

BILL NO. S-17-02-25

SPECIAL ORDINANCE NO. _____

AN ORDINANCE APPROVING BOARD OF
WORKS RESOLUTION NO. 104-2-22-17-1
FOR DEPOSIT OF FUNDS (\$272,500.00) TO
THE COURT TO TAKE POSSESSION OF
CERTAIN REAL PROPERTY (800 GLASGOW
AVENUE) BY WAY OF JUDICIAL
CONDEMNATION FOR USE BY THE CITY OF
FORT WAYNE, INDIANA FOR THE
CONSTRUCTION OF THE THREE RIVERS
PROTECTION AND OVERFLOW REDUCTION
TUNNEL.

WHEREAS, City Utilities desires to acquire 800 Glasgow Avenue to
begin construction on the Three Rivers Protection and Overflow Reduction
Tunnel (3RPORT) Project; and

WHEREAS, the City negotiated in good faith in an attempt to purchase
this property from its owner; however such negotiations were unsuccessful.

WHEREAS, the City filed for judicial condemnation in the Allen Circuit
Court and the City has exhausted all legal prerequisites required by Indiana
Code 32-24-1-4 et seq. for the condemnation of the Property located at 800
Glasgow Avenue; and

WHEREAS, in accordance with Indiana Code 32-24-1-9, the Court
appointed a panel of appraisers to assess the fair market value of the
property. The panel reported that the value is \$272,500.00; and

WHEREAS, In accordance with Indiana Code 32-24-1-10, the City will
deposit \$272,500.00 with the Clerk of the Court which will allow the City to
take possession of the property and begin construction of the 3RPORT

1 working shaft; and
2

3 **WHEREAS**, pursuant to Indiana Code section 32-24-1-10, by
4 depositing the amount of the Combined Assessed Value, payable by two
5 separate checks in the respective amounts of \$20,000 and \$252,000,
6 respectively, to the Clerk of the Allen Circuit Court will allow the City to take
7 possession of the Property and begin construction of the 3RPORT working
8 shaft.

9 **NOW, THEREFORE, BE IT ORDAINED BY THE**
10 **COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**

11 **SECTION 1.** That the Board of Works Resolution Number 104-
12 2-22-17-1 (attached hereto and made a part hereof) for the deposit of City
13 funds in the amount of the Combined Assessed Value as determined by the
14 Court-appointed panel of appraisers in the Condemnation Action, to be paid
15 by two separate checks in the respective amounts of \$20,000 and \$252,000 to
16 the Clerk of the Allen Circuit Court, in order to take possession of the Property
17 for construction of the 3RPORT project, is hereby approved.

18 **SECTION 2.** This Ordinance shall be in full force and effect from
19 and after its passage and any and all necessary approval by the Mayor.
20

21 _____
22 Council Member

23
24 APPROVED AS TO FORM AND LEGALITY

25
26 _____
27 Carol Helton, City Attorney

Interoffice Memo

Date: February 22, 2017
To: Common Council Members
From: Seth Weinglass, Program Manager – Capital Project Services – Telephone: 427-1330
RE: Court Deposit in Condemnation of 800 Glasgow Ave., Fort Wayne, IN 46803

Council Introduction Date: February 28, 2017—Council District #: 5

Background & supporting information:

City Utilities needs to acquire 800 Glasgow Avenue to begin construction on the Three Rivers Protection and Overflow Reduction Tunnel (3RPORT) Project. This property, located in a derelict industrial area adjacent to the wastewater treatment plant, will be the location of the 3RPORT working shaft, the contractor's base of operations to launch the tunnel boring machine and construct the tunnel.

The City negotiated in good faith in an attempt to purchase this property from its owner; however such negotiations were unsuccessful. (The principal dispute was whether the City's purchase price should take into account the environmental remediation work needed on the site, which has been contaminated by a number of industrial uses over the past century.) Having thus been unable to agree with the owner for the purchase of the property, the City filed for judicial condemnation. In due course, the Court heard a number of objections to the condemnation from the defendants, and overruled all such objections, determining that the City's negotiation had been in good faith, and that the City is otherwise within its right to exercise its eminent domain power over this property. The defendants' time to appeal from those rulings has passed.

Per code, the Court appointed a panel of appraisers to assess the fair market value of the property. The panel reported that the value is \$272,500.00. Depositing that amount with the Clerk of the Court will allow the City to take possession of the property and begin construction of the 3RPORT working shaft.

