



TO: Mayor Shaun Sipma
Members of the City Council

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

DATE: August 21, 2019

SUBJECT: **APPROVE EMINENT DOMAIN RESOLUTION FOR 1300 4TH Ave. NE, Minot**

I. RECOMMENDED ACTION

City Council approve resolution authorizing commencing Eminent Domain Proceedings for 1300 4th Avenue, NE, Minot, ND 58703

II. DEPARTMENT CONTACT PERSONS

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

III. DESCRIPTION

A. Background

This property is located in what is identified as Buyout Area #4 in support of the HUD approved CDBG-NDR Action Plan. The city has carried out the due diligence with the owner of this property 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, and multiple 30 day opportunities for the property owner to accept final offer made by the city or make further counter offers. 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 which 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 is communicated through the Joint Souris Water Board and coordinated with the city of Minot Public Works Department. 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 with other authorized cases currently still in negotiating phase.

B. Proposed Project

HUD rules set forth when it comes to Eminent Domain cases that it will accept and recognize requirements and practices for such legal action which are required or followed by the state in which the Eminent Domain action will be taken. On advice of the city's outside counsel specifically engaged to handle CDBG-DR and CDBG-NDR cases, it is recommended that a formal Resolution which includes specific detail be approved by the

City Council to assure standards are met based on state court precedent. Such resolution is consistent with the HUD rules and regulations. It should be noted, again, that even with an authorization to proceed and even during Eminent Domain court proceedings, the opportunity remains to reach amicable agreement on a purchase price meeting HUD and URA parameters, and it is the city's intent to seek to accomplish such an outcome

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
N/A

VII. LIST OF ATTACHMENTS

- i. Resolution authorizing Eminent Domain for 1300 4th Avenue NE. Minot, ND 58703