



City of Broken Arrow

Request for Action

File #: 17-2865, Version: 1

**Broken Arrow City Council
Meeting of: 11-7-2017**

**To: Mayor and City Council
From: Office of the City Attorney**

Title:

Consideration, discussion, and possible approval of and authorization to execute Resolution No. 1066, a resolution authorizing the City Attorney to enter into a final Journal Entry of Judgment in the matter of City of Broken Arrow v REIP, LLC; Gordon-Williams Development, Inc.; Transok Pipe Line Company; Sunoco Mid-Con (IN) LLC; Sunoco Partners Real Estate Acquisition, LLC; Board of County Commissioners of Tulsa County; and Dennis Semler, County Treasurer, Treasurer of Tulsa County, Oklahoma Tulsa County District Court Case CJ-2017-01169, authorizing damages in the amount of \$155,000.00 and conveyance of approximately 0.067 acres of land generally located to the south and west of the southernmost dam and presently used as a pond; declaring the 0.067 acres of land generally located to the north of Broken Arrow Expressway west of North Juniper Place and West Concord Street adjacent to Battle Creek Golf Course surplus and authorizing conveyance of the land to REIP, LLC pursuant to a Quit Claim Deed and the Court's order; approving and authorizing the execution of certain documents necessary to accomplish the declaration of surplus and transfer of title; and containing other provisions relating thereto

Background:

On January 17, 2017, the City Council passed Resolution No. 970 condemning property located in the E/2 of the SW/4 of Section 34, T-19-N, R-14-E of the Indian Meridian, Tulsa County, Oklahoma presently owned by REIP, LLC and generally located just west of North Juniper Place and West Concord Street Broken Arrow, Oklahoma.

An introductory letter was sent to the landowner's representatives on October 18, 2016. That correspondence detailed the drainage improvements that were occurring in the area, along with a letter requesting donation of the parcel or the sale of the parcel needed for this project. In a subsequent letter dated November 30, 2016, the City made an offer for a drainage easement in the amount of \$46,174.00. On December 2, 2016, the City received a letter from Rosenstein, Fist & Ringold, attorneys for REIP, LLC, the landowner. The letter advised that the City's request for the overland drainage easement would provide no benefit to their client as the retention/detention facilities previously constructed would provide sufficient storm water retention and detention for the entirety of all the property owned by their client. As a result, REIP had no desire to donate the easement. The taking of the easement was necessary for the public purpose of the City for constructing a storm water drainage and diversion facility within the Easement.

On July 7, 2017 the Commissioners appointed by the Court inspected the property and awarded the sum of \$110,000.00. REIP has agreed to take the sum of \$155,000.00 plus conveyance of an areas located adjacent to the Golf Course and presently used as a Pond. Staff has significant concerns with taking this case to a Jury Trial. First, the existing drainage way unquestionably bisects the property. From an engineering standpoint, it is almost impossible to pipe the stormwater due to the grades and other utilities in the area. As a result, the channel must be open thereby permanently separating the property into two distinct pieces and requiring box

culverts or other improvements to allow access. Third, surrounding landowners (Stone Ridge Towne Center) were allowed to pay fee-in-lieu of detention rather than detaining stormwater on-site. As a result, the easement is a necessary piece of resolving stormwater issues in the area, including the REIP property. Fourth, comparable sales in the area continue to increase. Recent sales will unquestionably drive the prices upwards. For these reasons, the Legal Department is concerned that a Jury Verdict may well exceed the resolution amount. Any verdict in excess of \$121,000.00 will require the payment of REIP's costs and attorney's fees. This would not include costs and fees to be incurred by the City.

The Legal Department and City staff recommend that the City Council authorize the City Attorney to enter into a Final Journal Entry of Judgment consistent with the draft attached to this item.

Cost: **\$155,000.00, and a provision of approximately**
0.067 acres of land owned by the City.

Prepared By: **Beth Anne Childs, City Attorney**

Reviewed By: **Assistant City Manager-Operations**
 Engineering Department

Approved By: **Michael L. Spurgeon, City Manager**

Attachments: **Resolution No. 1066**
 Journal Entry of Judgment

Recommendation: Approve Resolution No. 1066 and authorize its execution.