

STAFF REPORT

DATE: March 28, 2016
TO: Honorable Mayor and City Council Members
FROM: William R. Galstan, Special Counsel *William R. Galstan*
SUBJECT: Resolution of Necessity, 3530 Main Street

Recommendation:

Adopt the Resolution of Necessity (4/5 vote required).

Introduction:

The City will soon be considering bids to construct Capital Improvement Project #165, Main Street Reconstruction (Norcross to 2nd Street). This will extend the street improvements currently existing in front of City Hall to the area east of 2nd Street.

A commercial building located at 3530 Main Street is in the way of this project. The new street pavement edge would immediately abut the front of the building. There would be no room for the sidewalk or other street fixtures and infrastructure. Therefore, the property must be acquired and the building demolished in order to construct the improvements.

A plat map showing the proposed street improvements is attached as an exhibit to the proposed Resolution.

Staff has been in contact with the property owners, which is held in a family trust. An appraiser suggested by the family was retained, who assigned a fair market value to the property. An offer from the City to acquire the property for the amount stated in the appraisal was made but not yet accepted. Therefore, in order to meet the construction schedule, the City must consider the filing of an eminent domain action, which will allow the City to proceed with the project while the fair market value is determined by the Court.

Before an eminent domain case can be filed, the City Council must adopt, by at least a 4/5 vote, a "Resolution of Necessity." This resolution makes certain

findings required by state law and authorizes the city attorney to begin the proceedings.

It must be emphasized that the price to be paid for the property is NOT the subject of this hearing. This hearing has the sole purpose of determining whether the statutory findings can be made.

Statutory Findings:

The statutory findings required to be made, and the facts supporting the making of the findings, are as follows:

1. *The project is planned and located in a manner that will be most compatible with the greatest public good and the least private injury.*

Facts: Yes, the project has been part of the City's Downtown Specific Plan since 2010. The project would extend the current alignment and improvements of Main Street that exist in front of City Hall to past 2nd Street. This is deemed important for the revitalization of downtown as a whole. The subject property is on the north side of the street. The roadway cannot be shifted to the south and thus avoid the taking because of the geometrics of the street design and because there are more privately-owned buildings on the south side of the street. If the street was shifted to the south, more private property would need to be acquired and the street would not make a smooth transition along its proposed route.

2. *The taking of the project is necessary for the proposed project.*

Facts: Yes, as stated above, there would be insufficient room for the street improvements, including sidewalk and other street infrastructure, if the building was allowed to remain.

3. *The offer to purchase required by California Government Code Sec. 7267.2 was made to the owners of the property interests.*

Facts: Yes, a written offer to acquire the property at the fair market value as determined by the MAI appraiser was made on March 7, 2016.

4. *The necessary notice of this hearing was given as required by Code of Civil Procedure Sec. 1245.235.*

Facts: Yes, the notice was given by the City Clerk on March 23, 2016.

5. *The City of Oakley has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain.*

Facts: Yes, as outlined in this staff report.

6. *The City of Oakley has complied with all provisions of the California Environmental Quality Act for the project.*

Facts: Yes, the project is the subject of a certified Environmental Impact Report for the Downtown Specific Plan.

7. *If any portion of the property is appropriated for a public use, the public uses are necessary and paramount pursuant to Code of Civil Procedure Sec. 1240.610, or alternatively, will not unreasonably interfere with or impair the continuance of the public use as it then exists or can be reasonably expected to exist in the future.*

Facts: Yes, the surplus portion of the taken property, after the building is removed, will be used for public purposes, including landscaping and potential open space or parking for a nearby transit center.

Fiscal Impact:

Acquisition of this property is included in the costs of the Project budget.

Conclusion:

If the City Council wishes to proceed with the project, then this Resolution should be adopted.

Cc: Bryan Montgomery, City Manager
Derek Cole, City Attorney
Kevin Rohani, City Engineer

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY DECLARING
THE NECESSITY TO COMMENCE EMINENT DOMAIN PROCEEDINGS FOR THE
ACQUISITION OF 3530 MAIN STREET, OAKLEY**

WHEREAS after consideration of the staff report, staff presentation, discussion, oral testimony and evidence presented at the hearing on the date of the adoption of this Resolution, all of which are incorporated as if set forth herein, the City Council of the City of Oakley by vote of at least two-thirds of its members, FINDS, DETERMINES, DECLARES AND RESOLVES that:

- a) The public interest, convenience and necessity require the proposed project, to wit: Capital Improvement Project #165 Main Street Reconstruction (Norcross to 2nd Street) and all uses appurtenant thereto ("Project"); and
- b) The interests in real property to be acquired are fee simple, which are described in Exhibit "A" and depicted on Exhibit "B" attached hereto and incorporated herein by this reference ("Property"). The Property is located within the City of Oakley, County of Contra Costa, State of California.
- c) The use of eminent domain to acquire the Property is authorized by Streets & Highways Code Sec. 10102;
- d) The Project is planned and located in a manner that will be most compatible with the greatest public good and least private injury; and
- e) The taking of the Property is necessary for the proposed project and such taking is authorized by Section 19, Article I of the California Constitution, Section 1230.010 *et seq* of the California Code of Civil Procedure, and other applicable law; and
- f) The offer to purchase required by California Government Code Sec. 7267.2 was made to the owners of the Property interests; and
- g) The necessary notice of this Resolution has been given, as required by Code of Civil Procedure section 1245.235;
- h) The City of Oakley has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the property interests described herein; and
- i) The City of Oakley has fully complied with all provisions of the California Environmental Quality Act for the Project; and

WHEREAS the City Council hereby declares that it is its intention to acquire the Property in the name of the City of Oakley in accordance with the laws of the State of California governing condemnation proceedings; and

WHEREAS the City Council further finds that if any portion of the area of the Property has been appropriated to some public use, the public uses to which it is to be applied by the City, as described above, are more necessary and paramount public uses, pursuant to Code of Civil Procedure Sec. 1240.610 or, alternatively, will not unreasonably interfere with or impair the continuance of the public use as it then exists or may reasonably be expected to exist in the future, pursuant to Code of Civil Procedure Sec. 1240.510;

NOW, THEREFORE, BE IT RESOLVED that the City Attorney is authorized and directed to prepare, institute and prosecute in the name of the City of Oakley such proceedings in the proper Court having jurisdiction thereof as may be necessary for the acquisition of said Property, including the filing of a motion for an Order of Possession prior to judgment.

BE IT FURTHER RESOLVED that this Resolution shall be effective immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Oakley at a regular meeting held on the 12th day of April, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

APPROVED:

Kevin Romick, Mayor

ATTEST:

Libby Vreonis, City Clerk
By Kim Carmody, Deputy City Clerk

Date

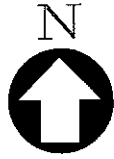
Property Description

The land referred to is situated in the County of Contra Costa, City of Oakley, State of California, and is described as follows:

Commencing at a point 129 feet East of the Southwest corner of Section 24, Township 2 North, Range 2 East, Mount Diablo Base and Meridian, running thence North 156 feet to the South line of the right of way of the Santa Fe and San Joaquin Valley Railway; thence Southeasterly along said right of way 54 feet; thence South 136 feet to the South line of said Section; thence West 50 feet to the place of beginning, less a strip 25 feet wide along the South side of a public road.

APN 037-160-023

Commonly known as 3530 Main Street, Oakley, California



3530

MANN VICTORIA
LOUISE/
FAVALORA JULIE
ANN
037-160-023

EXISTING BUILDING

FUTURE
SIDEWALK

12'

FUTURE
CURB

MAIN STREET

FUTURE
MEDIAN



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LEGEND:

----- RIGHT OF WAY

EXHIBIT

MARCH 30, 2016
SCALE: 1" = 20'