



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

Agenda Number: R-4

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 625 Hampton Hill Drive in Tyler, Texas for the construction of the Grande Boulevard East Extension Phase 2.

Page: 1 of 1

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 land commonly known as 625 Hampton Hill Drive in Tyler, Texas.


To date, the City of Tyler Engineering department, through a right of way agent has attempted to negotiate for the required right of way. At this time, the City and the property owners 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 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-2006-29

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 **\$13,722** 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:

0.21 of an acre being out of a called Lot 13, Block 1510, Hampton Hill Subdivision, Unit No. 1, Volume 8, Page 34, Plat Records of Smith County, Texas, and more commonly known as 625 Hampton Hill Drive, Tyler, Texas 75703

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-2006-29
PAGE 1 OF 6



October 10, 2006

COPY

Parcel No. 14
City Street: Grande Blvd. Phase 2
From: Sutherland Drive
To: SH 110 (Troup Highway)
City of Tyler, Texas

Mr. and Mrs. Anthony J. Simpson
625 Hampton Hill Drive
Tyler, Texas 75703

Re: 0.21 of an acre of land being out of a called
Lot 13, Block 1510, Hampton Hill Subdivision, Unit 1,
Volume 8, Page 34, Plat Records of Smith County, Texas, and
identified as Parcel No. 14.

Dear Mr. and Mrs. Simpson:

As you are aware, the City of Tyler has hired the consulting engineering firm of Schaumburg & Polk, Inc., located in Tyler to acquire right of way for this project. A portion of your property identified as Parcel No. 14 is required for the construction of Grande Boulevard. Negotiations to purchase this property have not been successful to date. An offer based on an appraisal was made on June 23, 2006. Your counteroffer was denied on September 28, 2006. Therefore, a final offer of \$13,722 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, 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.

Exhibit "A"

117 N Spring Avenue | Tyler, Texas 75702 | www.spi-eng.com | 903.595.3913 P | 903.595.2093 F

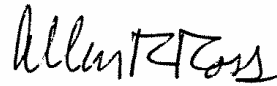
D:\Clerical\977003.12 Phase 3\Final Offer Letter City of Tyler for Counteroffer.doc

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-October 10, 2006
-Anthony J. Simpson and Roxanne Simpson
Page 2

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,
Schaumburg & Polk, Inc.



Allen R. Ross, P.E.
Project Manager

Certified Mail No. 7001-0320-0002-5840-6189

Exhibit "A"

D:\Clerical\977003.12 Phase 3\Final Offer Letter City of Tyler for Counteroffer.doc

SPX SCHAUMBURG POLK

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.

**APPENDIX "A" TO RESOLUTION R-2006-29
PAGE 4 OF 6**

This instrument was acknowledged before me on _____

by Anthony J. Simpson and Roxanne Simpson.

Notary Public's Signature

Corporate Acknowledgment

State of Texas
County of _____

This instrument was acknowledged before me on _____ by

_____ , _____

of _____,

a _____ corporation, on behalf of said corporation.

Notary Public's Signature

APPENDIX "A" TO RESOLUTION R-2006-29
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Form ROW-A-5
Rev. 3/2004

FIELD NOTES



Exhibit "A"
DDM, Surveying, Inc.

March 15, 2006
PARCEL NO. 14
0.21 of an Acre
625 Hampton Hill Drive

0.21 of an acre being out of a called Lot 13, Block 1510 of the Hampton Hill Subdivision Unit No. 1, as shown on a subdivision plat recorded in Volume 8 Page 34 of the Plat Records of Smith County (PRSC), as being conveyed to Anthony J. Simpson recorded in Volume 3549 Page 494 of the Land Records of Smith County (LRSC), being situated in the Susannah Butler Survey A-86 and located at 625 Hampton Hill Drive, 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 1/2" iron rod found marking the Southwest corner of said Lot 13 and being the Southeast corner of Lot 12, Block 1510;

THENCE with the West boundary line of said Lot 13 common with the East boundary line of said Lot 12 North 02 Degrees 37 Minutes 50 Seconds West a distance of 98.86 feet to a 1/2" iron rod set in same, whence bears an existing 1/2" iron rod found marking the Northwest corner of said Lot 13 and being at the Northeast corner of said Lot 12 North, Block 1510 North 02 Degrees 37 Minutes 50 Seconds West 169.10 feet;

THENCE with the proposed North right-of-way line of Grande Blvd. across said Lot 13 North 88 Degrees 33 Minutes 40 Seconds East a distance of 92.77 feet to a 1/2" iron rod set in the East boundary line of same, whence bears an existing 1/2" iron rod found marking the Northeast corner of same North 02 Degrees 37 Minutes 06 Seconds West 166.62 feet;

THENCE with the East boundary line of said Lot 13 common with the West boundary line of Lot 14, Block 1501 South 02 Degrees 37 Minutes 06 Seconds East a distance of 99.67 feet to an existing 1/2" iron rod found marking the Southeast corner of said Lot 13 and being at the Southwest corner of said Lot 14;

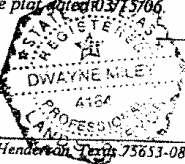
THENCE with the South boundary line of said Lot 13 South 89 Degrees 03 Minutes 47. Seconds West a distance of 92.76 feet to the BEGINNING and containing 0.21 of an acre.

