



Legislation Details (With Text)

File #: 17-1491 **Version:** 2 **Name:** Ordinance Authorizing Purchase/Sale of Easement
Type: Ordinance **Status:** Adopted
File created: 8/9/2017 **In control:** Economic and Housing Development
On agenda: 10/4/2017 **Final action:** 11/1/2017

Title: ORDINANCE OF THE CITY OF NEWARK, NEW JERSEY AUTHORIZING THE ACQUISITION BY PURCHASE OR CONDEMNATION OF AN EASEMENT ON A PORTION OF THE REAL PROPERTY LOCATED AT 68-74 COMMERCIAL STREET, 76-82 COMMERCIAL STREET, AND 943-965 RAYMOND BOULEVARD (REAR), BLOCK 169.01, LOTS 71 AND 75 AND BLOCK 170, LOT 15, EAST WARD, NEWARK, NEW JERSEY NOW OWNED BY HARTZ RB H LIMITED PARTNERSHIP.

Sponsors: Augusto Amador, John Sharpe James

Indexes:

Code sections:

Date	Ver.	Action By	Action	Result
11/1/2017	2	Municipal Council	Close on Public Hearing and Adopt	Pass
10/18/2017	1	Municipal Council	Motion to amend	Pass
10/18/2017	1	Municipal Council	Adopted as amended on first reading	Pass
10/4/2017	1	Municipal Council	Advance to First Reading	Pass

ORDINANCE OF THE CITY OF NEWARK, NEW JERSEY AUTHORIZING THE ACQUISITION BY PURCHASE OR CONDEMNATION OF AN EASEMENT ON A PORTION OF THE REAL PROPERTY LOCATED AT 68-74 COMMERCIAL STREET, 76-82 COMMERCIAL STREET, AND 943-965 RAYMOND BOULEVARD (REAR), BLOCK 169.01, LOTS 71 AND 75 AND BLOCK 170, LOT 15, EAST WARD, NEWARK, NEW JERSEY NOW OWNED BY HARTZ RB H LIMITED PARTNERSHIP.

WHEREAS, in accordance with N.J.S.A. 40:61-1, the City may, acquire, lay out, improve, embellish and maintain, lands by gift, purchase, devise, or condemnation, any lands suitable for public parks, squares, open spaces, playgrounds, beaches, water fronts and places for public resort and recreation; and

WHEREAS, in accordance with N.J.S.A. 40A:12-5(a)(1) "any municipality, by ordinance, may provide for the acquisition of any real property, capital improvement, or personal property: (1) by purchase, gift, devise, lease, exchange, or condemnation"; and

WHEREAS, in accordance with N.J.S.A. 40A:12-20, the City may, "acquire, sell, lease or exchange, pursuant to this act, any real property, capital improvement or personal property in trust for, on behalf of, or as agent for, any other political subdivision or body corporate and politic of this State or the United States of America, or any department or agency thereof," upon such terms and conditions as the Governing Body of the municipality by ordinance, may adopt; and

WHEREAS, in accordance with N.J.S.A. 40:68-1, the City may acquire, by purchase or

condemnation, any waterfront lands necessary or advisable for the construction of waterfront improvements, including shore and hurricane protection; and

WHEREAS, the construction of the Joseph G. Minish Passaic River Waterfront Park Flood Control Project (the “Project”) in the City of Newark was authorized by the United States Congress in Section 101(a)(18) of the Water Resources Development Act of 1990; and

WHEREAS, in April 1999, the United States Department of Army (“Army”) and the State of New Jersey (the “State”) entered into a Project Cooperation Agreement, Phase I (the “PCA”), which states in part that the State, through the New Jersey Department of Environmental Protection Division of Engineering and Construction (“NJDEP”) will furnish to the Army “all land, easements, rights-of-way, relocation of utilities, funding for the construction of the Project and the operation and maintenance of the Project upon its completion”; and

WHEREAS, parts of the Project were constructed intermittently between 1999-2010 on certain parcels owned by the City, State, and other governmental entities; and

WHEREAS, on October 29, 2012, Hurricane Sandy made landfall in New Jersey, causing the Passaic River to breach its banks and exposing Newark residents to flooding, pollutants, and loss of power, among other dangers; and

WHEREAS, as a result of Hurricane Sandy, Congress passed Public Law 113-2 (“PL 113-2”), the Disaster Relief Appropriation Act of 2013, which directed the Army to identify for funding “previously authorized but unconstructed Corps project and any project under study by the Corps in the area affected by Hurricane Sandy”; and

WHEREAS, the Army identified the Project as eligible for funding under PL 113-2 and, as part of its planning and implementation process prepared the “Joseph G. Minish Passaic River Waterfront Park and Historic Area, Phase I- Final Hurricane Sandy Limited Reevaluation Report” (“HSLRR”), which updated the prior engineering and design efforts, physical surveys, and environmental compliance for the Project; and

WHEREAS, as part of the HSLRR, the Army prepared the Phase I Real Estate Plan (“Real Estate Plan”), which provides an overview of the real estate requirements necessary for the completion of Phase I of the Project; and

WHEREAS, Phase I of the Project is identified in the Real Estate Plan as “approximately 6,000 linear feet of newly constructed bulkhead, approximately 3,200 feet of riverbank and wetland restoration”; and

WHEREAS, the Real Estate Plan identifies a second phase of the Project (“Phase II”), to provide an approximately 9,200-foot walkway, and a third phase (“Phase III”), to provide park facilities, plazas, and landscaping; and

WHEREAS, the Real Estate Plan provides for the acquisition of a Flood Protection Levee Easement on the Property for the purposes of constructing and maintaining a bulkhead; and

WHEREAS, the Real Estate Plan identifies an easement on a portion of the property located along the Passaic River at 68-74 Commercial Street, 76-82 Commercial Street and 943-965 Raymond Boulevard (Rear), also known as Block 169.01, Lots 71 and 75 and Block 170, Lot 15, on the Official Tax Map and Tax Duplicates of the City, and by the maps attached herein as Exhibit 'A' (the "Property") as to be acquired for the purposes of the Project; and

WHEREAS, the Army has not established a schedule to implement Phase II or Phase III; and

WHEREAS, by referendum on November 3, 2015, Newark voters approved a property tax increase of \$.02 for every \$100.00 of property value, which increase in tax revenue is dedicated entirely to the expansion of Newark Riverfront Park (the "Park"); and

WHEREAS, the New Jersey Department of Environmental Protection's Office of Natural Resource Restoration ("ONRR") coordinates with those responsible for injuries to natural resources to ensure that an appropriate restoration project is implemented to compensate the public for the loss of or injury to natural resources, as well as their use and enjoyment; and

WHEREAS, ONRR awards grants on a competitive basis to encourage projects that provide public access and enjoyment and/or substantial ecological restoration; and

WHEREAS, as the result of the settlement of litigation related to the discharges of hazardous substances into the Passaic River and Newark Bay Complex, ONRR made grant funding available for the land acquisition and construction costs associated with projects designed to enhance public access and enjoyment of the Newark Bay Complex waterfront resources; and

WHEREAS, the City, through or in partnership with the Newark Community Economic Development Corporation, applied for and was awarded a share of this grant funding, in the amount of approximately \$17,900,000.00, to be used for the acquisition of land and construction of the Park; and

WHEREAS, in conjunction with the Army's acquisition of the Flood Protection Levee Easement and construction of the bulkhead, and in order to maximize the utilization of the Property and provide, among other things, the amenities provided for by Phases II and III of the Project, the City has determined to augment the design of the Park and to promptly implement its construction and operation at the earliest possible time; and

WHEREAS, the City has engaged the firm of James Corner Field Operations to design a world-class waterfront park, which includes, among other amenities, a walkway, landscaping, a beach area, a theater, dog walks, and other recreational facilities; and

WHEREAS, an appraiser retained by the City, Value Research Group, LLC, determined the value of the Properties to be \$ 810,000.00, as more fully set forth in the Appraisal entitled "Summary Appraisal Report- Easement Value Newark Riverfront Park, 68-74 Commercial Street, 76-82 Commercial Street, and 943-965 Raymond Boulevard (Rear) Block 169.01, Lots 71 and 75 and Block 170, Lot 15 Newark, New Jersey," dated September 19, 2017, which is attached hereto as Exhibit 'B' and made a part of this Ordinance; and

