



**CITY OF TYLER, TEXAS
CITY COUNCIL COMMUNICATION**

Agenda Number: R-2

Date: December 13, 2006

Subject: Request that the City Council consider adopting a Resolution authorizing eminent domain proceedings for the acquisition of right of way land against 2.70 acres of land at the bend of Copeland Road in Tyler, Texas for the construction of the Grande Boulevard East Extension Phase 2.

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On April 26, 2006, the City Council determined the necessity for and authorized the design of the Grande Boulevard East extension Phase 2. In order to construct the road improvements, additional land for right of way is required across a tract of 2.70 acres located at the bend of Copeland Road in Tyler, Texas.

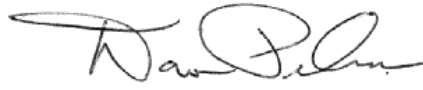
To date, the City of Tyler Engineering department has attempted to negotiate for the required right of way. At this time, the City and the property owner are unable to agree on the value of the land or the damages to be paid. Further settlement negotiations have become futile and impossible.

Therefore, Staff is requesting City Council authorization to proceed with condemnation of the necessary right of way across the aforementioned property. The necessary resolution is attached for City Council review.

RECOMMENDATION:

It is recommended that the City Council adopt a resolution authorizing eminent domain proceedings for the acquisition of land as described herein for the construction of the Grande Boulevard East extension Phase 2.

**Drafted/Recommended By:
Department Leader**


Dan Peden, City Engineer

**Edited/Submitted By:
City Manager**

RESOLUTION NO. R-2006-27

A RESOLUTION FINDING A NECESSITY FOR THE ACQUISITION OF CERTAIN LAND FOR GRANDE BOULEVARD EAST EXTENSION AND RELATED PURPOSES; DECLARING SUCH ACQUISITION FOR A PUBLIC PURPOSE; AUTHORIZING CONDEMNATION FOR THE RIGHT-OF-WAY INTEREST IN SAID PROPERTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, engineering studies heretofore conducted have determined that acquisition of the hereinafter described property is necessary for the public purpose of creating a new street, known as the Grande Boulevard East extension project (the "Project"), to provide for improved traffic flow to the City of Tyler, Texas; and

WHEREAS, the City Council has found that a public necessity requires such land acquisition; and

WHEREAS, the City Council has found and determined that the land interest in and to the hereinafter described property is suitable for such purpose and that it is necessary to acquire same for building the street extension along with needed additional Right of Way for utilities; and

WHEREAS, the City of Tyler, through its duly authorized representatives, has negotiated with the owner of such land and has been unable to agree with such owner as to the fair cash market value thereof:

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:

PART 1: The City of Tyler has offered **\$194,800** to the landowner, a final offer in writing of a reasonable sum of money to compensate the owner for the value of fee title and damages, if any, to the remainder of this property, the offer of which is hereby confirmed.

PART 2: That acquisition of fee title in and to the following described property, is hereby found to be necessary for the public purpose of constructing and maintaining a new City street along with installation and relocation of any required utilities and appurtenances on the new right of way:

2.70 acres of land, of which 0.9842 lies within the existing right of way of New Copeland Road (old FM 756) conveyed to Martel Properties, Inc. by Deed recorded in Volume 7400, page 790, Land Records of Smith County, Texas.

PART 3: That it is hereby determined that the City of Tyler has in fact transmitted bona fide offers to the property owner, in accordance with the laws of the State of Texas, for the property described herein, and the owner of the property and the City of Tyler have been unable to agree and cannot agree upon the value of the land or the damages to be paid and further settlement negotiations have become futile and impossible. A true and complete copy of the Right-of-Way Agreement offered by the City of Tyler as its last and final offer is attached hereto as Exhibit "A". The final monetary offer of the City of Tyler is hereby confirmed and approved.

