



# City of Norman, OK

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

## Text File

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**In Control:** City Council

**File Type:** Resolution

### Title

RESOLUTION NO. R-1213-141: 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 AND 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, the Council received an update on the progress of this Bond Projects. On May 14, 2013, Council accepted ten (10) easements representing seven (7) property owners. Also on May 14, 2013, the Council adjourned into Executive Session to discuss the condemnation process anticipated for certain properties that must necessarily be acquired for the Cedar Lane Widening Project. City Staff has continued to work to acquire necessary easements by agreement. City Council's agenda on May 28, 2013 will include 17 additional easements acquired by agreement for acceptance by Council.

Although City Staff has continued to negotiate with all the remaining property owners, those efforts at the time of printing the Agenda book have been unsuccessful for 21 parcels. As of print time, Staff is awaiting a counter-offer from the Madole and Armstrong families, who represent 16 of the 21 remaining parcels. Although negotiations will continue even after filing a condemnation action, as previously discussed with Council, it is necessary to begin the process of condemnation 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-1213-141 concerning the necessity of acquiring these parcels for the Cedar Lane Widening Project.

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. The City has continued to work with the property owners towards settlement but settlement efforts have not been successful thus far for the parcels 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 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.

STAFF RECOMMENDATION:

Based upon the above and foregoing, it is the recommendation of the City Attorney's Office that proposed Resolution No. R-1213-141 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.

