

City of Fayetteville Staff Review Form

City Council Agenda Items  
and  
Contracts, Leases or Agreements

5/1/2012

City Council Meeting Date  
Agenda Items Only

Chris Brown <sup>CB</sup> Engineering Development Services  
Submitted By Division Department

Action Required:

A Resolution Approving a Settlement with David Druding and Susan Druding for Purchase of Right of Way along Cato Springs Road

|                      |                           |   |
|----------------------|---------------------------|---|
| \$ 8,600.00          | \$ 13,451,110.00          | Transportation Bond Street Improvements |
| Cost of this request | Category / Project Budget | Program Category / Project Name         |
| 4520.9520.5805.00    | \$ 4,616,500.00           | Land Acquisition                        |
| Account Number       | Funds Used to Date        | Program / Project Category Name         |
| 06035.1200           | \$ 8,834,610.00           | Sales Tax Construction Bonds            |
| Project Number       | Remaining Balance         | Fund Name                               |

Budgeted Item  Budget Adjustment Attached

William C. Pate 4-18-2012 Previous Ordinance or Resolution # \_\_\_\_\_  
Department Director Date

John Kelly 4-18-12 Original Contract Date: \_\_\_\_\_  
City Attorney Date Original Contract Number: \_\_\_\_\_

Paula A. Bahr 4-18-2012 Received in City 04-13-12 A11:43 RCVD  
Finance and Internal Services Director Date Clerk's Office

Don Man 4-18-12 King J.  
Chief of Staff Date

Leonell Joylar 4/18/12 Received in Mayor's Office  
Mayor Date

Comments:

**CITY COUNCIL AGENDA MEMO**

City Council Meeting of May 1, 2012

**To:** Mayor Jordan and City Council

**Thru:** Don Marr, Chief of Staff  
Jeremy Pate, Director of Development Services *JR*

**From:** Chris Brown *CB*

**Date:** April 18, 2012

**Subject:** Approval of a Settlement with David Druding and Susan Druding for Purchase of Right of Way and Easements along Cato Springs Road

**PROPOSAL:**

Cato Springs Road is being improved from South School to Razorback Road as a part of the Transportation Improvement Bond Program. Right of way acquisition was required from many of the property owners along the route. In order to move forward with the project to bidding and construction, condemnation action on some of the properties was approved by the City Council. The City Attorney filed condemnation suits for these properties, and received Orders of Possession from the Circuit Court so that the project could move forward.

In the case of the David and Susan Druding property, \$6,400, representing the City's appraised value for the right of way and easements, was deposited with the Court at the time of the filing. The case has proceeded through the court system, up to the point of a jury trial to determine the actual just compensation to be paid to the Drudings. During the trial yesterday, April 17<sup>th</sup>, a settlement was reached with the Drudings in the amount of \$15,000, subject to approval by the City Council.

**RECOMMENDATION:**

Staff recommends approval of a Resolution authorizing the settlement of the Druding Condemnation Case, and approving an additional \$8,600 payment to David Druding and Susan Druding. This settlement is between the City's latest appraised amount of \$7,100 and the Druding's appraisal of \$18,250, and is recommended as a settlement that is fair and equitable to both the City and the Drudings.

**BUDGET IMPACT:**

The payment for land acquisition will be made from the project budget allocated for the Cato Springs Road Improvements Project, which is funded by the Transportation Bond Fund. An additional payment of \$8,600 will be made to the Drudings, making the total compensation to them \$15,000.

This is the final property condemnation on the Cato Springs Project that had not been resolved.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION APPROVING A SETTLEMENT AGREEMENT WITH DAVID AND SUSAN DRUDING, CONCERNING CONDEMNATION LITIGATION FILED AS PART OF THE CATO SPRINGS ROAD IMPROVEMENT PROJECT, IN THE TOTAL AMOUNT OF \$15,000.00

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves an agreement with David and Susan Druding, in a total amount of \$15,000.00, as full and final settlement of condemnation litigation (City of Fayetteville v. Druding, et al, Washington County Circuit Court Case No. CV 2010-3709-4) filed as part of the Cato Springs Road Improvement Project.

Section 2: That the City Council of the City of Fayetteville, Arkansas, in furtherance of the settlement, hereby approves payment of an additional \$8,600.00 over and above the \$6,400.00 placed on deposit with the court.

**PASSED and APPROVED** this 1<sup>st</sup> day of May, 2012.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN**, Mayor

By: \_\_\_\_\_  
**SONDRA E. SMITH**, City Clerk/Treasurer



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Departmental Correspondence



LEGAL  
DEPARTMENT

Kit Williams  
City Attorney

Jason B. Kelley  
Assistant City Attorney

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

CC: KIT WILLIAMS, CITY ATTORNEY

FROM: JASON B. KELLEY, ASST. CITY ATTORNEY

DATE: APRIL 18, 2012

RE: DRUDING CONDEMNATION MATTER/CATO SPRINGS RD. PROJECT

I am pleased to report it appears an amicable settlement has been reached in the above-referenced condemnation case, subject to your approval.

To refresh your memory, the City Council authorized condemnation of right-of-way, a general utility easement and a temporary construction easement from David and Susan Druding, a brother and sister, (and other property owners) along property they owned on Cato Springs Road for purposes of completing the Cato Springs Road Improvement Project.

The Drudings have the last unresolved condemnation case related to the Cato Springs Road project. During the course of the litigation, the Drudings, who were representing themselves without an attorney, insisted that the City pay full fee simple value for the partial taking of the easement the City had to have for utilities. We strongly disagreed with this assertion as contrary to the law.

The Drudings' case was scheduled for trial April 17, 2012. While in court and after the jury was selected, the judge called for a conference in his chambers to inform the parties he agreed with the City's position on the method of calculating compensation owed for the partial taking of an easement and that he would be instructing the jury regarding this correct measure of damages (the before-and-after approach and not the 100% value approach to easement acquisition required of public utility companies). The judge then strongly encouraged the Drudings and the City to reach an amicable settlement.

The judge has approved, conditioned upon your approval, a total settlement of \$15,000.00 to the Drudings as just compensation for the takings. This represents an additional \$8,600.00 payment over and above the initial \$6,400.00 already paid into the court at the beginning of the case. Days before trial, the Drudings were demanding \$32,000.00. The proposed settlement is less than half of that demand, and it is substantially less than the Drudings' appraiser's estimate of \$18,250.00.

I recommend acceptance of this settlement. Though a long process, this case has allowed the City to establish, once again, that sovereign governments are not required to pay 100% fee simple value for the partial taking of easements. To this extent, pursuit of this case has been well worth the City's time and effort in litigation.



