



TOWN OF ELIZABETH

PATRICK G. DAVIDSON, TOWN ADMINISTRATOR

TO: Honorable Mayor, Mayor Pro Tem, and Board of Trustees
FROM: Patrick Davidson, Town Administrator
DATED: July 9, 2024
SUBJECT: Acquisition of 1123 High Point Trail, Elizabeth, CO.

BACKGROUND

On July 5, 2023, the Town Administrator met with the Board of the Gold Creek Homeowners Association. During this meeting, the HOA asserted ownership of the lands upon which the Town previously drilled and completed two (2) water wells, as well as the associated infrastructure and wellhouse. The claim was asserted from an initial review of the records maintained by the Elbert County Assessor.

In reviewing the records regarding the re-platting by Lennar as part of the build-out of Gold Creek, the conveyances executed regarding common areas and the Town, and other documents, it became clear that several scrivener errors occurred, and that each compounded prior errors. The net result is that the Gold Creek HOA became title owner to property intended for the Town of Elizabeth for operations of water facilities for the Town.

On April 12, 2024, Counsel for the Gold Creek HOA provided notice to the Town that upon a review of the documents previously provided, it did appear that the land was conveyed in error. Unfortunately, under the Colorado Common Interest Ownership Act (CCIOA), it was believed that the error could not be corrected independently by the Gold Creek HOA, but rather was dependent upon the approval of 67% of the owners in Gold Creek or by eminent domain. Due to the extremely low level of participation by members of the HOA, the Town was encouraged to pursue eminent domain as a means of quickly and effectively obtaining title to the property. Therefore, this action follows.

ANALYSIS

The Town of Elizabeth, Colorado possesses the power of eminent domain for the purposes of obtaining the property upon which the Town's well and well house are located pursuant to the provisions of C.R.S. § 38-6-101 and C.R.S. § 31-35-402(1)(a). The acquisition of the Subject Property serves a public purpose and is necessary and essential to the Town's ability to provide water facilities for the residents of the Town of Elizabeth.

STAFF RECOMMENDATION

Staff recommend the above-described action, and as necessary, the exercise of the powers of eminent domain in order to secure fee simple title to the lands identified herein, for the benefit of the residents of the Town of Elizabeth.

BUDGET CONSIDERATIONS

The Town does not regularly budget for litigation, and as such, no specific funds have been allocated for this matter. Funding will need to be either from cost savings within the General Fund budget, or funds will need to be reallocated and identified for purposes of covering these expenses. As is nearly always the case with litigation, the costs are unknown. However, as the Gold Creek HOA is requiring eminent domain to simply clear title, the costs are expected to remain relatively low.

ATTACHMENTS

Ordinance 24-08. An Ordinance Of The Board Of Trustees Of The Town Of Elizabeth, Colorado Stating The Intent Of The Town Of Elizabeth To Acquire Real Property For The Purpose Of Obtaining The Town's Well House Site Through The Utilization Of The Town's Power Of Eminent Domain, And Directing The Town's Staff And Town Attorney To Notify All Persons Affected Thereby Of The Above Stated Intent Of The Town And Thereafter To Comply With All Pertinent Provisions Of C.R.S. § 38-1-101, *Et Seq.*, Relating To Good Faith Negotiation

ORDINANCE 24-08

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF ELIZABETH, COLORADO STATING THE INTENT OF THE TOWN OF ELIZABETH TO ACQUIRE REAL PROPERTY FOR THE PURPOSE OF OBTAINING THE TOWN'S WELL HOUSE SITE THROUGH THE UTILIZATION OF THE TOWN'S POWER OF EMINENT DOMAIN, AND DIRECTING THE TOWN'S STAFF AND TOWN ATTORNEY TO NOTIFY ALL PERSONS AFFECTED THEREBY OF THE ABOVE STATED INTENT OF THE TOWN AND THEREAFTER TO COMPLY WITH ALL PERTINENT PROVISIONS OF C.R.S. § 38-1-101, *ET SEQ.*, RELATING TO GOOD FAITH NEGOTIATION

WHEREAS, the Town of Elizabeth, Colorado possesses the power of eminent domain for the purposes of obtaining the property upon which the Town's well and well house are located pursuant to the provisions of C.R.S. § 38-6-101 and C.R.S. § 31-35-402(1)(a),

WHEREAS, the owner of the property attached hereto as **Exhibit A**, attached hereto and incorporated herein by this reference (the "Subject Property") has requested that the Town of Elizabeth exercise the power of eminent domain to acquire the Subject Property for good and valuable non-monetary consideration, and therefore the Town of Elizabeth wishes to acquire the Subject Property through the non-contested exercise of the power of eminent domain;

WHEREAS, the Board of Trustees of the Town of Elizabeth wishes to comply with all applicable provisions of C.R.S. § 38-1-101 *et seq.*, including without limitation the notice and negotiation requirements and provisions thereof; and

WHEREAS, the acquisition of the property more particularly described in **Exhibit A** is also based on a negotiated resolution of a disputed property issue.

BE IT ORDAINED BY THE BOARD OF TRUSTEES FOR THE TOWN OF ELIZABETH, COLORADO, THAT

Section 1. Notice is hereby given pursuant to C.R.S. § 38-1-121(1) that the Town of Elizabeth, Colorado, intends to acquire the parcels of property more particularly described in **Exhibit A** (the "Subject Property") based on the request of the property owner, and based on a negotiated settlement for the acquisition of the Subject Property.

Section 2. The acquisition of the Subject Property serves a public purpose and is necessary and essential to the Town's ability to provide water facilities for the residents of the Town of Elizabeth.

Section 3. The Town Attorney is hereby directed to provide a copy of this Ordinance to all persons who presently own or maintain an ownership interest in the Subject Property notifying them of the intent of the Town of Elizabeth to acquire such property through the use of the Town's power of eminent domain based on the request of the property owner.

Section 4. The staff of the Town, together with the Town Attorney, and any and all persons retained or employed by the Town of Elizabeth in the prosecution of this matter, are directed to comply with all requirements set forth in C.R.S. § 38-1-101, *et seq.*, in the conduct of the within authorized eminent domain actions.

Section 5. In the prosecution of the within authorized eminent domain action, the Town shall retain all rights and powers lawfully delegated to it by C.R.S. § 38-1-101, *et seq.*, C.R.S. § 38-6-101 and C.R.S. § 31-35-402(1)(a),

Section 6. Severability. If any section, paragraph, clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or enforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

Section 7. The Board of Trustees hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 8. This Ordinance shall become effective thirty (30) days after publication.

Read and approved at a meeting of the Board of Trustees of the Town of Elizabeth, Colorado, this _____ day of _____, 2024.

Passed by a vote of _____ for and _____ against and ordered published.

Tammy Payne, Mayor

ATTEST

Michelle M. Oeser, Town Clerk

EXHIBIT A – ORDINANCE 24-08

TOWN OF ELIZABETH WELL HOUSE SITE ACQUISITION

Parcel ID Number 8513308005

Legal Description. Section 13, Township 8, Range 65, Subdivision RITORO F2, Tract E, and more commonly known as 1123 High Point Trail, Elizabeth, Colorado 80107