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Title: A resolution authorizing the use of eminent domain to acquire real property owned by Delores Art needed to complete the Woodmen Road Corridor Improvement Project

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Date	Ver.	Action By	Action	Result
11/10/2015	1	City Council	adopted	Pass

A resolution authorizing the use of eminent domain to acquire real property owned by Delores Art needed to complete the Woodmen Road Corridor Improvement Project

From:

Travis Easton, Public Works Director
Mike Chaves, Engineering Manager

Summary:

The attached Resolution authorizes Staff to proceed with the use of Eminent Domain to finalize the acquisition of a portion of the real property, a permanent easement and two (2) temporary easements (collectively, the Property) from Ms. Delores Art at 2952 East Woodmen Road. Ms. Art has voluntarily entered into a Real Estate Purchase Agreement (Agreement) with the City. The Agreement provides the City with possession of the Property upon deposit of the agreed upon consideration in escrow at Land Title Guarantee Company (the Title Company). The City deposited said consideration on June 1, 2015, in anticipation of closing. The Property is subject to a deed of trust for the benefit of Plaza Home Mortgage LLC, and its assigns (the Lender). The Lender is unwilling to release the Property from the lien created by said deed of trust. The City cannot take title to the Property subject to the prior lien, and the Lender's refusal to issue a partial release makes it impossible for the City to close and complete the acquisition of the Property from Ms. Art. City Council approved the Real Estate Purchase Agreement and authorized acquisition of the Property on April 28, 2015.

Previous Council Action:

- On February 22, 2000, City Council approved the first phase of funding \$1,788,134 for the widening of Woodmen Road from I-25 to Lexington Drive
- On November 12, 2002, City Council approved increased funding to \$7,033,400 for the widening of Woodmen Road from I-25 to Powers Boulevard

- On June 22, 2004, City Council approved increased funding to \$7,401,740 for the widening of Woodmen Road from I-25 to Powers Boulevard
- On January 24, 2006, City Council approved a resolution endorsing the proposed action plan to improve Woodmen Road through the Colorado Springs urbanized area as detailed in the Woodmen Road Corridor Improvements Environmental Assessment document (EA)
- On August 14, 2007, City Council approved a resolution authorizing the acquisition of property owned by David E. Johnson, Ronald A. Johnson, and Anne H. Flemke to be used for the Woodmen Road Widening Project (Phase 1)
- On September 11, 2007, City Council approved a resolution authorizing the acquisition of property owned by Helen M. Riggs to be used for the Woodmen Road Widening Project (Phase 1).
- On October 23, 2007, City Council approved a resolution authorizing the acquisition of property owned by Steven R. Capehart and Betty Lue Capehart to be used for the Woodmen Road Widening Project (Phase 1).
- On October 23, 2007, City Council approved a resolution authorizing the acquisition of property owned by Alexander S. Christie, Carol E. Castaneda, Kyle Burke Craig, and Danna Lynn Barnes to be used for the Woodmen Road Widening Project (Phase 1).
- On November 13, 2007, City Council approved a resolution authorizing the acquisition of property owned by Emil M. Squazzo to be used for the Woodmen Road Widening Project (Phase 1).
- On January 8, 2008, City Council approved a resolution authorizing the acquisition of property owned by Mike P. Slattery to be used for the Woodmen Road Widening Project (Phase 1).
- On April 8, 2008, City Council approved a resolution authorizing the acquisition of property owned by Rose A. Carlson to be used for the Woodmen Road Widening Project (Phase 1).
- On May 13, 2014, City Council approved a resolution authorizing the acquisition of property owned by Matthew A., Anna L., and Thomas J. Alimena to be used for the Woodmen Road Widening Project (Phase 2).
- On May 13, 2014, City Council approved a resolution authorizing the acquisition of property owned by Carl and Hazelene Jordan to be used for the Woodmen Road Widening Project (Phase 2).
- On January 13, 2015, City Council approved a resolution authorizing the acquisition of property owned by Robert W. and Diana Y. Duncan to be used for the Woodmen Road Corridor Improvements Project (Phase 2).
- On March 24, 2015, City Council approved a resolution authorizing the acquisition of property owned by Danion and Janice E. Gill to be used for the Woodmen Road Corridor Improvements Project (Phase 2).
- On April 28, 2015, City Council approved a resolution authorizing the acquisition of property owned by Rodrigo and Cinthia Terrazas to be used for the Woodmen Road Corridor Improvements Project (Phase 2).
- On April 28, 2015, City Council approved a resolution authorizing the acquisition of property owned by William A. Hadl to be used for the Woodmen Road Corridor Improvements Project (Phase 2).
- On April 28, 2015, City Council approved a resolution authorizing the acquisition of property owned by Herbert Fieberling to be used for the Woodmen Road Corridor Improvements Project (Phase 2).
- On April 28, 2015, City Council approved a resolution authorizing the acquisition of property owned by Delores Art to be used for the Woodmen Road Corridor Improvements Project (Phase 2).
- On April 28, 2015, City Council approved a resolution authorizing the acquisition of property owned by Gerald R. and Jacqueline V. Haag to be used for the Woodmen Road Corridor Improvements Project (Phase 2).
- On June 9, 2015, City Council approved a resolution authorizing the acquisition of property owned by Burt Alexander and Colleen A. Alexander to be used for the Woodmen Road Corridor Improvements Project (Phase 2).

Background:

The Woodmen Road Corridor Improvements Project, Phases 1 and 2, extends from I-25 to US Highway 24, a distance of approximately 11 miles. The purpose of this project is to develop roadway improvements that meet the safety and capacity needs of the corridor by widening the roadway to six lanes and improving horizontal and vertical curves.

The City of Colorado Springs and El Paso County developed a National Environmental Protection Act (NEPA) Environmental Assessment (EA) for the project. This was a necessary first step to make use of the federal funds available to both the City and the County for Woodmen Road.

An Environmental Decision of Finding of No Significant Impact (FONSI) was determined by the Federal Highway Administration (FHWA) in February 2007. The Decision Document was released on March 22, 2007. As a result, the Phase 1 project (I-25 through Academy Boulevard) was authorized by CDOT and FHWA to advance to acquire right-of-way and to proceed into construction.

Phase 2 of the project continues from where Phase 1 left off east of Academy Boulevard and continues east to the Lexington Drive intersection. The EA for the project originally identified a Single Point Urban Interchange (SPUI) configuration for the Woodmen Road at Union Boulevard intersection. During the preliminary design for the Phase 2 project, a Continuous Flow Intersection (CFI) configuration was identified as an alternative that would deliver acceptable traffic operations through the horizon planning year of 2035 at a significantly lower cost than the SPUI (\$6 million for CFI versus \$24 million for SPUI). Because of this change and a change in how the residences in the Columbine Estates neighborhoods both west and east of Union Boulevard would be accessed, the EA had to be re-evaluated by the Colorado Department of Transportation and the FHWA. This re-evaluation was approved on December 19, 2013 by both CDOT and FHWA. As a result, the Phase 2 project was authorized by both CDOT and FHWA to advance to acquire the necessary right-of-way and to proceed into construction.

A portion of the real property at 2952 East Woodmen Road, owned by Delores Art (previously referred to as the Property), was identified as necessary to implement the proposed roadway improvements as part of Phase 2. The Property consists of: 0.618 acres, in fee simple, for Woodmen Road Right of Way; 0.141 acres for a Permanent Easement; and 0.820 Acres for Temporary Easements. The Property will be used for the proposed construction and maintenance of roadway widening, drainage improvements, utilities, sidewalk and construction of a new driveway.

Following Federal, State and City acquisition regulations and policies, Ms. Art and the City each obtained an independent appraisal of the Property. The appraisal solicited by the City valued the Property at \$93,800.00. The appraisal solicited by Ms. Art valued the Property at \$105,300.00. The difference in appraisals is due, in part, to a presumed reduction in value to Ms. Art's remaining property resulting from the proximity of the proposed roadway to Ms. Art's residence, as determined by Ms. Art's appraisal.

A mutually agreed upon settlement was reached with Ms. Art for the purchase of the Property in the amount of \$100,000.00, which was approved by CDOT, the oversight agency for this federally-funded Project. The difference is \$6,200.00 or 6.6% over the established Fair Market Value as approved by CDOT. Applicable Colorado State laws and federal-aid project mandates were followed for this determination of fair market value and settlement.

Ms. Art desires to sell the Property to the City for \$100,000.00 according to the terms and conditions of the attached Real Estate Purchase Agreement (Purchase Agreement), and City Council authorized the purchase of the Property for the \$100,000.00 pursuant to said terms and conditions. The purchase price is currently held in escrow at the Title Company, pending closing.

As identified in the Summary above, the Lender has refused to release its lien upon the Property to be acquired from Ms. Art. The original beneficiary of the deed of trust securing the lien, Plaza Home Mortgage, LLC, has purportedly assigned its interest to Seneca Mortgage, who is now the Lender. City staff, through its right of way acquisition consultant and the Title Company, engaged the Lender to secure a partial release of the deed of trust for the Right-of-Way and subordination agreement to the City's permanent easement in anticipation of closing at the Title Company.

The release and subordination agreement are necessary to protect title to the City's acquired Property, (and public infrastructure constructed thereafter upon the Property) from the Lender's rights and interests in the event of a foreclosure. Failure to do so could result in the need for the City to "acquire" and pay for the Property a second time, from the Lender, if the Property was foreclosed upon.

The Lender was provided with both the Owner's appraisal and the City's appraisal in support of the purchase, as evidence that the Lender's remaining collateral was sufficient to secure its lien. The Lender was, and remains, entitled to the proceeds of the sale of the Property to the City, which Ms. Art does not dispute. The Lender has refused, in writing, to release or subordinate its lien upon the Property. This matter is at impasse, and cannot proceed to close. A condemnation action should by court order clear the lien upon the Property that the Lender has refused to release voluntarily. Ms. Art has indicated she is not opposed to the City clearing title to the Property in this manner, and would like the City to commence with whatever means to bring the matter to a timely conclusion.

Financial Implications:

The purchase price of this parcel acquisition in the amount of \$100,000.00 is currently in escrow.

Board/Commission Recommendation:

N/A

Stakeholder Process:

Capital Projects Engineering staff and their consultants (AECOM/URS) have performed an extensive public involvement process for the Woodmen Road Phase 2 project. The project team has conducted three public open house meetings. In addition, staff and their consultants continue to be engaged in their coordination efforts with key residential and commercial stakeholders along the corridor. This effort has included a number of public meetings and individual meetings that are still continuing. Capital Projects Engineering has done extensive coordination with the residential and commercial stakeholders over the last several years in order to arrive at a mutually acceptable plan for the project

Alternatives:

The City Council may approve, modify or deny approval of the attached resolution.

Proposed Motion:

Move approval of the resolution.

N/A