



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1920-103

File ID: R-1920-103

Type: Resolution

Status: Consent Item

Version: 1

Reference: Item 21

In Control: City Council

Department: Legal Department

Cost:

File Created: 03/04/2020

File Name: Eminent Domain for Creston and Schulze Stormwater Project

Final Action:

Title: RESOLUTION R-1920-103: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING THE ACQUISITION CERTAIN REAL PROPERTY, MORE PARTICULARLY HEREINAFTER DESCRIBED, ALL WITHIN THE CITY OF NORMAN, COUNTY OF CLEVELAND, STATE OF OKLAHOMA, FOR THE PURPOSE OF THE CRESTON WAY AND SCHULZE DRIVE STORMWATER PROJECT IN THE CITY OF NORMAN; AND DECLARING THE NECESSITY FOR ACQUIRING SAID PROPERTY FOR DRAINAGE PURPOSES, AND AUTHORIZING INITIATION OF EMINENT DOMAIN PROCEEDINGS FOR THAT PURPOSE.

Notes: ACTION NEEDED: Motion to adopt or reject Resolution R-1920-103.

ACTION TAKEN: _____

Agenda Date: 03/10/2020

Agenda Number: 21

Attachments: R-1920-103, Temp/Perm Easement Map, 904 Creston Way Easement Location, Project Location Map

Project Manager: Beth Muckala, Assistant City Attorney

Entered by: beth.muckala@normanok.gov

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:

Text of Legislative File R-1920-103

body

BACKGROUND: Several stormwater projects have been funded in previous fiscal years to address specific flooding or maintenance issues: Creston Way and Schulze Drive, 36th Ave NW and Tecumseh Road, and Merkle Creek behind Cleveland Elementary School. These projects have not been previously completed due to a shortage of staff.

The Creston Way and Schulze Drive project is located between Creston Way and Schulze Drive in the central part of Norman in the Bishop Creek watershed. The current drainage system consists of a concrete flume connected to a stormwater pipe which is then connected to a second concrete flume. The system is believed to be undersized and contributing to flooding at homes on Creston Way. The City's goal is to make improvements to the undersized stormwater pipeline in this area to eliminate flooding problems at homes located at 904 Creston Way and 906 Creston Way.

Contract K-1617-120 was approved and executed April 25, 2017, with Meshek and Associates to perform the work on this and other stormwater projects. An acquisition agent has been assisting the City in acquiring the necessary property within the project boundaries to construct and maintain the proposed project. On acquisitions valued over \$10,000, an appraisal of the property is required to determine fair market value for the parcel. Acquisitions less than \$10,000 utilize values from recent comparable property sold in the area to establish a fair market value. In addition to paying landowners for the acquired property, they are paid for any damages including fence replacement, tree replacement, relocation damages and other items relating to the acquired property. After the easement values are determined, the acquisition agent meets with the landowner to discuss the purchase of the easement. If the landowner agrees with the terms, then the documents are signed and the landowner is compensated for the easement including any damages upon City Council approval.

If the landowner and appraiser cannot agree on a fair value for the property, the land may be acquired through a process called eminent domain, which allows a government to acquire private property for public use with compensation. In this process, a third party establishes an independent fair market value of the property being acquired, which becomes the purchase price of the property regardless of whether it is more or less than the original appraised value.

This project requires the acquisition of right of way and easements from 7 properties, and 6 of those property owners are in the process of signing the necessary documents for the acquisitions.

The needs of the project require the acquisition of both a permanent drainage easement and a temporary construction easement from subject parcel. Notably, the subject parcel is one of the two parcels most affected by runoff issues and stands to benefit from completion of this project. However, a tree (one of many on the property) is located within the temporary construction easement required in order to complete this project. Noting the size and location of the tree, the city has offered a reasonable amount in excess of its typical damages offers for tree removal. Discussions with the owner of this parcel and the City's consultant have occurred over several months. The landowner has requested compensation for the tree far in excess of any amount the City can justify for the use of public funds. The landowner will not consider offers less than his last offer.

Though the City is and remains willing to continue discussions in the hopes of achieving an amicable resolution, discussions appear to currently be at a decided impasse. Thus, proceeding with the filing of eminent domain proceedings will allow the City to satisfy projected City timelines, avoid cost increases, and avoid devaluing funds already expended in pursuit of

this project.

DISCUSSION: A professional appraisal was obtained by the City in order to support its offer to the landowner for acquisition and damages. The landowner has provided literature regarding trees and their impact on property values, but has not provided the City with any professional value parameters or estimates of value that the City may reasonably rely upon to increase its current offer.

The City's process in obtaining an appraisal is that it insures that the provisions 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 agents, has been working with the property owners' agents to address any concerns they might have regarding the acquisitions. However, the City and its agents have not yet been able to complete the acquisition of this subject parcel.

The City has: (1) followed best practices and applicable 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 professional appraisal of the property; (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 as timely a manner as possible in order to meet the projected fiscal timelines, to avoid significant cost increase, and to avoid devaluing funds already invested in this project. Although Staff desires to settle the acquisition

process with the property owners, it is necessary to take the next step and file for eminent domain. Filing for eminent domain 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 recommended that proposed Resolution R-1920-103 concerning the necessity of acquiring the previously described tract of property located within the Creston Way and Schulze Drive Stormwater Project, and authorizing the filing of eminent domain proceedings for the acquisition thereof, be approved.