



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1920-102

File ID: R-1920-102

Type: Resolution

Status: Consent Item

Version: 1

Reference: Item 20

In Control: City Council

Department: Legal Department

Cost:

File Created: 03/04/2020

File Name: Eminent Domain for Porter and Acres

Final Action:

Title: RESOLUTION R-1920-102: 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 PORTER AVENUE AND ACRES INTERSECTION BOND PROJECT IN THE CITY OF NORMAN; AND DECLARING THE NECESSITY FOR ACQUIRING SAID PROPERTY FOR ROADWAY PURPOSES, AND AUTHORIZING INITIATION OF EMINENT DOMAIN PROCEEDINGS FOR THAT PURPOSE.

Notes: ACTION NEEDED: Motion to adopt or reject Resolution R-1920-102.

ACTION TAKEN: _____

Agenda Date: 03/10/2020

Agenda Number: 20

Attachments: R-1920-102, Parcel 3 Legal and Exhibit, Porter and Acres Design Concept Half Size

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:
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Text of Legislative File R-1920-102

body

BACKGROUND: On April 2, 2019, the citizens of Norman voted in favor of a \$72 million transportation bond issue, which includes nineteen (19) projects. With the anticipated \$67 million in federal dollars being leveraged for these projects, approximately \$139 million is budgeted for the nineteen (19) projects.

Proceeds from bond sale associated with the 2019 Transportation Bond Program, dated June

1, 2019, were received by the City and placed into the 2019 Transportation Bond Account, Account 50-29000. Upon adoption of the FYE 2020 Budget, funds were appropriated from the 2019 Transportation Bond account into fund accounts for several of the earliest scheduled projects within the 2019 Bond Program, including appropriation of funds for the Porter Avenue and Acres Intersection Bond Project.

Proposed improvements for this Project include:

1. New left turn lanes on Porter Avenue
2. New traffic signal and ADA-compliant pedestrian controls
3. Stormwater drainage system
4. Sidewalks and Accessibility
5. Streetscape Enhancements and Landscaping

The estimated total cost of this project is \$2,674,100.

The City contracted with Smith Roberts Land Service Inc., acquisition agent, to acquire 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.

The Porter Avenue and Acres Intersection Bond Project is a single-phase project that requires the acquisition of right of way and easements from 11 parcels. Amicable acquisitions for other necessary parcels are currently underway.

The needs of the project require that the subject parcel be acquired in whole. Due to the needs of the Project associated with this particular parcel, the time-sensitive nature of the acquisition has a great effect on the remainder of the Project. Discussions with the owner regarding this parcel with the City's consultant have occurred over multiple months. The landowner has requested compensation far in excess of the appraised value of the property and the parties have also been unable to reach an agreement as to damages resulting from relocation from the subject property.

Though the City is and remains willing to continue discussions in the hopes of achieving an amicable resolution, discussions appear to currently be at an impasse. Very recently, the landowner hired legal counsel, which consulted with the City Attorney's office and was advised of this Resolution's consideration by City Council. Per this discussion, City Staff is optimistic that amicable discussions can continue between the City and the landowner's legal counsel in efforts to resolve this matter expeditiously, whether through a formal legal process or settlement. 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: Though this project is 100% funded by the City of Norman, the City and its consultant still strive to provide the highest level of professionalism during the acquisition process by adhering to procedures compliant with the requirements of the Oklahoma Department of Transportation (ODOT). Thus, 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. Additionally, though federal funds are not used and federal and state relocation acts are not applicable, the City and its agents have endeavored to honor these procedures to the extent possible in order to ensure a fair and reasonable offer of associated relocation damages.

The basis of requiring an appraisal and a review appraisal, as well as the state and federal acts concerning relocation damages, 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 the acquisition of this subject parcel.

The City has: (1) followed both federal and state regulations concerning the acquisition of private property for this public project, even where such law does not control; (2) provided the property owners property rights information as required by the regulations; (3) conducted appraisals and review appraisals per these 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, some of which has still not been provided by the property owner.

The City must complete property acquisition for this project by June 1, 2020, 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 condemnation to have this project ready for construction in the scheduled year to meet the Transportation Bond time lines. 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 recommended that proposed Resolution R-1920-102 concerning the necessity of acquiring the previously described tract of property located within the Porter Avenue and Acres Intersection Bond Project, and authorizing the filing of eminent domain proceedings for the acquisition thereof, be approved.