



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-1213-140: 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 FRANKLIN ROAD BRIDGE REPLACEMENT PROJECT IN THE CITY OF NORMAN; DECLARING THE NECESSITY FOR ACQUIRING SAID PROPERTY FOR ROADWAY AND DRAINAGE 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)

Although the Franklin Road Bridge project was slated to begin in 2014, Staff identified an opportunity for Federal Transportation Improvement Plan (TIP) funds if the land acquisition, utility relocation and project design is completed by August 2013. Because of this opportunity, Staff moved forward on these project components with the goal of completion in August.

The Franklin Road Bridge project requires the acquisition of five (5) parcels from two property owners. On May 14, 2013, the Council received an update on the progress of the Cedar Lane Widening and the Franklin Road Bridge Bond Projects. On May 14, 2013, Council accepted ten (10) easements representing seven (7) property owners. Also, on May 14, 2013, Council approved Easements No. E-1213-74 and E-1213-75 from Thompson Development Company. These represent Parcels 1 and 1.1 on Attachment 1 - Franklin Road Right of Way Acquisitions. 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 and the Franklin Road Bridge 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 the remaining property owners for the Franklin Bridge Project, Parcels 2, 2.1 and 2.2, Chris and Cindy Tietsort, those efforts at the time of printing the Agenda book have been unsuccessful. 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-1213-140 concerning the necessity of acquiring these parcels for the Bridge Project.

DISCUSSION: The appraisal of the Tietsort 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 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 that 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. After the property owner expressed a concern about the impact of the drainage easement (Parcel 2.1), Staff met the property owner onsite and changed the design so that the easement needed was smaller (a decrease of .49 acres) and altered the sloping so that there was less of an impact to farming the area. The City then made its offer to the property owners based upon the fair market value as determined by the review appraisal. The written offer to the property owners were delivered by the City's right-of-way agents, Smith Roberts Land Services on March 8, 2013. The City continued to work with the property owner towards settlement but a counter-offer was not proposed by the property owner until a face-to-face meeting with Legal staff on April 16, 2013. Staff responded to the counter-offer on April 26, 2013 and has not received a response from the property owner.

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-1213-140 concerning the necessity of acquiring the previously described tract of property located on Franklin Road and authorizing the filing of eminent domain proceedings for the acquisition thereof be approved.