



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1920-79

File ID: R-1920-79

Type: Resolution

Status: Non-Consent Items

Version: 1

Reference: Item 37

In Control: City Council

Department: Legal Department

Cost:

File Created: 12/05/2019

File Name: 36th Avenue NW - Direction to File Eminent Domain on Parcel 4

Final Action:

Title: RESOLUTION R-1920-79: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING THE ACQUISITION OF CERTAIN REAL PROPERTY, MORE PARTICULARLY HEREINAFTER DESCRIBED, ALL WITHIN THE CITY OF NORMAN, COUNTY OF CLEVELAND, STATE OF OKLAHOMA, FOR THE PURPOSE OF THE 36TH AVENUE NORTHWEST ROADWAY IMPROVEMENT PROJECT IN THE CITY OF NORMAN; AND DECLARING THE NECESSITY FOR ACQUIRING SAID PROPERTY FOR ROADWAY, UTILITY AND DRAINAGE PURPOSES, AND AUTHORIZING INITIATION OF EMINENT DOMAIN PROCEEDINGS FOR THAT PURPOSE.

Notes: ACTION NEEDED: Motion to adopt or reject Resolution R-1920-79.

ACTION TAKEN: _____

Agenda Date: 12/10/2019

Agenda Number: 37

Attachments: R-1920-79 - 36th EmDom - Parcel 4, Parcel 4.0 Site Map, Parcel 4.1 Site Map, Parcel 4.2 Site Map

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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-1920-79

Body

BACKGROUND: On August 28, 2012, the citizens of Norman voted in favor of a Bond Issue to finance the local share of eight transportation/storm water improvement projects. One of the eight 2012 bond projects is the 36th Avenue NW Widening Project between Tecumseh Road and Indian Hills Road. Please see the attached location map showing the project boundaries.

On November 22, 2011, the Norman City Council approved Programming Resolution R-1112-64, requesting federal funds for the 36th Avenue NW Widening Project. This resolution states the City's commitment to adhere to the terms and conditions of a federally funded project including engineering design, acquisition of all necessary rights-of-way and relocation of utilities and encroachments at 100% of the City's cost. In return, the Association of Central Oklahoma Governments (ACOG), through the Oklahoma Department of Transportation (ODOT), agrees to provide 80% of the construction cost, estimated at \$11,500,000, and administration of the construction with the matching share from the City of Norman.

Proposed improvements for the 36th Avenue NW Bond Project include:

- Widen two miles of roadway from two lanes to four lanes
- New traffic signals at 36th Avenue NW and Franklin Road and 36th Avenue NW and Indian Hills Road
- Interconnect signals between Tecumseh Road and Indian Hills Road
- Dedicated left turn lanes at All Saints Catholic School
- Fifth lane north of Indian Hills Road to Market Place
- Storm water improvements
- Continuous sidewalks along both sides of the roadway with the 10-foot wide legacy trail from Tecumseh Road to Franklin Road on the east side
- Bicycling facilities as listed in the Norman Bike Plan

On April 9, 2013, City Council approved engineering services Contract K-1213-170 with the engineering firm of CP&Y in the amount of \$703,878.50 to design 36th Avenue NW widening project from Tecumseh Road to Indian Hills Road. On July 24, 2018, the City Council approved Resolution R-1819-12, declaring this project as a recoupment project.

Currently, the City has contracted with Smith Roberts Land Services, acquisition agent, to acquire the necessary permanent right of way and temporary easements within the project limits to construct and maintain the proposed project. On property valued over \$10,000, an appraisal of the property is required to determine fair market value for the acquired property. Properties valued at 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, and other items located within the easement that may need to be replaced or relocated. After the values are determined, the acquisition agent will meet with the landowner to discuss the purchase of the property. If the landowner agrees with the terms, then the documents are signed and the landowner is compensated for the property including any damages as applicable.

If the landowner and appraiser cannot agree on a fair value for the property, the land is acquired through a process called eminent domain, which allows a government to acquire private property for public use with payment or compensation. In this process, a third party determines 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.

The 36th Avenue NW Roadway Improvement project is a two-phase project. The current resolution relates to the acquisition needs for Phase 1, which requires the acquisition of right of way and easements from eleven (11) parcels. Eight (8) of the required acquisitions have been resolved by agreement of the parties, all of which have already been approved by Council.

The City has attempted discussions with the owner of this parcel regarding the City's offer to acquire portions of the parcel in right of way and easement for over a year. Though the City is and remains willing to continue discussions in the hopes of achieving an amicable resolution, the owner has not been responsive to the City's attempts and 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, and more particularly, to acquire property by March 1 so that submittals for ODOT funding are timely.

DISCUSSION: The appraisal of the property was conducted by an Oklahoma Department of Transportation (ODOT) Certified Appraiser. Following completion of the appraisal, another appraiser certified by ODOT conducted a review appraisal. The purpose of the "review appraisal" is to evaluate the appraisal in order to correct any deficiencies and to insure that the appraisal of the property is in order.

The basis of requiring an appraisal and a review 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 right-of-way 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 acquisitions with respect to Parcels 2, 3 and 4 by voluntary agreement.

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 by March 1, 2020 in order to meet applicable ODOT submittal requirements and deadlines in a timely manner. 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 March 1, 2020. Filing 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 the recommendation of the City Attorney's Office that proposed Resolution R-1920-79 concerning the necessity of acquiring the previously described tract of property located on 36th Avenue Northwest, and authorizing the filing of eminent domain proceedings for the acquisition thereof be approved.