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Title: A Resolution Authorizing the Use Of Eminent Domain to Acquire A Right Of Entry to Real Property Owned By Rick And Elizabeth Apotheker For the Cascade Metropolitan District Conversion Project

Presenter:
Jessica Davis, Land Resource Manager, Colorado Springs Utilities
Aram Benyamin, Chief Executive Officer, Colorado Springs Utilities

Sponsors:

Indexes:

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Attachments: 1. Resolution Eminent Domain for Right of Entry (Cascade-Apotheker)

Date	Ver.	Action By	Action	Result
4/27/2021	1	City Council	withdrawn	Pass
4/13/2021	1	City Council	postpone to a date certain	Pass

A Resolution Authorizing the Use Of Eminent Domain to Acquire A Right Of Entry to Real Property Owned By Rick And Elizabeth Apotheker For the Cascade Metropolitan District Conversion Project

Presenter:

Jessica Davis, Land Resource Manager, Colorado Springs Utilities
Aram Benyamin, Chief Executive Officer, Colorado Springs Utilities

Summary:

Colorado Springs Utilities (“Utilities”) and the City of Colorado Springs’ Real Estate Services Office (“RES”) request that City Council approve a resolution that will allow Utilities to use eminent domain to obtain a right of entry to the real property owned by Rick and Elizabeth Apotheker (the “Apothekers”) located at 4210 Outpost Road, Cascade, Colorado 80809 (the “Property”).

Background:

Prior to the Conversion Date, Utilities provided water to CMD through a master meter, and CMD, in turn, provided water service to Town of Cascade residents. In City Council Ordinance 15-15, City Council approved a Settlement Agreement that provided for the conversion of CMD’s water distribution system and water customers to Utilities’ system and customers (the “Conversion”). As contemplated in the Settlement Agreement, CMD undertook the process of improving its water distribution system to Utilities’ standards so that the system could become part of Utilities’ water distribution system. CMD also was required to obtain easements for all parts of the water distribution system that crossed private property. Utilities oversaw and assisted CMD in the process of updating the system and obtaining all required easements (“CMD Conversion Project”). On the Conversion Date, CMD’s water distribution system was converted into and became a part of Utilities’ water

distribution system and CMD's customers became Utilities' customers.

However, CMD was not able to obtain all of the required easements by the Conversion Date. As a result, Utilities and CMD agreed that Utilities would obtain the remaining easements at CMD's expense. CMD and Utilities memorialized their agreement in a written Repayment Agreement that was executed as part of the closing of the Conversion.

One of the required easements that was not obtained by CMD prior to the Conversion Date crosses the Property owned by the Apothekers. RES sent a letter to the Apothekers on Utilities' behalf. The letter asked the Apothekers for permission to enter the Property to allow Utilities to: (1) conduct locates on the existing waterline; (2) create a legal description for the required easement; and (3) obtain an appraisal of the easement. In several calls with RES staff, Mr. Apotheker refused to grant Utilities permission to enter the Property. To this date, the Apothekers have been unwilling to consent to Utilities going on to the Property for the purposes contained in the letter sent by RES.

As provided in The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests (the "Real Estate Manual"), if a property owner will not grant permission to enter the property, the project manager and the RES Manager may seek City Council approval to pursue eminent domain and an immediate possession hearing to obtain a right to enter the property. Because the Apothekers are not willing to grant Utilities permission to enter, Utilities and RES seek City Council authorization to use eminent domain to obtain a right of entry to the Property to allow Utilities to conduct the due diligence necessary (perform locates, prepare a legal description of the permanent easement, and have an appraisal of the value of the easement conducted) to make an offer to the Apothekers for Utilities to acquire the required easement. RES has engaged a certified real estate appraiser to appraise both the right of entry and, ultimately, the permanent easement to be acquired from the Apothekers. In accordance with the Real Estate Manual and eminent domain law, a monetary offer based on the appraisal will be made to the Apothekers for the right of entry. It is not expected to be accepted, however, because the Apothekers have categorically refused to grant Utilities permission to enter the Property to conduct the necessary due diligence required for Utilities to make an offer to acquire a permanent easement for the existing waterline on their Property. Staff should be able to update City Council on the status of negotiations with the Apothekers at the time City Council considers this Resolution. As a first step to the acquisition of a permanent easement from the Apothekers, acquisition of the right of entry to the Apotheker Property is necessary for the completion of the CMD Conversion Project.

Previous Council Action:

N/A

Financial Implications:

N/A

City Council Appointed Board/Commission/Committee Recommendation:

This Resolution was presented to Utilities Board of Directors at its March 17, 2021 meeting.

Stakeholder Process:

N/A

Alternatives:

Approve the resolution and authorize the use of eminent domain.

Deny the resolution.

Proposed Motion:

Motion to approve the proposed Resolution authorizing the use of eminent domain to acquire a right of entry to the Property owned by Rick and Elizabeth Apothekeker.

N/A