



## Board of Aldermen Request for Action

**MEETING DATE:** 4/3/2023

**DEPARTMENT:** Public Works

**AGENDA ITEM:** Bill No. 2985-23, Authorizing Condemnation of certain lands for the purpose of constructing and maintaining a sewer line - 1<sup>st</sup> Reading

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**REQUESTED BOARD ACTION:**

A motion to approve Bill No. 2985-23, for First Reading by Title Only authorizing condemnation of certain lands for the purpose of constructing and maintaining a sewer line.

**SUMMARY:**

The City has been working to acquire several easements for the West Interceptor and 144<sup>th</sup> Street Pump Station Project. These projects will serve the southern side of Smithville and provide much needed relief to Hills of Shannon, provide capacity for development (Fairview North and South) and Forrest Oaks (when the South main is completed). Staff has acquired 11 of the 15 required easements.

The City and owners have not been able to agree on the value of the easement on three tracts.

Presented for the Boards consideration is an ordinance that will begin the formal process of acquiring the easement for public purposes on the Zimmerman Tract.

The eminent domain (condemnation) process has several steps. This is the first step that allows the City to move forward and notifies the owners of the City's intent. Simply summarized, the City passes an Ordinance stating the intent to acquire a property interest. Owners are provided a 60-day notice. An appraisal of the easement is completed and provided to the owners. An offer letter for the easement is provided to the owner. The City and Owner can at any time agree to settle for an agreed amount. If we (the owner and the City) cannot come to an agreement then the City files a petition with the court. The Court will assign three independent appraisers to provide a value for the property interest. The City and property Owners can either accept the value the court finds or appeal. The process takes 90 days more or less.

**PREVIOUS ACTION:**

The Board approved Authorization No. 94 for the engineering October 19, 2021

**POLICY ISSUE:**

Infrastructure maintenance / economic growth

**FINANCIAL CONSIDERATIONS:**

None

**ATTACHMENTS:**

☒ Ordinance

☐ Contract

☐ Resolution

☐ Plans

☐ Staff Report

☐ Minutes

☐ Other: [Click or tap here to enter text.](#)

**ORDINANCE AUTHORIZING CONDEMNATION OF CERTAIN LANDS FOR THE  
PURPOSE OF CONSTRUCTING AND MAINTAINING A SEWER LINE**

Authorizing condemnation and taking of public and private property interest for public use as a Temporary Construction & Grading Easements for a sewer improvement project "WEST INTERCEPTOR" in the City of Smithville, & Unincorporated Clay County, Missouri providing for the payment of just compensation therefore; authorizing continued negotiations and purchase by the City of Smithville; authorizing the filing of the petition for condemnation by the City Attorney on behalf of the City; and directing the City Clerk to record this ordinance in the office of the Recorder of Deeds for Clay County, Missouri.

WHEREAS the Board of Aldermen finds that certain interests in private property must be condemned for the necessary public use for the construction of a sanitary sewer improvement project "**WEST INTERCEPTOR**" in Smithville, Clay County Missouri as well as Unincorporated Clay County, Missouri.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE  
CITY OF SMITHVILLE, MISSOURI AS FOLLOWS:**

**SECTION 1.** That the property interests herein described are hereby authorized condemned and taken for public purpose in and upon the land hereinafter described for use as a Sanitary Sewer Line, Sewer Easements and Temporary Construction & Grading Easements in a proceeding instituted in Clay County, Missouri, by the City Attorney for "**WEST INTERCEPTOR**", including any necessary structures or appurtenances, in Smithville, Clay County, Missouri, as well as in Unincorporated Clay County Missouri as hereinafter described.

