



TO: Mayor Shaun Sipma
Members of the City Council

FROM: John R. Zakian, DR Grant Program Manager & Chief Resilience Officer

DATE: August 23, 2018

SUBJECT: AUTHORIZE EMINENT DOMAIN FOR THREE CDBG-NDR ACQUISITIONS

I. RECOMMENDED ACTION

City Council authorize the Eminent Domain Process to commence for acquisition of 435 Fourth Avenue NE, 19 Fifth Street NE, and 105 Sixth Street NE

II. DEPARTMENT CONTACT PERSONS

John R. Zakian, DR Program Manager & Chief Resilience Officer, 423-4528

III. DESCRIPTION

A. Background

These three properties are located in what is identified as Buyout Area #4 in the HUD approved CDBG-NDR Action Plan. The city has carried out the due diligence with the owners of these properties as set forth in HUD's involuntary acquisition guidelines and the requirements of the federal Uniform Relocation Act including undertaking an independent appraisal, an independent review appraisal, administrative conformation of the appraisal, making an initial offer to the property owner based on the value established through the independent appraisal process, allowing sufficient time for the property owner to make a counter offer, city response to the counter offer, affording the property owner to appear and make a case of his/her proposed counter offer to the Appeals Committee, and a minimum 30 day opportunity for the property owner to accept the recommendation of the Appeals Committee which had already been accepted by the DR Grant Program Manager. The use of involuntary acquisition which may include Eminent Domain is predicated on the HUD and URA requirement that acquisition is for an acceptable public purpose (flood mitigation and control measures are acceptable), there is a defined boundary for such public purpose projects for there is no discretion in the properties to be acquired, there is a defined project, and there is a known timeline necessary to acquire the property. The timeline for flood mitigation projects communicated through the Joint Souris Water Board and coordinated with the city of Minot Public Works Department has reported the need for these properties no later than the end of summer, 2019. Because of the wide variation experienced in North Dakota courts in terms of scheduling and reaching conclusion in Eminent Domain cases, there is need now to authorize commencement of the Eminent Domain process. The requirement for City Council authorization is set forth in the policies and procedures established for the involuntary acquisition program. There is currently one Eminent Domain case now in the courts.

B. Proposed Project

Letters have been sent to the affected property owners advising them of this step of recommending commencement of Eminent Domain proceedings but informing them that the opportunity continues for them to avoid legal proceedings by accepting the final offer made.

Authorizing Eminent Domain proceedings by the City Council does not mean we will not continue to seek a resolution of the acquisition outside of a court decision. It does trigger the city's use of the outside counsel under contract for Eminent Domain proceedings. If you will recall, both Home Sweet Home and Open Gate Church had advanced to Eminent Domain authorization but were resolved prior to pursuing a court decision.

IV. IMPACT:

- A. Strategic Impact:
Provides all necessary options for city to acquire the properties on a timely basis consistent with flood control projects' timelines.
- B. Service/Delivery Impact:
Properties need to be acquired in support of flood control projects.
- C. Fiscal Impact:
All costs including outside counsel fees will be charged to CDBG-NDR acquisition allocation.

V. ALTERNATIVES
N/A

VI. TIME CONSTRAINTS
Property acquisition according to current flood projects' timelines need to be completed before end of summer, 2019.

VII. LIST OF ATTACHMENTS