



## Legislation Details (With Text)

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**File created:** 4/27/2016    **In control:** City Council  
**On agenda:** 5/17/2016    **Final action:** 5/17/2016  
**Title:** Resolution Authorizing City Attorney to Institute Proceedings to Condemn a Portion of the Property of Tuscany Homeowners Association, Inc., in Connection with the Horse Pen Creek Road Widening Project

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Sitemap 1226 (3906 Near Siena Ter).pdf, 2. Vicinity 1226 (3906 Near Siena Ter).pdf, 3. Sitemap 1228 (4042 Near Tuscany Ln).pdf, 4. Vicinity 1228 (4042 Near Tuscany Ln).pdf, 5. Sitemap 1227 (4005 Near Tuscany Ln).pdf, 6. Vicinity 1227 (4005 Near Tuscany Ln).pdf, 7. Tuscany - NCSOS.pdf, 8. 16-0424 Resolution- Tuscany HOA (3).pdf

Date	Ver.	Action By	Action	Result
5/17/2016	1	City Council	adopt	Pass
5/11/2016	1	Infrastructure Committee	refer	
5/10/2016	1	Infrastructure Committee	recommend for approval	Pass

Resolution Authorizing City Attorney to Institute Proceedings to Condemn a Portion of the Property of Tuscany Homeowners Association, Inc., in Connection with the Horse Pen Creek Road Widening Project

Department: Legal

Council District: 3

Public Hearing: NA

Advertising Date/By: NA

Contact 1 and Phone: Ted Kallam, Engineering Manager, ext 2883

Contact 2 and Phone: John P. Roseboro, Assistant City Attorney, ext 2320

### PURPOSE

PARCEL # 0078451 - The City seeks to acquire Proposed Margin Tracts (PMT) of 3,191 square feet and 358 square feet, Proposed Permanent Slope Easements (PSE) of 2,182, and 109 square feet, a Proposed Temporary Construction Easements of 825 square feet and 1,304 square feet of the property owned by Tuscany Homeowners Association, Inc., located at 4005 Near Tuscany Lane, designated as Parcel # 0078451, in Morehead Township for the Horse Pen Creek Road Widening Project. The Property Management Section of the Engineering and Inspections Department (PM) requests Council to authorize the initiation of condemnation proceedings, because it has been unable to negotiate a purchase price with the property owner(s).

PARCEL # 0078457 - The City seeks to acquire a Proposed Margin Tract (PMT) of 678 square feet, Proposed Permanent Slope Easement (PSE) of 199 square feet, and a Proposed Temporary Construction Easement of 990 square feet of the property owned by Tuscany Homeowners Association, Inc., located at 4042 Near Tuscany Lane, designated as Parcel # 0078457, in Morehead Township for the Horse Pen Creek Road Widening Project. The Property Management Section of the Engineering and Inspections Department (PM) requests Council to authorize the initiation of condemnation proceedings, because it has been unable to negotiate a purchase price with the property owner(s).

PARCEL # 0078456 - The City seeks to acquire a Proposed Margin Tract (PMT) of 1,817 square feet, Proposed Permanent Slope Easement (PSE) of 1,466 square feet, and a Proposed Temporary Construction Easement of 1,076 square feet of the property owned by Tuscany Homeowners Association, Inc., located at 3906 Near Siena Terrace, designated as Parcel # 0078456, in Morehead Township for the Horse Pen Creek Road Widening Project. The Property Management Section of the Engineering and Inspections Department (PM) requests Council to authorize the initiation of condemnation proceedings, because it has been unable to negotiate a purchase price with the property owner(s).

**BACKGROUND:** PM attempted to negotiate a purchase within the total appraised value of \$62,630.00 for the properties. The value of the properties was calculated by an independent appraiser, Jeffrey A. McKee, Certified General Real Estate Appraiser, A5913, that was contracted by the City to perform the appraisal. The appraiser used generally accepted appraisal methods and calculated the value based upon the nature of the taking and the square footage taken. PM sent an initial written Offer to Purchase to the property owner(s) on February 25, 2015. PM discussed design and offer on multiple occasions. The offer was not accepted. PM made every reasonable effort to purchase the properties within the appraised amount, but its efforts were not successful. Therefore, PM recommends that the City Council adopt a resolution authorizing the City Attorney to institute proceedings to condemn the required properties. Following City Council's approval, the Legal Department will send a letter giving 30 days notice of the City's intent to an eminent domain lawsuit. After the lawsuit is filed and discovery is completed, a mediation or Commissioner's Hearing, or both, are held to try to resolve the matter with the property owner before trial. Additionally, the parties are free to continue negotiations through the date of trial.

The Horse Pen Creek Road Widening Project is needed to relieve the traffic congestion in that specific area. As it stands, the road is a major cut through for the traffic coming from Battleground Road and the surrounding areas. The continued growth in the area has spurred the need for a much wider road with multiple lanes and traffic control devices to be installed. The acquisition necessary for these properties are as follows:

PARCEL # 0078451 - The City seeks to acquire Proposed Margin Tracts (PMT) of 3,191 square feet and 358 square feet, Proposed Permanent Slope Easements (PSE) of 2,182, and 109 square feet, a Proposed Temporary Construction Easements of 825 square feet and 1,304 square feet of the property owned by Tuscany Homeowners Association, Inc., located at 4005 Near Tuscany Lane.

PARCEL # 0078457 - The City seeks to acquire a Proposed Margin Tract (PMT) of 678 square feet, Proposed Permanent Slope Easement (PSE) of 199 square feet, and a Proposed Temporary Construction Easement of 990 square feet of the property owned by Tuscany Homeowners Association, Inc., located at 4042 Near Tuscany Lane.

PARCEL # 0078456 - The City seeks to acquire a Proposed Margin Tract (PMT) of 1,817 square feet, Proposed Permanent Slope Easement (PSE) of 1,466 square feet, and a Proposed Temporary Construction Easement of 1,076 square feet of the property owned by Tuscany Homeowners Association, Inc., located at

3906 Near Siena Terrace.

The anticipated date for start of construction is January, 2017, with an anticipated completion date of January, 2019. The property is zoned PUD.

City staff further recommends that the City Council authorize payment of the estimated amount of the value of the properties to the Clerk of Superior Court for disbursement to the owner. This will allow the City to take possession, which is required before work for this Project can commence on the properties.

**BUDGET IMPACT:** The funding for this condemnation is budgeted in Account Number 471-4502-08.6012, Activity #A14074. The funding comes from the Capital Projects/ 2008 Transportation Bonds account. A minimum of \$62,630.00 will be expended to acquire this property, in addition to any litigation costs and/or settlement agreements.

**RECOMMENDATION / ACTION REQUESTED:** City Council approval of a resolution authorizing the City Attorney to institute proceedings to condemn a portion of the properties of Tuscany Homeowners Association, Inc., in connection with the Horse Pen Creek Road Widening Project.

**COMMITTEE ACTION:** This item was referred to Council by the Infrastructure Committee.