

COUNCIL ACTION FORM

SUBJECT: NOTICE OF INTENT TO PROCEED WITH SOUTH GRAND AVENUE EXTENSION PROJECT AND OBTAIN EASEMENTS AND PROPERTIES BY EMINENT DOMAIN TO LAND OWNERS AND TENANT INTEREST, IF NECESSARY

BACKGROUND:

This project is for the extension of South Grand Avenue from South 3rd Street to South 16th Street. Included is an extension of South 5th Street (South Grand Avenue to South Duff Avenue) as well as improvements to the South Duff Avenue (US 69)/South 16th Street intersection. Extending South Grand Avenue to South 16th Street will divert traffic from the US 69 corridor (Grand Avenue/Lincoln Way/South Duff Avenue). It will help alleviate the existing congestion and allow for easier access to businesses along US 69. In addition, through-traffic will also encounter less traffic congestion by using the South Grand Avenue extension.

The South Grand Avenue Extension continues to be included in the Capital Improvements Plan (CIP) with funding identified since FY 2013/14 and continuing through FY 2018/19. Funding shown in the CIP for FY 2017/18 and 2018/19 includes \$7,700,000 in G.O. Bonds, \$4,300,000 in MPO/STP Funds, and \$3,450,00 in Federal/State grant funds. In general, construction is anticipated to commence in 2019.

The projects have been progressing since early 2017 when the design was kicked off and the "Finding of No Significant Impact" was received from the Federal Highway Administration in May 2017. **Right-of-way acquisitions with numerous property owners and permitting through the Iowa Department of Natural Resources (DNR) and US Army Corps of Engineers (USACE) is underway.**

SOUTH 5TH STREET (GRAND AVENUE TO SOUTH DUFF AVENUE):

The design of this phase of the project is approximately 90% complete. The plans have been reviewed by the Iowa DOT and City staff at both the "preliminary" and "check" plan stages.

The acquisition for both permanent right-of-way and the necessary temporary easements is underway for multiple parcels. Several property owners have agreed to accept offers based on appraisals. One parcel owner within this project segment has indicated they are not in agreement with the appraisals and offers and an agreement has not been reached.

428 Stonehaven Drive – This parcel is owned by Stone Court Apartments Cooperative Housing Association. **The owner has agreed to a voluntary settlement as of September 26, 2018.**

450 South Grand Avenue – This parcel is owned by Kent and Joan Cooper. The southern portion of this parcel is needed for the project as South 5th Street must cross the parcel. Additionally, the portion south of South 5th Street leading to Squaw Creek is planned to be acquired as the roadway severs the parcel by cutting through the middle. The portions to be acquired lie within the existing floodplain and/or floodway for Squaw Creek.

Ryan Gurwell, right-of-way agent with A & R Land Services, Inc., is handling all the negotiations with the property owners on the City's behalf. On September 15, 2017, an appraisal was completed on the land to be acquired for the project by Commercial Appraisers of Iowa (an appraiser retained by the City). This appraisal established the value of the property to be acquired at \$98,300.

With the appraised value established, the City initiated negotiations with the property owner. A timeline of those negotiations follows.

- **September 15, 2017:** The reviewed and approved Appraisal Report for all real estate lying south of the planned South 5th Street in the amount of \$98,300 was mailed to the landowner.
- **October 26, 2017:** A meeting was held with the project team at FOX Engineering and Kent Cooper, his attorney Brian Torresi, and other landowners and representatives. **Mr. Cooper indicated he wants his property rezoned from agricultural to high density residential so the property remaining after the roadway is constructed can be developed with apartments. The City's representative indicated that we cannot include rezoning or building permits as a part of negotiations for acquiring property rights for this road improvement project.** Mr. Cooper also indicated that the City should reduce its taking if possible because he may need more land for fill and other development purposes. On October 31, 2017, Shive-Hattery provided an exhibit, minimizing the taking to only what was needed by the City for this road project. A detailed explanation letter and exhibit were mailed to the landowners.
- **November 29, 2017:** A notice letter was sent to the landowners indicating that the City authorized an appraisal for the reduced taking. On December 31, 2017, a revised Appraisal Report for the reduced land taking in the amount of \$32,500 was mailed to the landowners with an explanation letter. The letter included an offer to still purchase all the land originally identified for \$98,300 based on the original Appraisal Report.
- **February 15, 2018:** Mr. Cooper sent a response letter/counteroffer. The letter included a detailed explanation as to why the subject property should be rezoned

for residential development. The letter also included a statement that the City can either make a reasonable offer for all the property, or Mr. and Mrs. Cooper will investigate the rezoning process with City Council directly.

The Appraisal Report was prepared by an experienced Eminent Domain Certified General Real Property Appraiser, which was the basis of offers presented by the City to the landowner. All applicable acquisition documents were also presented to Kent and Joan Cooper with an explanation of each document contained in the letter. The City reduced the taking to the minimum amount of real estate needed to complete the road improvements for this project, as requested by the owner. **On August 3, 2018, after extensive discussion and design review by the City, a letter was mailed to Kent and Joan Cooper, explaining that their counteroffer dated February 15, 2018 was rejected.**

- **September 25, 2018:** Ryan Gurwell had a discussion with Mr. Cooper regarding his position on the information the City sent to him. Mr. Cooper's response was that he has been working with his attorney and FOX Engineering on a formal response for the City. Mr. Cooper's issue isn't regarding the compensation amount but the rezoning of his property to allow for residential development. He also mentioned working with his attorney and planning to address the City Council directly at the next meeting October 9, 2018.

At this point, staff concluded that the negotiations were at impasse. Rezoning of property is not a consideration during right-of-way acquisition under Iowa law. **The City's final offer letter to purchase the reduced land area for \$32,500 was mailed to Kent Cooper on September 25, 2018.** Mr. Cooper was given a deadline of end of business October 8, 2018 to settle the acquisition voluntarily.

It should be noted that City staff has worked with the property owners to minimize the impact of the project on their property by reducing the taking to the minimum amount of real estate needed to complete the road improvements for this project. Staff anticipates being ready for bidding as early as January 2019, so it is important to continue the process of acquiring the land needed for the project, which includes moving forward with the eminent domain process.

SOUTH GRAND AVENUE EXTENSION (GRAND AVENUE TO SOUTH 16TH STREET):

The design of this phase of the project is approximately 90% complete. The plans have been reviewed by City staff and were sent to Iowa DOT for "preliminary" and "check" plan stages. The acquisition for both permanent right-of-way and the necessary temporary easements is underway.

Iowa State University property: ISU staff verbally have no objections to easement acquisition. City staff, ISU Facilities Planning and Management staff, and the respective engineering consulting staffs have met several times to discuss the overall project,

answer questions, and get the preferred solution for realignment of Worle Creek along the new South Grand Avenue (hence the reason for the needed easement). **The City Attorney reviewed and approved the proposed easement; and the final approval from Iowa State University must come from the Board of Regents.** The Board meeting would be in February 2019 with several readings, ending in final approval in April 2019.

Marvin J. Walter Generation-Skipping Trust property: The owner has agreed to acquisition. City staff recently received signed agreement documents from the Trust and will bring this transaction to City Council for authorization in the near future.

Scott E. Randall property (1400 South Grand Avenue): The remaining parcel acquisition is owned by Scott E. Randall and is in the southern portion of Coldwater Golf Links (includes the Clubhouse). Several meetings were held to discuss the project impact on the golf course with Mr. Randall and his staff. During those meetings, Mr. Randall requested that the City take the following actions:

- Change the alignment of the road to instead be along the existing Vet Met Trail alignment.
 - Staff response: This alternative alignment was already considered as part of the NEPA process. After that process, the proposed alignment was recommended as the best route for the project.
- Change the golf cart passage culvert (10 ft x 12 ft) to a bridge.
 - Staff response: This would increase the project costs by approximately \$1.3 million. The box culvert is designed to accommodate two-way passage of golf carts and will be lighted along with the roadway street lighting.
- Change the roadway construction to 4 lanes now instead of widening later.
 - Staff response: The two-lane design has been established using 2040 traffic projections. However, the design has also provided the ability to widen the roadway in the future. The traffic study projects the 2040 traffic on this section of South Grand Avenue at approximately 7,600 vehicles per day. Typically, for a section of road similar to South Grand Avenue, a 4-lane road is not warranted until volumes reach 15,000 to 18,000 vehicles per day. Additionally, the present design provides turn lanes at South 5th Street and widens to four lanes to match the existing four lanes on South Grand Ave at South 16th Street. Construction of a 4-lane roadway is estimated to cost an additional \$6 million.
- Add a fence over the entire length of the new roadway.
 - Staff response: This request is being evaluated for feasibility as part of the current design.

- Provide the golf course with a driveway access directly onto South Grand Avenue.
 - Staff response: Access control is critical for maintaining a safe roadway corridor. Two driveways already exist along South Grand Avenue into Coldwater Golf Course and Campus Crest Apartments. Because of the existing driveways that will maintain access, staff does not support adding additional driveways.

With the appraised value established, the City initiated negotiations with the property owner. A timeline of those negotiations follows.

