



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1819-38

File ID: R-1819-38

Type: Resolution

Status: Consent Item

Version: 1

Reference: Item 31

In Control: City Council

Department: Legal Department

Cost:

File Created: 10/10/2018

File Name: Eminent Domain Proceedings 24th Avenue SE Bond Project

Final Action:

Title: RESOLUTION R-1819-38: 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, 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-1819-38.

ACTION TAKEN: _____

Agenda Date: 10/23/2018

Agenda Number: 31

Attachments: R-1819-38

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-1819-38

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 sixteen (16) parcels owned by fourteen (14) different property owners. Thirteen (13) of the required acquisitions have been resolved by agreement of the parties, seven (7) of which have already been approved by Council. On October 9, 2018, City Council passed Resolutions R-1819-33, R-1819-34, and R-1819-35, which authorized the filing of two eminent domain civil actions to acquire the needed property through that process in order to be able to timely pursue the process of securing matching federal funds for the project. Since those eminent domain actions been initiated in Cleveland County Court, acquisition of two of the three subject parcels have resolved by voluntary agreement of the parties, and the applicable civil suit will be dismissed. Negotiations continue regarding the other parcel as well. Although previously believed to have reached an agreement regarding acquisition of the parcel that is the subject of Resolution R-1819-38, unanticipated significant delays have occurred in obtaining that real property. Consequently, Resolution R-1819-38 is being brought forward to authorized initiation of eminent domain proceedings for Parcels 7 and 8 (owned in undivided interests by M.A.R.H. Properties, L.L.C., 4J, LTD, Meadowood II LP, Masterpiece Properties LP, Dee Anne Heaton f/k/a Dee Anne Barbour, and Margaret Barbour), to maintain applicable acquisition timelines for the Bond Project, similar to the Resolutions Council approved on October 9th.

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. Similar to previous Resolutions brought before City Council (Resolutions R-1819-33, R-1819-34, and R1819-35), the City and its agents have not yet been able to complete acquisitions with respect to Parcels 7 and 8 by voluntary agreement.

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 by December 31, 2013. 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-1819-38 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.