WHEREAS, the Municipal Council wishes to authorize the Mayor and/or the Deputy Mayor/Director of the Department of Economic and Housing Development to negotiate for the

acquisition of the Property in an amount not to exceed the appraised value for the Property or the same as may be adjusted to take additional deposited funds into account, and if negotiated purchase cannot be effectuated, to initiate eminent domain actions to acquire title to the Property under the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq., so long as all legal prerequisites for eminent domain are satisfied and to thereafter prosecute such eminent domain actions to completion and to arrange for the City to satisfy any judgments entered in such eminent domain proceedings.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

Section 1. The appraisal of the Property prepared by the firm of Value Research Group, LLC on behalf of the City is hereby accepted and approved in its entirety, including but not limited to the appraised value of \$810,000.00.

Section 2. After the effective date of this Ordinance, the City shall reserve the sum of \$810,000.00 from the Open Space and Recreation Trust Fund. There will be no expenditure of funds authorized until a Certification of Funds is obtained and a copy filed with the City Clerk.

Section 3. The Mayor and/or his designee, the Deputy Mayor/Director of the Department of Economic and Housing Development, are hereby authorized to negotiate for the acquisition by voluntary purchase and, if voluntary purchase cannot be effectuated, to carry out the condemnation of a portion of 68-74 Commercial Street, 76-82 Commercial Street, and 943-965 Raymond Boulevard (Rear), also known as Block 169.01, Lots 71 and 75 and Block 170, Lot 15, (the "Property") in the amount not to exceed the appraised value of the Property on behalf of the United States Department of the Army for the purpose of construction and maintenance of a bulkhead as authorized pursuant to P.L. 113-2, and N.J.S.A. 40:68-1, and for the purpose of public parks, squares, open spaces, playgrounds, beaches, water fronts and places for public resort and recreation N.J.S.A. 40:61-1 et seq., to implement Newark Riverfront Park.

Section 4. The Mayor and/or his designee, the Deputy Mayor/Director of Economic and Housing Development are hereby authorized to execute any and all agreements and other legal documents necessary, subject to the approval of the Acting Corporation Counsel, to accomplish the acquisition of the Property, including but not limited to a written offer for the purchase of the aforementioned property, land purchase contracts and Verified Complaints, Declarations of Taking, and any other necessary documents for eminent domain proceedings for the Property in accordance with the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq.

Section 5. In conjunction with said acquisition, the City hereby reserves and shall reserve any and all rights it had or may have to recover in any subsequent or pending action or by any administrative means, all costs of remediation and/or clean-up of contamination and/or removal of solid waste that have been incurred or may be incurred in the future by reason of conditions which were in existence as of or prior to the date of vesting of title and possession of the Properties in the name of the City.

Section 6. In conjunction with said acquisition, the City hereby reserves and shall reserve the right to seek in its sole discretion, any and all available legal, administrative and equitable remedies to compel the record owners and/or responsible parties to remediate and/or clean up the Properties in accordance with applicable state and federal statutory and regulatory provisions or to remove solid waste.

Section 7. The Mayor, Municipal Council, and Deputy Mayor/Director of the Department of

Economic and Housing Development and such other officials, consultants, agents, employees and professionals of the City as may be necessary and appropriate are hereby authorized and directed to take any and all actions necessary to effectuate the purposes of this Ordinance.

Section 8. A copy of the Ordinance and any agreements authorized herein shall be placed on file with the City Clerk's Office by the Director of the Department of Economic and Housing Development.

Section 9. If any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provisions so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective.

Section 10. This Ordinance shall take effect upon final passage and publication in accordance with the laws of the State New Jersey.

STATEMENT

This Ordinance authorizes the acquisition by purchase or condemnation of an easement on a portion of 68-74 Commercial Street, 76-82 Commercial Street, and 943-965 Raymond Boulevard (Rear), also known as Block 169.01, Lots 71 and 75 and Block 170, Lot 15, on the Official Tax Map and Tax Duplicates of the City, in the amount not to exceed the appraised value of \$ 810,000.00 as of September 19, 2017.