



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

Agenda Number: R-5

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 6283 New Copeland Road 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 6283 New 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 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**

A handwritten signature in black ink, appearing to read 'Dan Peden', is written over a horizontal line.

Dan Peden, City Engineer

**Edited/Submitted By:
City Manager**

RESOLUTION NO. R-2006-30

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 **\$370,000** 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:

0.43 of an acre being all of Lot 23 of the Strickland Addition, Unit 1, Recorded in Volume 6, Page 173, Plat Records of Smith County, Texas, and more commonly known as 6283 New Copeland Road, 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-2006-30
PAGE 1 OF 7

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 13, 2006

Parcel No. 38 (Bobby Joe Steel and Ruth Ilene Steel)
City Street: Grande Blvd. Phase 2
From: Sutherland Drive
To: SH 110 (Troup Highway)
City of Tyler, Texas

Mr. and Mrs. Bobby J. Steel
6283 New Copeland Road
Tyler, Texas 75703

Re: 0.43 of an acre of land being all of a called
Lot 23 of the Strickland Addition, Unit No. 1,
Volume 6, Page 173, Plat Records of Smith County, Texas, and
identified as Parcel No. 38.

Dear Mr. and Mrs. Steel:

As you are aware, your property identified as Parcel No. 38 is required for the construction of Grande Boulevard. Negotiations to purchase this property have not been successful to date. An offer of \$310,000 was made based on an appraisal dated August 17, 2006, and rejected by you. Therefore, in order to resolve this matter, a final offer of \$370,000 is offered for your property. This final offer includes an additional \$20,604 for commercial land value of \$2.60/sf, a 10% increase above the appraised value (\$33,060) and \$6,336 in moving expenses which will be paid after the move is complete.

If you decide to accept this offer, 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 City will consider filing an eminent domain suit. Thereafter, the Court will appoint three disinterested freeholders to serve as Special Commissioners, a date will be set for a

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-October 31, 2006
-Bobby J. and Ruth Steel
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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.

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,

A handwritten signature in black ink, appearing to read "Dan Peden". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Dan Peden, P.E.
City Engineer

CC: Gary Landers, City Attorney

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Form ROW-A-5
Rev. 3/2004

FIELD NOTES



Exhibit "A"
DDM, Surveying, Inc.

May 15, 2006
PARCEL NO. 38
0.43 of an Acre
6283 Copeland Road

0.43 of an acre being all of a called Lot 23 of the Strickland Addition Unit No. 1, as shown on a subdivision plat recorded in Volume 6 Page 173 of the Plat Records of Smith County (PRSC), and being conveyed to Bobby J. Steel and wife, Ruth Steel by J.C. Strickland and wife, Betty M. Strickland recorded in Volume 1449 Page 280 of the Land Records of Smith County (LRSC), being situated in the Isaac Hill Survey A-474 and located at 6283 Copeland Road, 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 iron pipe found marking the Northwest corner of a said Lot 23 and being at the Northeast corner of a called 10.301 acres conveyed to Central Baptist Church recorded in Volume 3847 Page 436 of the LRSC and being in the South right-of-way of said Copeland Road;

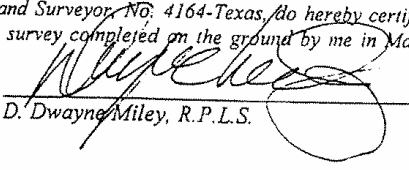
THENCE with the North boundary line of said Lot 23 common with the South right-of-way of said Copeland Road North 87 Degrees 14 Minutes 09 Seconds East a distance of 150.51 feet to an existing 1/2" iron rod found marking the Northeast corner of said Lot 23 and being at the intersection of the South right-of-way of said Copeland Road and the West right-of-way of Circle Drive;

THENCE with the East boundary line of said Lot 23 common with the West right-of-way of said Circle Drive South 01 Degrees 49 Minutes 53 Seconds East a distance of 125.00 feet to an existing 1/2" iron rod found in same and being at the Southeast corner of said Lot 23 and being at the Northeast corner of Lot 22;

THENCE with the South boundary line of said Lot 23 common with the North boundary line of said Lot 22 South 87 Degrees 48 Minutes 45 Seconds West a distance of 150.00 feet to an existing 1/2" iron rod found marking the Southwest corner of said Lot 23 and being at the Northwest corner of said Lot 22 and being in the East boundary line of a said 10.301 acres;

THENCE with the West boundary line of said Lot 23 common with the East boundary line of said 10.301 acres North 02 Degrees 03 Minutes 30 Seconds West a distance of 123.48 feet to the *BEGINNING* and containing 0.43 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 May 2006. See plat dated 5/15/06.