- **April 20, 2018:** After thorough review of the landowner requests (stated above), the City made a final decision on design and construction plans for the Randall property. An appraisal was completed, reviewed, and approved. The approved appraisal report was mailed to Scott Randall with a 10-day waiting period notice per the requirements of Section 6B.45 of the Code of Iowa. The appraisal amount was \$63,600 for this parcel.

To obtain soil borings for the project design, City staff sent Mr. Randall a letter via certified mail on April 20, 2018 in accordance with Iowa Code 314.9. The geotechnical crews entered the property and obtained these soil borings. Mr. Randall still maintained he is against the design of the road through the golf course real estate.

- **July 23, 2018:** With the City's understanding that Mr. Randall had decided not to cooperate, further attempts were still made to negotiate with Mr. Randall. The City directed Ryan Gurwell to present the formal offer with the proposed acquisition documents for Mr. Randall's review, which were delivered to Mr. Randall's office for both Parcels 17 and 20 on July 23, 2018, including explanation letters.
- **August 7, 2018:** Mr. Randall responded to Ryan Gurwell after reviewing the documents delivered on July 23, 2018. Mr. Randall stated there were five issues for which he wanted a formal response from the City (as noted above) before continuing negotiations. Mr. Randall also indicated that he planned to order his own appraisal for the City's consideration.
- **August 23, 2018:** Ryan Gurwell received a letter from Franklin Feilmeyer, attorney representing Scott Randall. The focus of this letter was pertaining to the leasehold interest held by Legacy Golf Associates, Inc. on the entire Coldwater golf course real estate, including land owned by Scott Randall, Iowa State University (ISU), and the Marvin J. Walter Generation-Skipping Trust. Mr. Feilmeyer requested a proper compensation offer from the City for said leasehold interest. However, no specific compensation amount was requested.

- **September 26, 2018:** Ryan Gurwell sent an email to Mr. Randall including formal answers to his previous four requests and inquired whether Mr. Randall had an appraisal as he previously stated would be ordered that the City could review. Also included was explanation that the additional leasehold compensation (requested by Mr. Randall's attorney) is not typically offered by the City prior to the landowner presenting an appraisal for the City's consideration (which had been the plan since August 7th). This separate appraisal is needed for the leasehold interest by Legacy Golf Associates for the entire golf course real estate. Once the City reviews the appraisal, it can be determined whether the City will obtain an independent appraisal for leasehold interest. The cost associated with this will be approximately \$7,000. The City has not yet directed Ryan Gurwell to order this appraisal.

It should be noted that City staff has worked with the property owner to minimize the impact of the project on the property. The roadway project is anticipated to impact two of the existing golf course holes, which will be restored as part of the project. The first area is the rear tee box on Hole 8. This tee box is too near to Worle Creek to allow for the relocation of the creek bank where Worle Creek is impacted by South Grand Avenue. This impact is located on land owned by ISU. An alternate location for the tee box directly west of the existing location has been identified. The other area of the golf course to be impacted is the existing cart path between the front nine holes and back nine holes. South Grand Avenue will directly cross this path. A roadway underpass has been included in the design plans to accommodate two-way golf cart traffic and the associated paths will be reconstructed as required.

Staff anticipates being ready for bidding as early as January 2019, so it is important to continue the process of acquiring the land needed for the project, which includes moving forward with the eminent domain process.

Provisions from Section 6B.2A of the Iowa Administrative Code have been followed for formal notification and negotiations with property owners. Although staff were hopeful the purchase of property/properties and easements required could be negotiated without condemnation, an agreement for a voluntary sale or easement for land owned by Kent and Joan Cooper and by Scott E. Randall have not been reached at the time of this staff report. Condemnation appears necessary to move the project forward.

ALTERNATIVES:

1. Approve by resolution a declaration of the City Council's intent to proceed with eminent domain, as necessary, to acquire the property, including leasehold interest, for the construction of the South 5th Street and South Grand Avenue Extension projects.

