

RESOLUTION NO. 06-18437

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, PURSUANT TO BILLINGS CITY CODE CHAPTER 12, EMINENT DOMAIN, DECLARING PUBLIC PURPOSE AND USE, ESTABLISHING FAIR MARKET VALUE FOR EACH OF THE PROPERTIES, DESCRIBING THE PROPERTIES TO BE TAKEN AND AUTHORIZING CITY OFFICIALS TO PROCEED.

WHEREAS, the City of Billings finds it necessary to acquire certain real property to allow it to utilize such property for purposes of traffic lane widening improvements on Grand Avenue between 8th Street West and 12th Street West in the City of Billings; and

WHEREAS, the real property to be acquired, and the temporary construction easements necessary, to complete these improvements is described in Exhibit "A" attached hereto and by this reference incorporated herein; and

WHEREAS, the City officials have attempted to purchase said real property at a mutually agreeable purchase price but have been unable to obtain the consent of all of the owners to sell said real property; and

WHEREAS, pursuant to Chapter 12, Section 12-102 of the Billings City Code, it is necessary to pass a Resolution initiating eminent domain procedures; and

WHEREAS, said use is a public use and will benefit the general public and will be used for public purposes; and

WHEREAS, it is necessary to condemn said real property by exercise of the right of eminent domain to make land available for said completion of traffic lane widening improvements on Grand Avenue between 8th Street West and 12th Street West in Billings; and

WHEREAS, it is necessary to condemn the right of way in said private real property in fee simple and for a temporary construction easement as described in Exhibit "A" for the

purpose of traffic lane widening improvements on Grand Avenue between 8th Street West and 12th Street West in the City of Billings; and

WHEREAS, the City officials should be authorized to proceed with the condemnation proceedings as provided by law.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Billings, Montana, as follows:

1. **PUBLIC USE:** The City hereby declares that the above-described interests in real property shall be condemned at its fair market value under the City's eminent domain powers to enable the City to acquire said property, and necessary construction easements, for the purposes of traffic lane widening improvements on Grand Avenue between 8th Street West and 12th Street West in the City of Billings;

2. **PUBLIC PURPOSE AND NECESSITY:** It is hereby declared that said real property is being acquired for a public purpose, for public use and is necessary to the project.

3. **ESTABLISHMENT OF FAIR MARKET VALUE.** Based upon formal appraisals and comparative market analyses that have been completed at the request of this Council. City staff are hereby instructed to make a last and best offer to each of these property owners for the following fair market values which are hereby established by the Council, plus a 5% premium to encourage settlement.

a. Northerly 19 feet of Lot 12, Block 4, Sunset Subdivision (1144 and 1146 Grand Avenue). Fair Market Value for the entire parcel is hereby established as \$210,000.00. City staff are instructed to offer the owner or owners of this property \$220,500.00 for the interest sought.

b. Northerly 15 feet of Lots 18, 19 and 20, Block 4, Sunset Subdivision (1102 and

1112 Grand Avenue). Fair Market Value for the northerly 15 feet of the parcel and the sign that is erected thereon is hereby established as \$60,966.00. City staff are instructed to offer the owner or owners of this property \$64,014.30 for the interest sought.

c. Northerly 100 feet of Lot 11, Block 4, Sunset Subdivision. (12th Street West at Grand Avenue). Fair Market Value for the entire parcel is hereby established as \$53,500.00. City staff are instructed to offer the owner or owners of this property \$56,175.00 for the interest sought.

d. Lot 3, Sunset Subdivision Fifth Filing (1048 Grand Avenue – Dairy Queen). Fair Market Value for the entire parcel is hereby established as \$220,000.00. City staff are instructed to offer the owner or owners of this property \$231,000.00 for the interest sought.

4. DESCRIPTION OF PROPERTY, EXTENT OF INTEREST: The right of way in fee simple, a perpetual easement and temporary construction easement described in Exhibit “A” shall be taken for public purpose.

5. AUTHORIZATION TO PROCEED: That the appropriate City officials are hereby directed and authorized to proceed with condemnation of said real property as provided by law.

PASSED AND APPROVED by the City Council of the City of Billings, Montana on the 12th day of June, 2006.

RON TUSSING, Mayor

ATTEST:

MARITA HEROLD, CMC/AAE
City Clerk

EXHIBIT "A"

LEGAL DESCRIPTION OF GRAND AVENUE PROPERTY ACQUISITION

1. A tract of land located in the Northerly 100 feet of Lot 11, Block 4, Sunset Subdivision, situated in Government Lot 2, Section 5, Township 1 South, Range 26 East, P.M.M., Yellowstone County, Montana.
Beginning at the northwest corner of Lot 11; thence N89°46'05"E along the north line of said lot, 58.44 feet; thence S0°22'55"E along the east line of said lot, 19.09 feet; thence S89°02'27"W, 39.75 feet; thence S46°22'56"W, 25.67 feet to the west line of said lot; thence N0°22'55"W along the west line of said lot, 37.22 feet to the Point of Beginning, containing 1,300 square feet, more or less, plus a temporary construction easement extending 10 feet to the south along the southern boundary of the tract for use for construction purposes during the construction period for the improvements being made.
2. A tract of land located in Lot 12, Block 4, Sunset Subdivision, situated in Government Lot 2, Section 5, Township 1 South, Range 26 East, P.M.M., Yellowstone County, Montana.
Beginning at the northwest corner of Lot 12; thence N89°46'05"E along the north line of said lot, 59.99 feet; thence S0°22'55"E along the east line of said lot, 18.33 feet; thence S89°02'27"W, 59.99 feet to the west line of said lot; thence N0°22'55"W along the west line of said lot, 19.09 feet to the Point of Beginning, containing 1,120 square feet, more or less, plus a temporary construction easement extending 10 feet to the south along the southern boundary of the tract for use for construction purposes during the construction period for the improvements being made.
3. A tract of land identified as Lot 3, of the Sunset Subdivision Fifth Filing, situated in Government Lot 2, Section 5, Township 1 South, Range 26 East, P.M.M., Yellowstone County, Montana.
4. A tract of land located in Lots 18 and 19, Block 4, Sunset Subdivision, situated in Government Lot 2, Section 5, Township 1 South, Range 26 East, P.M.M., Yellowstone County, Montana.
Beginning at the northwest corner of Lot 18; thence N89°46'54"E along the north line of Lots 18 and 19 a distance of 114.49 feet; thence S0°22'55"E along the east line of Lot 19 a distance of 14.66 feet; thence S89°33'59"W, 144.49 feet to the west line of Lot 18; thence N0°22'55"W along the west line of said lot, 15.09 feet to the Point of Beginning, containing 1,705 square feet, more or less, plus a temporary construction easement extending 10 feet to the south along the southern boundary of the tract for use for construction purposes during the construction period for the improvements being made.
5. A tract of land located in Lot 20, Block 4, Sunset Subdivision, situated in Government Lot 2, Section 5, Township 1 South, Range 26 East, P.M.M., Yellowstone County, Montana.
Beginning at the northwest corner of Lot 20; thence N89°39'31"E along the north line of said lot, 79.96 feet; thence S0°22'55"E along the east line of said lot, 36.80 feet; thence N42°46'33"W, 30.12 feet; thence S89°33'59"W, 59.65 feet to the west line of said lot; thence N0°22'55"W along the west line of said lot, 14.66 feet to the Point of Beginning, containing 1,395 square feet, more or less, plus a temporary construction easement extending 10 feet to the south along the southern boundary of the tract for use for construction purposes during the construction period for the improvements being made.