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

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

(903) 657-6229

* fax 657-8117

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-2006-30
PAGE 5 OF 7**

This instrument was acknowledged before me on _____

by Bobby Joe Steel and Ruth Ilene Steel.

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

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Form ROW-A-5
Rev. 3/2004

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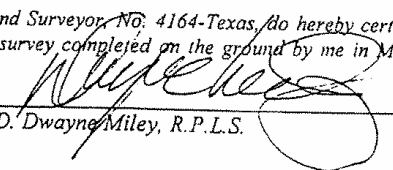
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D. Dwayne Miley, R.P.L.S.

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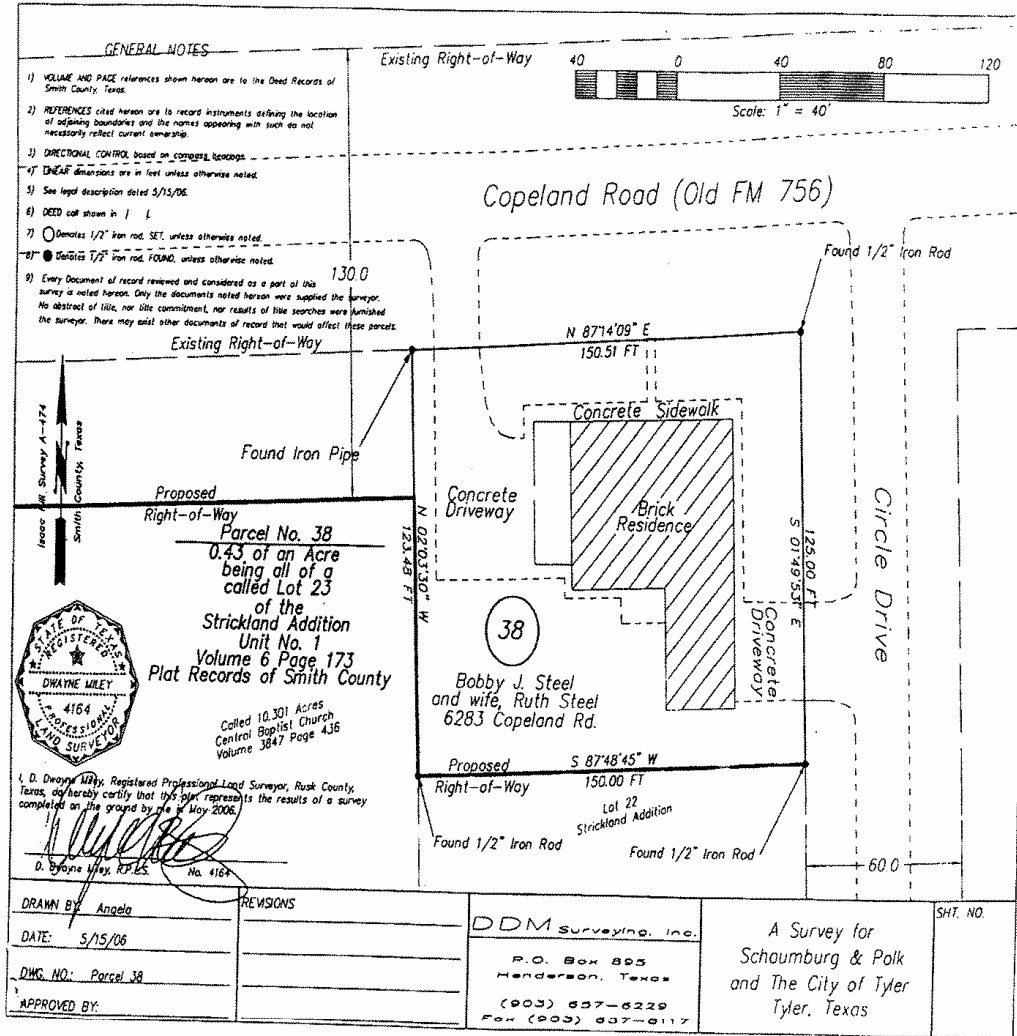
(903) 657-6229

* fax 657-8117

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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