Implications of not being approved:

This property acquisition is needed by the City to implement its combined sewer overflow long-term control plan, to comply with the Consent Decree entered into between the City, the U.S. Environmental Protection Agency, the U.S. Department of Justice, and the Indiana Department of Environmental Management. Failing to approve this deposit would delay the project, potentially causing the City to incur penalties set forth by the Consent Decree, and allowing the pollution of our rivers to continue.

Justification if prior approval is being requested: Not applicable

Funding source: Sewer Revenue Bond

Attachments:

- Resolution number 104-2-22-17-1 for court deposit of funds in condemnation, approved by the Board of Public Works on February 22, 2017.

CC: Matthew Wirtz
Justin Brugger
Diane Brown
Project file

**A RESOLUTION OF THE BOARD OF PUBLIC WORKS
OF THE CITY OF FORT WAYNE, INDIANA
APPROVING THE COURT DEPOSIT OF FUNDS IN AN AMOUNT
DETERMINED BY THE COURT-APPOINTED PANEL OF APPRAISERS
TO TAKE POSSESSION OF CERTAIN REAL PROPERTY
BY WAY OF JUDICIAL CONDEMNATION
FOR USE BY THE CITY OF FORT WAYNE, INDIANA
FOR THE CONSTRUCTION OF THE
THREE RIVERS PROTECTION AND OVERFLOW REDUCTION TUNNEL**

RESOLUTION NUMBER 104-2-22-17-1

WHEREAS, the City of Fort Wayne, City Utilities, has undertaken to exercise its power of eminent domain to acquire a fee simple interest in certain real property, located at 800 Glasgow Avenue, in Fort Wayne, Indiana, more particularly described and depicted in Exhibit 1 attached hereto (the "Property"), using the process of judicial condemnation set forth by Indiana Code section 32-24-1; and

WHEREAS, acquiring the Property will facilitate the Three Rivers Protection and Overflow Reduction Tunnel ("3RPORT") project, by serving as the location of a working shaft that will be the base of operations for the 3RPORT tunneling contractor to launch the tunnel boring machine and construct the tunnel; and

WHEREAS, the 3RPORT project is needed to bring the City into compliance with the Consent Decree that the City entered into with the U.S. Environmental Protection Agency, the U.S. Department of Justice, and the Indiana Department of Environmental Management to implement a combined sewer overflow long-term control plan; and

WHEREAS, the City has exhausted all legal prerequisites required by Indiana Code sections 32-24-1-4 et seq. for the condemnation of the Property, and has filed a pair of complaints (one for each parcel being acquired) for condemnation in the Allen Circuit Court, causes numbered 02C01-16-04-PL-00218 and 02C01-16-03-PL-000158, consolidated for hearing by the Court (the "Condemnation Action"); and

WHEREAS, the Court conducted a bench trial to receive and consider evidence of the property owner defendants' statutory objections to the Condemnation Action, and thereafter issued a set of interlocutory orders overruling all such objections, and the defendants' time for filing an appeal from such interlocutory orders has passed; and

WHEREAS, the Court has appointed a panel of disinterested appraisers, per Indiana Code sections 32-24-1-9 et seq., to assess the fair market value of the Property and its improvements, as well as damages (less any benefits) to the defendants and any other affected persons resulting from the City's proposed construction on the Property; and

WHEREAS, the total amount of the valuations determined by the panel of Court-appointed appraisers pursuant to such legal process (as reflected by the two Reports of Appraisers dated February 9, 2017, attached as Exhibit 2 and incorporated herein by this reference) is **\$272,500.00** (the " Combined Assessed Value"); and

WHEREAS, pursuant to Indiana Code section 32-24-1-10, depositing the amount of the Combined Assessed Value, payable by two separate checks in the respective amounts of \$20,000 and \$252,000, to the Clerk of the Allen Circuit Court, will allow the City to take possession of the Property and begin construction of the 3RPORT working shaft.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS OF THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

The deposit of City funds, in the amount of the Combined Assessed Value as determined by the Court-appointed panel of appraisers in the Condemnation Action, to be paid by two separate checks in the respective amounts of \$20,000 and \$252,000 to the Clerk of the Allen Circuit Court, in order to take possession of the Property for construction of the 3RPORT project, is hereby

APPROVED this ____ day of _____, 2017.

(SIGNATURES BEGIN ON NEXT PAGE)

(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

BOARD OF PUBLIC WORKS

By: _____
Robert P. Kennedy, Chair

By: _____
Kumar Menon, Member

By: _____
Mike Avila, Member

Attest: _____
Lyndsey Richards, Clerk

Prepared by: Seth Weinglass, City of Fort Wayne, Program Manager, Capital Project Services

ACKNOWLEDGEMENT

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, a Notary Public, in and for said County and State personally appeared Robert P. Kennedy, Kumar Menon, and Mike Avila, as Members of the Board of Public Works of the City of Fort Wayne, and Lyndsey Richards, Clerk of the Board of Works, and acknowledged the execution of the foregoing contract as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this ____ day of _____, 2017.

