

RESOLUTION 21-24

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH FLORIDA RELATING TO THE CONDEMNATION OF THAT CERTAIN LEASEHOLD INTEREST IN PROPERTY LOCATED AT 16726 FRONT BEACH ROAD WITHIN THE CITY, FOR RIGHT OF WAY AND DRAINAGE PURPOSES TO SUPPORT THE IMPROVEMENT OF THE FRONT BEACH ROAD SEGMENT 3 PROJECT; MAKING FINDINGS OF FACT AND NECESSITY; AND AUTHORIZING THE APPROPRIATE OFFICERS OF THE CITY TO TAKE THE APPROPRIATE ACTIONS TO SECURE THE ACQUISITION OF THE PROPERTY INTEREST BY EMINENT DOMAIN PROCEEDINGS.

WHEREAS, the CITY OF PANAMA CITY BEACH, (the "CITY") is authorized by Chapter 166, Florida Statutes to condemn all necessary lands and property for the purpose of securing and utilizing transportation rights-of-way, and

WHEREAS, the CITY may acquire private or public property and property rights, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation by eminent domain proceedings, as the City may deem necessary for any of the purpose of the Municipal Home Rule Powers Act, included, but not limited to, any property or property interests reasonably necessary for expansion, construction, operation and maintenance of public streets and roads, and

WHEREAS, Front Beach Road is a key east-west connector providing access from State Road 79 to State Road 392A and US Highway 98; and

WHEREAS, the City finds that the expansion and improvement of the right-of-way along Front Beach Road Segment 3 between State Road 79 and Lullwater Drive (the "Project") is necessary to improve the function and appearance of that corridor, and to allow for the installation and construction of sidewalks and additional traffic lanes in a safe and acceptable manner; and

WHEREAS, the CITY has determined that it is necessary, in the public interest, and serves a public purpose to make certain improvements to portions of the Front Beach Road right-of-way, and the City has determined that to do so it is necessary, in the public interest, and serves a public purpose that the CITY obtain title to certain portions of land along and adjacent Front Beach Road in a certain parcel of property situate, lying and being in Bay County, Florida, the legal description of the parcel being attached hereto as *Exhibit A* (the "Property"), and

WHEREAS, the City finds that the Property is necessary and essential for the realignment, construction and expansion of the Project, in accordance with the permitting requirements of state and local agencies, and the City determines that acquiring the Property for this Project is necessary and in the best interests of the public, and serves a public purpose; and

WHEREAS, the City, in consultation with the Florida Department of Transportation, has considered alternative designs and routes, cost, safety, environmental factors, and long term area planning in concluding that acquiring said property is necessary and in the best interests of the public, and all other conditions precedent to acquiring said parcels have been met, including, but not limited to, notifying appropriate state and local agencies that governmental permits have been obtained or that there is a reasonable probability that such permits will be obtained; and

WHEREAS, the acquisition of the Property is consistent with the City's Near Term Work Plan adopted by the City Council on September 10, 2020, by Resolution 20-168, and funds have been budgeted for this purpose; and

WHEREAS, the City voluntarily acquired the fee simple interest to the Property via an arm's length transaction with the Fee owner, subject to certain leasehold interests; and

WHEREAS, subsequent to the City's voluntary acquisition of said Property, Lessee NPC International. Inc. ("Lessee") voluntarily moved its Pizza Hut business from the Property to another location, and the structure they occupied on the Property has since been vacant; and

WHEREAS, the City has been in negotiation with Lessee to determine compensation, if any, due Lessee in this circumstance but said negotiation has been unsuccessful; and

WHEREAS, in order to resolve the issue of compensation, if any, due Lessee and acquire all interests in said property, it is necessary that the City maintain legal action against Lessee including, as necessary, an eminent domain action in order to determine the compensation due Lessee.

