



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

Agenda Number: R-6

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 6301 New 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 land known as 6301 New Copeland Road in Tyler.


To date, City of Tyler Engineering department 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-2006-31

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 **\$142,000** 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:

0.13 if an acre being out of a lot conveyed to Bobby G. Strickland and wife, Dolores Strickland, by Deed recorded in Volume 1499, Page 680, Deed Records of Smith County, Texas, and more commonly known as 6301 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

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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

October 31, 2006

Parcel No. 34 (Bobby G. and Dolores Strickland)
City Street: Grande Blvd. Phase 2
From: Sutherland Drive
To: SH 110 (Troup Highway)
City of Tyler, Texas

Mr. and Mrs. Bobby G. Strickland
6301 New Copeland Road
Tyler, Texas 75703

Re: 0.13 of an acre of land being out of a called lot
conveyed to Bobby G. Strickland, et ux Dolores,
Volume 1499, Page 680, Deed Records of Smith County, Texas, and
identified as Parcel No. 34.

Dear Mr. and Mrs. Strickland:

As you are aware, your property identified as Parcel No. 34 is required for the construction of Grande Boulevard. Negotiations to purchase your property have not been successful to date. An offer of \$120,000 was made based on an appraisal dated August 18, 2006, and rejected by you. Therefore, in order to resolve this matter, a final offer of \$142,000 is offered for your property. This final offer includes \$6,200 more for commercial land value of \$2.60/sf and a 10% overall increase of \$12,620. This final offer also includes moving expenses in the amount of \$3,180 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 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

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-October 31, 2006
-Bobby G. and Dolores Strickland
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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.

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 dtyner@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.

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WARRANTY DEED
(Parcel No. 34)

THE STATE OF TEXAS §

COUNTY OF SMITH §

KNOW ALL PERSONS BY THESE PRESENTS:

That we, Bobby G. Strickland and wife, Dolores Strickland, 6301 New Copeland Road, 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:

0.13 of an acre and is 94.92 feet from the southwest corner of that certain lot conveyed to Bobby G. Strickland and wife, Dolores Strickland by J. C. Strickland and wife, Betty M. Strickland by deed recorded in Volume 1499, page 680, Deed 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.

(Bobby G. Strickland), GRANTOR

(Dolores Strickland), GRANTOR

Acknowledgment

State of Texas
County of Smith

This instrument was acknowledged before me on _____

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by Bobby G. Strickland and Dolores Strickland.

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

FIELD NOTES



Exhibit "A"
DDM, Surveying, Inc.

June 5, 2006
PARCEL NO. 34
0.13 of an Acre

0.13 of an acre being out of a called Lot being conveyed to Bobby G. Strickland and wife, Dolores Strickland by J.C. Strickland and wife, Betty M. Strickland, recorded in Volume 1499 Page 680 of the Deed Records of Smith County (DRSC), being situated in the Isaac Hill Survey A-474 and located at 6301 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 1/2" iron rod found marking the Northeast corner of said Strickland Lot and being at the Northwest corner of a called 2.457 acres conveyed to Oak Tree Academy, LLC and recorded in Volume 4365 Page 23 of the LRSC;

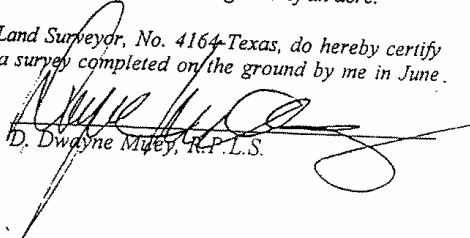
THENCE with the East boundary line of said Strickland Lot common with the West boundary line of said 2.457 acres South 01 Degrees 51 Minutes 43 Seconds East a distance of 43.92 feet to a 1/2" iron rod set in same;

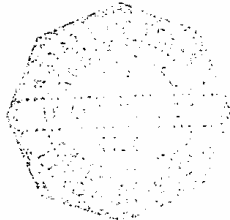
THENCE with the proposed South right-of-way line of Grande Blvd. across said Strickland Lot South 88 Degrees 08 Minutes 22 Seconds West a distance of 124.85 feet to a 1/2" iron rod set in the East right-of-way of Circle Drive, whence bears an existing 1/2" iron rod found marking the Southwest corner of said Strickland Lot South 01 Degrees 49 Minutes 53 Seconds West 94.92 feet;

THENCE with the West boundary line of said Strickland Lot common with the East right-of-way of said Circle Drive North 01 Degrees 49 Minutes 53 Seconds West a distance of 45.15 feet to a 1/2" iron rod set to mark the Northwest corner of said Strickland Lot, whence bears an existing 1/2" iron rod found South 88 Degrees 42 Minutes 14 Seconds West 60.17 feet;

THENCE with the North boundary line of said Strickland Lot North 88 Degrees 42 Minutes 14 Seconds East a distance of 124.84 feet to the BEGINNING and containing 0.13 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 June, 2006. See plat dated 6/5/06.