My Commission Expires:

Notary Public

Resident of _____ County

Printed Name of Notary

EXHIBIT 1

Page 1 of 3

PROPERTY OWNER NAMES AND MAILING ADDRESSES:

Landowners: Property Max MMXIV LLC
Mailing Address: 2042 Broadway
Fort Wayne, IN 46802

AFFECTED PROPERTY ADDRESS: 800 Glasgow Ave., Fort Wayne, IN 46803

LAST DEEDS OF RECORD:

Allen County Recorder's deed reference numbers:

2015058243 (Tax parcel no. 02-13-06-327-005.000-074)

2016006732 (Tax parcel no. 02-13-06-326-001.000-074)

[Scale drawing and full legal descriptions attached on following pages.]

INTERESTS TO BE ACQUIRED: Fee simple for all of both lots.

EXHIBIT "A"

Lots Numbered 159 thru 170, inclusive, and the South 38 feet of Lot Number 171, and Lots numbered 230 thru 241, inclusive, together with the vacated North-South alley that lies between Lots numbered 159 to 168 and Lots numbered 230 to 239, and the vacated East-West alley that lies between Lot Number 162 and Lot Number 163 and Lot Number 233 and Lot Number 234, as vacated by Declaratory Resolution 686-1936 and the vacated alley that lies between Lots numbered 168 and 169 and Lots numbered 239 and 240 and the vacated alley that lies between Lots numbered 169 and 170 and 240 and 241 and the East half of vacated alley adjoining Lot Number 171 on the West as vacated by General Ordinance No. G-23-77, all in White's Fourth Addition to the City of Fort Wayne, according to the plat thereof, as recorded in Deed Record 60, page 476.

Together With:

A parcel of land located in the Southwest Quarter of Section 6, Township 30 North, Range 13 East, Allen County, Indiana, lying West of White's Fourth Addition to the City of Fort Wayne, North of the New York, Chicago and St. Louis railroad (now the Norfolk & Western railroad), South of the Maumee River and East of Walton Avenue (now Anthony Boulevard), more particularly described as follows, to-wit:

Beginning at the Northwest corner of Lot Number 241 in White's Fourth Addition to the City of Fort Wayne, as recorded in Deed Record 60, page 476, Allen County Recorder's Office; thence Southerly along the East right-of-way line of vacated Sand street in said addition (said Sand street vacated 6/77 by General Ordinance G-23-77), a distance of 505.00 feet to the Southwest corner of Lot Number 230 in said addition; thence Westerly by a deflection right of 61 degrees 41 minutes 16 seconds, a distance of 56.79 feet to a point on the Northerly right-of-way line of the Norfolk & Western railroad (formerly the New York, Chicago & St. Louis railroad); thence along said right-of-way as found on station map lands, the N.Y.C. & St. L.R.R. Co., Fort Wayne Div., Sta. 19439+20 to Sta. 19465+60, dated December 31, 1927, sheet S-L2A of V-2, Ind., by a deflection right of 20 degrees 14 minutes 25 seconds, a distance of 49.08 feet; thence continuing along said right-of-way by a deflection left of 7 degrees 48 minutes 39 seconds, a distance of 104.92 feet, thence continuing along said right-of-way by a deflection left of 3 degrees 40 minutes 50 seconds, a distance of 104.15 feet; thence continuing along said right-of-way by a deflection left of 9 degrees 28 minutes 05 seconds, a distance of 404.30 feet; thence continuing along said right-of-way by a deflection right of 1 degree 22 minutes 21 seconds, a distance of 400.76 feet to a point on the Easterly right-of-way line of Anthony Boulevard (formerly Walton Avenue), as now established; thence Northerly along said East right-of-way line of Anthony Boulevard by a deflection right of 88 degrees 14 minutes 24 seconds, a distance of 37.00 feet to a point on the South bank of the Maumee River; thence Easterly along a meander line along the South bank of said river by a deflection right 92 degrees 45 minutes 18 seconds, a distance of 394.92 feet to an iron pin set (all iron pins set by this survey are 1/2 inch diameter by 18 inches long); thence continuing along a meander line by a deflection left of 12 degrees 26 minutes 08 seconds, a distance of 182.31 feet to an iron pin set; thence continuing along a meander line by a deflection left of 12 degrees 58 minutes 39 seconds, a distance of 163.45 feet to an iron pin set; thence continuing along a meander line by a deflection left of 16 degrees 06 minutes 39 seconds, a distance of 131.30 feet to an iron pin set; thence continuing along a meander line by a deflection right of 7 degrees 38 minutes 41 seconds, a distance of 210.15 feet to an iron pin set; thence continuing along a meander line by a deflection right of 9 degrees 35 minutes 18 seconds, a distance of 211.82 feet to an iron pin set; thence continuing along a meander line by a deflection left of 10 degrees 50 minutes 29 seconds, a distance of 125.89 feet; thence continuing along a meander line along said South river bank by a deflection right of 25 degrees 49 minutes 54 seconds, a distance of 73.33 feet to a point on the centerline of vacated Sand street; thence Southerly along the centerline of said vacated sand street by a deflection right of 125 degrees 57 minutes 52 seconds, a distance of 92.12 feet to an iron pin set on the Westerly extension of the North line of Lot Number 241 and 25.00 feet West of the Northwest corner of said Lot Number 241; thence Easterly by a deflection left of 90 degrees 00 minutes, a distance of 25.00 feet to the point of beginning, containing 4.81 acres of land, more or less.