**SECTION 2.** That the property interests obtained by condemnation shall be used by the City of Smithville, Missouri for the location of improvements to be constructed thereon including any necessary structures, facilities, and appurtenances to it, and Smithville or its authorized agents, employees or independent contractors, shall have the right to enter in or authorize the entry in and upon said properties for the purpose of constructing, reconstructing, maintaining, operating and repairing the following improvements hereinafter described:

Temporary Construction and Grading Easement

The Temporary Construction and Grading Easement(s) shall be used by the City of Smithville Missouri or its authorized agents, servants, employees or independent contractors, during the construction of said project, for grading and sloping, removal of trees and shrubbery, removal and replacement of fencing, sidewalks

and driveways, the storage of materials, the operation of equipment, and the movement of a working force.

The City of Smithville Missouri shall cause the surface of lands lying within said temporary construction easements to be restored to substantially the same physical condition that existed at the time Smithville or its agents entered upon them. Temporary construction easements shall terminate three (3) years from the date said easement is acquired and recorded by the Recorder of Deeds in Clay County, or upon completion and acceptance of the improvements by the Director of Public Works or the City Administrator whichever occurs first.

**SECTION 3.** That the private property is hereby authorized condemned and taken for public use and hereby described as follows:

**TEMPORARY CONSTRUCTION EASEMENT**

**Temporary Construction & Grading Easement**

**Owner:** Jeffery and Cayla Zimmerman, 520 NE 144<sup>th</sup> Street, Smithville Missouri, 64089

All that part of Lot 7, Estates of Wilkerson Creek , a subdivision in Smithville, Clay County, Missouri, according to the recorded plat thereof, more particularly described as follows:

Beginning at the southeast corner of said Lot 7; thence N89°11'16"W, along the south line of said Lot 7, 61.82 feet to the southeast corner an existing platted sanitary sewer easement; thence N00°48'44"E, along the east line of said easement, 85.00 feet to the northeast corner thereof; thence N89°11'16"W, along the north line of said easement, 50.00 feet to the northwest corner thereof; thence S00°48'44"W, along the west line of said easement, 85.00 feet to the southwest corner thereof, said point being on the south line of said Lot 7; thence N89°11'16"W, along said south line, 80.00 feet; thence departing said south line, N00°48'44"E, 135.00 feet; thence S89°11'16"E, 237.05 feet to the east line of said Lot 7; thence S19°20'03"W, along said east line, 142.37 feet to the Point of Beginning.

Containing in all 24,699 square feet, more or less.

Subject to all easements, conditions, and reservations of record.

**SECTION 4.** Said improvements shall be of the nature described and specified in, and shall be done in accordance with, the plans and specifications certified under the supervision of the Director of Public Works the same being on file in the Public Works Department and being incorporated herein by reference.

**SECTION 5.** That just compensation for the property taken shall be assessed and paid according to law; and the proceedings to determine compensation shall be prosecuted in one or more suits in the Circuit Court of Clay County, Missouri, pursuant to the provisions of Chapter 523 & §88.010, §88.667 and/or §91.770 of the Revised Statutes of Missouri, as supplemented or amended and by Rules 86.01 to 86.10 of the Rules of Civil Procedure. Payment of compensation shall be made by the City of Smithville from funds appropriated for such purposes.

**SECTION 6.** That pending the acquisition of said property by condemnation, the City Administrator and/or the Director of Public Works is hereby authorized to continue negotiations on the purchase of said property and pay for it out of funds appropriated or to be appropriated as aforesaid, and if any tracts be so acquired by negotiation and purchase, the City Attorney is authorized to withdraw same from condemnation proceedings.

**SECTION 7.** That said property interests described in Section 3 be condemned and conveyed to the City of Smithville, Missouri.

**SECTION 8.** That upon the effective date of this ordinance the City Clerk is hereby directed to record this ordinance in the office of the Recorder of Deeds for Clay County, Missouri.

**PASSED AND ADOPTED** by the Board of Aldermen and **APPROVED** by the Mayor of the City of Smithville, Missouri, the 3<sup>rd</sup> Day of April, 2023.

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DAMIEN BOLEY, MAYOR

ATTEST:

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LINDA DRUMMOND, CITY CLERK

First reading:

Second reading: