



## Legislation Text

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**File #:** 17-995, **Version:** 1

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A Resolution authorizing the use of eminent domain to acquire real property owned by Francisco Serna needed for the West Colorado Avenue reconstruction, 31st street to U.S. Highway 24, project

**Presenter:**

Aaron Egbert, Senior Engineer

**Summary:**

The attached Resolution authorizes staff to proceed with the use of a Possession and Use Agreement and/or Eminent Domain to acquire the Property from Mr. Serna for the Project. Despite repeated attempts by the City to negotiate an amicable acquisition of the Property with Mr. Serna, the City has been unable to negotiate an agreement for the purchase. Staff will continue to make all reasonable efforts to reach a negotiated settlement for the purchase and sale of the Property with Mr. Serna. However, obtaining the authority to proceed with a Possession and Use Agreement and Eminent Domain will allow the City to meet Project construction deadlines and avoid project delays if an agreement cannot be reached.

**Previous Council Action:**

None

**Background:**

The City of Colorado Springs ("City"), along with other participating governments, is working to complete the West Colorado Avenue Reconstruction, 31st Street to U.S. Highway 24 Project ("Project"). The Project consists of capital improvements to transportation and other systems and ways within and through the jurisdictional boundaries of the City of Colorado Springs, the City of Manitou Springs, and El Paso County, essential for the public health, safety and welfare of those communities. The Project was identified by the Pikes Peak Rural Transportation Authority ("PPRTA") as a Priority "A" Regional Collaborative Project, and the PPRTA committed funding for engineering and construction of the Project on January 1, 2015.

This Project supports the City's strategic goal of investment in infrastructure by: reconstruction of West Colorado Avenue/Manitou Avenue from 31st Street to U.S. Highway 24; construction of park trails and sidewalks; construction of drainage facilities; reconstruction of the Colorado Avenue Bridge over Fountain Creek; and, in conjunction with Colorado Springs Utilities, upgrades to utility infrastructure to include undergrounding of electric along Colorado Avenue.

The improvements planned for the Project will require the total acquisition of the property at 3740 West Colorado Avenue, further identified by El Paso County Assessor's parcels 7403300025 and 7403300023 ("Property"). The need for the Property was identified during the preliminary and final engineering processes for the Project and approved by the City of Colorado Springs, the City of

Manitou Springs and El Paso County.

Project representatives have either contacted, or attempted to contact, the Property Owner, Mr. Francisco Serna, 37 times, including as follows:

August 1, 2016. The City's Notice of Intent to Acquire ("Notice") was mailed via certified mail to Mr. Serna at the address of record on file with the El Paso County Assessor. The Notice could not be personally delivered by the U.S. Postal Service, nor was it picked up from the U.S. Post office after attempts to deliver failed.

September 30, 2016. An agent with TRS Corp. the City's property acquisition consultant, obtained an email address for Mr. Serna, emailed Mr. Serna, and subsequently spoke with Mr. Serna concerning the Notice. The Notice identified a public necessity for the City to acquire the Property in its entirety. The Notice further informed Mr. Serna that the City would have the Property appraised as the basis for a subsequent purchase, and that Mr. Serna may have the Property appraised independently at the City's expense.

October 8, 2016. TRS advised Mr. Serna of his opportunity to have the property appraised in a phone conversation. Mr. Serna indicated he wanted to discuss his issues with the Project Engineer.

October 13, 2016. Mr. Serna requested information relative to the pedestrian bridge.

October 27, 2016. TRS provided Mr. Serna the trail/bridge plans he requested and invited Mr. Serna to site inspection with City appraiser.

November 23, 2016

City, TRS Corp. and FHU representatives conducted a video conference with Mr. Serna. Mr. Serna indicated his desire to enter in to a long-term lease for a part of his property, and request the City redesign to accommodate his future uses for the property. City advised Mr. Serna there were no options to avoid the property with the public improvements. Requested Mr. Serna secures the services of an independent appraiser.

December 1, 2016. An appraiser contracted by the City to value the Property inspected the site and exterior of the building at 3740 West Colorado Avenue. Access to the interior of the structure was not granted by Mr. Serna.

December 5, 2016. Mr. Serna emailed TRS and appraiser inquiring about the valuation process and indicating his desire to retain a portion of the property.

January 11, 2017. Email correspondence with Mr. Serna. Reminder to Mr. Serna of his option to obtain an appraisal.

January 17, 2017. Email correspondence with Mr. Serna. Reminder to Mr. Serna of his option to obtain an appraisal, and that the City would extend the deadline that had already passed to do so.

January 20, 2017. Mr. Serna indicated he would be engaging an appraiser. TRS inquired as to an estimated delivery date and appurtenant appraisal delivery extension.

February 7, 2017. An environmental transaction screening questionnaire was sent by FHU, the Project engineering and environmental consultant, to Mr. Serna. TRS made inquiry as to the status of Mr. Serna's independent appraisal.

February 20, 2017. TRS makes inquiry by email as to the status of an independent appraisal by Mr. Serna.

February 25, 2017. The improvements on the Property caught fire and were extinguished by the Colorado Springs Fire Department ("CSFD"). The windows and doors were boarded over by CSFD.

March 3, 2017. The City's appraiser re-inspected the site and exterior of the Property, post fire.

March 22, 2017. An Offer to Acquire the Property, based upon an appraisal prepared on behalf of the City, was presented to Mr. Serna by TRS Corp.

April 4, 2017. Mr. Serna had requested Project plans in the vicinity of his property, and TRS emailed him said plans. TRS left voicemail with Mr. Serna to discuss the offer and engage in negotiations.

April 18, 2017. Email communication with Mr. Serna requesting a counter-proposal

May 4, 2017. With no response or meaningful negotiations to date, a Final Offer to acquire, based upon the appraisal prepared on behalf of the City, was sent via email and FedEx to Mr. Serna.

May 6, 2017. TRS emailed City's final offer to acquire and 90-day relocation notice to Mr. Serna.

May 11, 2017. TRS follow up email with Mr. Serna requesting opportunity to review the offer and a potential counter offer.

Total contacts/attempts to contact the Owner since August 1, 2016: 37

Total attempts to contact between Offer (March 22, 2017) and Final Offer (May 4, 2017): 5

**Financial Implications:**

This Property will be acquired using PPRTA funds. Mr. Serna will be afforded just compensation for his Property, either through a negotiated settlement or a court proceeding.

**Board/Commission Recommendation:**

N/A

**Stakeholder Process:**

City and El Paso County Engineering Staff and their consultant FHU have performed an extensive public involvement process for the West Colorado Avenue Reconstruction, 31st Street to U.S. Highway 24, Project. Outreach processes included new releases, stakeholder meetings, project meetings, open houses, individual business meetings, and the website [www.westsidplan.com](http://www.westsidplan.com).

**Alternatives:**

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

**Proposed Motion:**

Motion to approve the Resolution authorizing the City Attorney to take all action necessary to acquire the Property and to seek immediate possession of the Property by a voluntary Possession and Use Agreement, eminent domain, or other appropriate proceedings.

N/A