

Memorandum Regarding Council Bill No. 2024-04: An Ordinance declaring the necessity of acquiring by condemnation certain property.

Background:

On January 19, 2022, by Ordinance No. 2237, the City Council approved the preliminary plat for the Riverton Park Subdivision. Part of the public improvements for this Subdivision was the installation of a box culvert under North Road and the dedication of a drainage easement downstream of the culvert. The purpose of the drainage easement is to provide for stormwater and erosion control improvements to mitigate the erosion of the roadbed of North Road. The City is currently involved in litigation (Case No. 22CT-CC00166) in which the Plaintiff seeks to have the drainage easement declared void.

To avoid litigation on this matter, City staff have attempted to negotiate with the Plaintiff property owner to voluntarily acquire the easement. Without the easement, the City is unable to maintain stormwater and erosion control improvements. Without these improvements, the roadbed of North Road is subject to increased erosion which undermines the structural integrity of the road and creates the potential for a public safety issue for vehicles travelling on North Road.

The City has made offers to purchase the easement, based on an appraisal. As of the date of this memorandum, the City's offer has not been accepted.

Analysis:

Council Bill 2024-04, if approved, would allow the City to proceed with filing a condemnation action to acquire the easement and make the required improvements.

Recommendation:

Staff recommends approval of this Council Bill.

MEMO SUBMITTED BY:

Nick Woodman | City Attorney

Attachments:

Council Bill No. 2024-04.

Council Bill Exhibit A – Legal Description

1 AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA DECLARING THE
2 NECESSITY OF ACQUIRING BY CONDEMNATION CERTAIN PROPERTY RIGHTS
3 OVER, UNDER, AND THROUGH REAL ESTATE FOR THE PURPOSE OF
4 CONSTRUCTING AND MAINTAINING STORMWATER AND EROSION CONTROL
5 IMPROVEMENTS; AND AUTHORIZING CERTAIN CITY OFFICIALS TO DO ALL
6 THINGS NECESSARY OR CONVENIENT TO CARRY OUT THE TERMS AND INTENT
7 OF THIS ORDINANCE.
8
9

10 **WHEREAS** the preliminary plat for the Riverton Park Subdivision was approved
11 by the City Council on January 19, 2022 (Ordinance No. 2237); and
12

13 **WHEREAS** certain stormwater improvements are required as part of the Riverton
14 Park Subdivision, including the installation of a box culvert and drainage easement
15 improvements under North Road; and
16

17 **WHEREAS** the City is currently involved in litigation regarding the validity of a
18 certain public drainage easement which is part of the stormwater improvements required
19 for the Riverton Park Subdivision (Case No. 22CT-CC00166); and
20

21 **WHEREAS** the Plaintiff in the case is seeking to have a public drainage easement
22 declared void; and
23

24 **WHEREAS** the easement and improvements related thereto are a critical part of
25 the infrastructure of North Street; and
26

27 **WHEREAS** without the easement, the City will not have the right to maintain
28 improvements within the easement area; and
29

30 **WHEREAS** the easement is needed to maintain riprap and erosion control
31 improvements downstream of a box culvert currently under North Road; and
32

33 **WHEREAS** without the riprap and erosion control improvements water will
34 accelerate as it exits the culvert which can lead to erosion of the roadway embankment
35 which can cause structural failure of the road itself; and
36

37 **WHEREAS** this creates a safety issue for the public and a maintenance issue for
38 the City; and
39

40 **WHEREAS** City staff has been unable to reach a voluntary agreement with the
41 owner of the underlying property; and
42

43 **WHEREAS** City staff have negotiated in good faith and have made offers based
44 on the appraised value of the interest sought.
45

46 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
47 NIXA, AS FOLLOWS, THAT:
48

49 SECTION 1: The City Council hereby declares it necessary to condemn the
50 property interest described on "Council Bill Exhibit A," for the purpose of constructing and
51 maintaining stormwater and erosion control improvements within the area described on
52 "Council Bill Exhibit A." "Council Bill Exhibit A" is attached hereto and is incorporated by
53 this reference as though fully set forth herein.
54

