

ORDINANCE NO. 2004- 9

An ordinance declaring a public necessity for the acquisition of a 0.8304 acre (36,171 square feet) tract of land in the Patrick Dowlen Survey, Abstract 156, Victoria County, Texas, as more particularly described in Section 1 of this ordinance for the public purpose of drainage of the Lone Tree Acres Subdivision, authorizing all appropriate action of the City of Victoria in the institution and prosecution of condemnation proceedings to acquire this needed property, authorizing the City Manager to execute offers and contracts for the purchase of property interests from the owners thereof, authorizing the acceptance of deeds and other instruments, authorizing the joinder of all persons with rights in the aforementioned property, authorizing all other lawful action necessary or incidental to such acquisitions or eminent domain proceedings to survey, test, specify, define and secure the necessary property rights, declaring the sections of the ordinance to be severable one from the other in the event any section of this ordinance is determined to be invalid, and declaring an effective date.

The City Council of the City of Victoria finds that the acquisition of the property described in Section 1 of this ordinance is necessary and desirable for the drainage of Lone Tree Acres Subdivision, and has previously budgeted funds to be expended for these purposes, an adequate part of which remains on hand for such purposes.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VICTORIA:

1.

Public necessity requires that the City acquire the property described below in Victoria County, Texas, for the public purpose of drainage of the Lone Tree Acres Subdivision:

BEING a 0.8304 acre (36,171 square feet) tract of land situated in the Patrick Dowlen Survey, Abstract 156, Victoria County, Texas, and being out of that certain 132.823 acre tract of land as conveyed from Robert F. Rigamonti, et ux to David Chester, et ux according to instrument recorded in Volume 254, Page 186 of the Official Records of Victoria County, Texas, said 0.8304 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch diameter rebar found marking the south corner of said 132.823 acre tract and a corner in the northwesterly right-of-way line of Lone Tree Road (40' R.O.W.);

THENCE, North 45 deg. 01' 00" West (Basis of Bearing) with the common line of said 132.823 acre tract and Lone Tree Road, passing at 16.07 feet the east corner of Lone Tree Acres Subdivision No. 22, an addition to the City of Victoria, Victoria County, Texas according to the established map and plat of said addition recorded in Volume 8, Page 8C of the Plat Records of said County, passing at 273.36 feet a 5/8 inch diameter rebar found marking northeast corner of said subdivision, same being the southeast corner of that certain tract of land as conveyed from Amelia Massouh to George Velasquez, et ux according to instrument recorded in Volume 978, Page 804 of the Deed Records of said County, passing at 672.36 feet the northeast corner of said Velasquez tract, same being the southeast corner of Hyak Avenue right-of-way (55.6' R.O.W.), thence continuing with the northeast right-of-way line of Hyak Avenue for an overall distance of 744.96 feet to a 5/8 inch diameter rebar (with yellow plastic cap stamped ("URBAN SURVEYING, INC.") set for the northwest corner of the herein described tract;

THENCE, North 85 deg. 00' 00" East, a distance of 65.29 feet to a 5/8 inch diameter rebar (with yellow plastic cap stamped "URBAN SURVEYING INC.") set forth the northeast corner of the herein described tract;

THENCE, South 45 deg. 01' 00" East, parallel to and 50 feet northeast of the southwest line of said 132.823 acre tract, a distance of 732.43 feet to a 5/8 inch diameter rebar (with yellow plastic cap stamped "URBAN SURVEYING, INC.") set for the southeast corner herein and being in the common line of said 132.823 acre tract and said Lone Tree Road right-of-way;

THENCE, South 43 deg. 44' 00" West, with the common line of said 132.823 acre tract and said Lone Tree Road, a distance of 50.01 feet to the POINT OF BEGINNING, CONTAINING within these metes and bounds a 0.8304 acre (36,171 square feet) tract of land, more or less.

Bearings are based on bearing of record as shown on the plat of Lone Tree Acres Subdivision No. 22 recorded in Volume 8, Page 8C, Plat Records, Victoria County, Texas.

Public necessity also requires the City to acquire any other necessary rights of ingress and egress over and across this property, either through purchase or by the process of eminent domain, and to take all other lawful action necessary or incidental to such acquisitions or eminent domain proceedings to survey, test, specify, define and secure the necessary property rights. This property to be acquired pursuant to this ordinance is, without restriction to the aforementioned property, to be utilized for the Lone Tree Road Drainage Ditch Project.

2.

The City, acting by and through its retained attorneys, is hereby directed and authorized to institute and prosecute to conclusion all necessary proceedings to condemn the property interests described in Section 1 of this ordinance, to acquire such interests in land as the City is unable to acquire through negotiation by reason of its inability to agree with the owners of the land as to the value of such interest in land, and to take any other legal action necessary or incidental to such acquisitions or eminent domain proceedings to survey, specify, define and secure the necessary property rights.

3.

The City Manager is authorized to execute offers and contracts, in a form to be approved by the City Attorney, for the purchase of the aforementioned property and easements related thereto (known by Lone Tree Road Drainage Ditch) from the owners of the aforementioned property in amounts not to exceed a total of \$1,000.00. All necessary parties and lienholders may be joined in the aforementioned transactions. Deeds and other instruments conveying interests in this property may be accepted by the City Manager in a form to be approved by the City Attorney. All acts and proceedings done or initiated by the employees, agents and attorneys of the City for the acquisition of such property interest rights are hereby authorized, ratified, approved, confirmed and validated and declared to be valid in all respects as of the respective dates of such acts and proceedings, with and in regard to the owners from whom such rights have been or are being purchased or acquired.

4.

If any provision, section, subsection, sentence, clause or phrase of this ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this ordinance shall not be affected thereby, it being the intent of the City Council in adopting this ordinance that no portion hereof, or provisions or regulation contained herein, shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion hereof and all provisions of this ordinance are declared to be severable for that purpose.

5.

This ordinance shall be effective on final passage and approval.

PASSED FIRST READING, this the 6TH day of JULY, 2004.

AYES: 5
NAYS: 0
ABSTENTIONS: 0

PASSED SECOND READING, this the 20TH day of JULY, 2004.

AYES: 7
NAYS: 0
ABSTENTIONS: 0

PASSED THIRD READING, this the 20TH day of JULY, 2004.

AYES: 7
NAYS: 0
ABSTENTIONS: 0


APPROVED AND ADOPTED, this the 20TH day of JULY, 2004.

ATTEST:

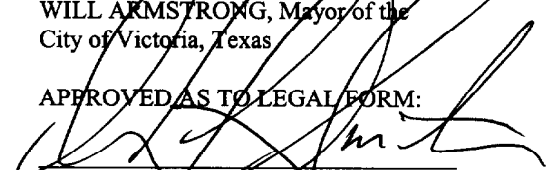

SCARLET SWOBODA, City Secretary

Distribution: Legal Department
City Manager




WILL ARMSTRONG, Mayor of the
City of Victoria, Texas

APPROVED AS TO LEGAL FORM:


DAVID ATMAR SMITH, City Attorney
Copies Sent: AUGUST 4, 2004