



## Board of Aldermen Request for Action

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

**DEPARTMENT:** Public Works

**AGENDA ITEM:** Bill No. 2989-23, Authorizing Condemnation of certain lands for the purpose of constructing and maintaining a sewer line - 2<sup>nd</sup> Reading

---

**REQUESTED BOARD ACTION:**

A motion to approve Bill No. 2989-23, for Second Reading by Title Only authorizing condemnation of certain lands for the purpose of constructing and maintaining a sewer line.

**SUMMARY:**

**The Board passed Bill No. 2983-23 on first reading on March 7<sup>th</sup>.**

**The City was informed the property has sold and as such staff is presenting a new Ordinance reflecting the new ownership.**

The City has been working to acquire several easements for the West Interceptor Project. This project will be completed with the 144<sup>th</sup> Street Pump Station and will serve the southern side of Smithville and provide much needed relief to Hills of Shannon, have capacity for development (Fairview North and South) and Forrest Oaks (when the South main is completed). Staff has acquired 11 of the 14 easements.

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

Presented for the Boards consideration is an ordinance that will begin the formal process of acquiring the easement for public purposes on the Tract 17. Ownership for this tract has been confirmed and thus is being included for the Boards consideration. Since the agenda was completed prior to the ownership of this tract being confirmed this Bill has been added to the agenda to keep all Tracts on the same schedule.

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 94 for the engineering October 19, 2021

**POLICY ISSUE:**

Infrastructure maintenance / economic growth

**FINANCIAL CONSIDERATIONS:**

None

**ATTACHMENTS:**

- |  |                                   |
|--|-----------------------------------|
| <input checked="" type="checkbox"/> Ordinance                                    | <input type="checkbox"/> Contract |
| <input type="checkbox"/> Resolution  | <input type="checkbox"/> Plans    |
| <input type="checkbox"/> Staff Report  | <input type="checkbox"/> Minutes  |
| <input type="checkbox"/> Other: <a href="#">Click or tap here to enter text.</a> |                                   |

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

Authorizing condemnation and taking of public and private property interest for public use as Permanent Sewer Easements and Temporary Construction & Grading Easements along 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.

#### Permanent Utility Easement

The Permanent Sewer Easement(s) shall be used by the City of Smithville Missouri or its authorized agents, servants, employees or independent contractors for the location, construction, reconstruction, maintenance, operation and repair of a sanitary sewer line main improvements and any and all appurtenances incidental thereto for " **WEST INTERCEPTOR**" in, under, upon, over, across, and through the following described tracts of land situated in Smithville, Clay County, Missouri.

By the granting of these Permanent Utility Easements, it shall not be construed to prohibit the Landowner from developing any adjoining property, or from the laying out, establishing and constructing pavement, surfacing of roadways, curbing and gutters along, upon, over or across said easement or any portion thereof; provided, however, said easement shall be kept free from additional depth of overburden, (no change in the earth cover over the sewer line will be made without the written approval of the City of Smithville Director of Public works or the City Administrator) buildings, and any other structure or obstruction (except sidewalks, roadways pavement, grass, shrubs, fences, or curbs), which will interfere with the Grantee in entering upon said adjacent land and easement for the purpose of laying, constructing, reconstructing, operating, repairing, improving, and maintaining said sewer main improvements and appurtenances.

The City of Smithville shall cause the surface of lands lying within the Permanent Utility Easement to be restored to substantially the same physical condition that existed at the time the City of Smithville or its agents entered upon it, with the exception of any sewer facilities or appurtenances thereto that may need to be upon said surface.

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

### **PERMANENT SEWER EASEMENT**

#### **Tract/Parcel No. 17 PERMANENT SEWER EASEMENT**

**Owner:** George T. O'Laughlin (or the successor) Trustee for Rudy Johnson under indenture dated December 24, 1973 as to an undivided ½ interest, 3400 Owl Creek Dr. Edmond Ok 73034-7012 and Mary Louise Greene and Bank of America, N.A., Co-Trustees of the Mary Louise Greene Trust dated October 3, 1991, as amended as to an undivided ½ interest: c/o Ted Greene 6750 W. 93<sup>rd</sup> Street Suite 250 Overland Park Kansas 66212 or its successor Undivided Interests, LLC 3965 West 83<sup>rd</sup> St #358 Prairie Village, Kansas 66208.

