



City of Norman, OK

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

Master

File Number: K-1314-42

File ID: K-1314-42	Type: Contract	Status: Consent Item
Version: 1	Reference: Item No. 29	In Control: City Council
Department: Legal Department	Cost:	File Created: 08/04/2013
File Name: Cedar Lane Property Acquisition - Madole/Armstrong		Final Action:

Title: CONTRACT NO. K-1314-42 A CONTRACT BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND THE MADOLE FAMILY REVOCABLE TRUST, WILEY R. AND BARBARA SUE MADOLE, CO-TRUSTEES; JAMES ROBERT ARMSTRONG REVOCABLE LIVING TRUST, JAMES ARMSTRONG, TRUSTEE UNDIVIDED ½ INTEREST AND DOROTHY ARMSTRONG; AND CHRISTOPHER ARMSTRONG; AND ACCEPTANCE OF THE RIGHT-OF-WAY ACQUISITIONS AS DESCRIBED IN THE SUBJECT AGREEMENT AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE NECESSARY DOCUMENTS TO EFFECTUATE THE TRANSFERS.

Notes: ACTION NEEDED: Motion to approve or reject Contract No. K-1314-42 with the Madole Family Revocable Trust, Wiley R. and Barbara Sue Madole, Co-Trustees, James Robert Armstrong Revocable Living Trust, James Armstrong, Trustee Undivided ½ Interest and Dorothy Armstrong; and Christopher Armstrong, and, if approved, accept the right-of-way acquisitions, and authorize the City Manager to execute the necessary documents to effectuate the transfers .

ACTION TAKEN: _____

Agenda Date: 08/13/2013

Agenda Number: 29

Attachments: Text File K-1314-52, K-1314-42, Map 8-8-13, Easements 8-8-13, Warranty Deeds 8-8-13

Project Manager: Kathryn Walker, Assistant City Attorney

Entered by: kathryn.walker@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 K-1314-42

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:

- Cedar Lane widening and new traffic signal (2013)
- Franklin Road Bridge replacement over Little River (2014)
- Main Street Bridge replacement and storm water improvements - Brookhaven Creek (2014)
- Alameda Street widening (2015)
- 12th Avenue SE widening and improved traffic signal at SH-9 (2015)
- 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)

The first planned project is the Cedar Lane Widening Project. This project is included in this year's Transportation Improvement Plan. If the City can finalize land acquisition, utility relocation and project design by August 2013, the City will receive approximately \$6.2 million in federal funds for this project.

The Cedar Lane Widening Project required the acquisition of forty-seven (47) easements from twenty (20) property owners. To date, all easements have been donated or purchased with the exception of twenty-one (21) easements from 4 property owners. Council approved Resolution No. R-1213-141 on May 28, 2013 declaring it to be a necessity to acquire these remaining parcels and authorizing the City Attorney to file for condemnation to achieve such acquisition. City Staff filed actions for condemnation in these cases on May 30, 2013. The cases have proceeded through the normal litigation process.

Although the litigation process has started, this office has continued to explore potential settlement of acquisition of the necessary Right of Way for the Cedar Lane Widening Project by Agreement. This item presents a proposed Agreement to effectuate the Right of Way transfers without the need to continue the Court process. The Agreement was discussed with City Council most recently in Executive Sessions held on August 6, 2013. Based on Council discussions, the Agreement for Property Acquisition with three of the four remaining property owners of Right of Way needed for the Cedar Lane Widening Project is being presented to Council for consideration at this time.

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.

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).

Since filing for condemnation, Staff has worked closely with Counsel for Wiley and Barbara Sue Madole, Christopher Armstrong, and James Armstrong and Dorothy Madole-Armstrong to identify values and other issues that would reasonably settle the condemnation case and enable the City to acquire the property in a timely fashion. The initial offer by the City, following appraisals of the property, was \$325,850. The property owners felt their property should be valued at \$751,089. Council has been updated on those negotiations during four executive sessions since May 8, 2013, the most recent being August 6, 2013. Contract No. K-1314-42 represents the culmination of those negotiations. As outlined below, the proposed settlement totals

\$489,980.70 for value of the right of way and easements needed. In addition additional costs of up to \$13,375 for potential fence relocations are referenced. The total settlement costs are \$503,355.70. Funds are available in the right of way acquisition budget to cover these costs. The terms of the agreement are summarized below:

