

RESOLUTION NO. R-2010-14

A RESOLUTION FINDING A NECESSITY FOR THE ACQUISITION OF CERTAIN LAND FOR EARL CAMPBELL PARKWAY 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 Earl Campbell Parkway 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 been unable to negotiate with the owner(s) of such land and has been unable to locate with such owner(s) 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 determined that \$1,500 constitutes a reasonable sum of money to compensate the owner(s) for the value of fee title to permanent right of way and damages, if any, to the remainder of this property and has transmitted the usual and customary final offer in writing to a located landowner for his/her interest in Parcel No. 114, the offer of which is hereby confirmed. The remaining owners, however, have not been provided with the usual and customary written final offer for their respective interests in Parcel No. 114 due to the City of Tyler's inability to locate the landowners and provide them with same;

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 as shown on the map attached hereto as Exhibit "B".

Being a 00716 acre tract of land located in the James A, Haynie Survey, Abstract No. 457, City of Tyler, Smith County, Texas, and being the residue of Lot 6, N.C.B. 835, and as described in a deed to Josephus Browning and Velma Browning, dated May 20, 1980 and recorded in Volume 1817, Page 674 in the Deed Records of Smith County, Texas. Said 0.0716 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod set for corner in the east right of way line of Old Noonday Road in the north line of said Lot 6 and in the south line of Lot 4, N.C.B. 835, from which the intersection of said east right of wayline with the west right of way line of

the St. Louis Southwestern Railroad bears North 11 deg. 20 min. 02 sec. East a distance of 104.07 feet;

THENCE North 87 deg. 55 min. 31 sec. East with the north line of Lot 6 and the south line of Lot 4, a distance of 43.69 feet to a 1/2 inch iron rod set for corner in the west right of way line of the St. Louis Southwestern Railroad;

THENCE South 13 deg. 00 min. 29 sec. East with the west right of way line of the St. Louis Southwestern Railroad, a distance of 56.94 feet to a 1/2 inch iron rod set for corner in the south line of said Lot 6 and the north line of Lot 1 N.C.B. 835-D;

THENCE South 87 deg. 55 min. 31 sec. West with the south line of Lot 6 and the north line of Lot 1, a distance of 67.82 feet to a 1/2 inch iron rod set for corner in the existing east right of way line of Old Noonday Road;

THENCE North 11 deg. 20 min. 02 sec. East with the existing east right of way line of Old Noonday Road, a distance of 57.47 feet to the **PLACE OF BEGINNING**, containing 0.0716 acres (3,117 square feet) of land.

PART 3: That it is hereby determined that the City of Tyler in fact submitted a bona fide offer to one of the located property owners in accordance with the laws of the State of Texas, for the property described herein, but the City of Tyler has 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 with respect to this landowner. 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 of Tyler has been unable to transmit bona fide offers to the remaining property owners because the City of Tyler, after using due diligence, has been unable to locate said owners, and therefore, any attempt to negotiate the purchase of the Property with these absent landowners would be futile and impossible.

PART 5: 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(s), proceedings in eminent domain to acquire fee title in or easement title where indicated 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 26th day of May, A. D. 2010.



BARBARA BASS, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:


CASSANDRA BRAGER, CITY CLERK

APPROVED:


GARY C. LANDERS, CITY ATTORNEY



EXHIBIT "A" TO RESOLUTION NO. R-2010-14

EXHIBIT "A"



VIA CERTIFIED MAIL

January 8, 2007

Josephus Browning Estate
935 S. Lyons Ave.
Tyler, TX 75701

RE: New Sunnybrook Drive
Parcel 114
Tyler, Smith County, Texas

Dear Sirs/Madams:

I represent the City of Tyler in the acquisition of right-of-way for the New Sunnybrook Drive. Accordingly please find the following attached for your review:

- Information About Brokerage Services – this document discloses who I represent in this transaction and should be executed and returned to my attention at the address below.
- Real Estate Appraisal Report dated November 30, 2006 prepared by Jason S. Trimble and John E. Chesley indicating a value of \$1,500.

Please review the enclosed information and let me know if you have any questions.

The City of Tyler appreciates your cooperation and is prepared to move towards closing on the property.

Sincerely,

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

Gary Halbrooks

cc: Mark Walter w/o enclosures
George Grantham w/o enclosures

1001 WSW Loop 323 Tyler, TX 75701
BUSINESS (903) 561-8000 FAX (903) 561-4000

