

RESOLUTION No. 2009-138-1083

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO INITIATE EMINENT DOMAIN PROCEEDINGS IN ORDER TO TAKE OWNERSHIP OF THAT CERTAIN PROPERTY LOCATED AT 1401 NORTHWEST 183RD STREET; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, approximately three years ago, City committed to moving the entrance to Rolling Oaks Park from Northwest 17th Avenue to Northwest 183rd Street as part of park improvements, and

WHEREAS, staff began to negotiate with the owner property located at 1401 Northwest 183rd Street, Mr. Charles Washuta, to purchase the property, and

WHEREAS, initially, Mr. Washuta indicated that he was willing to sell the property but indicated also that the property was involved in litigation and that he would have to wait until the litigation had been resolved, and

WHEREAS, it has been almost two and one-half years, and the City has not been able to determine whether not there is in fact any litigation involving the property and, if so, the status, and

WHEREAS, the Washuta parcel is critical to the City's plans for Rolling Oaks Park and, therefore, the City Manager is recommending that the City take steps in order to obtain ownership of the property,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORIZATION: The City Council of the City of Miami Gardens hereby authorizes the City Manager and City Attorney to take any and all steps necessary to engage in final negotiations with the property owner of the property located at 1401 Northwest 183rd Street. In the event negotiations fail, City Attorney is authorized to take any and all steps necessary in order to initiate eminent domain proceedings on the property including hiring outside counsel in the event it becomes necessary.

Section 3. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON JULY 22, 2009.


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ.
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

Resolution No. 2009-138-1083

MOVED BY: Vice Mayor Watson
SECOND BY: Councilman Gilbert

VOTE: 6-0

Mayor Shirley Gibson	<u>X</u> (Yes)	___ (No)
Vice Mayor Barbara Watson	<u>X</u> (Yes)	___ (No)
Councilman Melvin L. Bratton	<u>X</u> (Yes)	___ (No)
Councilman Aaron Campbell	<u>X</u> (Yes)	___ (No)
Councilman Andre' Williams	<u>X</u> (Yes)	___ (No)
Councilwoman Sharon Pritchett	___ (Yes)	___ (No)(not present)
Councilman Oliver Gilbert	<u>X</u> (Yes)	___ (No)

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City of Miami Gardens Agenda Cover Memo

Council Meeting Date:	July 22, 2008		Item Type: <small>(Enter X in box)</small>	Resolution	Ordinance	Other	
				x			
Fiscal Impact: <small>(Enter X in box)</small>	Yes	No	Ordinance Reading: <small>(Enter X in box)</small>	1st Reading		2nd Reading	
	x			Public Hearing: <small>(Enter X in box)</small>	Yes	No	Yes
Funding Source:	CIP Fund Reserve		Advertising Requirement: <small>(Enter X in box)</small>		Yes		No
							x
Contract/P.O. Required: <small>(Enter X in box)</small>	Yes	No	RFP/RFQ/Bid #:				
		x					
Sponsor Name	Danny Crew, City Manager		Department:	City Manager			

Short Title:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO INITIATE EMINENT DOMAIN PROCEEDINGS IN ORDER TO TAKE OWNERSHIP OF THAT CERTAIN PROPERTY LOCATED AT 1401 NORTHWEST 183RD STREET; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

Staff Summary:

Approximately three years ago, the City committed to moving the entrance to Rolling Oaks Park from NW 17th Avenue to NW 183rd Street as part of the approval for improvements at the Park. At that time, staff began negotiations with the property owner, Mr. Charles Washuta or Orlando, to purchase the property. He indicated his willingness to sell; however, he indicated that he was in litigation with a tenant and would like to wait until it was resolved. Over the past 2 ½ years, this litigation has apparently continued. We have contacted Mr. William Washuta on a monthly basis and have had no luck in moving him to sell in a timely manner.

This parcel is critical to our plans for Rolling Oaks Park, and in particular to moving the entrance. For this project to move forward, we need to acquire the property. I am recommending that we use the power granted to all cities and counties in Florida to purchase the property, eminent domain. This process allows a city to acquire public need property and provides a mechanism to ensure that the property is paid fair market value for the property and that the owner's rights are protected. An outline of how this process works is attached.

Based on the appraisals we have received from other Miami Gardens' properties, I would expect that his parcel to appraise between \$800,000 and \$1,500,000. In addition, we will have to pay his legal fees which are estimated at \$50,000.

Funds for this project are reserved in the proceeds of the City's \$14.4 million bond issue that we sold in 2007.

Recommendation:

RECOMMENDATION: That City Council authorize the City Manager to secure two M.A.I. appraisals for the Washuta property; enter into final negotiations with the Owner; if the negotiations are unsuccessful, authorize the City Attorney to file the appropriate eminent domain action.