55 SECTION 2: The City Council hereby finds and declares that the easement sought,
56 and the improvements related thereto, serves a legitimate public purpose as the
57 easement, and the improvements to be made within the easement area are needed to
58 provide stormwater and erosion control downstream of other public improvements.
59 Without stormwater and erosion control improvements water will accelerate which can
60 lead to erosion of the roadway embankment of North Road. This creates the potential for
61 a structural failure of the road thereby creating a safety issue for the public and a
62 maintenance issue for the City.
63

64 SECTION 3: The City Attorney, or designee, is hereby authorized to proceed with
65 condemnation proceedings against the properties described herein as authorized by law.
66 The Officers of the City are further authorized to exercise all powers necessary or
67 convenient to carry out the terms and intent of this Ordinance.
68

69 SECTION 4: This Ordinance shall be in full force and effect from and after its final
70 passage by the City Council and after its approval by the Mayor, subject to the provisions
71 of section 3.11(g) of the City Charter.
72

73 ADOPTED BY THE COUNCIL THIS _____ DAY OF _____ 2024.

74 ATTEST:
75

76 _____
77 PRESIDING OFFICER CITY CLERK
78

79 APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2024.

80 ATTEST:
81

82 _____
83 MAYOR CITY CLERK
84

85 APPROVED AS TO FORM:
86

87 _____
88 CITY ATTORNEY
89
90
91

COUNCIL BILL EXHIBIT A

A permanent drainage easement being a part of a tract of land described in Book 2018 at Page 2358 in the Christian County Recorder's office and also being a part of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) in Section 17, Township 27 North, Range 21 West, Christian County, Missouri, more particularly described as follows:

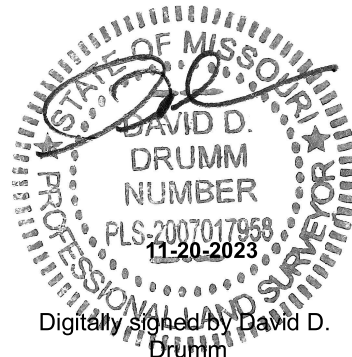
COMMENCING at an existing 1/2" iron bar at the Northwest corner of said NE1/4 of the NW1/4; thence S01°30'30"W along the West line of said NE1/4 of the NW1/4, a distance of 20.00 feet to a point on the South right-of-way line of North Road per said Book 2018, Page 2358; thence S87°26'45"E along said South right-of-way line, a distance of 792.68 feet to the POINT OF BEGINNING; thence S87°26'45"E continuing along said South right-of-way line, a distance of 80.00 feet; thence S02°33'47"W leaving said South right-of-way line, a distance of 57.96 feet; thence N87°26'13"W, a distance of 80.00 feet; thence N02°33'47"E, a distance of 57.95 feet to the POINT OF BEGINNING, containing 4,637 square feet, more or less, subject to right-of-way, easements and restrictions of record.

and also,

A 15.00 foot wide temporary construction easement being a part of a tract of land described in Book 2018 at Page 2358 in the Christian County Recorder's office and also being a part of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) in Section 17, Township 27 North, Range 21 West, Christian County, Missouri, more particularly described as follows:

COMMENCING at an existing 1/2" iron bar at the Northwest corner of said NE1/4 of the NW1/4; thence S01°30'30"W along the West line of said NE1/4 of the NW1/4, a distance of 20.00 feet to a point on the South right-of-way line of North Road per said Book 2018, Page 2358; thence S87°26'45"E along said South right-of-way line, a distance of 777.68 feet to the POINT OF BEGINNING; thence S87°26'45"E continuing along said South right-of-way line, a distance of 15.00 feet; thence S02°33'47"W leaving said South right-of-way line, a distance of 57.95 feet; thence S87°26'13"E, a distance of 80.00 feet; thence N02°33'47"E, a distance of 57.96 feet to the said South right-of-way line; thence S87°26'45"E along said South right-of-way line, a distance of 15.00 feet; thence S02°33'47"W leaving said South right-of-way line, a distance of 72.96 feet; thence N87°26'13"W, a distance of 110.00 feet; thence N02°33'47"E, a distance of 72.95 feet to the POINT OF BEGINNING, containing 3,389 square feet, more or less, subject to right-of-way, easements and restrictions of record. Said Temporary Construction Easement to terminate upon completion and acceptance of improvements.

Prepared by: Olsson, Inc.
Survey MO Certificate of Authority #LC366
550 St. Louis Street, Springfield MO 65806
Tel 417.890.8802
Prepared for: City of Nixa
Project No.: A18-3299



Digitally signed by David D. Drumm

Date: 2023.11.20 13:42:47-06'00'

POINT OF COMMENCING
 Ex. 1/2" Iron Bar (cap illegible)
 NW Cor., NE1/4, NW1/4,
 S17, T27N, R21W

S01°30'30"W(M)
 S01°22'05"E(D)
 20.00'(M&D)

S87°26'45"E 15.00'
 POINT OF BEGINNING
 Temp. Construction Esmt.

S87°26'45"E 792.68'
 S87°26'45"E 777.68'

South R/W line
 North Road per
 Book 2018, Page 2358

Ex. 1/2" Iron Bar (LS 2122)

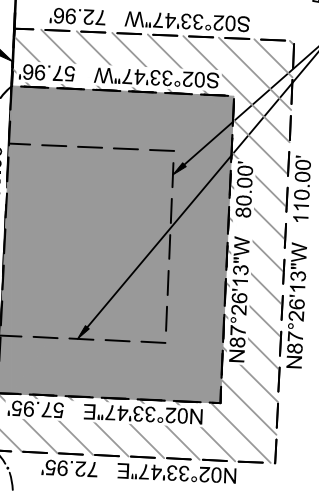
West line
 NE1/4, NW1/4

Ex. 1/2" Iron Bar (LS 2122)
 SW Cor., NE1/4, NW1/4,
 S17, T27N, R21W

POINT OF BEGINNING
 Permanent Drainage Esmt.

apparent cut in road for
 storm box installation
 S87°26'45"E 1,336.64'(M)

S87°26'45"E 15.00'



50.00' x 42.96' drainage esmt.
 Book 2020, Page 11432

Warren Scott Hagar
 Book 2018, Page 2358



Permanent Drainage Easement Area: 4,637 sqft



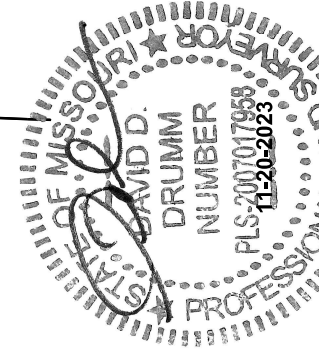
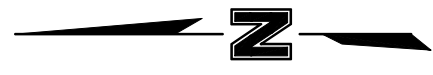
Temporary Construction Easement Area: 3,389 sqft

This sketch is not a boundary survey. It is intended to show the configuration of a drainage easement and a temp. construction easement. It should not be used to locate property lines and does not meet the Standards for Property Boundary Surveys.

Ex. 3" Aluminum Monument (LS 2122)
 NE Cor., NE1/4, NW1/4,
 S17, T27N, R21W

North line
 NE1/4, NW1/4

North Road



Digitally signed by David D. Drumm
 Date: 2023.11.20 13:43:38-06'00'

Project no: A18-32990

Drawn by: MRN

Date: 11/20/23

DRAINAGE AND TEMP. CONST. ESMT.
CITY OF NIXA

Olsson Associates, Inc. Survey MO
 Certificate of Authority #LC366
 550 St. Louis Street
 Springfield, MO 65806
 TEL 417.890.8802 FAX 417.890.8805



EXHIBIT

B