



AGENDA MEMORANDUM

Future Item for the City Council Meeting of August 30, 2016
Action Item for the City Council Meeting of September 13, 2016

DATE: August 15, 2016

TO: Margie C. Rose, City Manager

THRU: Mark Van Vleck, Assistant City Manager
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<p style="text-align: center;">Resolution for the acquisition of real property rights by eminent domain for the <u>Creek View Drive Extension Project – Bond 2014, Prop. 2</u></p>

CAPTION:

Resolution of the City Council of the City of Corpus Christi, Texas **(1)** determining the public necessity and public use for the acquisition of a parcel of land by fee simple title, collectively known as Parcel 1, for a street improvement project known as the Creek View Drive Extension Project; **(2)** authorizing the City Manager or designee to negotiate and execute all documents necessary to acquire the property interests subject to availability of funds appropriated for such purposes; **(3)** authorizing the City Manager to institute condemnation by eminent domain proceedings to acquire the fee simple title in the property owned by the William E. McKinzie, Jr. Family Limited Partnership; **(4)** authorizing payment pursuant to an award by special commissioners; **(5)** authorizing acceptance and recording of appropriate legal instruments; and **(6)** approving condemnation for all units of property to be acquired by condemnation of the parcel described herein by a single record vote of the City Council.

PURPOSE:

This resolution is required to proceed with eminent domain proceedings to acquire a parcel of land needed for this street project. Council must first determine that a public use and necessity exists for the project and delegate authority to the City Manager to use the power of eminent domain. The resolution also authorizes the City Manager or her designee to execute all real estate purchase contracts and instruments, provided that the amounts are within Council-approved project budgets.

BACKGROUND AND FINDINGS:

The extension of Creek View Drive (Bond 2014, Proposition 2) from Creek Side Drive to McKinzie Road will improve traffic flows and safety in the Maple Hills Subdivision and the Tuloso Midway Primary School (grades K-2) located within the subdivision. This project includes a new 2-lane roadway with new curb and gutter, sidewalks, ADA ramps, signage and pavement markings. Utility improvements include water, wastewater, gas and storm water that will increase reliability and service to the area. Water system improvements include a new fire hydrant and upgrades to enhance water services and emergency fire protection to the immediate area. Storm water improvements will improve local drainage.

The extension of Creek View Drive requires the acquisition of one (1) tract of land containing 22,230.10 square feet (0.51 acres) of land owned by the William E. McKinzie, Jr. Family Limited Partnership. The City's Property & Land Acquisition Division's staff first contact with the property owner's registered agent and general partner, Mr. William E. McKinzie, Jr. was on July 31, 2015, requesting right of entry for surveying. On August 5, 2015, Mr. McKinzie, Jr. called to refer city staff to his attorney, Mr. Charles Cartwright. Staff sent introduction letters to both the property owner and his representative on September 10, 2015. On March 8, 2016, the City received a letter from Mr. Paul Barkhurst, attorney, stating that he is representing the property owner. On March 15, 2016, a certified offer letter was sent to and received by Mr. Barkhurst, to purchase the tract of land in the amount of \$55,575.00 (based on a real estate appraisal obtained by the City). Upon not receiving a response, a certified final offer letter, as required by law, was sent to Mr. McKinzie and Mr. Barkhurst on May 19, 2016. The certified mail receipts indicate each received the final offer letter on May 23, 2016. No response from either has been received.

City staff has sent multiple requests by phone, email and letter with no response for acceptance, rejection or submission of a counter-offer throughout the course of negotiations. Therefore, City staff has concluded that negotiations have ceased and will not result in the acquisition of the needed tract of land. Based on this, staff requests that City Council authorize City staff to exercise and initiate eminent domain procedures to acquire the tract of land.

On September 1, 2011, Texas Senate Bill 18 (SB18) was passed which requires all entities with eminent domain authority to follow certain procedures prior to initiating eminent domain proceedings under Section §21.012 of the Texas Property Code. The new procedures are more restrictive on the condemning authorities and stipulate certain requirements. One of them is the requirement of a vote on the use of eminent domain by a governmental entity under Section 2206.052 of the Texas Government Code. This resolution and the motion to adopt it are in a form required under Senate Bill 18 and other state law requirements.

ALTERNATIVES:

No alternatives are available for a governmental entity to be able to use of its power of eminent domain. Under Texas law, Council must adopt a resolution at a public meeting by record vote delegating its authority.

OTHER CONSIDERATIONS:

None

CONFORMITY TO CITY POLICY:

The resolution conforms to the City Charter, Code of Ordinances, Article X, General Powers and Provisions, Section 1. The resolution and the motion adopting it conform to Senate Bill 18 (SB18), Chapter 21 of the Property Code, and Chapter 2206.052 of the Government Code.

EMERGENCY / NON-EMERGENCY:

Non-Emergency

DEPARTMENTAL CLEARANCES:

Engineering Services

FINANCIAL IMPACT:

☐ Operating ☐ Revenue ☐ Capital ☒ Not applicable

Fiscal Year 2015-2016	Project to Date Expenditures (CIP only)	Current Year	Future Years	TOTALS
Line Item Budget				
Encumbered / Expended Amount				
This item				
BALANCE				

Fund(s):

Comments: None

RECOMMENDATION:

Staff requests Council pass the motion to adopt the Resolution as presented.

LIST OF SUPPORTING DOCUMENTS:

Resolution
Vicinity Map
Presentation