

## RECORD OF PROCEEDINGS

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### MINUTES OF THE SPECIAL MEETING OF THE CITY COUNCIL OF GLENDALE, COLORADO

May 12, 2015

Mayor Mike Dunafon led the Pledge of Allegiance.

1. Call to Order and Roll Call. Mayor Dunafon called the special meeting of the City Council to order. Sherry Frame, City Clerk, called the roll. The following Council Members were present: Mayor Mike Dunafon, Mayor Pro Tem Paula Bovo, and Council Members Jeff Allen, Scott Franssen, Joe Giglio, Dario Katardzic, and Doris Rigoni. City Manager Jerry Peters, City attorneys Jeff Springer and Matt Giacomini, Glendale Urban Renewal Authority attorneys Carolynne White and Carolyn Quander, and other members of the City staff also attended the meeting.

2. Approval of Agenda. Council Member Allen moved to approve the agenda. This particular motion requires no second. The motion passed unanimously.

3. Public Comments. Attorney Springer said at that point in the meeting public comments should only be about topics not on the agenda. Other comments should be made later in the meeting.

4. Public Hearing Regarding Ratifying the Use of Eminent Domain by the Glendale Urban Renewal Authority to Implement the Glendale Riverwalk Urban Renewal Plan. Mayor Dunafon opened the public hearing.

Attorney Springer said the hearing was not about the condemnation of any particular piece of property or about the price to be paid for any property but, rather, about whether the Council should confer upon the Urban Renewal Authority the state-mandated and state-authorized tool of condemnation. He said by doing so Council is not telling the Authority to use condemnation; the Resolution simply gives the Authority the ability to utilize condemnation if it should wish to do so. Mr. Springer said condemnation is a process that follows unsuccessful attempts to negotiate in good faith with a landowner, in circumstances authorized by state law. If condemnation is invoked, a landowner receives fair market value for any property, and the Authority would be required to convince a court by clear and convincing evidence that the property fits the description of blight. The Court would decide whether the compensation offered is fair, and the landowner would have an opportunity to appeal. Mr. Springer said the ability to use eminent domain by the City of Glendale was granted by Resolution on May 7, 2013, when the Riverwalk project was introduced.

Carolynne White of Brownstein Hyatt Farber Schreck listed the various meetings and actions that led to the night's hearing, beginning with September 2004, when the original Glendale Urban Renewal Plan was originally adopted, which plan included the property presently under the Riverwalk Urban Renewal Plan. At that time, the City Council granted the use of eminent domain within the property boundaries. In April 2013, the Riverwalk Urban Renewal Plan was adopted, designating a specific sub area of the City as being suitable for redevelopment, based on a finding that blight did indeed exist, as was found in

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2004. In March 2015, the Council selected a developer to implement the Glendale 180 project. Ms. White said the Authority wants Council to reconfirm and ratify the eminent domain power the Authority was previously given.

Ms. White said in 2004 Colorado legislature strengthened the statutes authorizing eminent domain by adding specific procedures for the use of eminent domain. Title 31 Section 25-101 state a public hearing must be held in order to grant eminent domain. Ms. White said that, in this matter, a public hearing was held in 2013, which hearing was not well attended. Council decided to hold another public hearing for the sake of transparency and the allowance of public input. She said that steps in the eminent domain process include noticing a property owner of intent to acquire; obtaining an independent third-party appraisal to set the price of the property; notification to the property owner that an independent third-party appraisal may be obtained at the expense of the urban renewal authority, and relaying information that, if the parties cannot agree on a price for the property, the matter would go to a court. The court would then decide the market value of the property to be awarded. Ms. White said that with regard to the Riverwalk Urban Renewal Plan these steps have not begun. She said, in this case, eminent domain would only be used if good faith negotiations do not occur within a reasonable amount of time and at a reasonable price.

Ms. White said that under the urban renewal statute an authority must assess whether any families need to be relocated as a result of eminent domain, and an urban renewal authority must adopt a policy stating what happens if relocation is required. The Glendale Urban Renewal Authority has adopted such a process. That policy requires compensation for moving costs, a search for a new location, change of address, etc.

