

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: April 23, 2013		DATE SUBMITTED: March 19, 2013	
DEPARTMENT OF ORIGIN: Development Services		SUBMITTED BY: Randy Haynes	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> DIVERSITY
<input type="checkbox"/> SPECIAL	<input checked="" type="checkbox"/> CONSENT	<input checked="" type="checkbox"/> 2ND READING	<input type="checkbox"/> EDUCATION
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> GROWTH
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input checked="" type="checkbox"/> IMAGE
			<input type="checkbox"/> INFRASTRUCTURE
			<input type="checkbox"/> PUBLIC SAFETY
AGENDA ITEM DESCRIPTION: Consideration of an ordinance to repeal and replace Ordinance 1839 substituting the process of right-of-way abandonment with an exchange of land in the Caroline Mims Addition, now known as the Faith Subdivision.			
SUMMARY STATEMENT: Beginning in 2009, Bryan College/Station Habitat for Humanity (“Habitat”) submitted documents relating to residential subdivision development on several acres of land near the intersection of East Martin Luther King Jr. Street and Military Drive. Involved in the project would be re-platting of the undeveloped portion of the Caroline Mims Addition and the reconfiguration of the right-of-way in that subdivision, Caroline Street, which was never fully improved with a driving surface.			
<p>To subdivide the land in the most efficient manner, the City agreed to re-align the right-of-way by allowing Habitat to re-plat the subdivision, exchanging portions of the existing right-of-way with Habitat for adjacent land that they own. On October 27, 2009, the City Council adopted Ordinance 1839, which would allow the City to abandon right-of-way, subject to applicable law, following completion of a formal re-plat of the subdivision. A number of factors resulted in delay of the project until 2012 when infrastructure construction finally began on the residential subdivision. The re-plat document, having been approved by the Bryan Planning and Zoning Commission July 1, 2010, was submitted to the County Clerk for recording on March 7, 2013. The re-platted land is called Faith Subdivision that is served by a new street, Denise Drive, which incorporates the exchange of portions of the old right-of-way for adjacent property.</p> <p>During the week of March 11, 2013, the Planning Department was notified that Ordinance 1839, which purportedly abandoned the undeveloped Caroline Street right-of-way to Habitat, was approved in error. The City could not legally abandon the right-of-way in the manner proposed because of Texas Local Government Code section 272.001(c). Instead, the ordinance should have authorized an exchange of a portion of the existing right-of-way for adjacent property to be used as part of the re-aligned street. Because Ordinance 1839 incorrectly implied that the property was being abandoned, a title defect has arisen in the sale, by Habitat, of Lot 15R, because abandonment would require that approximately half of that lot would have been deeded to the adjacent property owner instead of Habitat.</p> <p>This proposed ordinance will repeal Ordinance 1839 and replace it with an ordinance that more clearly executes the City Council’s intent. This proposed ordinance encourages the development of low/moderate income housing and supports orderly infill development of these 5.3 acres, by exchanging a portion of the existing right-of-way for adjacent property to be used as the new right-of-way. The new street is improved to modern residential street standards with 27 feet of pavement, curbs, and gutters. The more immediate objective of this proposed ordinance will be to remove the cloud on title for Lot 15R and allow Habitat’s sale to proceed.</p>			

STAFF ANALYSIS:

A. PROS: Repeal of Ordinance 1839 and authorizing this exchange of right-of-way will help establish clear title for Lot 15R in the Faith Subdivision and show the City Council's continued support for this affordable housing development. The proposed right-of-way exchange is believed to have the most likely long-range public benefit, by allowing the continued development of this new residential subdivision.

B. CONS: There is a remote possibility that the adjacent property owner could object to the repeal, although staff does not believe that such an objection would have merit.

STAFF'S RECOMMENDATION (Including Rationale and Justification): Staff recommends approving this repeal and replacement ordinance. The exchange of right-of-way shown on the approved re-plat more accurately reflects the City's intentions and more effectively accomplishes the City's goals.

OPTIONS (In Suggested Order of Staff Preference):

1. approve the proposed ordinance as recommended
2. approve the proposed ordinance with amendments or modifications, which may require consideration at a future City Council meeting
3. do not approve the proposed ordinance at this time

ATTACHMENTS:

1. draft ordinance with exhibits;
2. schematics, which are Exhibits A and B of the proposed ordinance as referenced above (two schematics attached as two separate pdf files)

FUNDING SOURCE: N/A

APPROVALS: Lindsey Guindi, 3/22/13; Joey Dunn, 3-22-13; Hugh R. Walker, 03/27/2013

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 04-01-2013

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 03-27-2013

Revised 11/08

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRYAN REPEALING ORDINANCE NUMBER 1839 AND PROVIDING FOR THE EXCHANGE OF RIGHT-OF-WAY FOR PROPERTY TO BE USED AS RIGHT-OF-WAY, TO WIT: A PORTION OF THE RIGHT-OF-WAY FORMERLY KNOWN AS CAROLINE STREET, A 75-FOOT WIDE AND 467-FOOT LONG MOSTLY-UNIMPROVED PUBLIC RIGHT-OF-WAY, EXTENDING NORTHWEST FROM THE NORTH SIDE OF THE 900 BLOCK OF EAST MARTIN LUTHER KING JR STREET BETWEEN MILITARY DRIVE AND BRADLEY STREET, IN EXCHANGE FOR OTHER PROPERTY FROM THE ABUTTING PROPERTY OWNER; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE ORDINANCE IS PASSED ARE OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Bryan (“City”) is a Texas home rule city in Brazos County, Texas; and

WHEREAS, the owner of land adjacent to the 75-foot wide and 467-foot long right-of-way formerly known as Caroline Street, extending northwest from the north side of the 900 block of East Martin Luther King Jr Street between Military Drive and Bradley Street, as shown on **Exhibit A**, desires to exchange a portion of the formerly dedicated right-of-way for adjacent property, for the purpose of rerouting the right-of-way in accordance with **Exhibit B**; and

WHEREAS, during its regular meeting on July 1, 2010, the Bryan Planning and Zoning Commission recommended approving the exchange of right-of-way as depicted in **Exhibit B**; and

WHEREAS, the City’s governing body, the Bryan City Council (“City Council”) is authorized by Texas Local Government Code section 272.001(b)(3) to exchange property originally obtained for right-of-way for other property to be used as right-of-way; and

WHEREAS, the City Council is of the opinion that the best interests and welfare of the public will be served by exchanging this right-of-way and realigning the street, as depicted in **Exhibit B**.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS:

1.

That all language contained in the preambles to this Ordinance shall be incorporated into the text of the Ordinance as if set forth verbatim herein. That all exhibits attached to this Ordinance shall be incorporated into the text of this Ordinance as if set forth verbatim herein.

2.

That Ordinance Number 1839 is hereby repealed.

3.

That the right-of-way as shown on **Exhibit A** is exchanged for the right-of-way as shown on **Exhibit B**.

4.

It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Section 551.001, *et seq.*, of the Texas Government Code, and that advance public notice of the time, place and purpose of said meetings was given, pursuant to all applicable law.

5.

This ordinance shall take effect immediately upon its second and final reading and passage.

PRESENTED AND GIVEN first reading the 9th day of April, 2013, at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, **PASSED and APPROVED** on the 23rd day of April, 2013, by a vote of ____ ayes and ____ noes at a regular meeting of the City Council of the City of Bryan, Texas.

ATTEST:

CITY OF BRYAN:

Mary Lynne Stratta, City Secretary

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney