IN THE CITY OF CREVE COEUR

OF MISSOURI

CITY COUNCIL MEETING

300 NORTH NEW BALLAS

CREVE COEUR, MISSOURI

63141

JANUARY 11, 2016

Sherry A. Marshal
Official Court Reporter
22nd Judicial Circuit
St. Louis, Missouri

PUBLIC HEARING

MAYOR GLANTZ: Next item please.

MS. RYAN: Public hearing.

MAT WAHLBERG,

Having been duly sworn testified as follows:

MR. WAHLBERG: Good evening. My name is Mat Wahlberg. I'm the City Engineer for the City of Creve Coeur. Tonight we have a public hearing to discuss the potential use of eminent domain for the acquisition of the temporary easements necessary for the Emerson Sidewalk Improvement Project.

So I think the key word there in all of this is a temporary easement. We are talking about several temporary uses of people's property mainly for greater driveways and it's all necessary for the proposed sidewalk.

The Emerson Sidewalk Project has been in different phases of development for several years now. Starting in 2011 we created a Concept Plan for improvements to Emerson Road, which included sidewalks from Ladue to Old Ballas. Since then the city has been successful in applying for federal grants to get funding for $233,000 to supplement the sidewalk portion of the project. Earlier in 2015 the city was awarded transportation alternative program grant. Technically

Grant TAP 5526643 and we are currently working in the confines of that grant.

With that grant we anticipate construction either in the fall of 2016 or the spring of 2017 depending on how approvals and how the easement process goes.

With the federal grants we are bound by certain requirements. Grants are -- this is a federal grant, but it's administered by the Missouri Department of Transportation. The Missouri Department of Transportation started to have some new rules last year, I apologize, last year. In the spring we started to see some new rules regarding easement acquisition, right-of-way acquisition whereby the cities who have these grants were forced to indicate a date, a date by which you either would have all your easements, you would file for condemnation for any easements you didn't have or you would forfeit the grant. Those are the new requirements in 2015, and this is our first grant. The project has had this requirement with it.

For this project that date is April 29, 2016, so it's several months away, but right now we are looking at preparing for that date. For this project we have seven temporary easements, and those are on six different properties. Two easements are located on the

De Smet property, and those are required to remove the existing sidewalk that is outside of the current right away easements. We would remove it off of that property and build a new sidewalk on the existing easement, and we have exhibits and such we can go through any one of those in detail if you like.

The other five easements are located on residential properties. Those are 506 Emerson, 512 Emerson, 518 Emerson, 524 Emerson Road and 11970 Rocky Drive. Those easements are all needed to adjust the driveways to accommodate the new sidewalk. The sidewalk has to be essential flat as they cross the driveway. Four of those driveways are fairly steep, so in order to accommodate the sidewalk you have to grade back fairly far, and the other one is very flat, so it's the opposite problem, but you still have to do a lot of driveway work to make it drain.

Access will be impacted to these properties, but it will be a temporary impact. A standard condition of all our projects is that we require the contractor to maintain access at all times, so while access will be impacted, the impact would be for half of a drive way at a time. People of the residence will still be able to get in and out of their driveways, and the duration of the impact will vary, but we project

that would be probably start to finish for any given driveway say two weeks for the concrete work, a week for each side of the sidewalk, and then maybe it would be an extra day for the asphalt portion.

Bear with me for a second. So, why we are here today there is two reasons we are here today. One is the grant requirement to have this date whereby we would say the City will commit to filing for condemnation on properties. The second is the City's own eminent domain ordinance, Chapter 150 of the Municipal Code. We have several requirements before the City can authorize the exercise of eminent domain.

One of those is to demonstrate the project is not for economic development purposes. It's a public improvement project. It's been identified in the Capital Improvement Plan in various ways for several years. It's a new sidewalk where one didn't exist and it's been demonstrated as a public benefit.

The second -- so that's the whole, that's the essence of this first section, Section 150.010 and then we have a list of things, a list of items that the City Council must consider. One is there is a time limit for filing and the ordinance or the bill is included in the agenda packet for today, that the time limit is the end of 2016 for filing for condemnation. The City would

need a fairly generous extension of the grant to make it that far because the deadline for the grant itself is the end of April.

Is there adequate public disclosure? I would say yes. Certified mail was sent out to each of the affected property owners and the notice of public hearing was advertised in the paper, in the Countian Paper.

Some other issues. Relocation benefits. I don't feel these are necessary. Nobody will be relocated and nobody will be need to be.

Special measures. We don't feel it will be necessary. We will be proceeding in good faith.

And number five is to conduct this public hearing. So hopefully we've demonstrated we've met that requirement.

And, finally, Section 150.030 is that there is a consideration of mediation. The grant schedule doesn't necessarily allow for this, so we won't be pursuing anything special in terms of mediation. But we will have the negotiation process, and, if necessary, the court proceedings to deal with it.

In conclusion, the City's called this public hearing generally as a precaution. The City doesn't really want to go into condemnation. Actually, not --

well, in the list of things that the city staff wants to do, I don't think coming up before the City Council and saying condemnation and eminent domain are high on that list, but to have this public hearing, to go through this process, we make it possible to preserve the grant if it comes to April 29th, and we don't have all of the easements that we need.

So what the city staff is seeking authorization of the City Council to exercise eminent domain for these temporary easements, and in the meantime we will continue to negotiate with the property owners and try to acquire those easements through some form of negotiation, and some of that has already occurred. We have not acquired the easements to date, but we have verbal commitments to date, so I think we are succeeding through some of those easements, but like I said, we have to take this precaution in case there is an outstanding easement.

With that I would be happy to go into any of the specific easements in more detail, or the project in general in more detail, or answer any questions that you have.

MAYOR GLANTZ: Thank you, Mr. Wahlberg.

Questions or comments? Dr. Hoffman?

DR. HOFFMAN: Mr. Wahlberg, how many verbal

commitments do we have in favor of the easements of the five properties?

MR. WAHLBERG: We have two, and it is -- oh, shoot. I don't know exactly which ones, but they are two of the residential properties, but we've been in communication with five of the six property owners.

DR. HOFFMAN: And De Smet is not a problem?

MR. WAHLBERG: We have not secured De Smet's yet --

DR. HOFFMAN: Okay.

MR. WAHLBERG: But we are in communication with them.

MAYOR GLANTZ: Other questions or comments from members of the City Council?

(No response.)

MAYOR GLANTZ: Thank you, Mr. Wahlberg. Anything further? (No response.)

MAYOR GLANTZ: Mr. Perkins, anything further?

MR. PERKINS: No.

MAYOR GLANTZ: Mr. Lumley? And I want to go to comments from the public. Is there anything you would like to add to this proceeding at this point?

MR. LUMLEY: I can do the exhibits now or at the end, whichever you prefer.

MAYOR GLANTZ: Let's do those at the end.

MR. LUMLEY: Okay.

MAYOR GLANTZ: Is there anybody in the audience this evening that is affected by this Emerson Sidewalk Improvement Project that would like to address the City Council? If so, please come forward. Anybody that would like to speak, since this is a public hearing needs to be sworn in by the court reporter.

KATHLEEN CHRIST,

Having been duly sworn, testified as follows:

MS. CHRIST: Okay. I'm Kathleen Christ, and my address is 11970 Rocky Drive, and I have the largest property with two driveways that will be affected by this. So I have written up a statement. We've been there almost 30 years, and another family whose been there 40 years is electing to leave because they just don't want to go through any more Stuff. So I'm kind of summarizing for both of us and we are the ones that have been around the longest, you know.

So. All right. At the current time Emerson Road 60 plus years road, I'm not sure how old it is, but it's over that, by our homes has not been enlarged or made comparable to the Emerson Road south of De Smet High School. Much work and funding will be required to complete Emerson Road north of Old Ballas, to Old Ballas. Given the many issues and restrictions on the

existing road where the sidewalk is being proposed it appears the cart is before the horse. Much of Emerson Road south is already ready and waiting for a sidewalk installation. Everyone in the Balmoral Subdivision who will be directly affected by the construction are 100 percent in favor of a needed sidewalk, but since all of us have dealt with an extraordinary amount of traffic daily on the outer road of 270, a three-way stop that is too often ignored, and 1,200 teenage boys behind my backyard in De Smet High School, therefore, and therefore, young and very inexperienced drivers, and, incidentally, whenever it rains our part of Emerson becomes a river.

Okay. To say we have some issues is to put it mildly. Our mailboxes are run over regularly. Our trees and lawns are run up and yet we simply bear with it. A junior from De Smet High School ran up on our pine trees and totaled his parents' SUV, but fortunately no one was injured, but it was a brand-new SUV that was totaled.

Okay. To consider that a public sidewalk would be installed on such a narrow and dangerous road is inconceivable. To image families, young children running and playing, strollers, people jogging, and are walking their pets, et cetera, being invited to such a

public space is unthinkable. We live in the trenches, so please consider after 30 or 40 years here that we may have a perspective that you can't and you don't have.

Remember, Emerson Road, which is a frontage road of I-270, and runs by -- and we've counted up eight homes. I think you may have missed a home on Rocky Drive. It is right across from us, because they will also be affected, but they haven't been notified. They don't have a driveway, that's right. Anyway, they will have a sidewalk, okay. So the eight homes, we have no shoulder or curves and it's extremely narrow and broken. If the sidewalk goes in we will have to wait. Pedestrians still have the right-of-way before pulling into our driveways while causing a greater backup and blockage on this narrow road packed with cars as far as the eye can see about four hours a day. Two tight lanes exist with no room for a turning lane. How many ways can you say access and more problems enough for disasters. In short a world class bad idea. And mind you, we want the sidewalk, okay?

So our proposal to you is a beautiful sidewalk placed across the street from our homes. It could extend two unbroken miles from Ladue Road to Olive Street Road with no interference from streets, cars, traffic, et cetera. I realize with this placement that

a partnership with MODOT will be required and that may take more time. If in fact you have deemed this completely impossible then please begin on the part of the Emerson Road that has already been prepared as waiting and ready for construction.

If continuing with your current plans remain your free will choice, then we have much to discuss as far as our driveways and the layout of the sidewalks or concerns, cetera. Originally we were told that there would be time to work out the details and every effort would be made to save our trees, trees that have also saved our lives from crazy drivers on this dangerous road.

And the people down the street from me, they just had somebody plow up on their road last week, and somebody else took out the fire hydrant. This is all normal. See, probably where you live you don't encounter this all the time, so you wouldn't think this is normal, but this is normal for us. So neither the adequate time or the saving trees have happened, so empty promises are eroding any trust for a relationship that we could have had going forward.

Threatening eminent domain over installing a sidewalk is in the extreme, and actually harmful and abusive to the many senior citizens who have lived there

most of their lives. Plus a certified letter to this affect arrived in Christmas week. And, in fact, the whole point of this meeting is to strong-arm our acceptance of eminent domain.

We imagine there are many issues that will require another meeting. In the meantime, please seriously consider this most ill-fated, ill-conceived plan and the lives and limbs lost will be on your conscience.

Also I am not berating the good teenage boys of De Smet High School, which I do believe them to be, but neither do I want to set them up for failure. If you are proposing this project then please, dear God, take the time to do it right.

And, incidentally, Emerson Road north of Old Ballas is scheduled to be updated and fairly repaired and widened in 2020.

Also, we have a commericial developer who has officially contacted all the homes in the Balmoral Subdivision with a primary written offer for our homes. Should that happen your sidewalk project will be completely destroyed with the making of an entirely new and amazing entrance directly off of 270.

In either case, prudence would suggest waiting at least until the developer has completed his plans or

Emerson Road has been rebuilt.

MAYOR GLANTZ: Thank you for your comments, Ms. Christ.

MS. CHRIST: Should I leave this with you?

MAYOR GLANTZ: Please.

MS. CHRIST: Okay.

MAYOR GLANTZ: Is there anybody else that would like to speak on this issue?

If there are multiple people that would like to speak, all of you need to be sworn in.

WANDA WYATT,

Having been duly sworn testified as follows:

MS. WYATT: Good evening. My name is Wanda Wyatt. I am at 518 Emerson. My family and I moved in the first of June. We bought the ranch because we are caring for my elderly mom, and we needed everything to be on one level. We did quite a bit of renovation inside the house because she is wheelchair-bound, and we have a caregiver coming in daily to take care of her while I work. My husband and I work full time and so we get someone there all day.

Aside from the challenges of getting in and out of our driveway that this will present, I have to just back Kathleen 100 percent in saying that we do support having a sidewalk. We just think that there are

some better ways of addressing this.

Having a sidewalk across the street where -- I don't know if any of you have driven down Emerson -- but there is roughage, there is ditches, there is all kinds of land and space and opportunity across the street for development that won't as badly encumber the residents.

It won't take away trees that are currently buffering us from the sound and the visibility of 270. It won't take, in my case, 12 feet of my front yard, and take down two of the large pine trees that are buffering the sound from the highway.

So I would ask you to consider that seriously, and again, as Kathleen has stated, in my opinion developing the street before you add a sidewalk makes all the sense in the world. It would make more sense if it's for the public's good, which is what we were told that the part of this area that the public uses the most currently, which is the street, would be developed before a sidewalk that is rarely used that we don't see a lot of pedestrians walking because there is not a sidewalk, but I don't know how many of the high school kids will come down to that end of Emerson to get to anywhere when they can, you know, go out of the other side to Ballas to get to places to eat, places to go over their lunch hour. I think they would drive that

end of Emerson before they would walk.

That is all I wanted to say. Thank you.

MAYOR GLANTZ: Thank you for your comments.

Is there anybody else that would like to address the City Council on this hearing?

Any further questions from Members of the City Council?

Mr. Wahlberg, you've heard some of the comments. Do you have a brief follow up?

MR. WAHLBERG: Yes, and I will try to be brief.

I think something that Ms. Christ mentioned is -- was quite troubling to staff, and it's just the timing. We started talking to residents on Emerson over the summer, and the nature of how long it takes to get any sort of approvals for grant projects. We got the authority to begin talking to people about easements or right-of-way in early December. You know, we applied for it in October. And then that puts us sending out certified letters about eminent domain right before Christmas. That is certainly bad timing. That is not -- that doesn't start anything off in a good place. So I share Ms. Christ's concerns about that.

In terms of Emerson Road south of De Smet that owned by MODOT, and they've paved that asphalt shoulder

over there on their portion, and they've maintained it pretty well. I don't know exactly when that was done but certainly sooner than our section was done.

Placing the sidewalk on the west side of the street is a proposal we've heard, particularly from the residence we spoke to. I spoke to them over the summer. I think the problem you will find there is terrain. It's a decent hill on that side of the street and it's a wooded hill. If we are worried about removing trees I think we will remove more on the west side of the street, but it will admittedly have no impacts or driveways, but no one will be able to walk out of their front door or down their driveway to a sidewalk either whether you have access or not. That might be debatable.

And this proposed commercial development, it's hard to plan for that. If you plan for it, if we return the grant today and say we'll wait and see what happens with that commercial development, that may never happen. We may never get another grant either. I think we have to work with the opportunities we have right now. If a commercial development comes through in five years, removes and replaces the sidewalk, well then everyone can point to me and say we told you so, but that's hard to plan on that future development.

But I think that the sidewalk would get more use than we might think there are people who walk in the office part to the north, and the students from De Smet, we can see them outside of our windows here walking along where there isn't a sidewalk, and just north of the post office, I think they are typically going to the different restaurants on Ballas. I think they may find a different way, or even they are runners. They are always running along Ballas. I assume they would use the sidewalk on Emerson as well. But that is a lot of speculation, but I think that's why we are building a sidewalk is for that potential use.

MAYOR GLANTZ: Thank you, Mr. Wahlberg.

Any further questions or comments from Members of the City Council?

Ms. D'Alfonzo?

MS. D'ALFONZO: Have we talked to MODOT at all at any point about the sidewalk on the other side? Has that discussion ever been had?

MR. WAHLBERG: We have not proposed a sidewalk over there.

MR. D'ALFONZO: Because of the terrain?

MR. WAHLBERG: Correct. There is more space as you get to the residential portion of Emerson. As you get to De Smet and De Smet has a sidewalk.

Admittedly all of that will be replaced in this project, but once you get to the south side of De Smet you would have to use either the asphalt shoulder of Emerson or move the fence or something, but yet there isn't space there. Maybe there could be a crossing of Emerson but we have not proposed that to MODOT.

MAYOR GLANTZ: Dr. Lawrence?

DR. LAWRENCE: My concern, with the sidewalk on the west side, would be -- with so much traffic on Emerson, do you really want people crossing across the street to get to the sidewalk? I would be concerned that is a safety hazard.

MR. WAHLBERG: I would share any concern about safety. I think access would be hard. If we are going to build a sidewalk on a hill side we would probably put it closer to the top instead of trying to put it to the side of it. To get someone from Emerson up to that sidewalk would be a challenge. So I think if we put a sidewalk in it could be farther back off the street, but you may not actually see it from Emerson. I mean that's the point.

MR. PERKINS: I would add to that as you head to the south you are going to have to switch to the other side of the street most likely because the fence is right along the pavement as you approach Ladue Road,

so it's very unlikely if you're going to put a sidewalk right along a pedestrian -- along a road surface like that. It would be very awkward. I don't think MODOT would approve as well as with the terrain. Maybe it's not even feasible, but it would certainly be a lot more expensive.

DR. LAWRENCE: I think it would be a safety hazard. From what the residents have said some of those drivers aren't so great, and if you don't have a lot of room between the street and the sidewalk I would be concerned.

MR. WAHLBERG: And I think to add to the discussion, if we would put the sidewalk on the west side of Emerson I think that is different enough from what we've proposed for this grant that we would need to consider refiling for it.

MAYOR GLANTZ: Dr. Hoffman.

DR. HOFFMAN: I have walked this many times with my family and on the west side, especially south towards Ladue Road there is no room for a sidewalk. You've got the entire drainage system for the highway, which needs repair by the way, that is in the MODOT right-of-way inside the fence, to the highway side of the fence. There is no room for a sidewalk, and it would be a great safety hazard to put a sidewalk on that

side. I would not walk it on that side.

MAYOR GLANTZ: Any other questions or comments from Members of the Council?

(No response.)

MAYOR GLANTZ: Is there anybody in the audience that would like to be heard on this public hearing?

Seeing none. Mr. Lumley.

MR. LUMLEY: Mayor, I offer the following exhibits into the record of this public hearing. Documentation in possession of the city clerk reflecting the notice provided to the public, the draft ordinance with the proposed temporary easements attached to it, the city code of ordinances and charter, the city's comprehensive plan, and the public file regarding the grant application and development of this project.

MAYOR GLANTZ: Thank you, Mr. Lumley.

With that information is there, one last time, is there anybody else that would like to be heard during this public hearing?

(No response.)

With that, I call this public hearing closed.

MR. WAHLBERG: Thank you.

MAYOR GLANTZ: Thank you, Mr. Wahlberg, and thank you to everybody who spoke.

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25 **REPORTER'S CERTIFICATE**

I, SHERRY A. MARSHALL, a certified court reporter, for the State of Missouri, do hereby certify that pursuant to agreement came before me at the Government Center of the City of Creve Coeur, 300 North New Ballas Road, Creve Coeur, Mo. 63141 a hearing on January 11, 2016, and several witnesses by me first duly sworn to testify to the whole truth of their knowledge touching the matters herein; that the hearing was held and witnesses made presentations, and the hearing and witness's presentations were reduced to shorthand by me on the day, between the hours, at the place and that behalf first aforesaid, and later transcribed into typewriting and said transcript is now herewith returned.

IN WITNESS WHEREOF, I have set my hand this 16th day of January, 2016.

/s/ Sherry A. Marshall

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Sherry A. Marshall, CCR #486