Attachment:

Memo on Eminent Domain in Florida

Eminent Domain for Municipalities

By Danny O. Crew

During the course of daily business in all municipalities, there comes a time when it is necessary to purchase property. Whether this is for roads, utilities, public building sites, or parks, there will be times when the city needs a particular piece of property but is faced with an unwilling seller. Because government represents the will of the community and is charged with representing the welfare of the many, there are times when a city cannot allow any one individual to stand in the way of progress.

What is *Eminent Domain*?

In its simplest meaning, *eminent domain*, also called *taking* or *condemnation*, is a legal process where government can force a property owner to sell all or part of his property to make way for a government project. The process has been used since the founding of our nation.

Eminent domain is most often used in the building of roads and utilities where often hundreds of different property owners are affected by a project and there are always some who do not want to sell their land. Without *eminent domain*, there literally would not be any roads or utility lines in this country. Sometimes *eminent domain* can involve as little as a square foot of property and other times, thousands of acres.

Public Necessity/Purpose

One of the first steps in determining whether to use *eminent domain* is for the government to determine exactly what property is needed and further, to determine that the questioned property is needed for a *public purpose*. The courts have generally given great deference to just what is a *public purpose*. Projects such as roads, utilities, parks and public buildings, *public purpose* is generally obvious. However, courts have also recognized less obvious projects as serving a public purpose: Ports and airports, private utilities, copyrights and patents, etc.

Ownership Rights

All real property is divided in to various rights components, often called a *bundle of rights*. These rights include such partial ownerships such as development rights, air rights, mineral rights, use rights (easements), etc. If the entire bundle of rights is purchased, it is called *fee simple* ownership or sometimes simply *fee* ownership.

An *easement* is a right to do some particular activity on someone else's property. The basic *fee ownership* right remains with the original property owner but the easement holder has a right to use the property for a specific use. For example, a city might run a sewer line through someone's backyard. For the right to do this, the city must purchase an *easement* specifically allowing the line; however, the property owner still owns the

property and can use it as they please so long as their use does not interfere with the utility's use. To continue the example, if the sewer line 10 feet under the surface, the property owner might still be able to put an above ground pool over the line. However, if the utility company has to dig up the line for any reason, the owner would have to move the pool at his expense, until the repair work was done. Most *easement* owners have specific rules as to what can and cannot be placed on their easements. The more restrictive the rules, the more diminished the property owner's use, the more the easement costs the government to buy.

How It Works

When a governmental body begins most capital projects, land is the first aspect that must be identified and secured. If the government does not own the land, it must buy the appropriate parcel(s). This process usually begins with an appraisal of the needed property. In many cases, three separate appraisals are secured: two general appraisals and a review appraisal. These appraisals are secured from a qualified private appraisal firm that carries the certification of M.I.A. or S.R.A. These are professional designations in the appraisal field that carry weight in court testimony.

Once the appraisals are secured, the government then begins negotiations with the affected property owner(s). Most of the time, mutual agreement can be reached on a purchase price; however, inevitably some property owners will not want to sell their property and the city must consider *eminent domain*.

At some point in the process after an individual decides not to sell their property, the governing body declares in a resolution of taking that certain parcels are necessary to complete a project and that the project fulfills a public purpose. They then authorize the city attorney to file an *eminent domain* action in the appropriate court. This puts the property owner on notice that the city intends to take their property for its use. At this point, the property owner secures the services of an attorney to handle his case. Under Florida law, the government must pay the reasonable costs of such an attorney as well as additional appraisals for the property owner. While the court case proceeds, the city and the property owner usually continue negotiations. Many times, they successfully conclude such negotiations without ever completing the court action. There is an advantage to the property owner when the city threatens to use *eminent domain* as the I.R.S. allows extra time for the owner to re-invest his proceeds without having to pay taxes on the profit.

Quick Take and Regular Take

When filing an *eminent domain* action in court, the government must decide by which process they want to proceed. The first process is called *quick take*. Under a quick take action, the city places the appraised value of the property in an escrow account with the court. The judge then determines whether there is a valid public purpose. If the finding is that there is a valid public purpose, the court awards the title of the property to the

government. The government can then proceed to complete the proposed improvement or project. A trial is then scheduled for a jury to determine the exact amount of compensation that is owed to the former property owner. The advantage of this process is that the property immediately becomes available to the government for the stated purpose. The disadvantage is that a jury award can come in higher than the amount that the government placed with the court and they would have to come up with the balance.

The other option is for a *regular or slow take* of the property. The procedure is similar to that above except that the title to the property does not change hands until after the jury trial. This can take up to a year or more depending on court calendar. This offers the advantage to the government that, if they do not like the amount of the award, they can abandon the project and the taking action. Even then, they would still have to pay for the property owner's costs. The disadvantage is that the government does not have use of the property, and it may be subject to damages for delaying the property owner in his pursuits of property development if the government decides not to complete the taking.

Summary

Eminent domain is a normal part of running a government, especially a municipal government. I hope that this introduction to the process gives you a better picture of the process and how it works.