PART 4: That the City Attorney of the City of Tyler, or an attorney authorized by him be and is hereby authorized and directed to file and cause to be filed against the owner, proceedings in eminent domain to acquire fee title in and to the above described property and to conduct all parts of the condemnation in accordance with the laws and procedures of the State of Texas.

PART 5: That this Resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED this 13th day of December , A.D. 2006.

ATTEST:

JOSEPH O. SEEBER, MAYOR
APPROVED:

CASSANDRA BRAGER
CITY CLERK

GARY C. LANDERS, CITY ATTORNEY

APPENDIX "A" TO RESOLUTION R-2006-27
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423 W. Ferguson Street
(903) 531-1126
(903) 531-1185 FAX



MAILING ADDRESS
P.O. Box 2039
Tyler, Texas 75710

CITY OF TYLER
Engineering Services

November 28, 2006

Parcel No. 33
City Street: Grande Blvd. Phase 2
From: Sutherland Drive
To: SH 110 (Troup Highway)
City of Tyler, Texas

Mr. Joe Martel
3800 Paluxy Drive
Suite 150
Tyler, Texas 75703

Reference: 2.70 acres of land conveyed to Martel Properties, Inc., by Deed recorded in Volume 7400, Page 790, Land Records of Smith County, Texas, and identified also as Parcel No. 33 on this project.

Dear Mr. Martel:

As you are aware, your property identified as Parcel No. 33 is required for the construction of Grande Boulevard. Negotiations to purchase your property have not been successful to date. The initial appraisal determined a value of \$119,875.00. An offer of \$194,800, based on a second appraisal, was made on October 26, 2006. At your request the City's appraiser reviewed additional parcel sales and other information provided by you. No change in the appraised value resulted from this review. We have not received a counter offer or request for extension of time within a thirty-day time period. Therefore, a final offer of \$194,800.00 is offered for this property.

If you decide to accept this offer based on the appraisal, please contact Dwayne Tyner, right of way representative, Schaumburg & Polk, Inc., at (903) 595-3913, so he can prepare the necessary paperwork. If this offer is not accepted within ten days from the date of this letter, it must be considered as rejected. If you elect to reject this offer, the property is still needed leaving the City with no alternative but to file an eminent domain suit. Thereafter, the Court will appoint three disinterested freeholders to serve as Special Commissioners, a date will be set for a hearing and you will be notified of the time and place set for the hearing at which the Special Commissioners will hear the evidence presented and arrive at an award which will be filed with the Court.

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-November 28, 2006
-Joe Martel
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The City may then deposit the amount of the award with the Court, at which time the City will be entitled to take possession of the property involved. After the deposit is made, you may withdraw your share of the award. If either you or the City is dissatisfied with the amount of the award, objections may be filed within the time prescribed by law and the case subsequently tried before the Court, as are other civil cases. If you have any questions, please contact Dwayne Tyner at (903) 595-3913 or email at dtynes@spi-eng.com.

Sincerely,



Dan Peden, P.E., R.P.L.S.
City of Tyler

cc: Gary Landers, City Attorney

Notice of Confidentiality Rights: If you are a natural person, you may remove or strike any or all of the following information from this instrument before it is filed for record in the public records: your Social Security Number or your Driver's License Number.

**WARRANTY DEED
(Parcel No. 33)**

**THE STATE OF TEXAS §
 §
COUNTY OF SMITH §**

KNOW ALL PERSONS BY THESE PRESENTS:

That , Martel Properties, Inc. , 3800 Paluxy Drive, Suite 150, Tyler, Texas 75703 (Address), of the County of Smith and State of Texas hereinafter referred to as Grantors, whether one or more, for and in consideration of the sum of Ten Dollars and No/100 (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, paid to Grantors by the **CITY OF TYLER, TEXAS**, a municipal corporation, P. O. Box 2039, Tyler, Texas 75710, of the County of Smith and State of Texas, have GRANTED, SOLD AND CONVEYED and does by these presents GRANT, SELL AND CONVEY unto the said **CITY OF TYLER**, the following described tract or parcel of land:

2.70 acres of land, of which 0.9842 lies within the existing right of way of New Copeland Road (old FM 756) conveyed to Martel Properties, Inc. by Deed recorded in Volume 7400, page 790, Land Records of Smith County, Texas.

