

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: January 14, 2014		DATE SUBMITTED: December 11, 2013	
DEPARTMENT OF ORIGIN: Public Works – Engineering		SUBMITTED BY: W. Paul Kaspar	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input checked="" type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input checked="" type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: Consideration of a Resolution to authorize the acquisition through purchase or condemnation certain property interests in the property located at 1526 Dansby for an authorized and declared public purpose and use, that being the eventual extension of Waco Street to the existing intersection of Martin Luther King, Jr. Street and Waco Street to the north.			
SUMMARY STATEMENT: Since 2004, the City of Bryan has been slowly acquiring right-of-way for the Waco Street Extension Project that would extend the existing Waco Street by the Municipal Service Center northward to connect with Martin Luther King at the existing Waco Street intersection that heads further north to State Highway 21. The project also includes more right-of-way acquisition to the south connecting with Ursuline / Villa Maria, which leads to William Joel Bryan. (See map below.) Public meetings were held in 2004 to gain public input on the project and preliminary design work was done to determine the needed right-of-way for acquisition. The City has spent about \$70,000 to date on this project including legal fees, title work, appraisals, preliminary engineering, environmental clearance, surveying, and some land acquisition.			
<p>This agenda item will authorize the acquisition of the ownership interests in 1526 Dansby, through acquisition and condemnation, which will help with the extension to the north. The City's land agent has been working on identifying the heirs who have ownership in the property and have compiled detailed records in that regard. Staff is ready to proceed with acquiring the 50% interest of Ms. Doris Johnson Jones, the heir who has been paying taxes on the property, as well as the life estate interest (approximately 16.67%) belonging to her brother's widow Naomi Johnson. Ms. Jones' deceased brother, Israel Johnson, has known and unknown heirs from whom we have been unable to acquire an interest in the property. The purpose of this resolution is to authorize acquisition of Ms. Jones and Ms. Johnson's ownership interest and proceed with condemnation of the remaining approximately 34% interest that we are unable to locate.</p>			
<p>The agreed upon purchase price for the land is \$15,784.52 of which the City would release the existing liens on the property totaling \$5,603.48 (for structure demolition and cleanup) and pay the current property tax totaling \$181.04 out of the purchase price. That leaves the net purchase price at \$10,000. At closing the City will grant Ms. Doris Johnson Jones \$5,000 as consideration for her 50% share in the property. Ms. Naomi Johnson will receive \$500 for her 16.67% life estate as well. The remaining 33.33% interest in the property from unknown heirs will be secured through condemnation.</p>			
<p>The map below shows the properties already acquired and denotes the property remaining to make the project viable. The project is in the Capital Improvements Database, but it is not a current funded project in the CIP 5 year forecast. Waco Street is shown on the City's Thoroughfare Plan as a Minor Arterial with ultimate roadway section of 2 lanes each way with center median. The intersection formed by the extension to the south with Ursuline / Osborne / E. Villa Maria / Freeman / Waco is a strong candidate for a roundabout to be constructed.</p>			



STAFF ANALYSIS AND RECOMMENDATION: By approving the Resolution, the City will continue acquiring partial ownership of the land from the heirs who have been working with the City. The City's Legal Services Division, in cooperation with Bruchez, Goss, Thornton, Meronoff, & Hawthorne, P.C., will begin the process of eminent domain proceedings to acquire the remaining interests. Staff recommends approving the Resolution as the next step toward securing the property for the future Capital Improvement Project (CIP).

OPTIONS (In Suggested Order of Staff Preference):

1. Approve the Resolution.
2. Modify the Resolution and approve, which may require consideration at a future City Council meeting.
3. Do not approve the Resolution and provide direction to staff.

ATTACHMENTS:

1. Resolution
2. Memorandum of Agreements and Special Warranty Deeds for Jones and Johnson (pdf)

FUNDING SOURCE: 2010 Bond Funds - Fund 368

APPROVALS: Jayson E. Barfknecht 12/23/13; Hugh R. Walker, 12/23/2013

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 12/27/2013

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 12/30/2013

Revised 05/2013

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS, RELATING TO AND DECLARING THE FOLLOWING: (1) THE AUTHORITY OF THE CITY TO INITIATE, COMPLETE, AND ACQUIRE THROUGH PURCHASE OR CONDEMNATION CERTAIN PROPERTY INTERESTS IN CERTAIN REAL PROPERTY LOCATED IN THE CITY OF BRYAN, BRAZOS COUNTY, TEXAS FOR AN AUTHORIZED AND DECLARED PUBLIC PURPOSE AND USE, SAME BEING PROVIDING, ENLARGING, OR IMPROVING THE CITY'S STREETS AND ROADWAYS THROUGH THE ALIGNING, EXCAVATING, CONSTRUCTION, EXPANDING, EXTENDING, OPERATING, REMOVING, RE-ROUTING, RECONSTRUCTING, AND MAINTAINING WACO STREET EXTENSION ("WACO STREET EXTENSION PROJECT"); (2) DECLARING A PUBLIC NECESSITY EXIST TO ACQUIRE, BY ACQUISITION OR CONDEMNATION, A TRACT OF LAND BEING LOT FOURTEEN (14), BLOCK ONE (1), JAMES ADDITION, AN ADDITION TO THE CITY OF BRYAN, BRAZOS COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN VOLUME 38, PAGE 359, DEED RECORDS, BRAZOS COUNTY, TEXAS, IN ORDER TO ACCOMPLISH AN AUTHORIZED AND DECLARED PUBLIC PURPOSE AND USE; (3) THE RATIFICATION OF ALL PRIOR CITY ACTS AND RESOLUTIONS AND (4) THE ESTABLISHMENT OF AN EFFECTIVE DATE AND COMPLIANCE WITH THE TEXAS OPEN MEETING ACT.

WHEREAS, the City of Bryan, Texas ("City") is a home rule municipality which is duly incorporated and chartered under the constitution and laws of Texas; and

WHEREAS, the City owns, operates, constructs, repairs, and maintains a transportation system providing streets and roadways to the public ("system") as a public service, in order to provide public transportation and access through streets and roadways to the public and the City, now and in the future; and

WHEREAS, the City Council of the City of Bryan, Texas hereby determines and declares that the Waco Street Extension Project is a benefit to the public because the system currently provides, and will provide in the future, streets and roadways to the public and the City; and

WHEREAS, a public necessity exists for the acquisition of the property and all improvements thereon described herein and made a part hereof, for the public purpose and use as a site for the Waco Street Extension Project for the streets, roadways, and transportation system for the City of Bryan, within the city limits of the City of Bryan; Texas, and

WHEREAS, §251.001(a)(1) of the Texas Local Government Code authorizes municipalities to exercise the right of eminent domain for public purposes; and

WHEREAS, the City determines that the best interests and needs of the public, including the health, safety, and welfare of the public, require the City's transportation system should be improved and expanded by the City's acquisition, through purchase or condemnation, of certain property interests in and to certain tracts of real property located in the City of Bryan, Brazos County, Texas, said tract BEING LOT FOURTEEN (14), BLOCK ONE (1), JAMES ADDITION, AN ADDITION TO THE CITY OF BRYAN, BRAZOS COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN VOLUME 38, PAGE 359, DEED RECORDS, BRAZOS COUNTY, TEXAS, said property interest being described as the fee simple title to the surface of said tracts, including all title and rights to use the surface for the

exploration, development, production, saving, and transportation of all oil, gas, and other minerals, including rights of ingress and egress, save and except the ownership of all oil, gas, and other minerals; and

WHEREAS, the City intends and seeks to acquire the subject property and property interests through purchase or condemnation for the following declared public purpose and uses regarding the Waco Street Extension Project, in order to provide, enlarge, and improve the City's streets, roadways, and transportation system through the aligning, excavating, construction, expanding, extending, operating, removing, re-routing, reconstruction, and maintaining Waco Street Extension necessary for such transportation system, now and in the future, for the benefit of the public and the City:

- (a) the location, construction, operation, and maintenance of a transportation system;
- (b) the aligning, excavating, construction, expanding, extending, operating, removing, re-routing, reconstruction, and maintaining Waco Street Extension necessary for such transportation system on, in, above, under, across, through, and below the surface; and
- (c) the permanent ownership, operation, construction, repair, inspection, placement, removal, and maintenance of the transportation system on the subject property, including all infrastructure, equipment, and improvements placed on, in, above, under, across, through, and below, the ground, as described herein.

WHEREAS, pursuant to the Waco Street Extension Project, a public necessity exists for the City to acquire through purchase or condemnation the subject property and property interests for the public purposes and uses described herein, and

WHEREAS, pursuant to the Waco Street Extension Project, the City's acquisition of the subject property and property interests through purchase or condemnation is necessary to accomplish, achieve, and advance the public purpose and uses described herein.

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

SECTION 1.

THAT singular nouns and pronouns shall include the plural, and the masculine gender shall include the feminine gender, where necessary for a correct meaning of this document.

SECTION 2.

THAT all prior acts of the City, including the acts of its elected and appointed officials, officers, employees, agents, representatives, or attorneys, regarding the Waco Street Extension Project, the subject property, and the subject property interests are hereby authorized, ratified, approved, confirmed, and validated, including but not limited to all offers to purchase, purchases, acquisitions, offers, acceptances, or declinations, negotiations, and all other land acquisition activities regarding the Waco Street Extension Project.

SECTION 3.

THAT all statements made in the caption, preamble, and preliminary recitals of, and all documents referenced or attached to, this document are true, correct, and incorporated by reference.

SECTION 4.