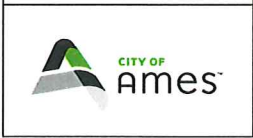
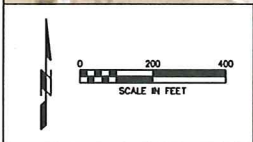
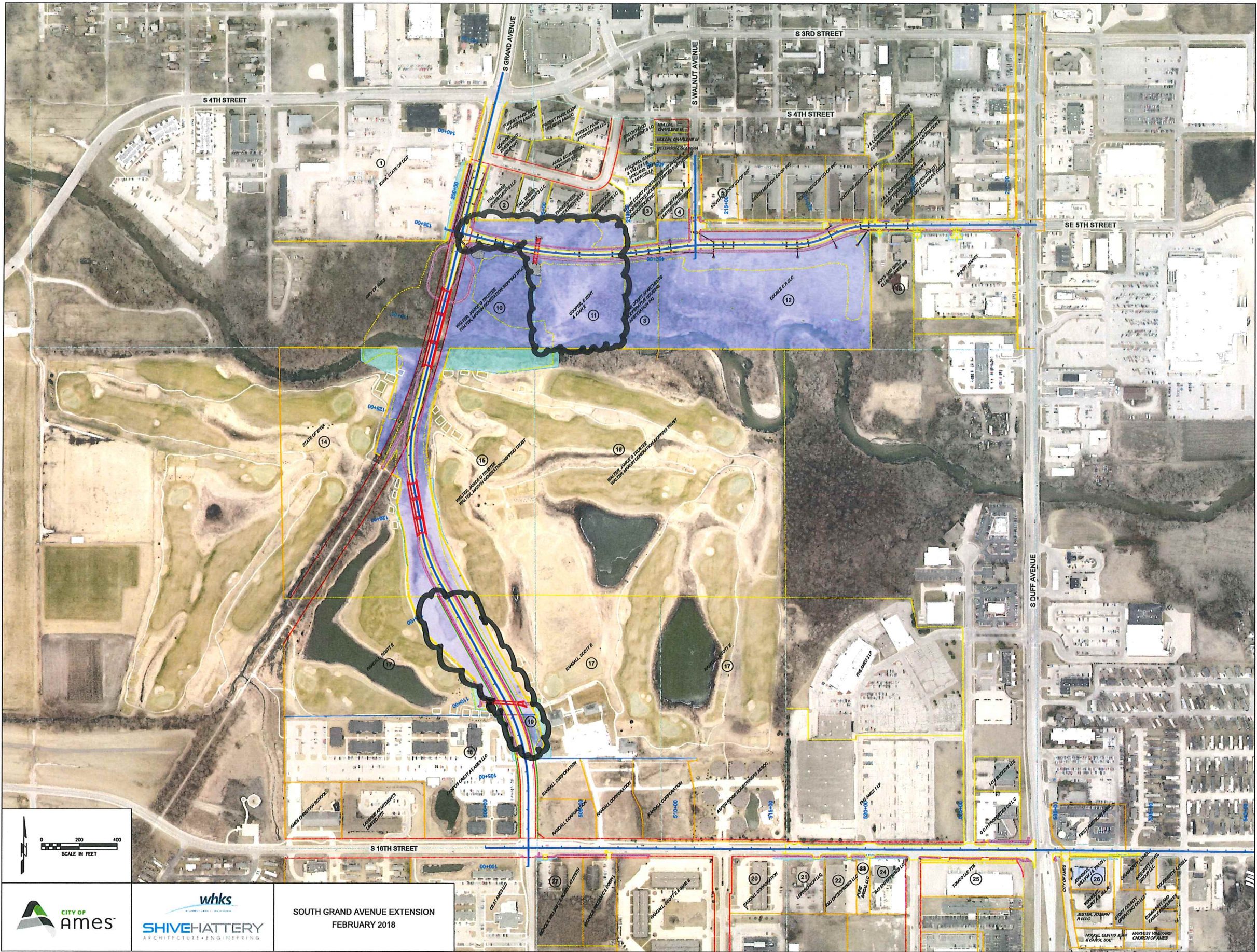
2. Direct staff to continue negotiation with the property owners, thereby not yet exercising municipal rights to acquire land through the eminent domain process, thereby likely delaying the construction of these projects.

CITY MANAGER’S RECOMMENDED ACTION:

Staff and the City’s land acquisition agent have made good-faith efforts to negotiate land acquisition with these property owners. Unfortunately, an impasse has been reached in those negotiations regarding key properties.

The use of eminent domain is a power that the City uses only as a last resort to ensure that its ability to provide essential services for the community is not compromised. The potential precedent of paying an exceptional premium for land has a very real likelihood of driving up land acquisition costs for any future projects by the City. Additionally, rezoning of property is not a consideration during right-of-way acquisition under Iowa law. Staff has gone as far as it can to reach voluntary agreements, but has unfortunately reached impasse with the remaining property owners. The recommendation in this case comes only after a protracted period of good faith negotiations by City staff.

All obligations required by the Code of Iowa have been fulfilled, preserving the use of eminent domain. Therefore, it is the recommendation of the City Manager that the City Council adopt Alternatives #1a and #1b as described above.



SOUTH GRAND AVENUE EXTENSION
FEBRUARY 2018

