



Legislation Text

File #: GID-1718-7, **Version:** 2

CONSIDERATION OF A RECOMMENDATION FROM THE CITY ATTORNEY THAT THE CITY COUNCIL APPROVE A SETTLEMENT IN THE AMOUNT OF \$13,620 FOR ACQUISITION OF PROPERTY IN CONNECTION WITH THE WIDENING OF 12TH AVENUE S.E., IN CITY OF NORMAN V. JERRY MADOLE AND NEVA MADOLE, ET AL., CLEVELAND COUNTY DISTRICT COURT CASE CJ-2017-333TS.

BACKGROUND: On August 28, 2012, Norman voters approved a \$42.5 million bond project that included eight major transportation/storm water projects, including the 12th Avenue S. E. Widening Project. The estimated construction cost of the 12th Avenue S.E. Widening Project (the "Project") is \$2,728,000, of which \$2,182,400 or 80% will be paid with federal funds and \$545,600 from the City Capital fund. In these projects involving a federal funding match, the City is responsible for the cost of the engineering design, utility relocation and right-of-way acquisition. Including engineering design, utility relocation and right-of-way acquisition cost, the total estimated project cost increases to \$3,455,000. The City's share, including construction costs, engineering design, utility relocation and right-of-way acquisition is estimated to be \$1,272,600 or 36.8% of the total. Engineering design has been completed. Utility relocation has been completed.

For right-of-way acquisition, the City utilizes Smith-Roberts Land Services, a professional right-of-way agent acting on behalf of the City to negotiate with property owners. By the early part of this year, most of the necessary right-of-way for this Project had been acquired, except for a small strip of land needed on the east side of the proposed roadway near Highway 9 that was owned by Jerry and Neva Madole. On January 9, 2017, Public Works advised the Madoles the 12th Avenue S.E. widening project would affect a portion of their property and the City would need to acquire a permanent road easement.

Smith-Roberts Land then contacted the Madoles with a proposed settlement to acquire the permanent road easement. The final settlement offer from Smith Roberts was presented to the Madoles in early February 2017. The offer totaled of \$11,990, and was rounded up to \$12,000. The offer was rejected. The City of Norman had made diligent efforts, in good faith, to acquire from the owners a tract of land for the purpose mentioned above.

Although the City continued to negotiate with the Madoles, through their attorney, due to the urgency to acquire the right-of-way for the project without jeopardizing federal funds, Council approved Resolution R-1617-75 on March 14, 2017 to initiate condemnation proceedings. Resolution R-1617-75 declared the necessity for acquiring the real property for the purpose of the 12th Avenue S.E. widening project. On March 15, 2017, the City of Norman filed an action in the District Court of Cleveland County to acquire by condemnation, and own in fee simple, a property owned by the Madoles to move the project forward and meet the Federal funds timeline. As there was no dispute of necessity of acquiring the property, it was acquired in the condemnation process.

The City submitted final plans to the Oklahoma Department of Transportation (ODOT) on or about April 14, 2017. The bid opening is October 19, 2017, and the contract will be awarded November 1, 2017. Construction will begin soon thereafter.

Although the City acquired the necessary easement from the Madoles, the issue of the value of the property has not been determined. The parties have continued to negotiate the issue of value. Last Friday a settlement offer was presented that is being forwarded to City Council for consideration at this time.

DISCUSSION: As noted above, case filed pursuant to Resolution R-1617-75 authorized the City to initiate a condemnation action regarding the property necessary for the public roadway Project. In that litigation process three Commissioners are appointed to view the property and report to the Court their opinion of value. In this case the three Commissioners appointed filed their opinion of value of the easement on May 12, 2017, in the amount of \$4,800. Although the Madoles disagreed with the Commissioner's report, this process allowed the City to pay funds into Court to acquire the easement. The parties are allowed to continue to negotiate as to the value. In the condemnation litigation process, if parties are unable to agree as to value, that issue is submitted for decision by a jury following a District Court

trial. Although the jury is not allowed to know the Commissioner's assessment of value, in the litigation process, if the jury returns a verdict as to value that is in excess of the Commissioner's opinion, then the condemning authority (City) would be required to pay the attorney's fees incurred by the property owner being condemned that were incurred in the litigation.

Last Friday, during settlement discussions, The Madoles agreed to accept the following settlement offer to resolve this matter, subject to City Council approval:

Easement - \$8,620

Fence removal/replacement - \$2,500

Tree loss - \$2,500

Total Settlement - \$13,620

In addition, the project will be done without any change, alteration, removal, diminishment or effect on the current access and right of way cut at the north end of the Madole property. This amount exceeds the offer made by Smith Roberts in February by \$1,620. If the settlement offer is rejected by the City, then we would continue to negotiate or proceed to a jury trial to determine value. The cost of proceeding to jury trial, with expert witness fees and perhaps outside legal counsel would far exceed the amount of the settlement offer.

If Council accepts this offer to resolve this right-of-way acquisition issue for the 12th Ave SE Widening Bond Project (BP-0191), then funding for this purpose has previously been appropriated to account 050-9552-431-60-01. A portion of this cost, \$4,800, has already been paid into the Court when Commissioners report was filed. An additional expenditure of \$8,820 will be required to effectuate the settlement.

RECOMMENDATION: For the reasons outlined above, it is believed this settlement is fair, reasonable, and in the best interest of the City. It is not anticipated a more favorable result for the City in this condemnation case could be achieved by further litigation.