This certain tract or parcel more particularly described in Exhibit "A", which is attached hereto and incorporated herein for any and all purposes.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto, which are hereby conveyed to the **CITY OF TYLER, TEXAS**, its heirs and assigns forever; and Grantors to hereby bind itself, its heirs, executors, successors, assigns and administrators to Warrant and Forever Defend, all and singular the said premises unto the **CITY OF TYLER, TEXAS**, its heirs and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

IN WITNESS WHEREOF, this instrument is executed on this _____ day of _____, 2006.

Martel Properties, Inc., (GRANTOR)

Acknowledgment

State of Texas

**APPENDIX "A" TO RESOLUTION R-2006-27
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County of Smith

This instrument was acknowledged before me on _____

by _____.

Notary Public's Signature

Corporate Acknowledgment

State of Texas

County of Smith

This instrument was acknowledged before me on _____ by

_____ , _____

of Martel Properties, Inc. ,

a _____ corporation, on behalf of said corporation.

Notary Public's Signature

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FIELD NOTES



1

Exhibit "A"
DDM, Surveying, Inc.

June 5, 2006
PARCEL NO. 33
2.70 Acres

2.70 acres being all of a called 1.720 acres (Tract 1), and being all of a called 0.9842 acres (Tract 2) both conveyed to Martel Properties, Inc. by Joseph M. Martel and both recorded in Volume 7400 Page 790 of the Land Records of Smith County (LRSC), being situated in the Marshall University Survey A-636 and the Isaac Hill Survey A-474 and located on Copeland Road (Old FM 756), within the corporate limits of the City of Tyler, Smith County, Texas and being described by metes and bounds as follows:

BEGINNING at an existing P/K Nail found marking the most Northern Northeast corner of said Tract 2 and being at the Northwest corner of a called 4.66 acres conveyed by deed to David, Ann, and Richard Krafve Trust and recorded in Volume 2212 Page 424 of the LRSC, whence bears a $\frac{1}{2}$ " iron rod North 88 Degrees 38 Minutes 54 Seconds East 52.5 feet;

THENCE along the North boundary line of said Tract 2 as follows.

Along a curve to the left having a radius of 716.17 feet an arc length of 916.93 feet along said curve and a chord direction of South 54 Degrees 49 Minutes 27 Seconds East with a chord length of 855.57 feet, and

North 88 Degrees 29 Minutes 51 Seconds East a distance of 281.09 feet to an existing P/K Nail found at the most Eastern Northeast corner of same;

THENCE with the East boundary line of said Tract 2 South 02 Degrees 15 Minutes 46 Seconds East a distance of 13.67 feet to the Southeast corner of same;

THENCE with the South boundary line of said Tract 2 South 88 Degrees 37 Minutes 10 Seconds West a distance of 518.47 feet to an existing $\frac{1}{2}$ " iron rod found in same and being in the North boundary line of said Tract 1;

THENCE with the North boundary line of said Tract 1 along a curve to the left having a radius of 766.17 feet an arc length of 56.22 feet along said curve and a chord direction of South 75 Degrees 52 Minutes 10 Seconds East with a chord length of 56.20 feet to an existing $\frac{1}{2}$ " iron rod found marking the Southeast corner of same and being in the North boundary line of a called 0.2990 acres conveyed by deed to F. Donald Haygood, M.D. and recorded in Volume 2322 Page 742 of the LRSC;

THENCE South 87 Degrees 41 Minutes 46 Seconds West at a distance of 245.3 feet an existing $\frac{1}{2}$ " iron rod and continuing an additional 130.2 feet an existing $\frac{1}{2}$ " iron rod and continuing a total distance of 507.53 feet to the Southwest corner of said 1.720 acres;

