION: The appraisals of the subject properties were conducted by an Oklahoma Department of Transportation (ODOT) Certified Appraiser. Following completion of the appraisal, Staff reviewed the appraisal to evaluate the appraisal in order to correct any deficiencies and to insure that the appraisals of the property are in order.

The basis of requiring an appraisal and a review appraisal is that it insures that the restrictions 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 to address any concerns they might have. The written offer to the property owners were delivered by the City's right-of-way agents, Smith Roberts Land Services in late March and early April. The property owners originally agreed to donate the property in recognition of the City's intention of declaring a recoupment project for the right of way costs. However, if the City does not declare a recoupment project, these property owners desire to continue negotiations for the purchase of the needed easements. Given the time frame and the uncertainty of the recoupment project, Staff decided to request permission to file condemnation on these additional parcels. The parcels affected by Resolution No. R-1213-152 are contained in the chart attached hereto as Attachment 1.

This Project is being conducted by the City in conjunction with the Federal Highway Administration (“FHWA”) and ODOT. 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 in August to take advantage of any available federal TIP funds. 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 preserve the timeline of completion by August 31, 2013. 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-1213-152 concerning the necessity of acquiring the

tracts of property described in Attachment 1 to this memorandum and in the exhibits attached to the Resolution, and associated with the Cedar Lane Project and authorizing the filing of eminent domain proceedings for the acquisition thereof, be approved.