THAT the best interests and needs of the public, including the health, safety, and welfare of the public, pursuant to the Waco Street Extension Project described herein, require that the transportation system of the City be expanded and improved by the City's acquisition, through purchase or condemnation, of the subject property and property interests described herein.

SECTION 5.

THAT a public necessity exists for the City of Bryan, Texas, to acquire, through purchase or condemnation, in fee simple the interest described herein a tract of land located in Bryan, Brazos County, Texas, and described as:

BEING LOT FOURTEEN (14), BLOCK ONE (1), JAMES ADDITION, AN ADDITION TO THE CITY OF BRYAN, BRAZOS COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN VOLUME 38, PAGE 359, DEED RECORDS, BRAZOS COUNTY, TEXAS,

for the public purpose and use as a site for the Waco Street Extension Project as described herein for the City of Bryan.

SECTION 6.

THAT all public purposes and uses described in this document are hereby declared to be worthwhile, convenient, and necessary to justify and support the acquisition of the subject property and property interests for the Waco Street Extension Project by the City through purchase or condemnation proceedings. A public necessity exists for the City to acquire through purchase or condemnation the subject property interests for the public purposes and uses described herein. The City's acquisition of the subject property and property interests through purchase or condemnation is necessary to accomplish, achieve, and advance the public purposes and uses described herein.

SECTION 7.

THAT regarding the subject property and property interests described in this document, and pursuant to the Waco Street Extension Project, the City hereby declares that the owners and the City are unable to agree on the issue of damages or compensation due to the following facts:

- (a) the City made bona fide, good faith offers to purchase said property and interests from the owners, but said offers were rejected or not accepted;

- (b) the City made bona fide, good faith offers to purchase said property and interests from the owners, but said owners were unable to convey title free and clear of all liens, encumbrances, or claims of adverse ownership or possession due to disputed or unclear title issues, therefore, it is futile for the City to engage in further negotiations for the purchase of said property and interests due to the inability of the City to determine true ownership, and the resulting risk to the City of having to pay fair compensation or damages more than once for the same property or property interest; or
- (c) after the exercise of due diligence, the City has been unable to locate the owners, therefore, it is futile for the City to attempt purchase negotiations with an owner who cannot be located.

SECTION 8.

THAT pursuant to the Waco Street Extension Project, the City's elected and appointed officials, officers, employees, agents, representatives, and attorneys ("said representatives") are hereby authorized to engage in the following conduct regarding the subject property and property interests:

- (a) Said representatives shall have the authority to lay-out and map the exact location of the land needed regarding the subject property and property interests.
- (b) Said representatives shall have the authority to hire, engage, or direct such City staff, engineers, surveyors, appraisers, title companies, architects, attorneys, or other persons or entities needed to obtain or complete: the mapping or design of the necessary infrastructure, facilities, or improvements regarding the subject property or property interests; the establishment and acquisition of the necessary title to the property or property interests, including the initiation and completion of all administrative and adjudicative phases of condemnation proceedings; and the construction, operation, inspection, removal, and maintenance of the necessary infrastructure, equipment, facilities, or improvements on the subject property.
- (c) Said representatives shall have the authority, with the consent of the property owner or through a court order, to enter upon the property for the purpose of: surveying and establishing title; determining reasonable, adequate, and just compensation; conducting tests; or negotiating with the owner for the purchase for the City of all necessary title regarding the subject property and property interests.
- (d) Said representative shall continue to have authority to determine reasonable, adequate, and just compensation for the subject property and property interests, and to negotiate with the property owner for the purpose of acquiring same for the City.
- (e) Said representatives shall have the authority to initiate and complete all administrative and adjudicative phases of condemnation proceedings against the property owners in order to acquire through condemnation all required title regarding the subject property and property interests.

- (f) Said representatives shall have the authority to initiate and complete all other actions deemed necessary and appropriate to obtain the accomplishment of the public purposes and uses described herein.

SECTION 9.

THAT the Legal Services Division of the City of Bryan, Texas, together with the law firm of Bruchez, Goss, Thornton, Meronoff, & Hawthorne, P.C., if necessary, are hereby authorized and directed to institute and prosecute to conclusion proceedings in eminent domain on behalf of and in the name of the City of Bryan, against Willie Johnson and Lorine Johnson, the owners of the land described hereinabove, or if the landowners are deceased, their heirs, known or unknown, and against all other interested owners, lienholders and other holders or claimants of an interest in the said land in order to acquire the land in fee simple for said municipal purposes; and

SECTION 10.

THIS resolution shall be effective immediately upon its passage and adoption. This document was passed and approved at a public meeting in compliance with the Texas Open Meetings Act.

APPROVED AND AOPTED by the City Council of the City of Bryan, Texas, this 14th day of January, 2014.

ATTEST:

CITY OF BRYAN:

Mary Lynne Stratta, City Secretary

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney