



# MAYOR & COUNCIL COMMUNICATION

**DATE:** September 15, 2015

**CONSENT**

**ITEM #** 11

**AGENDA ITEM:** Phase 2 Downtown Street, Drainage, and Utility Improvements: Request County to Proceed with 30<sup>th</sup> Street Right-of-Way Acquisition

**SUBMITTED BY:** Chad Isakson, Project Engineer

**THROUGH:** Clark Schroeder, Interim City Administrator

**REVIEWED BY:** Jack Griffin, City Engineer  
David Snyder, City Attorney  
Mike Bouthilet, Public Works

**SUGGESTED ORDER OF BUSINESS (if removed from the Consent Agenda):**

- Questions from Council to Staff..... Mayor Facilitates
- Public Input, if Appropriate.....Mayor Facilitates
- Call for Motion ..... Mayor & City Council
- Discussion..... Mayor & City Council
- Action on Motion..... Mayor Facilitates

**POLICY RECOMMENDER:** Staff and Legal.

**FISCAL IMPACT:** Approval of this motion will provide direction to Washington County as it works to acquire City owned right-of-way along 30th Street to facilitate the Phase 2 Downtown Street, Drainage, and Utility Improvements planned for construction in 2016.

Based upon Phase 1 Downtown Improvement appraisal information it is estimated the right-of-way acquisition will cost \$172,000 plus appraisal and acquisition costs. These costs have been previously identified in the project cost estimates and were included in the Cooperative Agreement with the County. Final costs will not be known until the county completes the Phase 2 Downtown Improvement appraisal process and successfully negotiates each acquisition.

**SUMMARY AND ACTION REQUESTED:**

The City Council is respectfully requested to direct Washington County to proceed with 30th Street right-of-way acquisition. If removed from the consent agenda, the recommended motion for the action is as follows:

***“Move to direct Washington County to acquire right-of-way along 30th Street as necessary to construct improvements proposed for the Phase 2 Downtown Street, Drainage, and Utility Improvements.”***

**LEGISLATIVE HISTORY/BACKGROUND INFORMATION:**

Final design is underway for the Phase 2 Downtown Street, Drainage, and Utility Improvements project which includes extension of sanitary sewer along 30th Street from Lake Elmo Avenue to Reid Park. Historic research has shown an indication that the City of Lake Elmo may own right-of-way along this corridor, however nothing was officially recorded or platted. In order to complete the improvements Washington County is recommending that the City direct the County to acquire right-of-way from the property owners from the back of the existing curb to the extent of the project construction limits, approximately 27 feet south of the existing roadway centerline. Under this scenario the City is assuming that prescriptive easement rights exist along 30th Street from back of curb to the back of curb due to the long standing maintenance of a public roadway but not beyond the curb line. This recommendation requires the City to acquire approximately 25,000 sf. of right-of-way to complete the proposed Phase 2 improvements. The County needs official direction on how to proceed with the acquisition in order to maintain their project schedule.

The City’s decision must weigh the risk and cost of litigation against the time and expense of obtaining this right-of-way. The City could proceed with the presumption that the 30 foot right-of-way exists based on deed records and no additional acquisition would be needed to complete the improvements as proposed. There would be no cost for acquisition but the City may be required to withstand challenges by property owners.

**LEGAL OPINION:**

The County has requested that the City clarify whether or not it wants to fully acquire easements in the affected areas sufficient to allow construction of a sidewalk. It appears that the City has a roadway and related easements established by longstanding use of the area and the proposed sidewalk would lie within areas that are essentially right-of-way. In any event, some portions of the sidewalk may not lie entirely within the right-of-way and some other related improvements may lie slightly outside of the right-of-way. The County suggests and requests that the areas affected by the sidewalk be acquired by the City through quick take eminent domain proceedings. Since most of the area is burdened with City right-of-way in any event, the acquisitions would not be difficult.

**RECOMMENDATION:**

Staff is recommending that the City Council, *as part of the Consent Agenda*, direct Washington County to proceed with 30th Street right-of-way acquisition. If removed from the consent agenda, the recommended motion for the action is as follows:

***“Move to direct Washington County to acquire right-of-way along 30th Street as necessary to construct improvements proposed for the Phase 2 Downtown Street, Drainage, and Utility Improvements.”***

**ATTACHMENT(S):**

1. Acquisition Map – Option 1 Existing Back of Curb to Recommended R/W extents.