



City of Broken Arrow

Request for Action

File #: 19-1019, Version: 1

**Broken Arrow City Council
Meeting of: 08-20-2019**

Title:

Consideration, discussion, and possible approval and authorization to execute Resolution No. 1251, a Resolution authorizing the City Attorney to seek issuance by the Court a Journal Entry of Judgment in the case of City of Broken Arrow, Oklahoma v. CWP, Inc., Wagoner County District Court Case No. CV-18-114, regarding the condemnation of property located on Government Lot 2, Section 7, T-18-N, R-15-E of Indian Meridian, Wagoner County, State of Oklahoma

Background:

On November 20, 2018, the Broken Arrow City Council determined and declared the public necessity of taking, appropriating, condemning and acquiring the fee simple and permanent right of way of 95,532 square feet or 2.1 acres, more or less, from CWP, Inc. ("CWP") for the public purpose of completion of the 23rd Street, Kenosha to Houston, road widening project, as authorized under authority of 11 O.S. § 22-104. On December 7, 2018, the City filed suit against CWP to acquire this property, along with a building used as a bar named Scooters South 40. The Commissioners filed a report on January 31, 2019, valuing the take at \$178,000.00. On February 25, 2019, the City tendered the commissioners' award to the Court Clerk, taking title to the condemned property including the building used as a bar.

Prior to the City filing the court action, Carl White, President of CWP, Inc., provided an agent of the City with a copy of a lease agreement between CWP and the Lamar Companies ("Lamar") which purported to lease a portion of the subject property to Lamar "for the construction, repair and relocation of an outdoor advertising sign." The lease agreement, dated January 1, 2009, expired January 1, 2019. A sign was installed by Lamar and rent payments were made to CWP. Thus, because it appeared Lamar might have a property interest in the subject property, Lamar was listed as a defendant in the condemnation action. However, very early in the action, the City determined that Lamar's sign is not, in fact, on the subject property. Before they issued their report, the commissioners were made aware that the City was not taking the property upon which Lamar's sign is located.

In addition to being President of CWP, Mr. White is President of Automatic Vending, Inc. ("Automatic Vending"), a company which leased a juke box and pool table to the bar located in the business. Mr. White asserted Automatic Vending had a property interest in the action. Thus, Automatic Vending was also named as a defendant in the condemnation action. However, Automatic Vending did not provide documentation of a property interest to the City or the commissioners.

Pursuant to state law, any party seeking to contest the commissioners' valuation of the property must file a jury demand within 60 days of the date of the filing of the commissioners' report. Thus, all jury demands had to be filed on or before April 2, 2019. Both the City and Lamar filed timely jury demands. CWP and Automatic Vending filed jury demands on April 18, 2019, after the 60 days expired. On that date, Bill Hickman, attorney for Lamar, entered his appearance for CWP and Automatic Vending and filed those late jury demands.

On May 17, 2019, the City filed a Notice of Dismissal dismissing Lamar from the action because it has no property interest to which it is due compensation. On the same date, the City withdrew its jury demand. This case was discussed with Council in executive session on May 21, 2019.

The City Attorney's office then drafted the attached proposed Journal Entry of Judgment and attempted to obtain the signatures of all attorneys who had entered their appearances in the case, and, thereby, resolve all outstanding issues. The City Attorney's office obtained the signatures of all attorneys except Bill Hickman, who now represents the landowner, a vendor and a sign company in this action.

Because, in the opinion of the City Attorney's Office, all legal issues have been resolved and the case is ripe for entry of a Journal Entry of Judgment, the City filed a Motion for Entry of Journal Entry of Judgment on June 17, 2019, which requested entry of judgment without the written agreement of all of the parties. The motion was set for hearing. At the hearing held on July 30, 2019, Mr. Hickman objected to entry of a Journal Entry of Judgment on behalf of CWP, but not his other two clients. The Court took the City's motion under advisement and permitted briefing, which should be complete by September 3, 2019.

The attached Resolution No. 1251 authorizes the City Attorney to seek the issuance of a Journal Entry of Judgment which awards the \$178,000.00 currently held in the court registry to CWP and resolves all issues in the action.

Cost: \$178,000.00

Funding Source: 2014 GO Bond

Requested By: Trevor A. Dennis, City Attorney

Approved By: City Manager's Office

Attachments: Resolution No. 1251
Journal Entry of Judgment

Recommendation:

Approve Resolution No. 1251 and authorize its execution.