Ms. White said the principal goals Council identified when it adopted the Urban Renewal Plan were to help provide important services to the area, attract private investment, utilize underdeveloped land, and leverage public investment and funding mechanisms to provide necessary public infrastructure to serve the subject area, all for the purpose of remedying and preventing blight within the urban renewal plan area. She said eminent domain would only be used for furtherance of those goals. Ms. White asked Council to pass the resolution before it.

Ms. White spoke of the condition of blight, which is addressed at C.R.S. 31-25-103. She said there are 11 factors of blight, and four of those factors must exist in order to determine blight. To consider the use of eminent domain, five of the 11 factors must exist. The 2013 Conditions Survey of the area found there were 10 blight factors. The only factor not applicable was “defective conditions of title.”

Ms. White said one of the current property owners acquired their land in 2006, subsequent to the 2004 blight study and formation of the urban renewal district.

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The following individuals spoke in opposition to the concept of eminent domain: Jeanne Price, Candy Lewis, Rob Erickson, Victoria Beck, Terry Fitzpatrick, Norma Moore, Tom Wambolt from the Colorado Property Rights Coalition, Christina Dickinson, Vicki Allison, Gary Beck, and Randy Daitz. Baret Palumbo, Jeremy Blocker, and Zachary Ramsli, representing Oath Keepers, also spoke.

Elaine Daniloff from the Colorado Department of Public Health and Environment said one-quarter of the staff, or 1,200 people, ride their bicycles to work every day. She said traffic is congested and it stretches bumper-to-bumper from Colorado Blvd. to Holly Street in the summer months. Ms. Daniloff said she has noticed degradation of the ecosystem of the creek area and the accumulation of trash in the area over the past 14 years.

Phil Applebaum of the Institute for Justice spoke. Mr. Applebaum said the Institute for Justice is a national, non-profit public interest law firm, dedicated to defending the fundamental rights of individuals and protecting the basic notions of a free society. He said the Institute is the leading advocate against eminent domain laws. Mr. Applebaum said eminent domain is meant for the public use of roads and schools, not for private redevelopment purposes. He told Council that if it approves the condemnation of the M.A.K. property, they are sending a message to all Glendale present and future property owners that their investments are not safe. He asked that M.A.K. be allowed to develop their own property.

Doug Turner, property owner in Glendale, said he likes the way Glendale is run. He believes the Mayor and the Council have done an excellent job.

Mayor Dunafon said the vision for the City was not perfected by the current Council. The Land Use Master Plan went into effect after the strategic planning initiative of 1998.

Jody Alderman (Attorney No. 24450) of Alderman Bernstein said she represents M.A.K. Investment Group, who owns five acres of property in the Riverwalk Urban Renewal Area and the Authentic Persian Rug Store, a successful business location for 25 years. She said that over the years M.A.K. submitted a concept plan to the City to redevelop its own property, which the City rejected because it contained residential. In 2014, M.A.K. again came before the City, along with Turnbuckle Development, with another concept, which was also rejected, and came before the City in 2015 with a development proposal for the Glendale 180 project. The City chose Wulfe as the developer instead. Ms. Alderman asked Council to vote no on eminent domain and the transfer of property to a third-party developer. She asked that M.A.K. be allowed to develop its own property without the use of public funds.

Saeed Kholghy, owner of the Authentic Persian Rug Store, said he and Mayor Dunafon discussed where his store would be located in the entertainment district – in the back of the development. He also said he

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did not protest the finding of blight in the allowed timeframe, as he was assured by City staff that the finding of blight was necessary only for financing purposes.

James O'Connor said he was the former owner of the five acres currently owned by M.A.K. on Colorado Blvd. He said he was approached by the City to purchase the property in 2004 and turned down the offer. He was renting property to the Persian rug store but sold the property to the Kholghys for \$6.5 million and still holds the mortgage. Mr. O'Connor said the City had turned down numerous projects on the land during 2001-06.

Nasrin Khoghly of the Authentic Persian Rug Store also spoke against eminent domain and said her family's roots were in the Colorado Blvd. property. Ali Kheir Khadi chose not to speak.