I, D. Dwayne Miley, Registered Professional Land Surveyor, No. 4164-Texas, do hereby certify that this description represents the results of a survey completed on the ground by me in March 2006. See plat dated 03/15/06.

D. Dwayne Miley, R.P.L.S.

2006-02-11

D:\2006\20060211\22ac.dwg



P. O. Box 895 Henderson, Texas 75653-0895

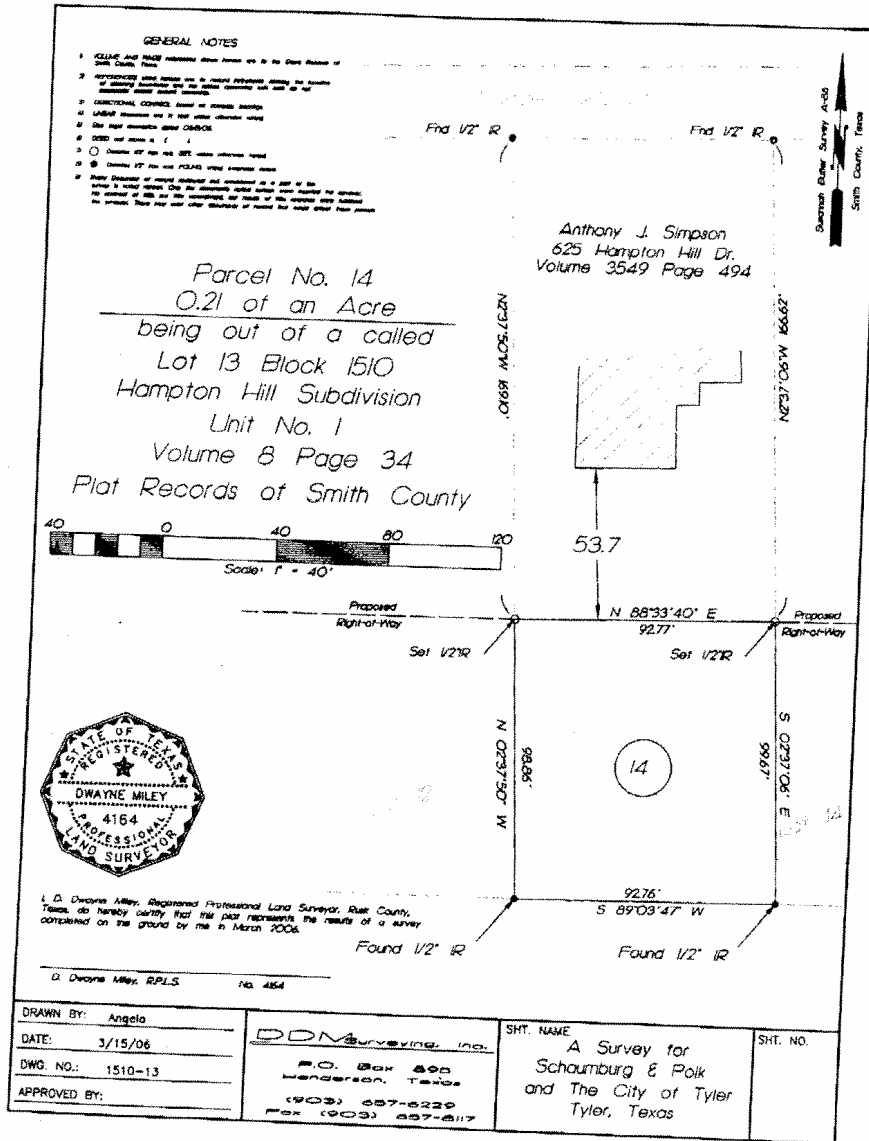
(903) 657-6229

* fax 657-8117

**APPENDIX "A" TO RESOLUTION R-2006-29
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Form ROW-A-5
Rev. 3/2004

PARCEL SKETCH



After Recording Return To:
Gary Landers
City Attorney
City of Tyler, Texas
P.O. Box 2039
Tyler, TX 75710-2039