



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1819-33

File ID: R-1819-33

Type: Resolution

Status: Non-Consent Items

Version: 2

Reference: Item 36

In Control: City Council

Department: Legal Department

Cost:

File Created: 09/19/2018

File Name: Declaration of Necessity of Acquisition and Direction
to Proceed with Eminent Domain

Final Action:

Title: RESOLUTION R-1819-33: 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 24TH AVENUE EAST 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-1819-33.

ACTION TAKEN: _____

Agenda Date: 09/25/2018

Agenda Number: 36

Attachments: R-1819-33

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: |
|---------------|--------------|-------|---------|----------|-----------|-----------------|---------|
|---------------|--------------|-------|---------|----------|-----------|-----------------|---------|

Text of Legislative File R-1819-33

body

BACKGROUND: On November 22, 2011, the Norman City Council approved Programming Resolution R-1112-62 requesting federal funds for the 24th Avenue East 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 \$7,831,000, and administration of the construction with the matching share from the City of Norman.

On August 28, 2012, the citizens of Norman voted in favor of a Bond Issue to finance the local share of eight transportation/stormwater improvement projects. One of the eight 2012 bond projects is the 24th Avenue East Widening Project. Please see the attached location map showing the project boundaries. The total estimated

project cost including design, utility relocations, right-of-way, construction and construction management is \$13,008,000. The City's share is \$5,177,000.

Proposed improvements for the 24th Avenue East Widening Project include:

- Widen two miles of roadway from two lanes to four lanes
- New traffic signal at 24th Avenue East and Meadowood Boulevard
- Intersection improvements at 24th Avenue East and Meadowood Boulevard and 24th Avenue East and Robinson Street.
- Interconnect traffic signals on 24th Avenue East from Lindsey Street to Robinson Street
- Continuous sidewalks and accessibility
- Stormwater improvements
- On-street bike lanes

For this project, engineering services are provided by Atkins North America, Inc. Pinnacle Consulting Management Group is the acquisition agent for this project. On easements valued over \$10,000, an appraisal of the property is required to determine fair market value for the acquired property. Easements 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 offered damages including fence replacement, tree replacement, and other items located within the easement that may need to be replaced or relocated.

The 24th Avenue NE Roadway Improvement Project is divided into two 1-mile phases. Phase 1 of the project requires the acquisition of right of way and easements from eighteen (18) parcels owned by 16 different property owners. Sixteen of the required acquisitions have been resolved by agreement of the parties, nine (9) of which have already been approved by Council. Easements for the remaining agreements that have been reached will be brought to Council at its October 9, 2018 meeting. Negotiations with the property owner of Parcels 17, the Bread of Life, Inc., have not yet been successful. The Legal Department has prepared Resolution R-1819-33 concerning the necessity of acquiring these parcels for the roadway improvement project.

DISCUSSION: As noted, the engineering for the public roadway improvement project has been completed, plans shared, and there is no dispute that the parcels requested are necessary for the project. The primary remaining issue is the value of the parcels to be taken. In such an instance, Staff recommends initiating eminent domain proceedings as a legal mechanism to effectively acquire the needed property even though discussions regarding value continue to occur. Initiating an eminent domain action will insure that the necessary property is acquired timely, so that the anticipated matching federal funding can be acquired in a timely manner.

Attempts to determine an agreed upon value of the required parcel have followed applicable State and Federal guidelines. Parcel 17 did not require appraisal. The fair market value of this property was determined by an Oklahoma Department of Transportation (ODOT) Certified Appraiser based upon market appraisals from comparable sales of property.

This valuation ensures 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 valuation process used in this case helps ensure 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).

Though an appraisal was not required for this property, one was initially performed. 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 ensure that the appraisal of the property is in order. This additional step taken in this case provides additional assurance that the compensation offered to the owner was adequate.

The City of Norman, through its right-of-way agents, has been working with the property owner to address any concerns they might have. Parcels 17 and 18 (addressed by separate resolution) are owned by The Bread of Life, Inc. A church is located on the east side of Parcel 18. Parcel 17 is smaller and entirely undeveloped, but fronts 24th Avenue NE on its northern side. The property owner has stated various concerns regarding the effect of the improvements on a pond located on Parcel 18, regarding the materials with which the fence is replaced, and compensation for numerous trees planted within right-of-way previously acquired by the City. City Staff has engaged in numerous conversations to resolve the owners’ concerns, and has not yet been able to achieve a resolution.

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.

As noted, 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 eminent domain to preserve the timeline of completion by December 31, 2018. 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 Staff’s recommendation that proposed Resolution R-1819-33 concerning the necessity of acquiring the previously described tract of property located on 24th Avenue NE and authorizing the filing of eminent domain proceedings for the acquisition thereof be approved.