



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1415-104

File ID: R-1415-104

Type: Resolution

Status: Consent Item

Version: 2

Reference: Item 27

In Control: City Council

Department: Legal Department

Cost:

File Created: 04/22/2015

File Name: Resolution regarding real property acquisition for Lindsey Street Improvement Project

Final Action:

Title: RESOLUTION R-1415-104: 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 LINDSEY STREET IMPROVEMENT PROJECT IN THE CITY OF NORMAN; AND DECLARING THE NECESSITY FOR ACQUIRING SAID PROPERTY FOR ROADWAY PURPOSES.

Notes: ACTION NEEDED: Motion to adopt or reject Resolution No. R-1415-104.

ACTION TAKEN: _____

Agenda Date: 04/28/2015

Agenda Number: 27

Attachments: List of Parcels, Resolution R-1415-104 and exhibits

Project Manager: Leah Messner, Assistant City Attorney

Entered by: jayme.rowe@normanok.gov

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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Text of Legislative File R-1415-104

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
- ☐ 24th Avenue SE widening and new traffic signal
- ☐ 36th Avenue NW widening and 2 new traffic signals
- ☐ 12th Avenue SE widening and improved traffic signal at SH-9
- ☐ Main Street Bridge replacement over Brookhaven Creek and storm water improvements
- ☐ Alameda Street widening
- ☐ Cedar Lane widening and new traffic signal
- ☐ Franklin Road Bridge replacement over Little River

Of those funds, \$21,445,118 is intended to be spent on the Lindsey Street Improvement Project. City Council adopted Resolution R-1112-63 on November 22, 2011 programming Federal Program Urbanized Area (STP-UZA) funds for the Lindsey Street Improvement Project. Council, on December 18, 2012, approved Contract K-1213-126 with Leidos Engineering (formerly SAIC) for the design of the project. Council also approved the Right of Way, Public Utility, and Encroachment Agreement, Contract K-1415-86, with the Oklahoma Department of Transportation on January 3, 2015.

All of the parcels that the City is seeking to acquire are easements whether for right-of-way, drainage, sidewalks, or temporary construction areas. No existing house or business is sought to be acquired.

Negotiations with the remaining property owners have been unsuccessful thus far. However, several of the parcels are moving through the corporate approval process, and City staff is continuing negotiations with other parcels. Although negotiations will continue, it is necessary to begin the process of condemnation in order to meet the goal of completing the land acquisition for this project by July 7, 2015. The Legal Department has prepared Resolution R-1415-104 concerning the necessity of acquiring these parcels for the Lindsey Street Improvement 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 the acquisition of the easements 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 July 7, 2015. Filing condemnation does not mean that efforts toward settlement will cease. It will ensure however, that the easements are 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-1415-104 concerning the necessity of acquiring the easements described in Attachment 1 to this memorandum and in the exhibits attached to the Resolution, and associated with the Lindsey Street Improvement Project and authorizing the filing of eminent domain proceedings for the acquisition thereof, be approved.