Ordinance No. 4236

(Amending or Repealing Ordinances)

2/7/2017
Condemnation, appropriation, taking, and damaging of real property and/or property rights for the South 228th Street Grade Separation Project
ORDINANCE NO. 4236

AN ORDINANCE of the City Council of the City of Kent, Washington, providing for the acquisition of real property and/or property rights located 1,000 feet east and west of the railroad tracks for Union Pacific Railroad and adjacent to South 228th Street. This action is being taken in order to construct the South 228th Street grade separation project. This ordinance provides for the condemnation, appropriation, taking, and damaging of real property and/or property rights as are necessary for that purpose and provides for the payment thereof out of the S. 228th Street UPRR Grade Separation Project Fund (Fund No. R90067.64420.220). This ordinance also directs the City Attorney or designee to prosecute the appropriate legal proceedings, together with the authority to enter into settlements, stipulations, or other agreements, and acknowledges that all of the real property affected is located within King County, Washington.

RECITALS

A. The grade separation project on S. 228th Street where the street meets the railroad tracks for the Union Pacific Railroad is necessary to improve traffic operations and safety by separating vehicle traffic on S. 228th Street from trains that operate on the UPRR tracks. The project will also increase pedestrian and bicycle mobility and safety by separating Interurban Trail users from vehicle traffic at the trail’s S. 228th Street.

Condemnation Ordinance - S. 228th St. – UPRR Grade Separation
crossing. Grade separation will occur by constructing an overpass on S. 228th Street over the tracks of Union Pacific Railroad.

B. To complete the project, staff must acquire certain property and/or property rights along the project's alignment. Efforts by City staff are currently ongoing to acquire the necessary property and/or property rights for this public use through negotiation and settlement agreements.

C. In the past, staff has not typically sought formal Council action authorizing eminent domain proceedings until negotiation efforts fail or stall. However, timing on this project is critical due to time limitations on the use of grant funds required for the project. For this reason, staff has requested that Council authorize eminent domain proceedings for this public use now to place the City in a position to initiate condemnation proceedings without delay should negotiation efforts deteriorate so the project may still be timely constructed.

D. Prior to Council's action on this ordinance, the City provided the requisite notice to property owners in the manner provided for in RCW 8.12.005 and RCW 8.25.290.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. - Public Use and Necessity Declared. After receiving the report of City staff, and after reviewing the planned improvements for the S. 228th Street Union Pacific Railroad Grade Separation Project (the "Project"), the City Council finds and declares that the public convenience, use, health, safety, and necessity demand that the City of Kent condemn, appropriate, take, and damage certain real properties, all or in part, and located in King County, Washington, in order to acquire the necessary real
property and/or property rights for the construction of the Project, including all necessary appurtenances. The properties affected by this ordinance are legally described in the attached and incorporated Exhibit A (collectively "the Property"). The acquisition area proposed for the Project is broadly depicted in the attached and incorporated Exhibit B ("Acquisition Area"). However, the scope and boundary of the Acquisition Area may change concerning any portion of the Property if engineering requires modification of the plans, and such changes are hereby authorized. The purposes for which this condemnation is authorized shall include, without limitation, all acts necessary to complete the construction, extension, improvement, widening, alteration, maintenance, reconstruction, and restoration of the Project, and any other municipal purpose that may be necessary from time to time on the Property.

SECTION 2. - Condemnation Authorized. The City Council authorizes the acquisition by condemnation of all or a portion of the Property for the construction, extension, improvement, widening, alteration, maintenance, and reconstruction of the Project, together with all necessary appurtenances and related work to make a complete improvement according to City standards.

SECTION 3. - Condemnation Procedures and Proceedings. The City shall condemn the Property only upon completion of all steps and procedures required by applicable federal or state law or regulations, and only after just compensation has first been made or paid into court for the owner or owners in the manner prescribed by law.

SECTION 4. - Project Fund. The City shall pay for the entire cost of the acquisition by condemnation provided for in this ordinance through the City's "S. 228th Street UPRR Grade Separation Project" fund (Fund No. R90067.64420.220) or from any of the City's general funds, if necessary, as may be provided by law.
SECTION 5. – City Attorney Authorized. In the event reasonable negotiation efforts are not successful with affected property owners, or if the timing of the Project otherwise requires, the City Attorney or his or her designee is authorized and directed to commence those proceedings provided by law that are necessary to condemn the Property. In commencing these condemnation proceedings, the City Council authorizes the City Attorney to enter into settlements, stipulations, or agreements in order to minimize damages. These settlements, stipulations, or agreements may include, but are not limited to, the amount of just compensation to be paid, the size and dimensions of the property condemned, and the acquisition of temporary construction easements and other property interests.

SECTION 6. – Ratification. Any acts consistent with the authority of this ordinance and prior to its effective date are ratified and affirmed.

SECTION 7. – Severability. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

SECTION 8. – Effective Date. This ordinance shall take effect and be in force five days from and after its publication as provided by law.

ATTEST:

KIMBERLY A. KOMOTO, CITY CLERK

Suzette Cooke, Mayor
APPROVED AS TO FORM:

[Signature]

TOM BRUBAKER, CITY ATTORNEY

PASSED: 7th day of February, 2017.
APPROVED: 7th day of February, 2017.
PUBLISHED: 10th day of February, 2017.

I hereby certify that this is a true copy of Ordinance No. 42316 passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

[Signature]
KIMBERLEY A. KOMOTO, CITY CLERK

Condemnation Ordinance - S. 228th St. – UPRR Grade Separation
Tax Parcel Number: 132204-9339

LOT B, BETAWEST SHORT PLAT CITY OF KENT NO. 89-4, ACCORDING TO THE SHORT PLAT RECORDED UNDER RECORDING NUMBER 8911271377, SAID SHORT PLAT BEING A PORTION OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON.

Tax Parcel Number: 132204-9219 and 383090-0060

PARCEL A:

LOT 3, CITY OF KENT SHORT SUBDIVISION NO. SPC-84-4, RECORDED UNDER KING COUNTY RECORDING NUMBER 8406151322, BEING A REVISION OF CITY OF KENT SHORT PLAT NUMBER SPC-78-36, RECORDED UNDER KING COUNTY RECORDING NUMBER 7812200850, SAID SHORT PLAT BEING A PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON.

PARCEL A1:

A NON-EXCLUSIVE TWENTY FOOT EASEMENT FOR PRIVATE ACCESS AS DELINEATED ON SHORT PLAT NUMBER RECORDED AS RECORDING NUMBER 8406151322.

PARCEL B:

LOT 6, KENT VALLEY INDUSTRIAL PARK, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 97 OF PLATS, PAGES 30 THROUGH 35, INCLUSIVE, IN KING COUNTY, WASHINGTON;

PARCEL B1:


Tax Parcel Number: 383090-0050

LOT 5, KENT VALLEY INDUSTRIAL PARK, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 97 OF PLATS, PAGES 30 THROUGH 35, IN KING COUNTY, WASHINGTON.
Tax Parcel Number 132204-9229
LOT A OF CITY OF KENT SHORT PLAT NUMBER SPC-89-4, ALSO KNOWN AS BETAWEST SHORT PLAT SP-89-4, RECORDED NOVEMBER 27, 1989 UNDER RECORDING NO. 8911271377, RECORDS OF KING COUNTY, WASHINGTON.

Tax Parcel Number: 883480-0110
LOT 5, BLOCK 2, UPLAND CORPORATE PARK, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 108 OF PLATS, PAGE(S) 38 AND 39, RECORDS OF KING COUNTY, WASHINGTON.

Tax Parcel Number: 132204-9342
LOT 2, CITY OF KENT AT&T SHORT PLAT NO. SP-93-5, ACCORDING TO THE SHORT PLAT RECORDED UNDER RECORDING NUMBER 9307300513, RECORDS OF KING COUNTY, STATE OF WASHINGTON;

Tax Parcel Number: 383090-0065
LOTS 7, 8 AND THE NORTHERLY 190 FEET OF LOT 9, KENT VALLEY INDUSTRIAL PARK, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 97 OF PLATS, PAGE(S) 30 THROUGH 35, RECORDS OF KING COUNTY, WASHINGTON.

Tax Parcel Number: 383090-0230
LOTS 23 AND 24, KENT VALLEY INDUSTRIAL PARK, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 97 OF PLATS, PAGE(S) 30 THROUGH 35, RECORDS OF KING COUNTY, WASHINGTON.

Tax Parcel Number: 883480-0090
LOT B, CITY OF KENT LOT LINE ADJUSTMENT NUMBER LL-2008-5, RECORDED UNDER RECORDING NUMBER 20081020001358, RECORDS OF KING COUNTY, WASHINGTON;
EXCEPT THAT PORTION OF LOT B CONVEYED TO CITY OF KENT PURSUANT TO QUIT CLAIM DEED RECORDED UNDER RECORDING NUMBER 20120607001872.

Tax Parcel Number: 383090-0040
LOT 4 KENT VALLEY INDUSTRIAL PARK, ACCORDING TO PLAT RECORDED IN VOLUME 97 OF PLATS, PAGES 30 TO 35, INCLUSIVE, IN KING COUNTY, WASHINGTON;
EXCEPT PORTION CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 693010, FOR SOUTH 228TH STREET.