



CITY COUNCIL AGENDA ITEM

TO: Mayor & City Council **DATE:** May 29, 2014

FROM: John McDonough, City Manager

AGENDA ITEM: Consideration of Approval of the Appropriation of Property Located at 0 Windsor Parkway (Parcel #17-094-0001-079-4) through the Use of Eminent Domain

MEETING DATE: For Submission onto the June 3, 2014, City Council Regular Meeting Agenda

BACKGROUND INFORMATION: (Attach additional pages if necessary)

See attached:

Memorandum
Exhibits
Resolution

APPROVAL BY CITY MANAGER: JMM APPROVED

PLACED ON AGENDA FOR: 6/3/2014

CITY ATTORNEY APPROVAL REQUIRED: () YES () NO

CITY ATTORNEY APPROVAL: [Signature]

REMARKS:



TO: John McDonough, City Manager

FROM: Wendell K. Willard, City Attorney
Cecil McLendon, Assistant City Attorney

DATE: May 28, 2014 for Submission onto the Agenda of the June 3, 2014 City Council Meeting

ITEM: Consideration of Approval of the Appropriation of Property Located at 0 Windsor Parkway (Parcel #17-094-0001-079-4) through the Use of Eminent Domain.

Public Works Department's Recommendation:

The Assistant City Attorney recommends that the Mayor and City Council approve the use of the condemnation process for property located at 0 Windsor Parkway, lying within Land Lot 94 of the 17th District (Parcel #17-094-0001-079-4), in connection with the Windsor Parkway Project.

Background:

The subject property is a vacant lot. The acquisition of the property is necessary for the construction of stormwater facilities related to above referenced project. There is no apparent owner of the property (it was last conveyed by an Executor's Deed in 1974) and there are numerous property tax liens. The only way that the City can obtain a clear title to the property would be to proceed with a condemnation.

Discussion:

Acquisition by the use of Eminent Domain alternative is required to insure that the City acquires free and clear title to the property. Although this project is still in the early stages, the Assistant City Attorney recommends that the City proceed with the condemnation to avoid any delay in the project.

Alternatives:

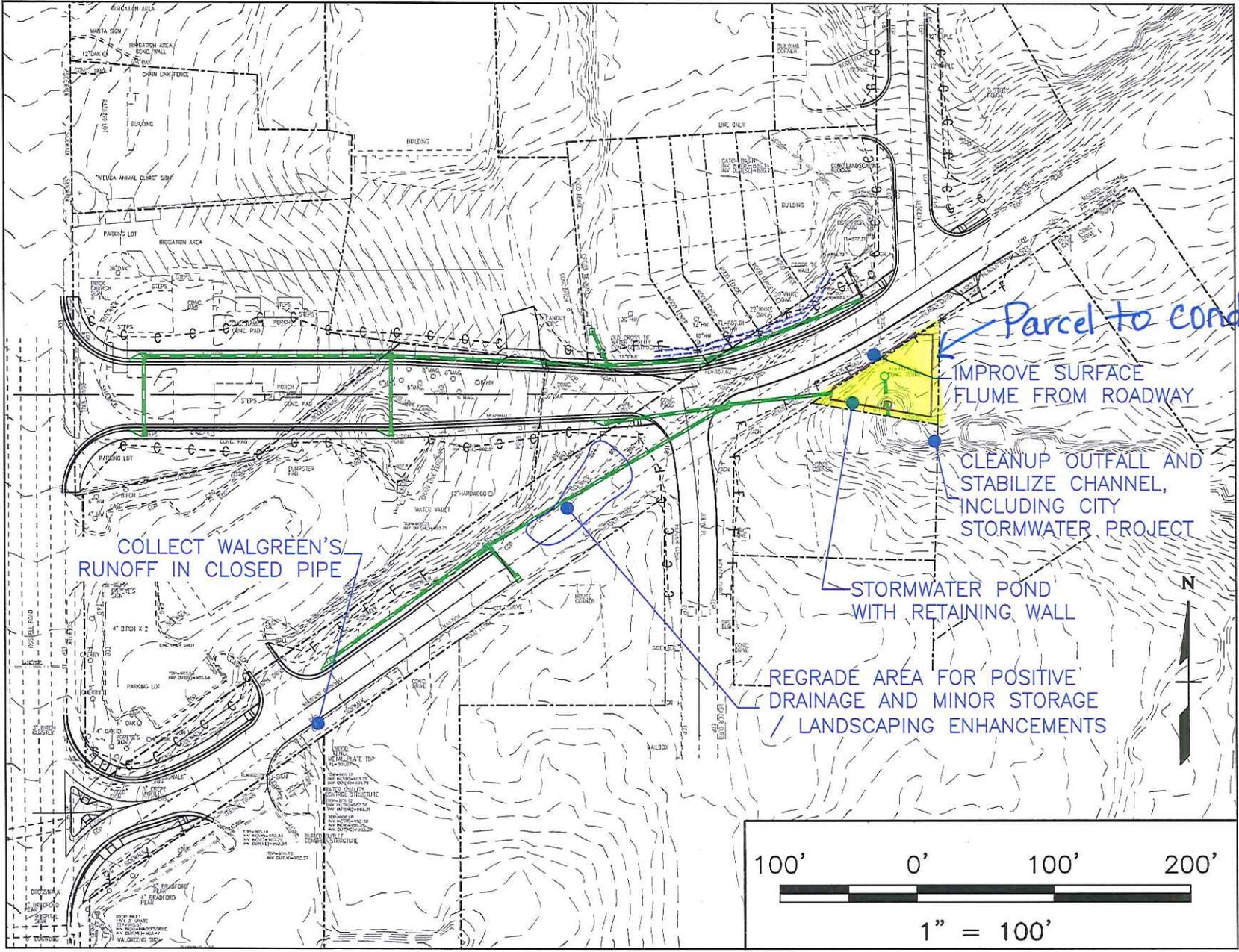
The City's failure to obtain clear title to this property would result in the City having to modify the proposed stormwater facilities related to this project, which would increase the cost of the project substantially.

Financial Impact:

Purchase of this property has been budgeted in the Windsor Parkway Project Budget.

Attachments:

- I. Exhibits
 - Project Plans
 - Fulton County Tax Parcel Map
 - Title Commitment with Legal Description
- II. Resolution



Parcel to condemn

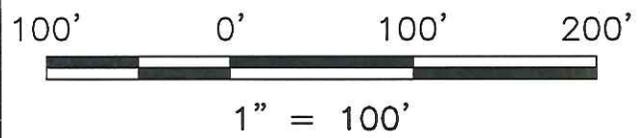
COLLECT WALGREEN'S
RUNOFF IN CLOSED PIPE

IMPROVE SURFACE
FLUME FROM ROADWAY

CLEANUP OUTFALL AND
STABILIZE CHANNEL,
INCLUDING CITY
STORMWATER PROJECT

STORMWATER POND
WITH RETAINING WALL

REGRADE AREA FOR POSITIVE
DRAINAGE AND MINOR STORAGE
/ LANDSCAPING ENHANCEMENTS



Windsor Parkway
Parcel # 17-094-0001-079-4

Kevin E. Belle Isle L.L.C.
A Limited Liability Company

722 Willivee Drive
Decatur, Georgia 30033

April 27, 2014

Certificate of Title

Riley McLendon, LLC
315 Washington Avenue
Marietta, Georgia 30060

Re: Selma H Hoffman
Address: Windsor Parkway, Fulton County
KEB file: 14-8037

This is to certify that we have examined title and find record of title to that real estate described in exhibit "A" attached to this Certificate and incorporated herein by this reference and made a part hereof, and we find the fee simple title to said property to be vested in:

Selma H. Hoffman by virtue an executor's Deed from The Fulton National Bank Of Atlanta dated 08/20/74 and filed 09/28/74 and recorded at Deed Book 5464, page 175 records of the Clerk of the Superior Court of Fulton County Georgia

Subject to those objections and exceptions set out in Exhibit "B" attached to this certificate and incorporated herein by this reference and made a part hereof.

All questions with reference to the following are expressly excepted from this Certificate, and this opinion is limited to the names of married women as they appear in the chain of title and as furnished to examining counsel.

- a. All matters of record subsequent to the date of this certificate.
- b. Matters affecting the title which are not of record, or which, if they are of record, are not indexed in such a manner that a reasonably prudent search would have revealed them to this examiner.
- c. Such state of facts as would be disclosed from a competent civil engineer's accurate survey of said property. (It is always advisable that a survey be made in order to determine if there are encroachments, or overhangs or overlaps, that the improvements are within the boundaries of caption, and the lines and corners of caption are clearly marked.)
- d. Encroachments, except such as in our opinion do not materially affect the value of the property.
- e. Title to that portion of the premises within the bounds of any public road.
- f. The Riparian rights of abutting owners on any stream or body of water running through or being upon the premises.
- g. Adverse claims of tenants in possession.
- h. All zoning laws, ordinances or regulations, municipal or county, and all governmental regulations of the use and occupancy of premises described,

including the regulations or condemnation of the land or any building or structure thereon.

- i. Unrecorded claims of liens for labor or material furnished for the improvements of said property.
- j. Street improvement liens, which have not been properly placed of record.
- k. Past due water bills, which, while not technically liens, will deter the municipal authority from transferring water meters until have been paid.
- l. Pay-as-you-enter water or sewer lines, which, while not technically liens, will be payable upon connection with such lines.
- m. If title has been acquired by foreclosure, rights of redemption in the United States in its status of lienholder, for a period of 120 days after the foreclosure sale.
- n. Any claim, which arises out of the transaction vesting in the purchaser or security interest holder the estate or interest which is the subject of this Certificate, by reason of the operation of federal bankruptcy, state insolvency, or similar creditor's rights laws.
- o. If subject property is located in Dekalb or Fulton County Georgia:

Please be advised that Dekalb and Fulton County, Georgia deed records and indices continue to be unreliable to the extreme and have deteriorated to the point that my proficiency as a title attorney cannot overcome the problems that exist in Dekalb or Fulton County. Index pages are missing or mutilated, deeds are not correctly cross referenced and all indices (Deed, General Execution Docket, Federal Tax Liens and lis pendens et al.) are often incorrect or incomplete or corrected and revised without appropriate notice of said corrections after the posted effective date.

