



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

Agenda Number: R-3

Date: May 9, 2007

Subject: Request that the City Council consider adopting a Resolution authorizing eminent domain proceedings for the acquisition of right of way land against Mezayek Building Limited, a general partnership 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 owned by **Mezayek Building Limited, a general partnership.**

To date, the Tyler City 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 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 the City Council's 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**


Greg Morgan

**Edited/Submitted By:
City Manager**

RESOLUTION NO. R-2007-19

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 **\$159,507** to the landowner, a final offer in writing of a reasonable sum of money to compensate the owner for the value of fee title to permanent right of way, an easement title to a permanent slope easement 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:

Being 4.308 acres of land, being situated in the Susannah Butler Survey, A-86, City of Tyler, Texas, Smith County, Texas, and being part of a certain called 32.851 acre tract described in a deed from Harriet Sue McArthur, et al to Mezayek Building Limited and recorded in Volume 3993, Page 434, Land Records of Smith County, Texas.

Easement interest in two separate parcels containing approximately 47,370 square feet for the first parcel located outside of the proposed north right of way line of Grande Blvd. and located on the remainder of the 32.851 acre tract described above. The second parcel containing 44,312 square feet located outside the south right of way line of Grande Blvd and located on the remainder of the 32.851-acre tract described above.

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 9th day of May , A.D. 2007.

ATTEST:

JOSEPH O. SEEBER, MAYOR
APPROVED:

CASSANDRA BRAGER
CITY CLERK

GARY C. LANDERS, CITY ATTORNEY

EXHIBIT "A" TO RESOLUTION NO. R-2007-19
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March 27, 2007

Parcel No. 35
Highway: Grande Blvd. Phase 2
From: Sutherland Drive
To: SH 110 (Troup Highway)
City of Tyler, Texas

Mr. Sam Mezayek
Mezayek Building Limited
112 East Heritage Drive
Tyler, Texas 75703

Dear Mr. Mezayek:

The City of Tyler has hired the consulting engineering firm of Schaumburg & Polk, Inc. (the "consultant") located in Tyler to acquire right of way for this project. In acquiring property for expansion of the street system, the City of Tyler follows a definite procedure for appraising the land needed and for handling personal negotiations with each owner. As explained by the consultant's representative, Dwayne Tyner, a portion of your property located on New Copeland Road is to be acquired for the above captioned project.

We believe at this stage of the purchase process it is mutually beneficial to confirm that based on an appraisal(s) made by an independent fee appraiser(s), the City is authorized to offer you \$159,507 for your property. This amount has been determined to be the total amount of just compensation for the property. Replacement of existing fencing, adjustment of sprinkler system or relocation of existing fencing that will be handled separately by the City. Except for utility easements for which the City will contact the easement holder, you will be responsible for notifying and negotiating with any other parties who may rent or lease from you. We will contact any lienholders on this property and obtain releases for the new right of way.

As stated above, the City has obtained an independent fee appraisal. If you wish to accept the offer based upon this appraisal, please contact Dwayne Tyner as soon as possible so the payment procedure to obtain your payment may be started. If you are not willing to accept this offer, you may submit a written request for counteroffer, setting forth a counteroffer amount and documentation to support such amount, provided such settlement request and supporting documentation are received in writing within 14 days from the date of receipt of this letter. This makes the 14-day response time to begin on the date of the receipt of the letter.

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

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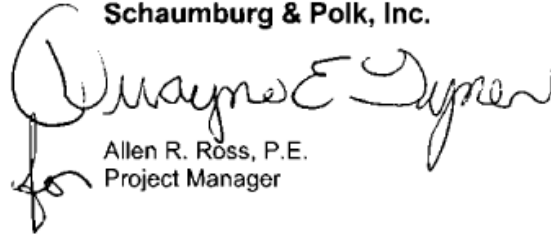
March 27, 2007
Mezayek Building Limited
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Request for an extension of time extending this 14-day time period must be submitted in writing to the consultant with a specific amount of additional time requested. Please submit such request to: Dwayne Tyner, Right-of-Way Representative, Schaumburg & Polk, Inc., 117 North Spring Avenue, Tyler, TX 75702.

In the event the condition of the property changes for any reason, the City shall have the right to withdraw this offer.

If you have any questions regarding the details as to the type of facility to be built or concerning the purchase transaction, please do not hesitate to contact Mr. Tyner at (903) 595-3913.

Sincerely,
Schaumburg & Polk, Inc.



Allen R. Ross, P.E.
Project Manager

**Certified Mail No. 7001-0320-0002-7986-8713
With appraisal attached**

**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. 35)**

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

KNOW ALL PERSONS BY THESE PRESENTS:

That we, Mezayek Building Limited, a general partnership, 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:

Being 4.308 acres of land, being situated in the Susannah Butler Survey, A-86, City of Tyler, Texas, Smith County, Texas, and being part of a certain called 32.851 acre tract described in a deed from Harriet Sue McArthur, et al to Mezayek Building Limited and recorded in Volume 3993, Page 434, Land Records of Smith County, Texas.

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 _____, 2007.

Mezayek Building Limited, a general partnership, GRANTOR

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Acknowledgment

State of Texas
County of Smith

This instrument was acknowledged before me on _____
by _____ Mezeyek Building Limited, a general partnership _____.

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

After Recording Return To:

**Gary Landers
City Attorney
City of Tyler, Texas
P.O. Box 2039
Tyler, TX 75710-2039**

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In addition thereto an easement interest in two separate parcels containing approximately 47,370 square feet for the first parcel located outside of the proposed north right of way line of Grande Blvd. and located on the remainder of the 32.851 acre tract described above. The second parcel containing 44,312 square feet located outside the south right of way line of Grande Blvd and located on the remainder of the 32.851-acre tract described above.

CONDEMNATION PARCELS

Parcel No. 35

Owners: Mezayek Building Limited, a general partnership

Street Address: New Copeland Road
Tyler, TX 75703

Legal Description of fee portion being acquired:

Being 4.308 acres of land, being situated in the Susannah Butler Survey, A-86, City of Tyler, Texas, Smith County, Texas, and being part of a certain called 32.851 acre tract described in a deed from Harriet Sue McArthur, et al to Mezayek Building Limited and recorded in Volume 3993, Page 434, Land Records of Smith County, Texas.

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