- Compensation:
 - Wiley and Barbara Madole will be compensated for the right-of-way and easements associated with Parcels 3 and 7. They have agreed to donate Parcel 2. Total compensation is \$420,704.38.
 - James Armstrong and Dorothy Madole-Armstrong will be compensated for right-of-way and easements associated with Parcels 4 and 6. Total compensation is \$49,063.82.
 - Christopher Armstrong will be compensated for right-of-way and easements associated with Parcel 5. Total compensation is \$20,212.50.
- Recoupment:
 - Council will recall that the Madoles and Armstrongs were concerned about the impact recoupment could have on a development contract that was pending for a portion of the subject parcels for this project. This has been satisfied in the agreement by providing that a pro-rata share of the total recoupment will be paid at the time such portion of the property is developed, i.e. final platted, under the Recoupment Ordinance. This means when the Park 7 Property is final platted, \$82,295 will be owed to satisfy recoupment for that portion of the property. As additional portions of the property develop, the remaining recoupment would be due in full with the final plat.
- Park 7 Development:
 - This Agreement also provides for the Property Owners submission of a Revised Preliminary Plat for all the property owned by these three property owners. The Revised Preliminary Plat will be substituted for Council's consideration on that item of The Preliminary Plat for the Park 7 Group that is scheduled for Council consideration on August 13, 2013 Agenda as well. As described in the Staff memo for that item, after Planning Commission's recommendation of approval for the Preliminary Plat in June 2013, an error was discovered which rendered the remaining portions of some of the Madole/Armstrong property as illegal lots. To address this, the Applicant is submitting a substitute preliminary plat that will include all of the Madole/Armstrong property, with no change in use proposed for the added parcels. Before the lots can become legal, the Applicant will have to come forward with a zoning change from A-2 to A-1, for the remaining lots that comprise less than ten acres as required by their current A-2 designation, and has agreed to move forward with such zoning change request subsequent to this Agreement.
 - As noted above, the revised Preliminary Plat includes a total of 68.61 acres for the Park 7 Group Addition which includes 32.97 acres for a Planned Unit Development, and 36.64 acres with seven lots that are currently being used as single family residences or agricultural purposes. Under City of Norman subdivision regulations 19-103(A), subdividing land into two or more parcel which, when subdivided, contains less than 40 acres requires a platting process. Including the southern single family and agricultural lots in the revised preliminary plat brings this subdivision in compliance with City subdivision regulations.
 - Normally revisions in Preliminary Plats should first be reviewed by Planning Commission for recommendation, however in this instance, the revision of the Preliminary Plat is being recommended to correct a technical deficiency in the subdivision process that was discovered after Planning Commission approval. The southern properties will retain their current uses of single family residences or agriculture. A future change in those uses will require an additional revised Preliminary Plat that will need to be submitted to Planning Commission. Since the uses on the southern properties are not changing and the expansion of the Preliminary Plat from what was considered by Planning Commission is to correct a technical deficiency, Staff recommends substituting the expanded Preliminary Plat for Council consideration at this time without the necessity of going back through Planning Commission.
- Armstrong Building Permit
 - Christopher Armstrong was granted a building permit in 2006 to build a single family home on his tract.

The house was never built. As currently divided, his property does not meet the requirements for the grant of a building permit because it was subdivided outside of the platting process and does not meet the acreage requirements of A-2 zoning. With the approval of the preliminary plat for Park 7, Mr. Armstrong's parcel will be recognized on that Preliminary Plat, although an additional step in the development process of final platting is normally required to properly subdivide property.

- In addition, under the terms of the subject Agreement, Mr. Armstrong agrees to make application to rezone his property to A-1, or another zoning category, in order to achieve proper acreage requirements. If the future rezoning application is granted so that he meets the acreage requirement, the City, under the terms of the Agreement, agrees to then grant him a building permit for a single-family dwelling on his property, even though a final plat for this parcel has not been finalized.
 - Also, the grant of such a building permit will not trigger the Recoupment Ordinance because a final plat for the parcel will not have been finalized. However, if Mr. Armstrong, or the other future owner of this property, chooses to final plat or to develop their property in a way that is inconsistent with its current uses within the fifteen year time of the Recoupment Ordinance, then they will be required to pay recoupment costs.
 - Although consideration of a lot for potential rezoning and building permit purposes without requiring final platting is inconsistent with City subdivision regulations, the Agreement, if approved by Council, allows this exception in this instance based on this particular factual circumstance, considering recognition of the lot in the Preliminary Plat, and considering no change in current use without future final platting. Due to the specific factual circumstances in this matter, Council's approval of this exception by virtue of approval of this Agreement would not be considered precedent setting for future cases.
- Miscellaneous Items:
 - The City will pay up to \$13,375 for relocation of cattle fencing and cattle guards.
 - Water meters - the City will move two water meters previously installed by the Property Owners at no additional cost during the water line relocation portion of this project.
 - Top Soil - the Property Owners will have a first right of refusal as to any top soil removed from their property for this Project.

Approval of this Agreement will result in dismissal of the condemnation court cases with prejudice and will ensure the City has acquired the property it needs to access federal funds for the Cedar Lane Widening Project.

RECOMMENDATION: Staff recommends approval of Contract No. K-1314-42 and acceptance of the transfer of the right-of-way acquisitions as described in the subject Agreement and authorization for the City Manager to execute the necessary documents to effectuate these transfers. Upon approval, payment of the right of way costs to the three property owners as outlined above will also be authorized from Account No. 050-9079-431.60-01, Cedar Lane Widening Project Right of Way Acquisitions.