This firm's title reports have always been limited to items, which were "correctly indexed of record." In Dekalb or Fulton County, Georgia, this amended to include any error or omissions caused by the general poor condition of the deed records of Dekalb or Fulton County Georgia.

This certificate is limited to matters appearing of record properly indexed through the effective date of this search, which is 04/01/14.

This Certificate is prepared for the sole benefit of the above addressee. All others who rely upon this Certificate do so at their own risk. This Certificate is null and of no effect until paid for.

Sincerely yours,

Kevin E. Belle Isle
Manager

Exhibit A

All That Tract or parcel of lying and being in
Land Lot 94 of the 17th District Fulton County, Georgia
Being more particularly described at an executor's Deed from The Fulton National Bank
Of Atlanta dated 08/20/74 and filed 09/28/74 and recorded at Deed Book 5464, page 175
records of the Clerk of the Superior Court of Fulton County Georgia

Exhibit B

- 1) All property taxes.
- 2) Property tax reports from Sexton Real Estate Tax Service enclosed.
- 3) All matters per recorded plats. None referenced.
- 4) Any and all environmental matters.
- 5) Rights of tenants in possession if any.
- 6) Vague legal description contained in Warranty Deed from Ed Hedden to Mrs. Pearl Hedden dated 07/08/1923 and recorded at Deed Book 749, page 045 aforesaid records.
- 7) Suggest current and accurate survey to confirm no boundary encroachments.
- 8) Easements that may be contained in Right of Way Deed from Mrs. Pearl Hedden et al to Fulton County dated 04/30/23 and recorded at Deed Book 1746, page 493 aforesaid records.
- 9) No open deed to secure debt found of record. Please inquire as to possibility of an unrecorded or mis-indexed security instrument.
- 10) Checked Fulton County Probate no estate for Selma Hoffman found last 20 years.
- 11) Does not appear taxes have been paid in a number of years.
- 12) Property tax fifas as follows:
 - a) Lien Book 207 page 651
 - b) Lien Book 438, page 481
 - c) Lien Book 2217, page 451
 - d) Lien Book 2232, page 687
 - e) GED Book 4059 ,page 222
 - f) GED Book 4765, page 295
 - g) GED Book 9703 page 272
 - h) GED Book 9879, page 341
 - i) GED Book 10077 page 083
 - j) Lien Book 1381, page 497
 - k) Lien Book 1381, page 498
 - l) Lien Book 1381, page 499
 - m) Lien Book 1512, page 412
 - n) Lien Book 1550 page 155
 - o) Lien Book 1846, page 727
 - p) Lien Book 1892 page 283
 - q) Lien Book 2545, page 695
 - r) Lien Bok 2580 page 290

- s) Lien Book 2875 page 388
- t) Lien Book 2906 page 56
- u) GED BOOK 4371 page 038
- v) GED Book 4059, page 223
- w) GED Book 4059, page 224
- x) GED Book 4059, page 226
- y) GED Book 4059, page 227
- z) GED Book 4059 page 228
- aa) GED Book 3605, page 36
- bb) GED Book 9506, page 512

13) Should inquire if tax parcel has ever been sold for delinquent taxes whether taxes have been transferred to 3rd party need Fulton payoff for taxes and any other party that may have an interest in said property taxes.

RESOLUTION NO. 2014-05-__

STATE OF GEORGIA
COUNTY FULTON

A RESOLUTION TO AUTHORIZE THE USE OF EMINENT DOMAIN
TO ACQUIRE PROPERTY AT 0 WINDSOR PARKWAY, SANDY SPRINGS,
GEORGIA FOR ROAD PROJECT

WHEREAS, the City has determined that it is necessary to conduct road and infrastructure project on Windsor Parkway (the "Project"); and

WHEREAS, in order to conduct the Project, certain rights are required over, under, and through the property located at 0 Windsor Parkway within the City of Sandy Springs (reference: Parcel #17-094-0001-079-4); and

WHEREAS, the Mayor and Council has considered the Project and determined that it is necessary and must be carried out expediently to insure the timely completion of the City's sidewalk and infrastructure project.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Sandy Springs, Georgia while in regular session on _____, 2014, at __:00 p.m. as follows:

In order to insure the timely completion of the City's road and infrastructure project the Mayor and Council authorize the City Attorney's Office to acquire through the use of Eminent Domain by any method allowed by law the necessary property rights over, under, and across the property located at 0 Windsor Parkway in order to insure the timely completion of the City's Windsor Parkway road and infrastructure project. Further the Mayor is specifically authorized to execute any documents necessary to further the filing of any Petition related to the same.

APPROVED AND ADOPTED this _____ day of _____, 2014.

Approved: _____, 2014

Russell K. Paul, Mayor

Attest:

Michael Casey, City Clerk
(Seal)