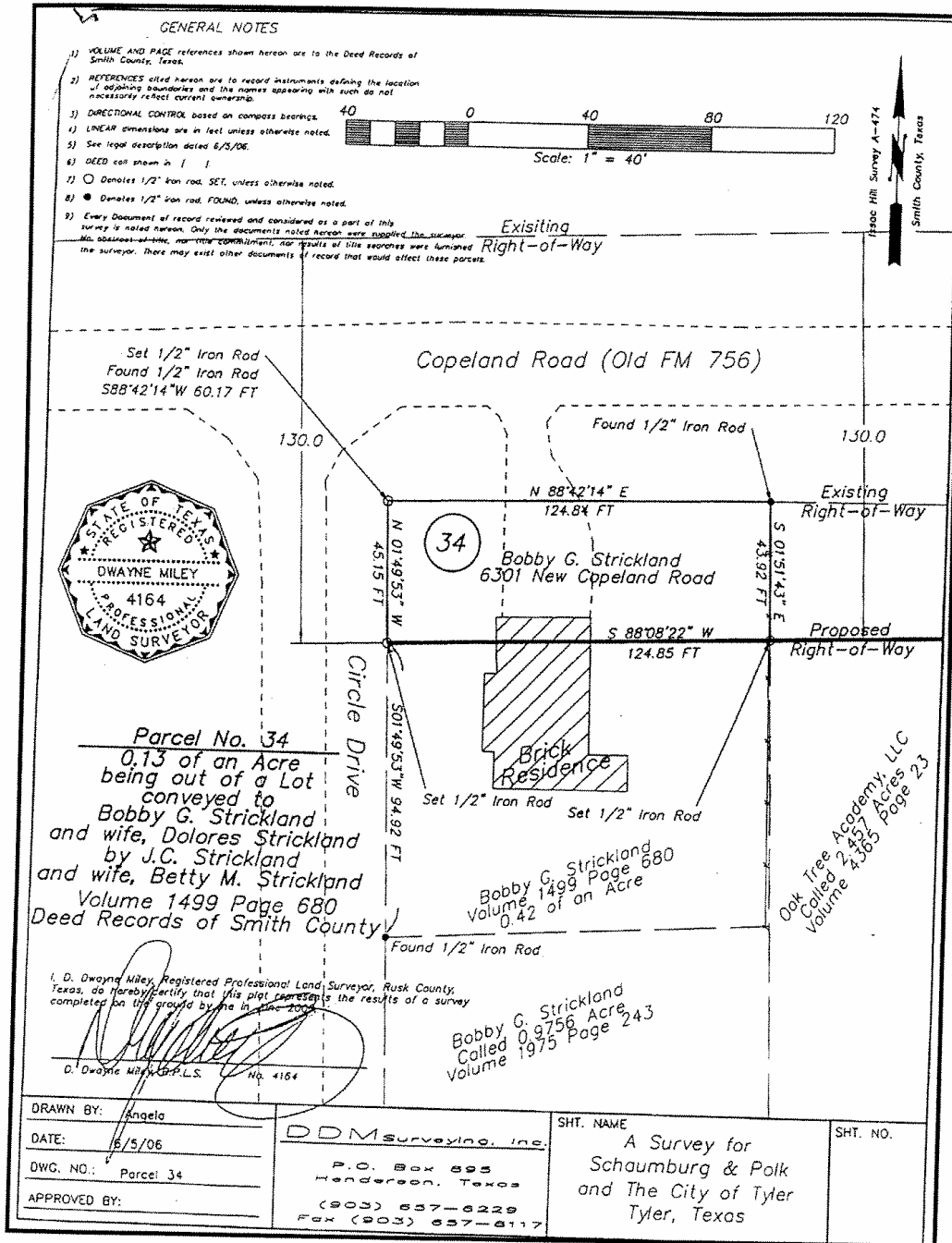

D. Dwayne Miley, R.P.L.S.



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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