



## CITY OF NORMAN, OK STAFF REPORT

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**MEETING DATE:** 4/9/2024

**REQUESTER:** Joseph Hill, Streets Program Manager

**PRESENTER:** AshLynn Wilkerson, Assistant City Attorney

**ITEM TITLE:** CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2324-136: 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 60TH AVENUE NE BRIDGE REPLACEMENT BOND 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.

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### **BACKGROUND:**

On October 10, 2023, the citizens of Norman voted in favor of a \$50 million bridge maintenance bond issue. The 60th Avenue NE Bridge replacement project between Tecumseh Road and Rock Creek Road is one of the 2023 Bridge Maintenance Bond Projects and includes widening the bridge from 2-lane to 3-lane to accommodate future projected traffic flows, increasing the span length of the structure, and shifting the location of the bridge to the west to follow the existing section line. This project will be entirely locally funded, but future projects in the bridge bond program anticipate seeking federal funding.

On June 23, 2022, City staff advertised Request for Proposal RFP 2122-41 to solicit consulting engineering services for the reconstruction design of Bridge NBI No. 09189 and a two-dimensional hydraulic and hydrologic model and detailed engineering report for Bridge NBI No. 05724. Nine (9) proposals were received by the 4:00 pm deadline on July 28, 2022. The selection committee consisting of three (3) City staff (Joseph Hill – Streets Program Manager, Chris Smith – Construction Manager, and Brandon Brooks – Staff Engineer) and two (2) citizens (Donna Riesland and Sunny Day) shortlisted three (3) consultant teams for interviews held August 18, 2022. Following the interviews, the consultant team selected was Garver, LLC based in Norman, Oklahoma.

On October 11, 2022, City Council awarded the 60<sup>th</sup> Avenue Bridge replacement project to Garver, LLC in the amount of \$471,309.

On, November 3, 2023, City Manager Pyle approved the on-call right-of-way acquisition services contract for the 60<sup>th</sup> Avenue Bridge Project to Pinnacle Consulting Group, Inc. (Pinnacle) of Oklahoma City in the amount of \$19,400.

**DISCUSSION:**

The 60<sup>th</sup> Avenue NE Bridge replacement project requires the acquisition of easements and right-of-way from three different property owners. Per federal guidelines, if an individual property acquisition is estimated to be less than \$10,000, the offers can be based on values obtained from comparable sales. If any of the individual property acquisition is determined to be over \$10,000, appraisals are required for those properties. On this project, all individual property acquisitions were estimated to be less than \$10,000, so Pinnacle pulled recent, comparable sales to determine property values. These offers considered both the value of the land acquired, as well as any damages, such as fence replacement, landscaped tree replacement, and other items located within the acquired easement that may be affected or need to be replaced or relocated. However, a certified appraisal, conducted by ODOT-certified appraisers, was performed on the only parcel at issue once City staff determined an eminent domain action was likely needed for such property.

After the easement values are determined, the acquisition agent meets with the landowner to discuss the purchase of the easement(s). If the landowner agrees to the terms, then the documents are signed and the landowner is compensated for the easement, including any damages, upon City Council approval. If an agreement cannot be reached on fair value, the land may be acquired through a process called eminent domain, which allows a government to acquire private property for public use with fair 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 first offer letters for acquisition of the needed easements and right-of-way were sent in January of 2024. All three of the property owners submitted counteroffers and two out of the three successfully negotiated with the City. The City thereby acquired the necessary easements from these two property owners on March 26, 2024. Thus, the City only requires easements from the owner of the only remaining privately-owned parcel.

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 damages for public use without just compensation. Just compensation means the value of the property taken ...". 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 of Title 11 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 appraisal process ensures the offer to the property owner is adequate. The Courts have viewed “just compensation” as “[t]he fair market value, which means the money which purchaser willing but not obligated to buy property would pay to the owner willing but not obligated to sell it.” *Grand River Dam Auth. 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 one parcel: Parcel 2.

Regarding Parcel 2, the City requires 13,499.18 square feet of new permanent right-of-way and a temporary construction easement. The City’s multiple offers were rejected and though numerous discussions have taken place, the owner and the City have not been able to come to a conclusion over value and appear to be at an impasse.

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 owner, it is necessary to take the next step to file for eminent domain for this project to proceed timely to safely restore traffic flow through 60<sup>th</sup> Avenue NE between Tecumseh Road and Rock Creek Road for Norman residents. 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-2324-136, concerning the necessity of acquiring the previously described tract(s) of property located on 60th Avenue NE, and authorizing the filing of eminent domain proceedings for the acquisition thereof, be approved.