## **PERMANENT SEWER EASEMENT**

A strip of land 10 feet in width being part of the Northeast Quarter of Section 34, Township 53 North, Range 33 West, in the City of Smithville, Clay County, Missouri, said strip lying 5 feet on both sides of, parallel with and adjacent to the following described centerline:

(Note: The bearings in the following description are based on Grid North, Missouri State Plane Coordinate System, NAD83)

Commencing at the southwest corner of the Northeast Quarter of said Section 34;

Thence N01°05'57"E, along the west line thereof, 1431.05 feet to the north line of FIRST PARK 2ND PLAT, a subdivision in the City of Smithville, Clay County, Missouri;

Thence S86°41'23"E, along said north line, 1679.05 feet to the northwest corner of FIRST PARK, a subdivision in the City of Smithville, Clay County, Missouri;

Thence S86°50'59"E, along the north line of said FIRST PARK, 133.96 feet to the Point of Beginning;

Thence departing said north line, N25°16'42"W, 67.85 feet;

Thence N65°10'08"E, 77.11 feet;

Thence N28°29'56"W, 385.63 feet;

Thence N24°49'31"W, 754.86 feet to the south right of way line of Missouri State Highway 92 and the Point of Termination of said centerline.

The sidelines of said strip shall be lengthened or shortened to terminate at the respective boundaries of subject tract.

Containing in all 12,855 square feet, more or less.

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

## **TEMPORARY CONSTRUCTION EASEMENT**

### **Tract/Parcel No. 17 — Temporary Construction & Grading Easement**

**Owner:** George T. O'Laughlin (or the successor) Trustee for Rudy Johnson under indenture dated December 24, 1973 as to an undivided ½ interest, 3400 Owl Creek Dr. Edmond Ok 73034-7012 and Mary Louise Greene and Bank of America, N.A., Co-Trustees of the Mary Louise Greene Trust dated October 3, 1991, as amended as to an undivided ½ interest: c/o Ted Greene 6750 W. 93<sup>rd</sup> Street Suite 250 Overland Park Kansas 66212 or its successor Undivided Interests, LLC 3965 West 83<sup>rd</sup> St #358 Prairie Village, Kansas 66208.

## **TEMPORARY CONSTRUCTION & GRADING EASEMENT:**

A strip of land 50 feet in width being part of the Northeast Quarter of Section 34, Township 53 North, Range 33 West, in the City of Smithville, Clay County, Missouri, said strip lying 25 feet on both sides of, parallel with and adjacent to the following described centerline:

(Note: The bearings in the following description are based on Grid North, Missouri State Plane Coordinate System, NAD83)

Commencing at the southwest corner of the Northeast Quarter of said Section 34;

Thence N01°05'57"E, along the west line thereof, 1431.05 feet to the north line of FIRST PARK 2ND PLAT, a subdivision in the City of Smithville, Clay County, Missouri;

Thence S86°41'23"E, along said north line, 1679.05 feet to the northwest corner of FIRST PARK, a subdivision in the City of Smithville, Clay County, Missouri;

Thence S86°50'59"E, along the north line of said FIRST PARK, 133.96 feet to the Point of Beginning;

Thence departing said north line, N25°16'42"W, 67.85 feet;

Thence N65°10'08"E, 77.11 feet;

Thence N28°29'56"W, 385.63 feet;

Thence N24°49'31"W, 754.86 feet to the south right of way line of Missouri State Highway 92 and the Point of Termination of said centerline.

The sidelines of said strip shall be lengthened or shortened to terminate at the respective boundaries of subject tract.

**EXCEPT:** that part taken for permanent sewer easement.

Containing in all 51,419 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 18<sup>th</sup> Day of April, 2023.

---

DAMIEN BOLEY, MAYOR

ATTEST:

---

LINDA DRUMMOND, CITY CLERK

First reading: 04/03/2023

Second reading: 04/18/2023