

FOR BOARD ACTION

Agenda Item # 7

Meeting Date:

12/17/09

SUBJECT:

Initiation of Eminent Domain Proceedings

PREPARED BY:

Joe Hensel, Director of Field Services

ITEM DESCRIPTION:

The Minnesota Public Utilities Commission (MPUC) issued a route permit for the Westside 161 kV transmission line on August 7, 2008. The permit defines the precise route and prescribes the ROW for the transmission line. The construction of the transmission line, linking the IBM substation and the new Westside Substation, is underway. RPU has acquired essentially all of the right-of-way (ROW) needed for the project, with the exception of a ¼ mile long easement located in Section 20 of Cascade Township. Although negotiations were started in July, we appear to be at an impasse with the land owner regarding compensation for the outstanding 0.75 acre easement. If resolution cannot be reached through negotiations, Minnesota Statutes 117 Eminent Domain is the appropriate process to determine fair compensation.

RPU's project construction schedule identifies completion of the transmission line in the spring of 2010 to avoid damage to planted crop fields. Statute 117.042 contains "quick take" provisions for situations where possession is required prior to the filing of award by the court appointed commissioners. Statute 117.042 requires the City to notify the land owner of its intent to possess at least 90 days prior to the date on which possession is to be taken. RPU Board policy states, "Proceedings for condemnation of property rights may be initiated only upon resolution of Board and Common Council.

Management will continue to negotiate in good faith with the land owner and every attempt will be made to reach resolution in a manner consistent with Board policy and RPU's ROW acquisition guidelines. Management requests Board approval to initiate eminent domain proceedings in parallel with continued negotiations.

A copy of the Board Policy Statement, "Acquisition and Disposal of Interest in Real Property" is attached. Pursuant to item 3 of the policy and under the terms of Section 15.07 of the Home Rule Charter or the City of Rochester, advance notification has been provided to the City Administrator's office.

UTILITY BOARD ACTION REQUESTED:

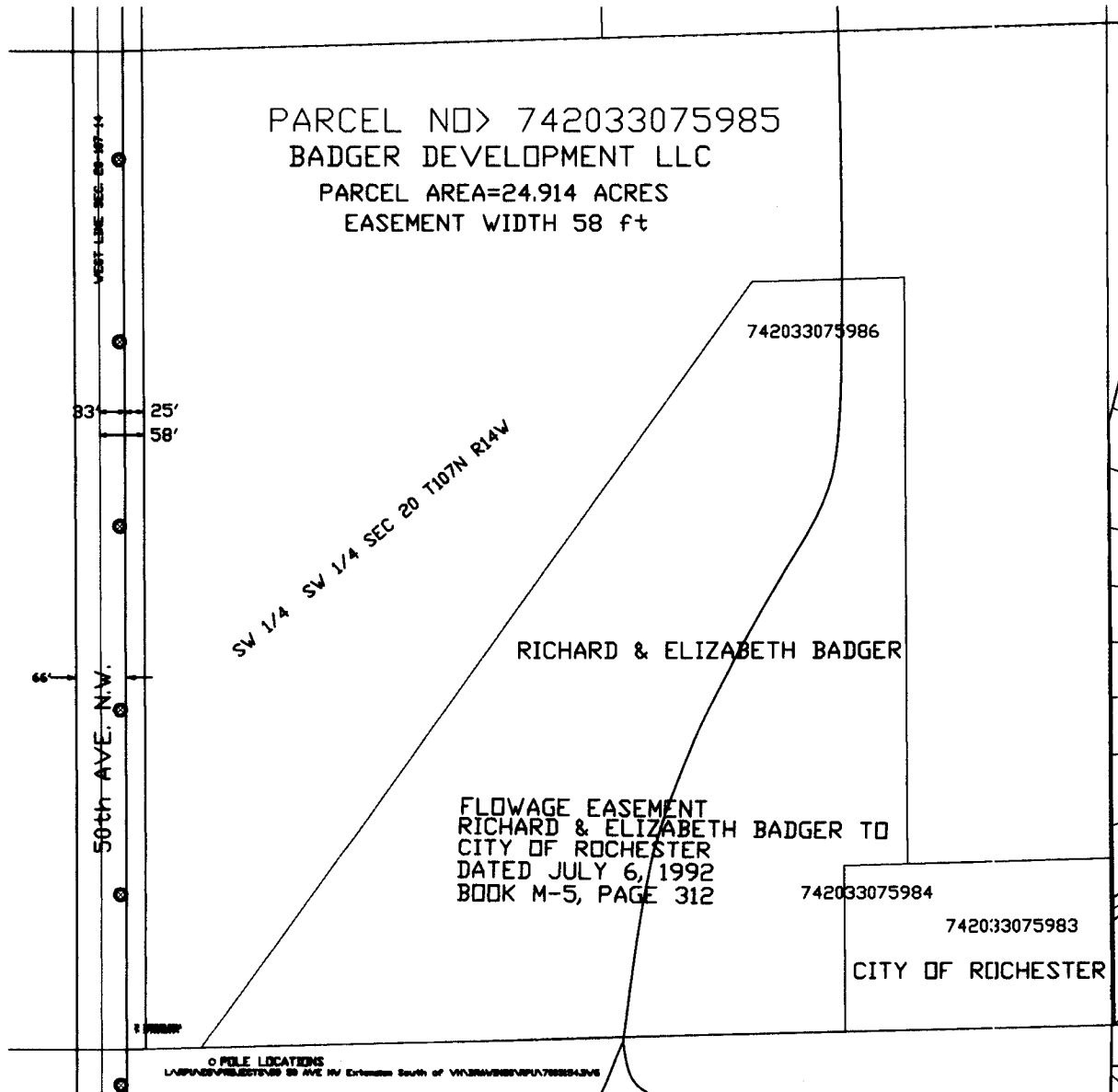
Management requests Board approval to initiate eminent domain proceedings and to recommend to the City Council to authorize this action.


General Manager


Date

ROCHESTER PUBLIC UTILITIES

PARCEL NO> 742033075985
BADGER DEVELOPMENT LLC
PARCEL AREA=24.914 ACRES
EASEMENT WIDTH 58 ft



ROCHESTER PUBLIC UTILITIES

BOARD POLICY STATEMENT

POLICY SUBJECT: ACQUISITION AND DISPOSAL OF INTEREST IN REAL PROPERTY

POLICY OBJECTIVE:

The Board's objective is to acquire and retain interest in real property only when such interest is used or anticipated to be used in connection with the operation of the public utility enterprises under its jurisdiction. It is also the objective of the Board to pay no more than is necessary for the acquisition of real property or property rights and, thereafter, to preserve the value of these property assets for the benefit of the utility ratepayers.

POLICY STATEMENT:

1. The RPU will purchase or lease real property and property rights only when such property or property rights are to be used in connection with the operation of the public utility enterprises under its jurisdiction.
2. Real property or property rights held by the RPU will be sold or released when no longer used or anticipated to be used for utility purposes.
3. All fee purchases, sales, transfers, lease agreements, license agreements, and easement agreements requiring financial consideration in excess of \$25,000 shall be approved by resolution of the Board. (Resolution of the Common Council is also required for financial consideration in excess of \$100,000.) Advanced notification will be given to the City Administrator in accordance with Section 15.07 (Subdivision 1, D 2) of the Home Rule Charter of the City of Rochester. All purchase or lease agreements shall be executed in writing by signature of the Mayor and City Clerk.
4. All fee purchases, sales, transfers, or lease agreements, requiring financial consideration in excess of \$25,000 shall be made only after having received at least one independent property appraisal. The Board, at its discretion, may request two or more independent appraisals. It is the intent of the Board to acquire property interests at a cost not to exceed fair market value and to dispose of property interests at a cost not less than fair market value.
5. The Board, in return for providing utility services on previously unplatted or undeveloped lands, requires the landowner or developer to grant the necessary perpetual utility easements for a nominal financial consideration (\$1.00).

