

City of Fayetteville Staff Review Form

2022-1075

Legistar File ID

12/6/2022

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Tim Nyander

11/16/2022

WATER SEWER (720)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends City Council approval of a Resolution authorizing the City Attorney to seek condemnation and an order of possession of certain land owned by Mhoon Family Trust necessary for the West Water Transmission Main project.

Budget Impact:

5400.720.5600-5810.00

Water and Sewer

Account Number

Fund

10007.1

W/S Improvements Defined by Study

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 1,028,987.00

Funds Obligated \$ 599,575.00

Current Balance **\$ 429,412.00**

Does item have a cost? Yes

Item Cost \$ 131,800.00

Budget Adjustment Attached? No

Budget Adjustment \$ -

Remaining Budget **\$ 297,612.00**

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 6, 2022

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Tim Nyander, Utilities Director

FROM: Corey Granderson, Utilities Engineer

DATE: November 16, 2022

SUBJECT: **Approval of a Resolution authorizing the City Attorney to seek condemnation and an order of possession of certain land owned by Mhoon Family Trust necessary for the West Transmission water main project.**

RECOMMENDATION:

Staff recommends City Council approval of a Resolution authorizing the City Attorney to seek condemnation and an order of possession of certain land owned by Mhoon Family Trust necessary for the West Water Transmission Main project.

BACKGROUND:

The City's wholesale water supplier, Beaver Water District, intends to build a western water distribution point near HWY-112 and the newly constructed Springdale Northern Bypass, HWY-612. This facility will supply a western water transmission feed to all four customer cities, helping with hydraulics, critical redundancy, and overall utility resiliency. Fayetteville's 11-mile connection to the proposed BWD facility has been identified in water master plans for many years. The project is currently being designed, with construction planned to begin in late 2024. For this 48-inch diameter waterline, a 50-foot width easement is necessary along the entire route to construct and maintain the line throughout its lifetime. The route chosen is specifically designed to be as unobtrusive as possible to impacted properties, staying close to property lines whenever possible.

DISCUSSION:

The Mhoon Family Trust easement consists of approximately 2.7-acres of easement area. Since 2017, staff has sent many letters, spoken with realtors, and appraised the property over the course of several years without any meaningful negotiations with the ownership. For this reason, Staff recommends that the City Attorney file for order of possession of this easement, paying the value of the property as documented in the appraisal, recently updated.

BUDGET/STAFF IMPACT:

The payment for land acquisition will be made from the project budget allocated for the easements for the West Water Transmission Line. The agenda item staff review form indicates \$131,800.00 as the cost of this request. It should be noted that this is an estimate, based on the appraised value of the property, and that the final cost is subject to negotiation with the property

owners or by court order. The appraised value will be deposited into the Registry of the Circuit Court as just compensation when the condemnation complaint is filed for the property.

Attachments:

Final Offer Letter

Appraisal summary sheet

Easement Form & Exhibits

Case History



CITY OF
FAYETTEVILLE
ARKANSAS

November 2, 2022

Mhoon Family Trust
PO Box 22
Tontitown, AR 72770

RE: West Transmission Main Line
Parcel Nos. 830-37621-000 & 830-37623-000
ALSO Parcel Nos. 830-37780-000 & 830-38036-000
Tracts 52 & 53
FINAL Offer & Notification Letter

Dear Ms. Mhoon:

As you may be aware, the City of Fayetteville in conjunction with Beaver Water District, is planning the construction of a 48-inch water main extension from Van Asche (Hwy 112) and Garland Avenue in Fayetteville to Elm Springs west of US Interstate 49. Construction of this water main is expected to begin in 2024. It is our intent to obtain 50-foot wide easements for this 48-inch water main line presently to avoid future development at the time of construction. The route we have chosen is specifically designed to be as unobtrusive as possible to the property, staying close to the property lines whenever possible. A portion of this easement is within an existing setback and appraised accordingly. The property will be returned to a condition as good as or better than it was found.

The City of Fayetteville hereby offers \$122,800.00 for rights associated with the permanent easements (50,792 square feet, Tract 52 or 1.17Ac and 66,523 square feet, Tract 53 or 1.53Ac) and \$9,000.00 for landscaping damages for 9 trees that will be removed during construction for a total offer of **\$131,800.00**. This offer is based on updated appraisal by Reed & Associates, Inc. and the summary sheet has been provided for your review.

We have not heard from you after repeated letters and emails have been sent. We are happy to meet with you to discuss any concerns you may have regarding this easement or our offer. We will be handing this over to our City Attorney's office to take to City Council to request approval for Resolution to move forward with condemnation on this easement on the 6th of December 2022. They meet at 113 W Mountain Street, Fayetteville, AR in Room 219 at 5:30 p.m.

Should you elect to accept this offer, the *Water/Sewer Easement* contained herein should be executed by all parties with current ownership interest in the property. The documents should be notarized and returned to the City of Fayetteville. A City Land Agent will be pleased to witness and notarize the execution of the documents if you will advise our office accordingly. Upon receipt of the documents, a check will be requested and you will be paid the amount indicated in this offer letter. Payment normally takes three weeks to process once all the documents have been received.

Copies of the documents are included for your records. We can provide a copy of the recorded documents upon your request and at the appropriate time. Please provide us with a Social Security Number or a Tax Identification Number (Corporation) so that a check can be written. A W-9 is provided for this purpose.

A City Land Agent will be glad to meet with you at your convenience and discuss all phases of this project and the associated easements and acquisitions. Please contact Holly Jones at (479) 444-3414 (hjones@fayetteville-ar.gov) or Brandi Samuels (479) 444-3421 (bsamuels@fayetteville-ar.gov). For questions or concerns, please contact Corey Granderson, Utilities Engineer at cgranderson@fayetteville-ar.gov or Tim Nyander, Utilities Director at tnyander@fayetteville-ar.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim Nyander".

Tim Nyander
Utilities Director

TN/hj

Enclosures

City of Fayetteville Water/Sewer-Utilities Department: 479-575-8386

Mailing Address:
113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

Location: West side of State Highway 112, east side of N. Barrington Road, Tontitown, AR
Client: McClelland Consulting Engineers
Fee Owner: Mhoon Family Trust
Mailing Address: P.O. Box 22, Tontitown, AR
Tract No. 52 & 53

Area Of The Whole:	88.85± ACS	Permanent Utility Easement:	1.527± ACS – Tract 52 <u>1.166± ACS</u> – Tract 53 2.693± ACS
Area Of Remainder:	88.85± ACS		
Area Of Acquisition:	Not Applicable	Temporary Construction Easement:	Not Applicable

Date of Report: November 1, 2022

HIGHEST AND BEST USE:

Whole Property- Residential development/ use

Remainder Property- Residential development/ use

ACQUISITION COMPENSATION:

Before

Land: 88.85± ACS	\$	4,846,900
Improvements: Not Applicable	\$	0
Total:	\$	4,846,900

After

Land: 88.85± ACS	\$	4,715,100
Improvements: Not Applicable	\$	0
Total	\$	4,715,100
Total Compensation as of: October 13, 2022	\$	131,800

ALLOCATION OF COMPENSATION

Land: Not Applicable	\$	0
Utility Easement: 2.693± ACS	\$	131,800
Temporary Construction Easement: Not Applicable	\$	0
Improvements: None	\$	0
Damages: None	\$	0
Cost to Cure Items: None	\$	0
Total Compensation:	\$	131,800

Please see the Extraordinary Assumptions and Hypothetical Condition previously presented.

Katie R. Hampton

Katie Reed Hampton, CG3642
 Reed & Associates, Inc.



WATER/SEWER EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT **Linda Mhoon, as the Trustee of the Mhoon Family Trust dated June 12, 2012**, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby GRANT, SELL and CONVEY unto the **City of Fayetteville, Arkansas, a municipal corporation**, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement to construct, lay, remove, relay, inspect, enlarge and/or operate a water and/or sanitary sewer pipe line or lines, manholes, and appurtenances thereto, on, over, across, and under the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION: (Deed Ref: 2012-34636 1st, 3rd, 4th and 7th descriptions only)

(Also) Part of the Northeast Quarter of Section 1, Township 17 North, Range 31 West, described as follows: Commencing at the SE corner of the West Half of the East Half of said Quarter section, and running thence North 1538 ½ feet, for a beginning point, thence North 152.5 feet, thence West 1428 feet, to the middle of the Barrington Road, thence South bearing West 152.5 feet, thence East 1440 feet to the place of beginning, and containing 5 acres, more or less. **Also** a part of the Northeast Quarter of Section 1, Township 17 North, Range 31 West beginning at the Southeast corner of the West ½ of the East Half of said Quarter section, and running thence North with the West line of Brown 15 acres tract, 1699 ½ feet, to a beginning point, thence North 876 feet to the North line of said Quarter section, thence West 1256 feet to the middle of the Barrington Road, thence South with the middle of said road, to a point due West of beginning, thence East to beginning.

Also, The North Half of the Southeast Quarter of the Southeast Quarter of Section 36, Township 18 North, Range 31 West containing 20 acres, more or less. **Also**, S1/2 of SE¼ of SE¼ Sec. 36, Twp. 18 North, Range 31 West.

PERMANENT EASEMENT DESCRIPTION:

Tract 52:

Part of the NE¼ of the NE¼ of Section 1, Township 17 North, Range 31 West, Washington County, Arkansas, being more particularly described as follows: Commencing at the NE corner of the NE¼ of the NE¼ of said Section 1; thence North 86°56'05" West 656.25 feet to the POINT OF BEGINNING; thence South 03°09'49" West 1,015.74 feet; thence North 87°10'05" West 50.00 feet; thence North 03°09'49" East 1,015.94 feet; thence South 86°56'05" East 50.00 feet to the POINT OF BEGINNING, containing 50,792 square feet or 1.17 acres, more or less.

Tract 53:

Part of the SE¼ of SE¼ of Section 36, Township 18 North, Range 31 West, Washington County, Arkansas, being more particularly described as follows: Commencing at the SE Corner of the SE¼ of the SE¼ of said Section 36; thence North 86°56'06" West 656.26 feet to the POINT OF BEGINNING; thence North 86°56'05" West 50.00 feet; thence North 00°13'02" East 411.72 feet; thence North 09°29'29" East 279.93 feet; thence North 05°34'42" East 639.03 feet; thence South 87°02'25" East 50.05 feet; thence South 05°34'42" West 643.02 feet; thence South 09°29'29" West 277.61 feet; thence South 00°13'32" West 410.13 feet to the POINT OF BEGINNING, containing 66,523 square feet or 1.53 acres, more or less.

Together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, so long as such pipe line or lines, manholes and/or appurtenances thereto shall be maintained, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth.

The said Grantor is to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Grantee, which hereby agrees to bury all pipes, where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and that manholes will be constructed flush with the surface of the ground except in bottom lands where they shall be at a height above high water.

WATER/SEWER EASEMENT
Page 2 of 2

The Grantor agrees not to erect any buildings or structures in said easement. Driveways and parking lots will not be considered permanent structures.

The Grantee shall have the right to construct pipe lines and/or make repairs to lines within the above described easement at any time in the future and agrees to pay for or repair any damages as a result of such future construction and/or repairs as set out in this easement.

It is further understood that Grantee's easement shall be exclusive and that Grantor and/or Grantor's successors shall convey no parallel rights to any person, utility or corporation on, across or under said easement without the express written permission of Grantee.

The consideration first above recited as being paid to Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

It is hereby understood and agreed that the party securing this document in behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this the _____ day of _____, 2022.

Mhoon Family Trust dated June 12, 2012,

BY: _____

Linda Mhoon, Trustee

BY: _____

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF _____)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Linda Mhoon, as the Trustee of the Mhoon Family Trust dated June 12, 2012**, to me well known as the person who executed the foregoing document, and who stated and acknowledged that she had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 2022.

MY COMMISSION EXPIRES:

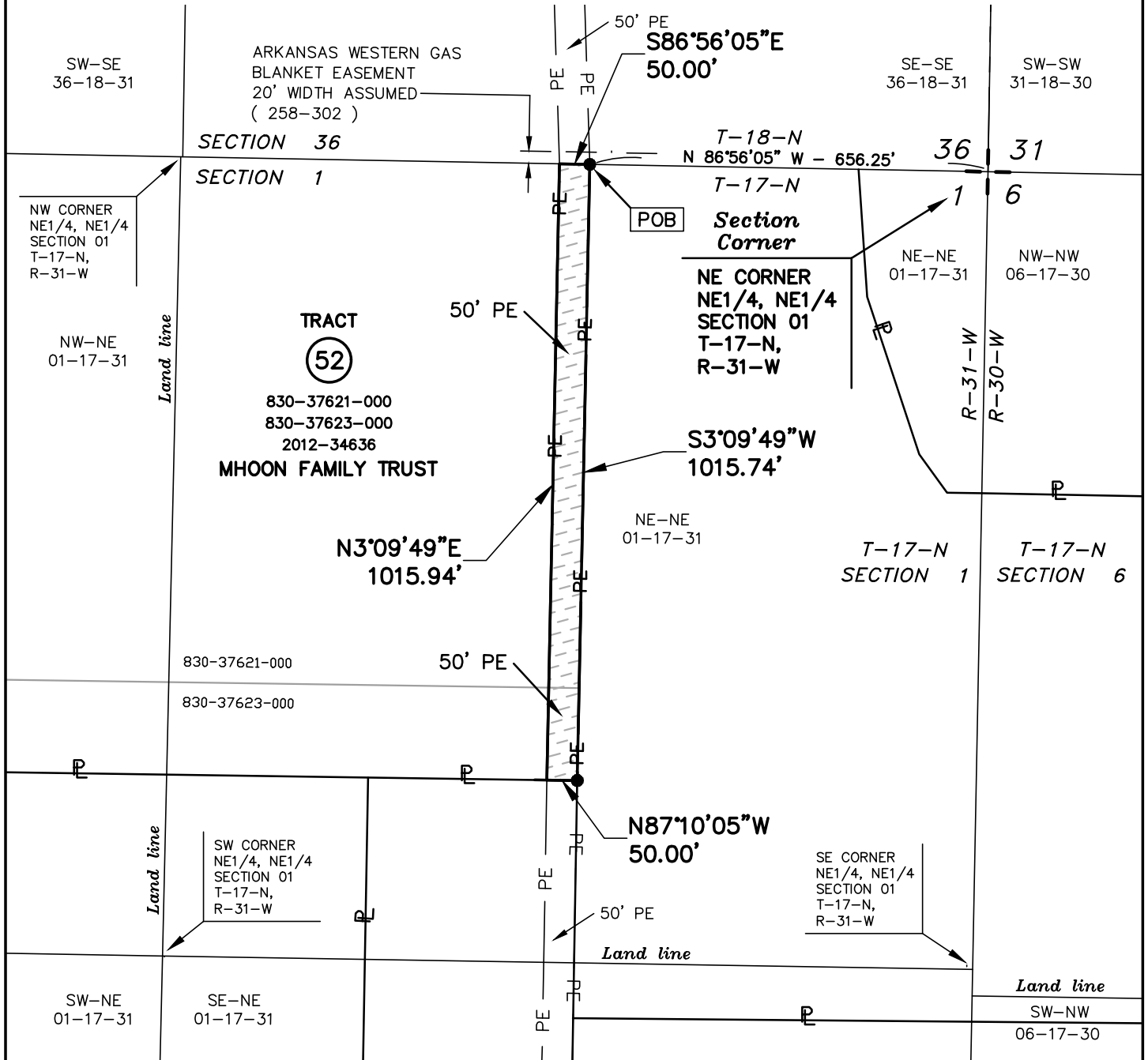
Notary Public



Basis of Bearings:
Arkansas State Plane
Coordinate System
(North Zone)
Scale: 1"=250'

UTILITY EASEMENT MAP
TRACT MAP NO. 52
EXHIBIT "A"

PE - 50,792 SQ. FT. (1.17 AC.)
TCE - 0 SQ. FT. (0 AC.)



LEGEND

- Permanent Easement
- Property Line
- Street Right-of-Way
- Tax Parcel Number
- Deed Record
- Temporary Construction Easement
- Corner of Permanent Easement
- Existing Utility Easement Line
- Permanent Easement
- Temporary Construction Easement

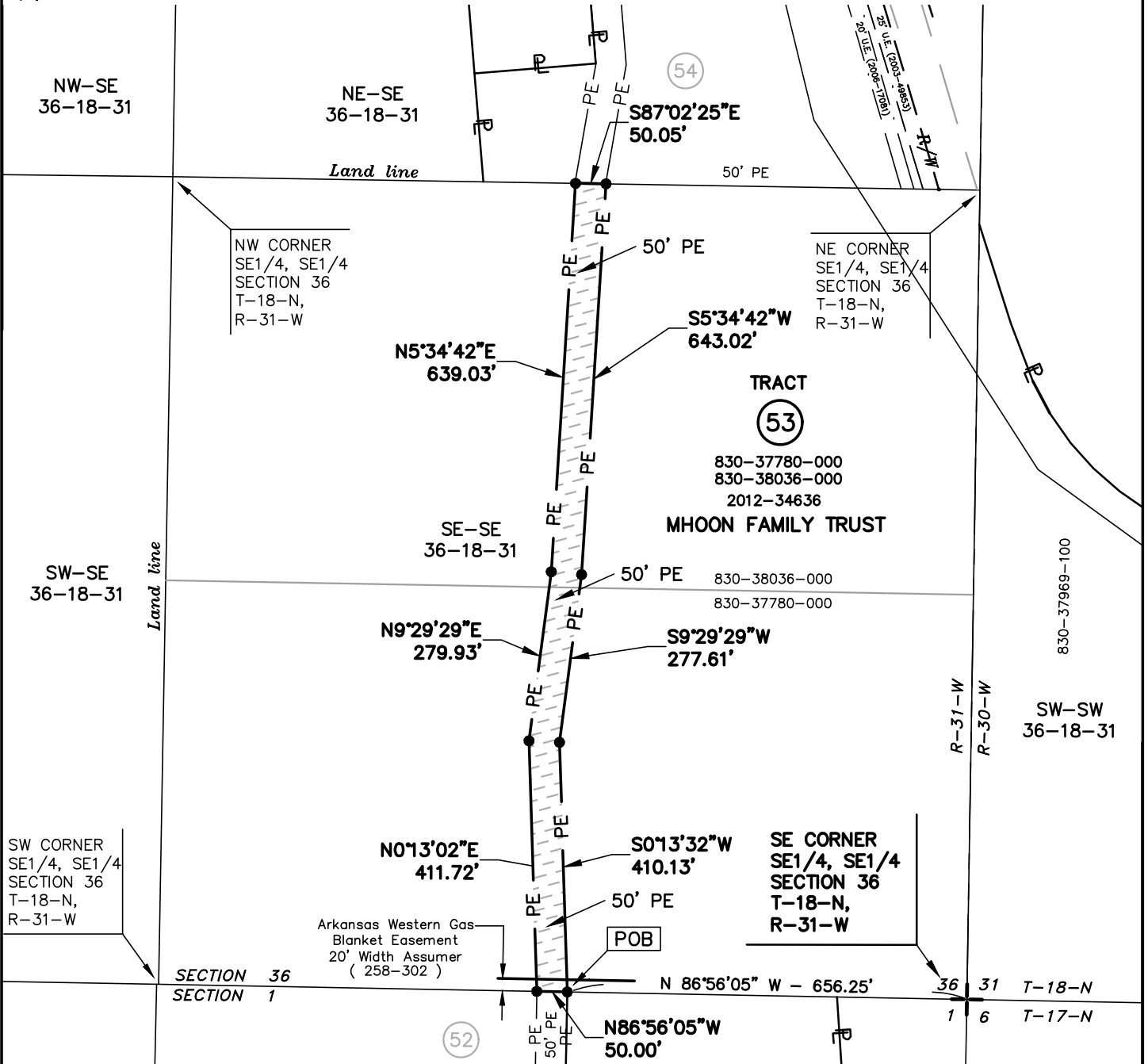
CITY OF FAYETTEVILLE	Property Owner : MHOON FAMILY TRUST		Project Name : West Transmission Main Route
	Drawn by : McClelland Consulting Engineers		
	Date: Sept. 2022	Scale : 1" = 250'	
	Project No. 112184	Tract No. 52	



Basis of Bearings:
 Arkansas State Plane
 Coordinate System
 (North Zone)
 Scale: 1"=250'

UTILITY EASEMENT MAP
 TRACT MAP NO. 53
 EXHIBIT "A"

PE - 66,523 SQ. FT. (1.53 AC.)
 TCE - 0 SQ. FT. (0 AC.)



LEGEND

- Permanent Easement
- Property Line
- Street Right-of-Way
- 830-38036-000
830-37780-000 Tax Parcel Number
- 2012-34636 Deed Record
- Temporary Construction Easement
- Corner of Permanent Easement
- Existing Utility Easement Line
- PE Permanent Easement
- TCE Temporary Construction Easement

CITY OF FAYETTEVILLE	Property Owner : MHOON FAMILY TRUST		Project Name : West Transmission Main Route
	Drawn by : McClelland Consulting Engineers		
	Date: Sept. 2022	Scale : 1" = 250'	
	Project No. 112184	Tract No. 53	

CASE HISTORY
WEST TRANSMISSION MAIN
Tracts 52 & 53 MHOON FAMILY TRUST

- 4/16/2017 Appraisal by Reed & Associates received.
- 5/1/2017 Offer packet mailed including offer letter (\$47,600.00), proposed easement, and exhibit and appraisal summary sheet. (Tract 52 requires 50,792sf, Tract 53 requires 66,523sf)
- 4/5/2018 Reminder letter sent
- 9/30/2020 Owner requested through appraiser that easement be altered to allow for trees that had been planted along existing fence within setback. See email. (Mhoon.Realignment)
- 10/19/2020 Updated appraisal by Reed & Associates received.
Update offer mailed based on updated and revised appraisal (\$88,000) along with proposed easement, exhibit and appraisal summary (Tract 52 requires 71,121sf, Tract 53 requires 66,523sf). The easement was adjusted to avoid trees.
- 11/2/2020 The realtor that met with the appraiser was emailed regarding the offer since no contact had been made. In that email, I misspoke and called it a 36-inch waterline, and he responded that they had the packet and they'd discuss. There was no further response.
- 4/20/2021 The realtor was emailed once again. I offered to meet them, email them the appraisal and again, there was no response. (See Mhoon.Realtor)
- 3/15/2022 Reminder letter was mailed to the Mhoon Family Trust letting them know that on April 7, I'd be handing these tracts over to the City Attorney for approval.
- 7/28/2022 Notification Letter to Mhoon Family and I have enclosed the condemnation brochure and the entire offer packet and informed them of Council date.
- 5/19/2017 – present There have been several calls to several different numbers over the years. If I could find a Linda Mhoon phone number listed, I called it and left a message. Sometimes, I just called a random Mhoon and asked if they knew Linda and to have her call me. I have never spoken to anyone regarding this tract. The closest I have come is the email exchanges with Joe Frame, their realtor.

There has been no contact as of this date regarding the Notification letter. It states that this tract will go to the City Attorney's office to be presented at Council on September 6 for approval for resolution to condemnation. This will give us an eventual order of Possession and hopefully, a starting point for negotiations with this family without going to court.