NOW THEREFORE BE IT RESOLVED, for the purposes aforesaid, the City Council finds that:

1. The City Council hereby adopts as true and correct the foregoing Whereas clauses, and incorporates them as findings herein.
2. For the purposes aforesaid, it is necessary, practical, and in the best interest of the public and the CITY that it acquire the leasehold interest in that certain parcel heretofore described in the attached Exhibit A, necessary for the Panama City Beach Front Beach Road CRA Segment 3 Project. The Property will be used as transportation right of way for the realignment, improvement and expansion of Front Beach Road, for required drainage facilities and water retention areas necessitated by the improvement and expansion of Front Beach Road and the adjacent Lullwater Lake outfall, and other municipal purposes.
3. The City, its officers, employees and attorneys, including designated outside counsel, be and are hereby authorized and directed to proceed to take the necessary steps to institute and prosecute such necessary actions and proceedings as may be proper for the acquisition of the leasehold interest in said land by eminent domain proceedings pursuant to Chapters 73 and 74, Florida Statutes, and otherwise and to prepare, sign, execute, serve, publish and file in the name of the City, all eminent domain papers, affidavits and pleadings and said attorneys are authorized to have prepared such other instruments and documents as may be necessary in connection herewith.
4. The City finds and determines that the property identified in Exhibit A is necessary for the public purpose of construction of the roadway project. The City authorizes the acquisition of the property identified and described in Exhibit A attached hereto, and by this reference made a part thereof. The City further authorizes the City Attorney, her staff or designated outside counsel to correct minor errors or scrivener's errors

to said descriptions, if any, with regard to the condemnation proceeding without further action of this Council.

5. This Resolution supercedes and repeals paragraph 3 of Resolution 18-133.

THIS RESOLUTION shall become effective immediately upon passage.

PASSED in regular session this 10th day of December, 2020.

CITY OF PANAMA CITY BEACH

BY: _____


Mark Sheldon, Mayor

ATTEST:



Lynne Fasone, City Clerk

EXHIBIT A

THAT CERTAIN LEASEHOLD INTEREST HELD BY NPC INTERNATIONAL, INC., A KANSAS CORPORATION, BY VIRTUE OF THAT CERTAIN LEASE AGREEMENT DATED FEBRUARY 1, 1994, (THE "LEASE"), AS AMENDED BY AGREEMENT SEPTEMBER 7, 2012 (THE "FIRST AMENDMENT"), AND AS SUBSEQUENTLY AMENDED MAY 13, 2020 (THE "SECOND AMENDMENT"), IN THE FOLLOWING DESCRIBED PROPERTY OWNED IN FEE SIMPLE BY THE CITY OF PANAMA CITY BEACH:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 19, TOWNSHIP 3 SOUTH, RANGE 16 WEST, BAY COUNTY, FLORIDA; THENCE RUN WEST ON THE NORTH LINE OF SAID SECTION 19 A DISTANCE OF 1445.6 FEET; THENCE AT A DEFLECTION ANGLE OF 66°45' TO THE LEFT RUN SOUTHWESTERLY (OLD HOLLOWAY & VICKERS PROPERTY LINE) A DISTANCE OF 575 FEET TO THE NORTHERLY R/W OF U.S. HIGHWAY 98 AS IT NOW EXISTS (100 FOOT R/W); THENCE RUN NORTHWESTERLY ON AND ALONG THE NORTHERLY R/W LINE OF SAID U.S. HIGHWAY 98 A DISTANCE OF 398 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION, THIS POINT ALSO BEING THE POINT OF INTERSECTION OF THE NORTHERLY R/W LINE OF SAID U.S. HIGHWAY 98 AND THE EASTERLY R/W LINE OF LULLWATER DRIVE ACCORDING TO THE PLAT OF EL CENTRO BEACH AS RECORDED WITH THE CLERK OF THE CIRCUIT COURT OF BAY COUNTY, FLORIDA, IN PLAT BOOK 9, PAGE 8; THENCE AT 90° TO THE RIGHT RUN NORTHEASTERLY ON THE EASTERLY R/W LINE OF SAID LULLWATER DRIVE A DISTANCE OF 120 FEET; THENCE AT 90° TO THE RIGHT RUN SOUTHEASTERLY A DISTANCE OF 125 FEET; THENCE AT 90° TO THE RIGHT RUN SOUTHWESTERLY A DISTANCE OF 120 FEET TO THE NORTHERLY R/W LINE OF SAID U.S. HIGHWAY 98; THENCE AT 90° TO THE RIGHT RUN NORTHWESTERLY ON AND ALONG THE SAID NORTHERLY R/W LINE OF SAID U.S. HIGHWAY 98 A DISTANCE OF 125 FEET TO THE POINT OF BEGINNING.

BAY COUNTY PARCEL NO: 33321-000-000

PROPERTY ADDRESS: 16726 FRONT BEACH ROAD, PANAMA CITY BEACH, FLORIDA