



## Legislation Details (With Text)

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**File created:** 4/7/2017    **In control:** City Council  
**On agenda:** 4/18/2017    **Final action:** 4/18/2017  
**Title:** Resolution Authorizing City Attorney to Institute Proceedings to Condemn a Portion of the Property of Clarence V. Daye and wife, Barbara D. Daye, Located at 605 Lowdermilk Street in Connection with the Holts Chapel Road/Lowdermilk Street Sidewalk Project

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Site Map - 605 Lowdermilk St. - Daye.pdf, 2. Vicinity Map - 605 Lowdermilk St. - Daye.pdf, 3. 17-0253 Resolution - 605 Lowdermilk St. - Daye.pdf

Date	Ver.	Action By	Action	Result
4/18/2017	1	City Council	adopt	Pass

Resolution Authorizing City Attorney to Institute Proceedings to Condemn a Portion of the Property of Clarence V. Daye and wife, Barbara D. Daye, Located at 605 Lowdermilk Street in Connection with the Holts Chapel Road/Lowdermilk Street Sidewalk Project

Department: Legal  
Council District: 1

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:** The City seeks to acquire a Right of Way of 890 square feet, a Permanent Slope Easement (PSE) of 202 square feet, and a Temporary Construction Easement (TCE) of 429 square feet, of the property owned by Clarence V. Daye and wife, Barbara D. Daye, located at 605 Lowdermilk Street, designated as Parcel # 0022261 in the Morehead/Gilmer Township for the Holts Chapel Road/Lowdermilk Street Sidewalk 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 \$1,942.00 for the property. The value of the property was calculated by an independent appraiser, Dick Foster, of Foster Appraisal Services, Inc. PM sent a written Offer to Purchase to the property owner(s) on March 22, 2016 and a follow up letter on April 11, 2016. PM corresponded with the property owner on numerous occasions from March of 2016 to November of 2016 to discuss the design and offer. The property owner rejected this offer. PM made every reasonable effort to purchase the property 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 property. Following City Council's approval, the Legal Department will send a 30-day letter to the owner requesting to purchase the property prior to litigation. 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 Holts Chapel Road/Lowdermilk Street Sidewalk Project:** The main purpose of the project is to provide pedestrians with a safe route from East Market Street to Franklin Boulevard by installing sidewalks and curb and gutter along Holts Chapel Road and Lowdermilk Street. The acquisition necessary for this property is a Right of Way of 890 square feet, a Permanent Slope Easement (PSE) of 202 square feet, and a Temporary Construction Easement (TCE) of 429 square feet, for the property located at 605 Lowdermilk Street. The property is zoned R-5 (Residential Single Family).

City staff further recommends that the City Council authorize payment of the estimated amount of the value of the property 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 property.

**BUDGET IMPACT:** The funding for this condemnation is budgeted in the Street and Sidewalk Capital Project Fund EL - 5101DM Contract 2010-025, Account Number 401-4551-01.6012, Activity #A15054. A minimum of \$1,942.00 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 property of Clarence V. Daye ad wife, Barbara D. Daye, in connection with the Holts Chapel Road/Lowdermilk Street Sidewalk Project.