Mayor Pro Tem Bovo asked if any party had received any good faith offers. She asked if it was necessary to pass the resolution authorizing the use of eminent domain and if good faith offers could be made without the threat of eminent domain. Ms. White said she was not aware of any formal offers by the City or the Authority or the Kholghys. She said under statute an offer is not considered to be in good faith until certain procedural steps are followed: a notice of intent to acquire, the right of an appraisal, etc. An offer must be based on an appraisal. An offer could be made, but certain steps still have to be taken in case the parties are unsuccessful in negotiating a price and eminent domain is ultimately exercised. Ms. White said the eminent domain statute was designed to protect the property owners and their property rights.

Mayor Pro Tem Bovo asked if it was possible for Council to be a part of the process as it goes forward. Ms. White said it would not be. In Glendale, the seven individuals who serve on the Council are the members of the Urban Renewal Authority. Ms. White said the Authority still has to comply with the statute. She also said that if Council wants to add in extra layers of review or policy consideration on behalf of Council, this language must be added before the passage of the resolution.

Ms. Bovo said the resolution does not just deal with the five acres owned by M.A.K. but deals with the entire 22 acres. She did reference a letter given to Council at the meeting from another property owner: Summit Hotel Properties.

Ms. Alderman said no monetary offers have been received by M.A.K., but her firm has been contacted by condemnation counsel for the Urban Renewal Authority, and an appraisal is being done for condemnation purposes. She said the concept that eminent domain is not being authorized at the hearing is incorrect. Ms. Alderman said that with regard to good faith negotiations in Colorado the condemnation statute requires one offer and either a counteroffer, a rejection, or no response. This fulfills good faith negotiation requirements, and urban renewal authorities can go ahead and condemn. She said she feels that good faith negotiations should be done without the threat of eminent domain.

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Ms. Bovo said she is confused about M.A.K.'s desire. She said she is hearing two different wishes: "leave us alone and let us develop our own property" and the aspiration to be the developer of the entire Glendale 180 project. She asked which one of these scenarios the Kholghys want, so she can make an informed decision. Nasrin Kholghy said M.A.K. submitted a development plan to the City (Chuck Line and Larry Harte) in 2007. M.A.K. offered to buy the Hamburger Stand property from the City. The plan contained 11 residential units, which Ms. Kholghy said Chuck Line rejected because of residential. Mr. Line said in the mid 90's, the City changed the zoning code stating residential is not a use by right. It is only allowed as an accessory use, and it is has to be an accessory to one of the other uses, such as a hotel with a manager's unit. Ms. Kholghy said many concepts were discussed between the parties, including reducing the number of residential units to three or four. Mr. Line said after receiving M.A.K.'s 2007 proposal, he studied the zoning codes and plans and found that three or four units could not be an accessory to one business. Ms. Kholghy said that if they cannot do the development on their own, they are willing to do a development with the City, but the sticking point has always been the presence of the rug store. Ms. Alderman said she feels the Kholghys want to control their own destiny, by presenting a plan to the City for their own development, with a development agreement providing for the payment of infrastructure; the negotiation of a straight sale not under the threat of eminent domain; or being part of the entire project.

City Attorney Springer counseled Council to focus and stop allowing outbursts from the audience, deviation from the agenda, etc. He said the Mayor was too liberal in giving extra time for comments and allowing speakers to talk out of order and voice opinions that had no relevance to the night's topic. He counseled Council to focus. He said he understands the vehemence and strong opinions on condemnation, but the meeting is not about condemnation.

Ms. White said there is pending litigation where the Urban Renewal Authority is a defendant; thus, she counseled against discussion straying into the topic of the development proposals during the public hearing.

Ms. White said Council could direct Staff to go above and beyond the minimal requirements in the statute in conducting truly good faith negotiations. Ms. Bovo asked if there was any way to pass a resolution that restricts the notion of eminent domain to allow for good faith negotiations under the statute but not up to and including using condemnation or eminent domain. Ms. White said if Council does not intend to authorize the use of eminent domain, it does not need to approve the resolution. Good faith negotiations can be conducted without the resolution. The principal purpose of the resolution is to direct Staff of the Authority that, if good faith negotiations are unsuccessful, they may use eminent domain to acquire property necessary to implement the project. Ms. White said Council can also authorize eminent domain and never use it, as Glendale has never used eminent domain before.

Council Member Giglio asked if Council has the power to exercise eminent domain, and Mr. Springer said it does not in the condition of blight. Ms. White said only urban renewal authorities can use

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eminent domain for blight and only if the use of eminent domain for blight is set forth in a plan. The City cannot give that power to itself. The Council may condemn for roads, streets, sewers, and other normal city functions. Ms. White said the project includes a significant portion of tax increment financing that would not be available if there was no urban renewal authority. Mr. Giglio asked if negotiations could be attempted without passing the eminent domain resolution. He said he would be the last person to vote to condemn anyone's property. Mr. Springer said the resolution could be amended to provide for more than just the statutory minimum offer and counteroffer for negotiation. Council could put in an extra layer of negotiation such as mediation, while still passing the resolution. Mr. Springer said the problem with condemnation is the city has to send a notice before it can trigger and require negotiation. The landowner doesn't have to negotiate; they don't have to do anything until the notice goes out. It is difficult to impose additional layers without the notice going out. Once the notice is sent, additional layers, such as mediation, could be imposed. Ms. White said she agreed with Mr. Springer, in that without eminent domain no property owner has to negotiate. She said one of the reasons it is common to have a public hearing to consider the question of eminent domain in the aggregate of an entire plan is that the process only gets more personal and more specific when talking about particular pieces of property. She said tonight's public hearing feels as if there is only one property, but it is really about all 22 acres of property.

Council Member Giglio asked how much negotiation time the City has before the project is compromised. Linda Cassaday, Deputy City Manager and Finance Director, said it affects construction and financing costs and negotiations with lessees. Ms. White said if negotiations fail and the City still wishes to proceed on the schedule proposed by Staff for the project, then coming back for another public hearing to address eminent domain would severely affect the project timeline. She said the Urban Renewal Plan was authorized in 2013. Tax increment may only be collected by the Urban Renewal Authority under the statute for 25 years. Two of those years have elapsed. Each year that passes with the project not completed means one year less of revenue that might be available to pay for the infrastructure. She said there will come a tipping point after which the plan is no longer possible if it cannot be executed on the schedule as envisioned.

Ms. White suggested amending the resolution to add some additional direction to the Authority and to the Staff on the Council's intent that the good faith negotiations be more than the minimum under the statute. Council asked that the attorneys and Staff meet to craft such an amendment, and a 15-minute break was taken.

After the break, Mayor Dunafon closed the public hearing.

5. Resolution No. 3, Series of 2015, a Resolution of the City of Glendale, Colorado, Ratifying the Use of Eminent Domain by the Glendale Urban Renewal Authority. Mayor Dunafon read the matter into the record by title only, all Council Members having received copies of the same.

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Ms. White read the following amendment language into the Resolution as paragraph 2.b.:

The Council hereby directs the Authority that, in engaging in good faith negotiations as required by the statute, the Authority must additionally engage in the following alternative dispute resolution process before initiating a condemnation action in district court:


- i. After each party has obtained an appraisal and having exchanged an offer and a counteroffer, if one is forthcoming, the Urban Renewal Authority must offer to mediate with any landowners with whom resolution has not been reached.
- ii. If the Urban Renewal Authority requests mediation, the landowner may decline to participate in such mediation, in which case the requirement for mediation is waived.
- iii. If mediation is triggered by either party, the mediation must occur within 30 days.
- iv. The mediator must be approved by any landowner who is a party to the proceedings.
- v. The Urban Renewal Authority must pay for the mediator.
- vi. Each party will otherwise bear its own legal fees and costs.

Ms. White said 30 days was added because one party, by declining to participate or agree on a mediator, could stretch out the time for so long it could effectively kill the project. The Urban Renewal Authority has to defer to the landowner's approval of the mediator and pay for the mediator.


Mayor Pro Tem Bovo moved to approve Resolution No. 3, Series of 2015, a Resolution of the City of Glendale, Colorado, Ratifying the Use of Eminent Domain by the Glendale Urban Renewal Authority, with amendments listed in the newly-added paragraph 2b on page 2. Council Member Allen seconded the motion. The motion then passed unanimously.

6. Other Business. There was no other business.
7. Items for Press Release. There was none.
8. Adjournment. Council Member Allen made a motion to adjourn the meeting.

Dated: 6/16/15

  
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Mike Dunafon, Mayor

ATTEST:

  
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Sherry Frame, City Clerk