



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 03/08/2022

REQUESTER: Elisabeth E. Muckala, Asst. City Attorney

PRESENTER: Elisabeth E. Muckala, Asst. City Attorney

ITEM TITLE: CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT AND/OR POSTPONMENT OF RESOLUTION R-2122-101:
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 STREETSCAPE 2019 BOND PROJECT IN THE CITY OF NORMAN; AND DECLARING THE NECESSITY FOR ACQUIRING SAID PROPERTY FOR ROADWAY IMPROVEMENTS INCLUDING SIDEWALK, UTILITY AND DRAINAGE PURPOSES, AND AUTHORIZING INITIATION OF EMINENT DOMAIN PROCEEDINGS FOR THAT PURPOSE.

BACKGROUND:

The Porter Avenue Corridor from Robinson Street south to Alameda Street along with the intersection of Porter Avenue and Acres Street, has been the subject of much discussion and study over the years, due to concerns over traffic and pedestrian safety.

In 2010, Ochsner Hare & Hare, prepared a Porter Avenue Corridor Study which sought to analyze the area and provide a vision for future improvements to the corridor.

An evaluation of traffic control needs revealed that traffic volumes had reached levels that justify the installation of a new traffic signal at Porter Avenue and Acres Street. Approximately 20,000 vehicles pass through the intersection every day. An aerial photograph of the two 2019 Bond projects within the Porter Avenue Corridor is included in the exhibits to this agenda item.

On April 2, 2019, the citizens of Norman voted in favor of a Bond Issue to finance the local share of nineteen transportation improvement projects. Two of the nineteen 2019 bond projects are the Porter Avenue and Acres Street Intersection Bond Project and the Porter Avenue Streetscape Bond Project. The Porter Avenue Streetscape Bond Project consists of design and construction of streetscape elements along the Porter Avenue corridor between Robinson Avenue on the north and Alameda Street on the south. Proposed improvements include:

- New sidewalks
- Driveway consolidation or elimination (access management)
- Decorative roadway and pedestrian lighting
- Landscaping
- New curb and gutter
- Street furniture (e.g., benches, trash receptacles, ash urns, etc.)

The Porter Avenue and Acres Avenue Intersection Project began construction in November of 2020 and was completed in January of 2022. The Porter Avenue Streetscape project has been approved to receive federal funds to aid in the construction costs and is anticipated to be out for bid in summer of 2022 pending right of way and utility relocations and ODOT environmental review.

On September 10, 2019, the Norman City Council approved Amendment No. 2 to contract K-1213-165 with Garver Engineers, in the amount of \$185,500.00, for a total contract amount of \$400,800.00, for the design of the Porter Avenue Streetscape project including the portion of the project from Robinson Avenue to Hughbert Street, which coincides with the northern boundary of the Porter Avenue and Acres Street Intersection Project.

On April 28, 2020, the Norman City Council approved Amendment No. 3 to contract K-1213-165 with Garver Engineers, in the amount of \$175,000.00, for a total contract amount of \$575,800.00, for the design of the Porter Avenue Streetscape project, which expands the design scope to encompass the full project, adding the section of Porter Avenue from the southern boundary of the Porter Avenue and Acres Street Intersection Bond Project to Alameda Street.

On September 8, 2020, the Norman City Council approved Resolution R-2021-48, Programming Federal Surface Transportation Block Grant Program Urbanized Area (STPBG-UZA) funds for roadway improvements along Porter Avenue between Robinson Street and Alameda Street in Norman.

On July 13 2021, the Norman City Council approved Authorization for Expenditure No. Six under on-call Contract K-1314-102, with Smith-Roberts Land Services (SRLS), in the amount of \$89,055, for right-of-way acquisition services.

On October 26, 2021 City Council approved Authorization for Expenditure No. Seven, under Contract K-1314-102 between the City of Norman, OK and Smith-Roberts Land Services, Inc., in an amount not-to-exceed \$10,884.00, to provide acquisition services under an on-call contract utilizing funds from the Porter Avenue Streetscape Bond Project.

DISCUSSION:

For the project, twenty-one (21) necessary acquisitions were identified. Offer letters for the necessary permanent and temporary easements were first sent to the property owners on January 10, 2022. Since that time, the City and its hired consultants have made contact with every owner and endeavored to amicably acquire the necessary easements. Many acquisitions have been achieved by amicable means. Four parcels (six total easements) are brought for City Council's consideration and acceptance on this same date. Additionally, easements for as many

as seven additional parcels will be brought for City Council's consideration and acceptance at the March 22, 2022 City Council Meeting.

The City contracted with Smith Roberts Land Service Inc., acquisition agent, to acquire the necessary right-of-way and easements 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 individual parcel. Easements less than \$10,000 utilize an average value based on the parcels involved in the project area. In addition to paying landowners for the acquired property, they are paid for any damages such as to fences or trees, and other items located within the easement that may need to be replaced, acquired or relocated. 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 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, directly and/or 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 acquisitions with respect to 10 parcels (14 total easements): Parcels 1, 3, 5, 7, 8, 11, 16, 18, 19, and 21.

Parcels 1 and Parcels 3 and 5 are owned by a person and affiliated entity, so all acquisition discussions have involved the same owner representative and been conducted collectively for all parcels. A resolution has not been able to be reached as to the value of the land acquisition as well as the value of certain damages. The City believes that the parties have likely reached an impasse in negotiations; nonetheless, attempts to resolve amicably will continue for these three parcels.

Parcels 8 and 18 have both rejected the City’s offer on the basis of both land and damages value. However, either parcel has yet to provide a counter-offer or otherwise engage in negotiations aimed to resolve the acquisition. In the interests of time, the City must pursue eminent domain through court in order to preserve the project timeline, but will be ready to consider any counter-offer eventually presented by these parties.

Parcels 7, 11, 16 have rejected the City’s initial offer and have engaged in some negotiations, but due to various factors these discussions have been unduly protracted such that the failure to complete acquisitions threatens the overall project timeline. City Staff is very hopeful that these acquisitions will resolve meaningfully before eminent domain actions advance very far, which will avoid cost and expense for both the City and these parcel owners. Amicable attempts to reach a resolution will continue.

Parcel 21 involves an out-of-state owner that has been unavailable or otherwise unable to be reached for the nearly two-months City Staff has spent pursuing acquisitions. This owner is now in contact regarding acquisitions, but have not yet provided meaningful response regarding the City’s initial offer. Parcel 19 also involves an out-of-state owner; however, this owner has only recently acquired the property, and City Staff in endeavoring to get the new owner caught up on the project and amicably complete the acquisition without the need for eminent domain. In the interests of preserving the project timeline, these parcels are included in this resolution so that, upon a determination by the City Attorney that reasonable efforts to acquire have resulted in an impasse, eminent domain may be timely pursued to complete the acquisitions.

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.

Staff believes that pursuing eminent domain may serve to avoid significant cost increases and 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 eminent domain to have this project ready for the next available Federal Funding opportunity. Filing an eminent domain action does not mean that efforts toward settlement will cease. It will ensure, rather, that the property is acquired in a timely fashion.

RECOMMENDATION:

Based upon the above and foregoing, it is the recommendation of Staff that proposed Resolution R-2122-101 concerning the necessity of acquiring the previously described tract of property located on Porter Avenue, and authorizing the filing of eminent domain proceedings for the acquisition thereof, be approved.