6. All interest in real property shall be obtained by the RPU in the name of the City of Rochester. Property obtained by the RPU shall be recorded as an asset in the continuing property records of the appropriate utility enterprise. Such property shall be removed as an asset when disposed of.
7. The cost of interest in real property shall be paid out of the utility enterprise fund(s) for which the property will be used. All cash derived from the sale of property interests acquired for or in connection with utility operations shall be returned to the utility enterprise fund(s) for which the property was used.
8. Proceedings for condemnation of property rights may be initiated only upon resolution of the Board and Common Council.

RELEVANT LEGAL AUTHORITY

SECTION 15.07 (Contracts). Subdivision 1. The public utility board, in its sole discretion and as it deems necessary, may perform the following actions: (A) subject to Subd. 2, acquire such real and personal property, or any interest therein; (B) enter into any contract, so long as the board's approved annual budget contains an appropriation to pay the contract amount; (C) enter into any contract when the board's approved annual budget does not contain an appropriation to pay the contract amount so long as the contract amount is less than \$100,000.00; and (D) enter into a contract for the sale of real property, or any interest therein, if (1) the amount of the contract is \$100,000.00 or less, and (2) the board provides advance notice to the city administrator of its intent to execute the contract.

SECTION 15.07 Subdivision 2. The public utility board, with authorization by resolution of the Common Council, may enter into a contract if the contract: (A) involves a capital appropriation which is not contained within the board's approved annual budget and exceeds the amount of \$100,000.0; (B) involves the sale or purchase of real or personal property in an amount greater than \$100,000.00; or (C) establishes any officer's salary or employee's wage.

EFFECTIVE DATE OF POLICY:

October 14, 1988

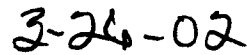
DATE OF POLICY REVISION:

March 26, 2002

POLICY APPROVAL:

A handwritten signature in black ink, appearing to read "R. H. Handweh", written over a horizontal line.

Board President

A handwritten date "3-26-02" in black ink, written over a horizontal line.

Date



RESOLUTION

WHEREAS, it is necessary for the City of Rochester to acquire certain interests in real property, in the area of the proposed Westside 161 kV transmission line project; and,

WHEREAS, the transmission line route and right-of-way are defined by the route permit (Docket No. E299/TL-07-1366) issued by the Minnesota Public Utilities Commission; and,

WHEREAS, all right-of-way for this project has been acquired with the exception of a utility easement in the SW ¼ of the SW ¼, Section 20, Cascade Township (Parcel I.D. No. 74.20.33.075985) and it may not be possible to acquire the necessary easement through a process of voluntary negotiation with owner, Badger Development III, LLC; and,

WHEREAS, the construction of the proposed transmission line will support an effective and efficient electric utility system in this area of the City, provide necessary electric services to customers, support public safety and welfare, and constitutes a lawful and public purpose; and,

WHEREAS, construction of the project is anticipated to begin soon and therefore acquisition of such property interests is needed as soon as is legally possible.

NOW, THEREFORE, BE IT RESOLVED by the Public Utility Board of the City of Rochester, that eminent domain proceedings pursuant to Minnesota Statutes, Chapter 117 is hereby approved;

BE IT FURTHER RESOLVED that the Common Council of the said City is requested to authorize eminent domain proceedings;

BE IT FURTHER RESOLVED that the City Attorney is authorized and directed to initiate, in the name of the City of Rochester, appropriate proceedings pursuant to Minnesota Statutes, Chapter 117, including use of the 90-day "Quick Take" proceeding, in order to acquire any interests or interests in lands necessary which cannot be otherwise obtained voluntarily, needed to facilitate the construction of this electric transmission line project.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 17th day of December, 2009.

President

Secretary