

TOWN OF EATONVILLE

Agenda Staff Report

Agenda Item No.:	_____	Meeting Date:	<u>August 8, 2016</u>
Subject:	<u>Ordinance No. 2016-20 Declaring As A</u>	Prepared by:	<u>Town Attorney</u>
	<u>Public Use The Real Property Along SR</u>		_____
	<u>161 And Authorizing Condemnation Of</u>	Atty Routing No:	<u>018-16</u>
	<u>Certain Real Property</u>	Atty Review Date:	<u>August 4, 2016</u>

Summary: The Town, in partnership with the State of Washington, has commenced a project to widen SR 161, which requires the Town to acquire right of way and other real property rights from property owners in the affected areas. The project is funded partially with federal grant funds, which need to be obligated by the end of the year. Several property owners in the affected area have refused to accept offers made by the Town and it does not appear that further negotiations will be successful. WSDOT has suggested the Town prepare for condemnation proceedings.

State law requires that before the Town may initiate condemnation proceedings in Superior Court, the Town Council must first adopt an ordinance that declares a public use and necessity, authorizes the proposed condemnation, and identifies the source of the funds to be used to purchase the property. The three properties in question are located at 203 Center Street E., 204 Center Street E., and 103 Washington Avenue N.

The Town is currently in negotiations with the property owners of the three parcels in question, but it is expected that negotiations will fail and the parties will not be able to agree on total just compensation to be paid for the right-of-way. In the event the negotiations do fail, the final remedy is for the Town to initiate a condemnation action pursuant to Chapter 8.12 RCW.

Recommendation: Staff recommends approval of Ordinance No. 2016-20 declaring as public use and necessity the design and construction of certain roadway improvements on SR 161 and authorizing the condemnation of land in and through certain real property located along SR 161.

Motion for consideration: I move to adopt Ordinance No. 2016-20 declaring as public use and necessity the design and construction of certain roadway improvements on SR 161 and authorizing the condemnation of land in and through certain real property located along SR 161.

Fiscal Impact: None at this time. At such time as the Town and land owners agree, or the Pierce Superior Court determines final total just compensation, the property owner will be paid from funds that the Town Council previously obligated for right-of-way acquisition.

Attachments: Proposed Ordinance 2016-20

ORDINANCE NO. 2016-20

AN ORDINANCE OF THE TOWN OF EATONVILLE, WASHINGTON, DECLARING AS PUBLIC USE AND NECESSITY THE DESIGN AND CONSTRUCTION OF CERTAIN ROADWAY IMPROVEMENTS ON STATE ROUTE 161 AND AUTHORIZING THE CONDEMNATION OF LAND IN AND THROUGH CERTAIN REAL PROPERTY LOCATED ALONG STATE ROUTE 161

WHEREAS, the Town Council previously approved, and the Town of Eatonville, in partnership with the State of Washington, commenced work on the widening of Washington State Route (SR) 161 through the Town of Eatonville (“Project”); and

WHEREAS, the Project involves the widening of the existing SR 161 roadway in order to improve traffic flow and increase safety in the area; and

WHEREAS, the Town has secured funding for the right-of-way acquisition phase of the Project; and

WHEREAS, completion of the Project will positively address important public safety and transportation issues by the alleviation of traffic congestion and the improvement of traffic flow in the Town; and

WHEREAS, prior to the commencement of construction, the Town must acquire all right-of-way interests and construction easements necessary for construction of the Project, and must justly compensate affected property owners for the property rights and interests acquired; and

WHEREAS, the Town, with the assistance of its acquisition agent, Brian Fagernes of Cascade Right-Of-Way Services, Inc., has diligently worked to acquire by negotiation all property interests necessary for the Project, has successfully negotiated with a number of property owners, and has otherwise notified all property owners of the Project and the reason for the Town’s acquisition efforts; and

WHEREAS, there exists in the Town of Eatonville three parcels of land, Pierce County Assessor’s Parcel Numbers 3605001870, 0416144115, and 3605002800 (“Right-Of-Way Properties”), which the Town does not currently own but which are necessary for the Project; and

WHEREAS, the Town Council finds that the Right-of-Way Properties are critical to the Project and that it is in the public interest to acquire the Right-of-Way Properties for public health, safety, welfare and transportation needs; and

WHEREAS, although the Town, by and through its representative, has negotiated, and continues to negotiate in good faith with the owners of the Right-Of-Way Properties, the Town and the owners have not been able to agree on a final total just compensation amount to be paid for the Right-Of-Way Properties and it appears an agreement may not be reached; and

WHEREAS, the Town Council believes that condemnation proceedings pursuant to Chapter 8.12 RCW will provide a full and public process to ensure that public funds are spent appropriately and that the owners of the Right-of-Way Properties are compensated in accordance with the requirements of law; and

WHEREAS, the Town has provided notice of this planned final action as provided in RCW 8.12.005 and RCW 8.25.290; and

WHEREAS, based on the foregoing, the Town Council finds that the only alternative available for acquisition of the Right-of-Way Properties may be by eminent domain and that it is in the public interest to condemn the Right-Of-Way Properties for the purposes of completing the Project; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF EATONVILLE AS FOLLOWS:

Section 1. Each and every of the recitals above are hereby adopted as findings of fact and incorporated herein by reference supporting the action taken in this ordinance.

