



## Legislation Text

**File #:** R-1617-75, **Version:** 2

**RESOLUTION R-1617-75:** A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, DECLARING THE NECESSITY FOR ACQUIRING CERTAIN REAL PROPERTY, MORE PARTICULARLY HEREINAFTER DESCRIBED, ALL WITHIN THE CITY OF NORMAN, COUNTY OF CLEVELAND, STATE OF OKLAHOMA, FOR THE PURPOSE OF THE 12TH AVENUE S.E. WIDENING PROJECT IN THE CITY OF NORMAN; AND DECLARING THE NECESSITY FOR ACQUIRING SAID PROPERTY FOR ROADWAY PURPOSES.

**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:

- West Lindsey Street widening and storm water improvements (2016)
- 24<sup>th</sup> Avenue SE widening and new traffic signal (2017)
- 36<sup>th</sup> Avenue NW widening and 2 new traffic signals (2018)
- 12<sup>th</sup> Avenue SE widening and improved traffic signal at SH-9 (2015)
- Main Street Bridge replacement over Brookhaven Creek and storm water improvements (2014)
- Alameda Street widening (2015)
- Cedar Lane widening and new traffic signal (2013)
- Franklin Road Bridge replacement over Little River (2014)

This project is the 12<sup>th</sup> Avenue SE Widening Project. This project is included in this year's Transportation Improvement Plan. If the City can finalize land acquisition by June 23, 2017, the City will receive approximately \$2.54 million dollars in federal funds for this project.

The 12<sup>th</sup> Avenue SE Widening Project requires the acquisition of two easements representing two property owners. The February 28, 2017, agenda included Resolution R-1617-67 declaring a recoument project to allow the City of Norman to recover right of way acquisition costs should recipient property owners decide to develop their property over the next 15-20 years. In order to meet the goal of completing the land acquisition for this project by June 23, 2017, the Legal Department has prepared Resolution R-1617-67 declaring the necessity of acquiring these parcels for the 12<sup>th</sup> Avenue SE Widening Project.

**DISCUSSION:** The fair market value of the subject property was determined by an Oklahoma Department of Transportation (ODOT) Certified Appraiser by comparing property values from recent sales of similar projects.

The estimate of fair market value by comparison of property values, 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.

Requiring the fair market value estimate 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).

The City of Norman, through its right-of-way agents, has been working with the property owners to address any concerns they might have. The written offer to the property owners was delivered by the City's right-of-way agents, Smith Roberts Land Services from Oklahoma City. On February 14, 2017, the City Council adopted Resolution R-1617-67 declaring a Recoupment Project for costs associated with the 12<sup>th</sup> Avenue SE improvements which applies to undeveloped parcels. The undeveloped parcel owned by Jerry and Neva Madole is the only parcel affected by Resolution R-1617-67. Staff is requesting permission to file condemnation on the parcel owned by Jerry and Neva Madole. The parcel affected by Resolution R-1617-67 is contained in the chart attached hereto as Attachment 1.

This Project is being conducted by the City in conjunction with the Federal Highway Administration ("FHWA") and ODOT. The City has:

- followed both federal and state regulations concerning the acquisition of private property for this public project;
- provided the property owners property rights information as required by the regulations;
- provided the property owners with all requested information with respect to this Project and their property;
- representatives of the City and City Staff have been available at all times to discuss any issue with the property owners; and
- 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 mid-June 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 June 23, 2017. 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-1617-75 concerning the necessity of acquiring the tracts of property described in Attachment 1 to this memorandum and in the exhibits attached to the Resolution, and associated with the 12<sup>th</sup> Avenue SE Widening Project and authorizing the filing of eminent domain proceedings for the acquisition thereof, be approved.