



ENGINEERING SERVICES

To: Mayor and Town Council

From: Hulon T. Webb, Jr., P.E., Director of Engineering Services

**Through: Mario Canizares, Town Manager
Chuck Ewings, Executive Director of Development and Infrastructure Services**

**Re: Eminent Domain Authorization Resolution
Dallas North Tollway (Prosper Trail - Frontier) 12" Water Line**

Town Council Meeting – April 11, 2023

Agenda Item:

Consider and act upon a resolution of the Town Council of the Town of Prosper, Texas, declaring the public necessity to acquire certain water line easements and temporary construction easements for the construction of the Dallas North Tollway (Prosper Trail - Frontier) 12" Water Line project; determining the public use and necessity for such acquisition; authorizing the acquisition of property rights necessary for said Project; appointing an appraiser and negotiator as necessary; authorizing the Town Manager to establish just compensation for the property rights to be acquired; authorizing the Town Manager to take all steps necessary to acquire the needed property rights in compliance with all applicable laws and resolutions; and authorizing the Town Attorney to institute condemnation proceedings to acquire the property rights if purchase negotiations are not successful.

Description of Agenda Item:

The Town is in the process of developing engineering plans for the construction of the Dallas North Tollway (Prosper Trail - Frontier) 12" Water Line project. To facilitate the construction of the project, it is necessary for the Town to acquire certain water line and temporary construction easements. The location of which is generally set forth in the attached resolution. The Location Map included with the resolution depict the five (5) properties currently known to be affected. As with other similar water line construction projects, it is not anticipated that all easements will require the use of eminent domain to complete the acquisition process, however, staff is requesting advance authorization to pursue acquisition by eminent domain if negotiations are unsuccessful.

Under the Property Code, water, wastewater, flood control and drainage projects are treated differently than other public uses in two ways:

- First, the Town is not required to identify the specific parcels or tracts of properties that the Town will condemn. The Town is allowed to adopt a condemnation ordinance, resolution or order that will "identify the general area to be covered by the project or the general route that will be used by the governmental entity for the project in a way that provides property owners in and around the area or along the route reasonable notice that the owners' properties may be subject to condemnation proceedings during the planning or construction of the project." Tex. Gov't Code Ann. §§ 2206.053(g).

What this means is that for these covered projects, the Town may use a route map or other general diagram that gives fair notice that an owner's property may be condemned for a water line, sewer line, flowage easement or drainage easement, even if the precise location of the planned public improvement has not been determined.

- Second, the law allows the Town, for those projects which require multiple tracts of land for water lines, sewer lines, flowage easements and drainage easements, to adopt one ordinance or resolution for the project that "delegates the authority to initiate condemnation proceedings to the chief administrative official of the governmental entity." Tex. Gov't Code Ann. §§ 2206.053(f).

Utilization of this provision of the law allows the Town Manager, and presumably his/her designee, to authorize condemnation once the precise metes and bounds of the parcels needed for the project are determined by the engineers without having to go back to the Town Council again for additional authorization.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has reviewed the resolution as to form and legality

Attached Documents:

1. Resolution
2. Location Map

Town Staff Recommendation:

Town staff recommends that the Town Council of the Town of Prosper, Texas, approve the attached resolution declaring the necessity to acquire certain water line easements and temporary construction easements for the construction of the Dallas North Tollway (Prosper Trail - Frontier) 12" Water Line project; determining the public use and necessity for such acquisition; authorizing the acquisition of property rights necessary for said Project; appointing an appraiser and negotiator as necessary; authorizing the Town Manager to establish just compensation for the property rights to be acquired; authorizing the Town Manager to take all steps necessary to acquire the needed property rights in compliance with all applicable laws and resolutions; and authorizing the Town Attorney to institute condemnation proceedings to acquire the property rights if purchase negotiations are not successful.

Proposed Motion:

I move to approve the attached resolution declaring the necessity to acquire certain water line easements and temporary construction easements for the construction of the Dallas North Tollway (Prosper Trail - Frontier) 12" Water Line project; determining the public use and necessity for such acquisition; authorizing the acquisition of property rights necessary for said Project; appointing an appraiser and negotiator as necessary; authorizing the Town Manager to establish just compensation for the property rights to be acquired; authorizing the Town Manager to take all steps necessary to acquire the needed property rights in compliance with all applicable laws and resolutions; and authorizing the Town Attorney to institute condemnation proceedings to acquire the property rights if purchase negotiations are not successful.

Please note: Pursuant to Section 2206.053(c) of the Texas Government Code, if two (2) or more councilmembers object to adopting this single resolution for all the properties referenced therein, a separate record vote must be taken for each unit of property.

This item requires a roll call vote.