EXHIBIT 2
Valuation Reports

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN CIRCUIT COURT
CAUSE NO. 02C01-1604-PL-218

CITY OF FORT WAYNE, INDIANA)
)
Plaintiff,)
)
)
)

vs.)
)

PROPERTY MAX MMXIV, LLC)
OLD NATIONAL BANCORP,)
d/b/a OLD NATIONAL BANK,)
BNY MELLON CAPITAL MARKETS,)
LLC, as successor in interest to NEW)
YORK TRUST CO., and WELLS)
FARGO BANK, N.A.,)
)
Defendants.)

"Bare Land Parcel"

FILED
CLERK OF COURT
ALLEN CIRCUIT
AND CLERK OF COURT
FEB 10 2017
CENTRAL SERVICES DIVISION

REPORT OF APPRAISERS

The undersigned appraisers, being duly appointed, sworn and instructed by the Court, have honestly, fairly and impartially assessed the total amount of just compensation due Defendant in this case as follows:

1. On April 26, 2016, the fair market value of the interest of the land taken by the Plaintiff in this case was twenty thousand dollars. \$20,000
2. On April 26, 2016, the fair market value of the improvements, if any, of the land taken by Plaintiff in this case was zero dollars. \$0
3. Total just compensation, which includes residue damages plus damages resulting from construction of the proposed improvements, amounts to twenty thousand dollars. \$20,000

1. Verne V. Mitchell III Dated: 2/9/17
Verne V. Mitchell, III, MAI
Indiana Certified General Appraiser
License Number CG69100097

202 West Berry Street, Suite 240
Fort Wayne, IN 46802

2. Roger L. Koehlinger Dated: 2/9/17
Roger L. Koehlinger
License Number AB14003847

1021 South Calhoun Street
Fort Wayne, IN 46802

3. Daniel J. Kruse Dated: 2/9/17
Daniel J. Kruse
Indiana Certified General Appraiser
License Number CG6910092

1910 St. Joe Center Road, Suite 64
Fort Wayne, IN 46825

IN THE ALLEN CIRCUIT COURT
CAUSE NO. 02C01-1603-PL-158

“Building Parcel”

The undersigned appraisers, being duly appointed, sworn and instructed by the Court, have honestly, fairly and impartially assessed the total amount of just compensation due Defendant in this case as follows:

1. On March 23, 2016, the fair market value of the interest of the land taken by the Plaintiff in this case was thirty two thousand five hundred dollars. \$32,500

2. On March 23, 2016, the fair market value of the improvements, if any, of the land taken by Plaintiff in this case was two hundred twenty thousand dollars. \$220,000

3. Total just compensation, which includes residue damages plus damages resulting from construction of the proposed improvements, amounts to two hundred fifty two thousand five hundred dollars. \$252,500

1. Verne V. Mitchell, III Dated: 2/9/17
Verne V. Mitchell, III, MAI
Indiana Certified General Appraiser
License Number CG69100097

202 West Berry Street, Suite 240
Fort Wayne, IN 46802

2. Roger L. Koehlinger Dated: 2/9/17
Roger L. Koehlinger
License Number AB14003847

1021 South Calhoun Street
Fort Wayne, IN 46802

3. Daniel J. Kruse Dated: 2/9/17
Daniel J. Kruse
Indiana Certified General Appraiser
License Number CG6910092

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