



# City of Norman, OK

Municipal Building  
Council Chambers  
201 West Gray  
Norman, OK 73069

## Master

**File Number: R-1516-28**

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<b>File ID:</b> R-1516-28	<b>Type:</b> Resolution	<b>Status:</b> Consent Item
<b>Version:</b> 1	<b>Reference:</b> Item 35	<b>In Control:</b> City Council
<b>Department:</b> Legal Department	<b>Cost:</b>	<b>File Created:</b> 10/14/2015
<b>File Name:</b> Eminent Domain for West Main Bridge Project	<b>Final Action:</b>	

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**Title:** RESOLUTION R-1516-28: 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 WEST MAIN STREET BRIDGE 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 R-1516-28.

ACTION TAKEN: \_\_\_\_\_

**Agenda Date:** 10/27/2015

**Agenda Number:** 35

**Attachments:** R-1516-28, Table of Parcels

**Project Manager:** Kathryn Walker, Assistant City Attorney

**Entered by:** jayme.rowe@normanok.gov

**Effective Date:**

### History of Legislative File

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Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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### Text of Legislative File R-1516-28

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)
- West 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 total estimated cost of the West Main Street Bridge Project is \$5,624,000 of which federal funds will pay \$3,661,000 or 65%.

The existing West Main Street Bridge over Brookhaven Creek, located between 36th Avenue S.W. and 48th Avenue S.W., was constructed in 1972 using 2 10-foot metal arch pipes. This bridge is identified in the City's adopted Storm Water Master Plan as being "hydraulically deficient". This means it is unable to convey a ten-year storm or a storm that has the likelihood of occurring 10 percent of the time. This deficiency likely caused the bridge to sustain serious damage in the flood of August 19, 2007. City crews made temporary emergency repairs at that time to keep the bridge in service. The City's current standards require structures of this type to convey a 50 year storm frequency or a storm that occurs two percent of the time.

On January 27, 2009, the Norman City Council approved programming Resolution R-0809-96 requesting federal funds to replace the bridge and roadway approaches on West Main Street. On August 11, 2009, City Council approved contract K-0910-56 with Garver, LLC for the preliminary engineering design of this project. On June 11, 2010, Council approved Amendment No. 1 with Garver, LLC. for the final design of this project. On December 31, 2012, Council approved Amendment No. 2 modifying the design of the creek improvements which reduced the number of mobile homes relocations from nine to two.

On April 22, 2014, Council approved Contract K-1314-137, a Right of Way, Utility and Encroachment agreement with the Oklahoma Department of Transportation (ODOT). This agreement stipulates that the City will acquire all right-of-way required for the project, grant ODOT access to and the use of the right-of-way for this project, relocate all utilities and encroachments from the construction area and to indemnify and hold ODOT harmless.

The engineering design of the West Main Street Bridge Project is 70% complete and the utility relocation process is 60% complete. Negotiations have been ongoing with the nine property owners affected by this Project. Of those nine, seven have reached a settlement, and Council is scheduled to consider acceptance of those parcels on the October 27, 2015 Council Agenda. The bridge project is scheduled to begin construction in September 2016 with completion anticipated by April 2017.

Negotiations with the remaining property owners have been unsuccessful thus far. 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. The City Attorney's Office is advised by the Public Works Department that the City must complete property acquisition for this project in December 2015 to take advantage of any available federal TIP funds. This is similar to the Lindsey Street Improvement Project in that the Resolution merely authorizes the Legal Staff to file eminent domain proceedings as a last resort if it becomes necessary to do so to preserve the timeline and the grant of federal funds. The Legal Department has prepared Resolution R-1516-28 concerning the necessity of acquiring these parcels for the West Main Street Bridge 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 December 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. Filing condemnation 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 the recommendation of the City Attorney's Office that proposed Resolution R-1516-28 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 West Main Street Bridge Project and authorizing the filing of eminent domain proceedings for the acquisition thereof, be approved.