



City of Norman, OK

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

Master

File Number: R-1314-23

File ID: R-1314-23 **Type:** Resolution **Status:** Consent Item

Version: 2 **Reference:** Item No. 31 **In Control:** City Council

Department: Legal Department **Cost:** **File Created:** 08/08/2013

File Name: Resolution declaring Boydview Park abandoned **Final Action:**

Title: RESOLUTION NO. R-1314-23: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, DECLARING CERTAIN REAL PROPERTY KNOWN AS BOYD VIEW PARK AS UNSUITABLE FOR USE AS A PARK AND DECLARING SUCH USE TO BE ABANDONED.

Notes: ACTION NEEDED: Motion to adopt or reject Resolution No. R-1314-23.

ACTION TAKEN: _____

Agenda Date: 08/13/2013

Agenda Number: 31

Attachments: Resolution No. R-1314-23, Map R-1314-23, Easements R-1314-23, Deed R-1314-23

Project Manager: Leah Messner, Assistant City Attorney

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Effective Date:

History of Legislative File

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:

Text of Legislative File R-1314-23

Body

BACKGROUND: The City of Norman is currently in the process of acquiring right-of-way necessary for the widening of Cedar Lane Road, one of the 2012 Bond Projects. Ill Moore Properties, LTD ("Ill Moore") owns a parcel of property along Cedar Lane Road, east of the BSNF railroad tracks, near the intersection of Highway 77. For the project, the City of Norman needs to acquire five parcels from Ill Moore - permanent right-of-way, a temporary construction easement, two permanent drainage easements, and a permanent driveway easement. Ill Moore has offered to donate to the City parcels needed for the Cedar Lane Widening Project.

One motivation for Ill Moore's willingness to donate the Cedar Lane Widening Project parcels is their interest in acquiring City property adjacent to other property that they own south of Lindsey Street. The property Ill Moore is interested in is 2.13 acres of City-owned property, the Boyd View Property, near the intersection of Lindsey Street and Classen Boulevard. Ill Moore is interested in combining the Boyd View Property with their current ownership to create a more marketable property for future development. If the property were to be deeded to them, Ill Moore is willing to reserve a majority of the deeded property to be used as open space, storm water detention, and/or park type amenities that will be accessible for use by the adjacent neighborhood. This commitment for open space and park type amenities would be guaranteed by a deed restriction when the

property is transferred.

In 1963, as part of the Boyd View Estates Plat, the Boyd View Property was dedicated as "public" on the plat. The practice at this time was to dedicate land as "public" to relieve the requirement for a developer to improve adjacent arterial streets. In 1985, the Boyd View Property was incorporated into the Land Use Plan as "parkland". However, the current Park Master Plan does not recommend the Boyd View Property for any improvements because of site issues of limited accessibility, visibility, and lack of on-street parking. In its current state, the Boyd View Property is a functioning drainage channel. The Parks Board, at their August 1, 2013 meeting, considered the idea of transferring property that the City has no plans to develop with a deed restriction to provide privately owned, but publicly accessible, open space upon future development. The Parks Board endorsed the concept by vote of a five in favor and two opposed.

DISCUSSION: If Council desires to proceed with this concept, then two actions will be required. The first action is consideration and approval of Resolution R-1314-23. The second action is consideration and approval of Contract No. K-1314-43 regarding Property Acquisition for the Cedar Lane Widening Project.

Approval of Resolution R-1314-23 is necessary to clearly state Council intention to not use the Boyd View Property as a public park to clear up any issue regarding such a use, since the Boyd View Property has been included in the City's Land Use and Transportation Plan since 1985, and is currently identified as a public parkland in the City's current Parks Master Plan.

Municipalities own property in one of two capacities. The property is owned for use by the municipal corporation as an entity or it held for the public use and benefit of its citizens.

There is a clear distinction, recognized by practically all authorities, between property purchased and held by municipal corporations for the use of the corporation as an entity, and that purchased and held by such corporation for the public use and benefit of its citizens. In other words, its title to and power of disposition of property acquired for strictly corporate uses and purposes are different from its title to and power of disposition of property acquired for and actually dedicated to the public use of its inhabitants. As to the former class the power of the corporation to dispose of it is unquestioned. The rule is different as to the latter class. It is only when the public use has been abandoned, or the property has become unsuitable or inadequate for the purpose to which it was dedicated, that a power of disposition is recognized in the corporation. *City Nat. Bank of Ft. Smith, Ark. v. Inc. Town of Kiowa*, 1924 OK 898, 104 Okla. 161, 230 P. 894, 897.

Because the Boyd View Property was dedicated to the public as part of the 1963 platting, it is owned by the City of Norman for the public use and benefit of its citizens. Under the Agreement to transfer the Boyd View Property, a significant portion of the property will continue to be used for drainage purposes, via reserved drainage easement, for public use and benefit. However, with the drainage easement, the developer plans to consider an underground drainage pipe in order that the land surface could be converted to more usable open space or park like amenities. The title to the property will be held by the developer and the surface will be available for use in the private development.

As noted above, even though not noted on the 1963 Plat, because the Boyd View Property has been designated as Parkland in the Land Use and Transportation Plan and the Parks Master Plan, out of an abundance of caution, it is recommended that in order for it to be deeded to Ill Moore the City Council must declare the property to be abandoned or unsuitable for the purpose for which it was designated. As the Parks Master Plan suggests, the Boyd View Parkland is unlikely to ever be developed as a City of Norman park. For that reason, the Boyd View Parkland meets the legal requirement of unsuitability or inadequacy for that use.

The City of Norman may declare the public use of the Boyd View Property as parkland to be abandoned via Resolution. The attached Resolution, R-1314-23, accomplishes that. It recites the history of the Boyd View Property as discussed above and acknowledges the City of Norman's desire to retain a drainage easement across the property in order to ensure continued functioning of the drainage in this area. If approved, the Boyd View Property will be abandoned for use as a park, and the City will be in a position to deed the property to Ill Moore if a settlement as to the Cedar Lane right-of-way can be reached.

Even if City Council declares the Boyd View Property as abandoned, the proposed deed restriction and limitation in the Resolution regarding the public drainage easement, serve to ensure that the property retains

public functions. Ill Moore and any successive buyers will be required to provide a majority of the deeded property as open space and provide park like amenities. And the City of Norman will maintain a public drainage easement, with accompanying right to maintain and service the easement, to continue to solve storm water and drainage issues in the area.

STAFF RECOMMENDATION: The City Attorney's Office recommends approval of Resolution R-1314-23 if City Council desires to abandon the use of Boyd View Property as a park in light of the difficulties of development of a park in this location, and the possibility, through deed restriction, of requiring the future developer to provide private opens space and park like amenities that will be accessible to the public, and particularly the adjacent Boyd View neighborhood. This approach provided additional opens space and park like amenities accessible to the adjacent Boyd View neighborhood that would not otherwise developed or provided by the City under the City's Parks Master Plan. The Parks Board endorsed this concept.

In addition, with this arrangement for transfer of the Boyd View Property, Ill Moore, is willing to donate the necessary right-of-way for the Cedar Lane Widening Project that is currently owned by them. That right of way is valued between \$174,200 and \$224,337. City Staff will be available to answer additional questions you may have.