



16-472

**TITLE:** Consider/Discuss/Act on a Resolution Authorizing the Execution of Documents for the Acquisition of Easements and the Consideration of the Use of Eminent Domain to Condemn Property for the Construction of Utility Lines from Approximately Wilmeth Road to North of Bloomdale Road Generally Along Stover Creek

**COUNCIL GOAL:** Direction for Strategic and Economic Growth

**MEETING DATE:** May 3, 2016

**DEPARTMENT:** Development Services/Engineering

**CONTACT:** Mark Hines, PE, Director of Engineering

**RECOMMENDED CITY COUNCIL ACTION:**

- Approval of Resolution using a motion in a form substantially similar to the following:

*"I move that we approve this item as written and authorize the use of the power of eminent domain to acquire all necessary easements from property owners, generally indicated on the attached property locator map, for the construction of utility lines generally known as Stover Creek Sanitary Sewer."*

**ITEM SUMMARY:**

- This item provides authority to the Interim City Manager to execute documents for the acquisition of utility easements (UE) and temporary construction easements (TCE); and the use of eminent domain to condemn property to complete the construction of a portion of the Wastewater Master Plan Stover Creek sanitary sewer gravity trunk line commencing just south of Wilmeth Road and continuing north generally along Stover Creek to Bloomdale Road.

**BACKGROUND INFORMATION:**

- The City has entered into a facilities agreement with property owners HRC WCD

Partners, L.P., (Owner), for the development of approximately 641 acres of land situated on the south side of FM 1461, on the north side of Bloomdale Road along and between Ridge Road and Stonebridge Drive.

- Under the agreement, Owner has agreed to fund and construct, at no cost to the City, certain wastewater capital improvements.
- In accordance with the agreement:
  1. If Owner is unable to acquire all the necessary offsite easements after using reasonable and diligent efforts, upon written notice to the City, the City agrees to use its eminent domain authority subject to approval of City Council to acquire the necessary property interests for the construction of the requisite facilities.
  2. Owner has been unsuccessful in its efforts to obtain all the necessary easements and has submitted satisfactory documentation of their efforts along with a written request that the City use its eminent domain authority to acquire the needed property rights.
  3. In the event the City elects to acquire any property interests through eminent domain, Owner agrees to reimburse the City for all costs associated with acquiring those interests for public use.
- This agenda item provides authority to the Interim City Manager to execute documents for the acquisition of easements and to take all necessary steps to acquire property rights in order to construct a portion of the Wastewater Master Plan Stover Creek sanitary sewer gravity trunk line commencing just south of Wilmeth Road and generally along Stover Creek to the north side Bloomdale Road.
- According to preliminary alignment and profiles, the Owner will need to acquire easements from approximately 8 separate property owners (see attached project locator map).
- Owner has been denied permission, from at least one property, to enter onto their property to survey and pothole for the future sanitary sewer easement.
- As previously presented to Council, Senate Bill 18 (SB 18) was passed into law during the Texas 82<sup>nd</sup> Regular Legislative Session and became effective September 1, 2011. The Bill created the following impacts on negotiations and the eminent domain practices of the City:
  - The Truth in Condemnation Procedures Act states that a governmental entity must authorize the initiation of a condemnation proceeding at a public meeting and must be approved by a record vote.
  - The Act also requires the governmental entity to include in the notice for the public meeting, “the consideration of the use of eminent domain to condemn property” as an agenda item.
  - Under the Act, a single ordinance or resolution authorizing the initiation of

the condemnation proceeding may be adopted for all units (parcels) of property to be condemned for a utility line from point to point, along a general area/route without identifying a list of specific parcels.

- The required motion (as provided above) indicates that the first record vote applies to all units of property to be condemned. If action is taken as a single vote the minutes of the meeting must reflect that the first vote applies to all units.

**FINANCIAL SUMMARY:**

- Per the facilities agreement, funds for the acquisition of easements will be provided for by the Owner.

**BOARD OR COMMISSION RECOMMENDATION:**

- N/A

**SUPPORTING MATERIALS:**

[Resolution](#)

[Location Map](#)