Section 2. Based on the findings set forth above, the Town Council declares the SR 161 Project is of public use, and is necessary and in the best interests of the citizens of Eatonville. The Project will be owned by the Town of Eatonville and open to the public. The Project will alleviate traffic congestion, improve traffic flow within the Town, and improve the overall safety of SR 161 for the use of the public.

Section 3. To accomplish construction of the SR 161 Project it is necessary to obtain fee title to Pierce County Assessor's Parcel Numbers 3605001870, 0416144115, and 3605002800 ("Right-of-Way Properties"), as legally described in Exhibits A, B, and C, which are attached hereto and incorporated by this reference. The Town Council finds and declares that the acquisition of the Right-of-Way Properties described in Exhibits A, B, and C is necessary to construct the SR 161 Project, which is a public use as set forth in Section 2 above.

Section 4. Pursuant to RCW 8.12.030, the Right-of-Way Properties described in Exhibits A, B, and C are hereby condemned and taken for the purposes described above,

only after just compensation having been first made to the owner of the property, or paid into the court for the owner thereof and in accordance with the requirements of due process and state law.

Section 5. Compensation for the Right-of-Way Properties condemned shall be made from the General Fund made available for that purpose, and/or such other funds of the Town of Eatonville as may be permitted by law.

Section 6. In the event final negotiations with the owners of the Right-Of-Way Properties does not result in an agreement regarding the total just compensation to be paid, the Mayor is hereby authorized and directed to instruct the Town Attorney to immediately initiate condemnation proceedings for the above-described Right-of-Way Properties in the Superior Court of the State of Washington for Pierce County pursuant to Chapter 8.12 RCW.

Section 7. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 8. This ordinance shall take effect after publication of a summary, consisting of the title, pursuant to RCW 35.27.300.

1ST READING:

2ND READING: 08/08/2016

PASSED by the Town Council of the Town of Eatonville and attested by the Clerk in authentication of such passage this ____ day of August, 2016.

Mike Schaub
Mayor

ATTEST:

APPROVED AS TO FORM:

Kathy Linnemeyer
Town Clerk

Gregory A. Jacoby
Town Attorney

EXHIBIT A

Right-Of-Way Property Number 1:

Property Location: 203 Center Street East, Eatonville, Washington

Pierce County Assessor's Parcel Number: 3605001870

Legal Description:

Section 14 Township 16 Range 04 Quarter 43 EATONVILLE:
EATONVILLE L 1 THRU 6 B 23 EXC POR DEEDED TO
TOWN OF EATONVILLE UNDER ETN #520753
(DCNFEMS8-18-80)

EXHIBIT B

Right-Of-Way Property Number 2:

Property Location: 204 Center Street East, Eatonville, Washington

Pierce County Assessor's Parcel Number: 0416144115

Legal Description:

Section 14 Township 16 Range 04 Quarter 43 : & 360500-281-1 L 5, 6, 7 & 8 BLK C OF TOWN OF EATONVILLE TOG/W FOLL DESC TR BEG INTER OF NLY LI RAILROAD AVE AKA GROE ST IN SW OF SE WITH SE COR L 8 BLK C TH SELY ALG NLY LI OF SD GROE ST 110 FT TH N PAR/W E LI OF SD PLAT 154.94 FT TO N LI OF L 5, 6, 7 & 8 EXT E TH W ON SD N LI EXT E 100.39 FT TO NE COR OF SD L 8 TH S 109.96 FT TO BEG OUT OF 360500-281-0, 282-0, 283-0 & 04-16-14-4-064 & 4-071 SEG L-0404 HB JW

EXHIBIT C

Right-Of-Way Property Number 3:

Property Location: 103 Washington Avenue North, Eatonville, Washington

Pierce County Assessor's Parcel Number: 3605002800

Legal Description:

Section 14 Township 16 Range 04 Quarter 42 EATONVILLE:
EATONVILLE S 1/2 OF L 1 THRU 4 BLK C