

Decatur County Commissioners

Special Called Meeting

Monday, July 23rd, 2012 8:00 a.m.

Present: Rick Nobbe, John Richards, Jerome Buening

Commissioner Jerome Buening announced that the special meeting was called to discuss right of way acquisition for property adjacent to the Bridge 18 project. In an effort to remain fair to the other landowners and the taxpayers of Decatur County, there was much discussion over the amount and the additional demands being made by one particular landowner. At Mr. Buening's request, Aecon engineer Ron May and County Attorney Peg Polanski were in attendance. Tim Ortman of the Decatur County Highway Department was also in attendance. Mr. May reported that of the seven properties involved, three were already completely settled with three more being verbally agreed upon. He discussed the time frame and the concerns of losing funding if the bridge project is delayed. The project is scheduled for a December bid-letting through INDOT. If right of way issues aren't settled timely, it will delay the entire process. It typically runs six weeks or so after a letting that contractors receive a notice to proceed and with tree cutting restrictions being in place from April through fall and another restriction due to fish spawning season, the trees need to be down before February or March. If the delay causes the project to wait until a February letting, the notice to proceed will be issued too late for the trees to be cut. The reality is that the property needs to be secured by October 1st.

Mr. May has looked carefully at the request. The initial appraisal was given to the property owner. The property owner made a counter-proposal that included more money, modifications to the driveway, the property owner wanted to keep trees and a wanted a field entrance created on the east side and some fill slopes flattened out from the original plans. The county considered the proposal acknowledging that expanding the right of way has environmental complications and the out of pocket expense to the county would be \$7700. Mr. Buening asked about the slope modification and Mr. May said that the original design conformed to all applicable INDOT standards. Mr. Buening stated that what the property owner is asking for is over and above what INDOT and the counter offer is still over and above what is required by INDOT standards. The trees are a part of the value in the original appraisal.

There was discussion on the valuation of all of the affected properties and it was determined that each had unique properties that made valuation slightly different on each based on classification and usage of the land.

There was some question as to how long it would take for condemnation proceedings to get through the court system and County Attorney Peg Polanski provided a brief overview of the process. Mr. May provided a best case/worst case timeframe for the process. Mr. Buening asked if the case could be sent out of county and Ms. Polanski said yes.

There was discussion concerning the additional expense of having appraisals done. Mr. Buening asked what the ramifications would be of delaying the project by a year. Mr. May pointed out that the design standards could change and require the plans to have to be reworked. There was much discussion on court proceedings and Mr. May inquired as to whether the county would go back to the original plan and not provide any of the enhancements that were offered in the counter offer. Mr. Buening asked if the county was doing anything extra for any of the other property owners. The response was yes, the county agreed to keep a driveway open and another property owner got to keep trees. A private water line that crosses the road will also be maintained. Again, it was pointed out that there were fluctuations in the offers based on yard damages, fence replacements and multiple other factors.

Mr. May mentioned that it is now the policy of INDOT that existing right of way that isn't formally documented in county records has to be recorded now. As far as right of way acquisition rights go, Mr. May did say that the county is already only using a small portion of what it is entitled to.

Mr. Nobbe asked what the costs would be to run this through the court system. Ms. Polanski said she really has no idea because there are so many variables. The condemnation process was discussed again.

Mr. Tim Ortman of the County Highway Department mentioned that some of the landowner's requests do have some merit such as the more shallow side slopes and some of the signage.

The county has offered everything except the full amount of money being asked for. Mr. May pointed out that the county has offered him 30 -40% more than the appraisal. Mr. Buening offered the opinion that the county isn't taking the property, the landowner is being justly compensated. Mr. Nobbe suggested that the offer be taken back to Mr. Stephen Boyer with a deadline for him to respond. Mr. Nobbe suggested 10 days to allow for a response. He would like for the current offer to be resent and for Mr. Boyer to be made aware that the county will not change the offer and that condemnation proceedings will begin if he fails to accept the offer. Mr. Nobbe is reluctant to proceed with condemnation without more thought and would like it if the buyer could get with Mr. Boyer and let him know the decision will be made on August 6th. Mr. Buening stated that he doesn't think it serves any purpose to let Mr. Boyer have more time but if the other two commissioners would like more time to think about it, he wouldn't have a problem with that. Mr. Buening stated the other option would be to agree to Mr. Boyer's request.

After much more discussion and deliberation, Mr. Jerome Buening moved that the county proceed with condemnation on the property in question. Mr. John Richards seconded the motion. Mr. Nobbe did not concur but the motion carried. Mr. Richards did confirm that the condemnation could be rescinded if Mr. Boyer agreed to the county's last counter offer.

The meeting was recessed at 9:22 a.m.

Rick Nobbe, President

Attest: _____

Date: _____