

**A RESOLUTION**

No. 19-14

A RESOLUTION BY THE MAYOR AND COUNCIL OF THE CITY OF SENOIA, GEORGIA, AUTHORIZING THE EXERCISE OF EMINENT DOMAIN UNDER THE PROCEDURES OF TITLE 32, PUBLIC TRANSPORTATION, BY THE DECLARATION OF TAKINGS METHOD TO ACQUIRE IN FEE SIMPLE A RIGHT OF WAY FOR THE CONSTRUCTION AND OPENING OF A PUBLIC STREET, ON LANDS OF SHOPS OF SENOIA, LLC. (THE SUBJECT TRACT), AND THE CLOSURE OF AN EXISTING PRESCRIPTIVE EASEMENT ON, OVER, THROUGH AND ACROSS SAID PROPERTY CURRENTLY USED AS A MEANS OF INGRESS AND EGRESS BY OWNERS OF REAL PROPERTIES SITUATE, LYING, AND BEING NORTH OF THE SUBJECT TRACT, AND THE HEIRS, SUCCESSORS AND ASSIGNS THEREOF (WHOSE RIGHT OF USE OR CLAIM OF INTEREST MAY BE DOUBTFUL BASED UPON EXAMINATION OF TITLE RECORDS); AUTHORIZING THE CITY ATTORNEY TO PREPARE AND FILE LEGAL PROCEEDINGS UNDER SAID DECLARATION OF TAKINGS METHOD TO EXPEDITE ACQUISITION OF TITLE TO REQUIRED RIGHT OF WAY FOR SAID NEW STREET; AND FOR OTHER PURPOSES.

**WHEREAS**, the City of Senoia is a Georgia municipal corporation, having under Sec. 5.2 of its City Charter the power to lay out, open, construct, extend, establish, change the grade of, abandon or close, pave, or otherwise improvement and maintain such streets, roads, and bridges for a public transportation system as its Mayor and Council deem necessary or desirable;

**WHEREAS**, the City further has the power under its Charter and general laws of this State to exercise for a public purpose, when deemed necessary, eminent domain or condemnation of private property upon payment of just and adequate compensation to property owners or persons having a legally compensable interest therein;

**WHEREAS**, O.C.G.A. Title 32, Chapter 3, grants to the State, its counties and municipal corporations, authority to acquire real property, in fee simple or any lesser interests, through gift, devise, exchange, purchase, prescription, dedication, or, if necessary, eminent domain for present or future public road and other transportation purposes, in the manner and using the methods and procedures set forth therein;

**WHEREAS**, Shops of Senoia, LLC owns an unimproved tract or parcel of land in the City of Senoia bounded by Georgia State Route 16 (aka Wells Street), now or formerly by Robert Hatchett, now or formerly by William Franklin Harris, by the railroad right of way of the Central of Georgia Railroad Company, and by lands now or formerly owned by Senoia Grocery, LLC (hereafter the subject property);

**WHEREAS**, based upon examination of the land records in Coweta County Superior Court, the subject tract is bisected by an unimproved prescriptive easement,

having an apparent width of 50', known locally as Dorsey Road and formerly known as Branch Street, which provides a means of ingress and egress to 5 real properties lying north of the subject tract, as shown on the land records of the County, believed to be owned by William Franklin Harris; the Estate of Kitty Ann Atwater/LeBlanc Investments, LLC; J.D. Dorsey/Juanita Dorsey Bridges c/o Juanita Bridges Glover; the Estate of Lula V. Dorsey (on which taxes have been paid by Juanita Bridges Glover); and Virginia Fambro and Dillard H. Fambro, Jr., in an undivided 1/3 interest, and Susie Grier and Daniel Grier, in an undivided 2/3 interest. Title and legal interest, if any, of these properties is doubtful as one or more of the record title holders may now be deceased, however, no probate proceedings were found in Coweta County, Georgia, and in one or more instances, recorded conveyances were found outside the properly indexed chain of title;

**WHEREAS**, the Georgia Department of Transportation, which permits driveways and access points onto state highways, has examined the location where the prescriptive easement, known as Dorsey Road, presently intersects with State Route 16 and found the same to pose a hazard to the public at its present location; recommendation has been made and an access point approved at a location west of the present Dorsey Road location, which would form an intersection with State Route 16 and Tucker Road, a public road that intersects State Route 16 on its south side;

**WHEREAS**, by resolution, enacted September 16, 2019, and spread onto the Minutes of its duly called and convened regular meeting on said date, the Mayor and Council found it was within the best interest of the City to open, layout, and construct a new public street west of the present Dorsey Road location and declared the need to acquire sufficient right of way, in fee simple, from the subject property owned by Shops of Senoia, LLC; as proposed, engineered and designed, the new street, to be known as Dorsey Road, shall have a right of way of 60' in which will be constructed a paved roadway, with curb and gutter, of not less than 22 feet; this new street will intersect State Route 16 opposite Tucker Road, so as to form an intersection, with the north end lining up with and being an extension of the prescriptive easement through adjoining lands of William Franklin Harris and others;

**WHEREAS**, upon completion and opening of relocated Dorsey Road, the existing prescriptive easement on, lying, being and across the subject property, shall be closed and abandoned as a means of ingress and egress to those real properties north of the subject property; inasmuch as title to said properties, and the interests of persons who have or may claim some right therein is doubtful, a condemnation proceeding shall be filed to extinguish all such claims for access rights on or over the subject property by all persons claiming the right to use the prescriptive easement as their means to access the properties in which they contend to have a legal interest;

**WHEREAS**, in accordance with The Landowners Bill of Rights and Private Property Protection Act, O.C.G.A. §22-1-10, the City has caused to be posted in the right of way of State Route 16, in front of the subject property, near the location of present Dorsey Road, a sign advertising the date and time of this meeting at which the Mayor and Council will consider enactment of this resolution to file condemnation

proceedings, has caused a public notice thereof to be published as a display ad in the County legal organ; in addition, the City has given personal notice to those persons known or believed to claim an interest in the real properties lying north of the subject property who use the prescriptive easement across the subject property as the means to access those properties, to make them aware of the date and time of this meeting; and

**WHEREAS**, Steve Manley of Manley Acquisition Services, Inc., who was designated by the Mayor & Council in the resolution, enacted September 16, 2019, as the City's acquisition agent, diligently sought to contact and explain to each person known or believed by the City to be affected by this proceeding, and to obtain a written consent to the relocation of Dorsey Road as hereinbefore provided; while some consents were obtained, said negotiations have not been successful, thus requiring the filing of a condemnation to provide Due Process to all affected persons whose rights may be affected by closure of the prescriptive easement;

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF SENOIA, GEORGIA, THAT:**

1. Based upon the foregoing recitals, the Mayor and Council find, conclude, and reaffirm that it is in the City's best interest to open, layout, and construct a new public street, to be known as Dorsey Road, in the location shown on the attached plat of survey entitled "Right of Way Plat for Shops of Senoia, LLC", prepared by Technical Survey Services, Aubrey Jonathan Akin, R.L.S. # 3138, dated October 21, 2019, as Tract 2, and upon completion and opening of said new street, the present Dorsey Road, being a prescriptive easement encumbering Tract 1 on said plat, shall be closed and any property rights therein revert to Shops of Senoia, LLC, its successors or assigns. As evidence of such, the City shall deliver a quitclaim deed to the owner of the subject tract for the present Dorsey Road (prescriptive easement).
2. That the City Attorney be authorized to draft and file a condemnation proceeding under the method and procedures set forth in O.C.G.A. Title 32, Chapter 3, the "Declaration of Taking" method, and to serve said Petition on all persons entitled to notice thereof, either by statute or the best means available, including publication.
3. The legal description of the subject property from which the right of way for a new public street shall be acquired is as follows:

**LEGAL DESCRIPTION**

ALL THAT TRACT or parcel of land lying and being in Land Lots 278, 279, 290 and 291 of the 1<sup>st</sup> District of Coweta County, Georgia, containing 11.978 acres and being more particularly identified as Tract 2, all as shown on a plat of property dated March 1, 2002, revised April 23, 2003, prepared by LTE Group, Inc. by W.D. Gray and Associates, Inc., Larry C. Shimshick, Georgia Registered Land Surveyor, as more particularly depicted on

a plat recorded in Plat Book 78, page 224, records of Coweta County, Georgia, which plat is incorporated herein by reference hereto.

LESS AND EXCEPT from the above described property that portion of the property conveyed by that certain Deed of Gift from Shops of Senoia, LLC, a Georgia limited liability company to Senoia Grocery, LLC, a Georgia limited liability company, dated as of July 29, 2019, filed for record August 14, 2019, recorded in Deed Book 4898, page 1, records of Coweta County, Georgia.

4. The legal description of the portion to be acquired out of the subject property as right of way for the new street is as follows:

#### LEGAL DESCRIPTION

All that tract or parcel of land lying and being in Land Lot 279 of the 1st District, City of Senoia, Coweta County, Georgia and being more particularly described as follows:

To Reach the TRUE POINT OF BEGINNING commence at a Right of Way monument disturbed found at the intersection of the northwesterly Right of Way of State Route 85, a variable Right of Way being 65.2 feet to the centerline at this point and the southwesterly Right of Way of Central of Georgia Railroad Company, a 150 foot Right of Way; thence running along said southwesterly Right of Way of Central of Georgia Railroad Company the following courses; along a curve to the right an arc length of 178.94 feet, (said curve having a radius of 1535.08 feet, with a chord bearing of North 67° 44' 18" West, and a chord length of 178.84 feet) to a point; thence North 64° 43' 50" West a distance of 460.35 feet to a 1/2" rebar found; thence North 64° 45' 34" West a distance of 529.91 feet to a 1/2" rebar found; thence leaving said southwesterly Right of Way of Central of Georgia Railroad Company South 63° 06' 57" West a distance of 289.43 feet to an iron pin set; thence North 62° 34' 02" West a distance of 29.02 feet to a point and the TRUE POINT OF BEGINNING; thence from the point thus established South 27° 25' 58" West a distance of 27.19 feet to a point; thence running along a curve to the right an arc length of 130.02 feet, (said curve having a radius of 430.00 feet, with a chord bearing of South 36° 05' 41" West, and a chord length of 129.52 feet) to a point; thence South 44° 45' 25" West a distance of 98.43 feet to a point; thence running along a curve to the left an arc length of 198.69 feet, (said curve having a radius of 365.14 feet, with a chord bearing of South 29° 10' 05" West, and a chord length of 196.25 feet) to a point; to the left an arc length of 62.97 feet, (said curve having a radius of 1961.81 feet, with a chord bearing of North 57° 18' 39" West, and a chord length of 62.97 feet) to a point; to the right an arc length of 210.72 feet, (said curve having a radius of 425.14 feet, with a chord bearing of North 30° 33' 28" East, and a chord length of 208.57 feet) to a point; thence North 44° 45' 25" East a distance of 98.43 feet to a point; thence running along a curve to the left an arc length of 111.61 feet, (said curve having a radius of 370.00 feet, with a chord bearing of North 36° 06' 56" East, and a chord length of 111.18 feet) to a point; thence North 27° 25' 59" East a distance of 27.46 feet to a point; thence South 62° 34' 02" East a distance of 60.00 feet to a point; and the TRUE POINT OF BEGINNING.

Said tract contains 0.621 Acres (27,065 Square Feet).

5. The legal description of the portion of the prescriptive easement on or across the subject property that is to be closed and abandoned is as follows:

#### LEGAL DESCRIPTION

All that tract or parcel of land lying and being in Land Lot 279 of the 1<sup>st</sup> District, City of Senoia, Coweta County, Georgia and being more particularly described as follows:

To Reach the TRUE POINT OF BEGINNING commence at a Right of Way monument disturbed found at the intersection of the northwesterly Right of Way of State Route 85, a variable Right of Way being 65.2 feet to the centerline at this point and the southwesterly Right of Way of Central of Georgia Railroad Company, a 150 foot Right of Way; thence running along said southwesterly Right of Way of Central of Georgia Railroad Company the following courses; along a curve to the right an arc length of 178.94 feet, (said curve having a radius of 1535.08 feet, with a chord bearing of North 67° 44' 18" West, and a chord length of 178.84 feet) to a point; thence North 64° 43' 50" West a distance of 460.35 feet to a 1/2" rebar found; thence North 64° 45' 34" West a distance of 529.91 feet to a 1/2" rebar found; thence leaving said southwesterly Right of Way of Central of Georgia Railroad Company South 63° 06' 57" West a distance of 289.43 feet to an iron pin set; thence North 62° 34' 02" West a distance of 22.93 feet to a point being the TRUE POINT OF BEGINNING; from the point thus established and running along a curve to the right an arc length of 250.72 feet, (said curve having a radius of 2281.20 feet, with a chord bearing of South 11° 27' 18" East, and a chord length of 250.59 feet) to a point; thence running along a curve to the right an arc length of 264.22 feet, (said curve having a radius of 669.70 feet, with a chord bearing of South 00° 39' 14" West, and a chord length of 262.51 feet) to a point; thence running along a curve to the right an arc length of 83.98 feet, (said curve having a radius of 492.09 feet, with a chord bearing of South 18° 19' 35" West, and a chord length of 83.87 feet) to a point; thence North 49° 36' 28" West a distance of 52.62 feet to a point on the northeasterly Right of Way of State Route 16 also known as Wells Street, 100 foot Right of Way; thence leaving said Right of Way and running along a curve to the left an arc length of 59.26 feet, (said curve having a radius of 442.09 feet, with a chord bearing of North 17° 21' 39" East, and a chord length of 59.21 feet) to a point; thence running along a curve to the left an arc length of 244.85 feet, (said curve having a radius of 619.70 feet, with a chord bearing of North 00° 34' 38" East, and a chord length of 243.26 feet) to a point; thence running along a curve to the left an arc length of 291.76 feet, (said curve having a radius of 2231.20 feet, with a chord bearing of North 12° 01' 33" West, and a chord length of 291.55 feet) to a point; thence South 62° 34' 02" East a distance of 67.94 feet to the TRUE POINT OF BEGINNING. Said tract contains 0.686 Acres (29,867 Square Feet).

6. Those persons, organizations and entities known or believed to hold an interest in the subject property or in the right to use the prescriptive easement on, over and across the subject property as a means of ingress and egress to real properties north of the subject property are:

- a. **Shops of Senoia, LLC** – Owner of record of subject property by virtue of

Limited Warranty Deed from Palmetto Pad Ready, LLC to Shops of Senoia, LLC, dated as of December 20, 2018, filed for record February 18, 2019, recorded in Deed Book 4815, page 31, Coweta County, GA, records. Owner consents to this project.

- b. **William Franklin Harris** by virtue of that certain Executor's Deed Under Power from William Franklin Harris, as Executor of the Estate of James Franklin Harris, deceased, to William Franklin Harris, individually, dated April 29, 2017, filed for record on May 26, 2017, recorded in Deed Book 4546, page 543, Coweta County, GA, records. William Franklin Harris has given his written consent to relocation of Dorsey Road.
- c. **Estate of Kitty Ann Atwater/LeBlanc Investments, LLC – Kitty Ann Atwater** is believed to be the owner of record by virtue of that certain Warranty Deed from William Sanders and Mattie Sanders Page, dated July 17, 1961, and filed for record on July 17, 1961, recorded in Deed Book 102, page 75, Coweta County, GA records. Property was conveyed to Coweta County, Georgia by Tax Deed from G.A. Massey, Sheriff of Coweta County, Georgia, on August 20, 1984, recorded in Deed Book 373, page 234, filed for record on November 8, 1984, Coweta County, GA records; Owner-taxpayer shown as *Estate of Kitty Ann Atwater*. Subsequently, conveyed by Quitclaim Deed from Coweta County, Georgia to **LeBlanc Investments, LLC**, dated November 23, 2016, filed for record December 8, 2016, and recorded in Deed Book 4471, page 359, Coweta County, GA records. No evidence of record that taxpayer's equity of redemption has been foreclosed. Taxes for 2018 and prior years were returned and paid by LeBlanc Investments, LLC. No probate or administration found in Coweta County, GA for any Estate of Kitty Ann Atwater. LeBlanc Investments, LLC has given its written consent for relocation of Dorsey Road.
- d. **J. D. Dorsey – J. D. Dorsey** is believed to be the owner of record by virtue of that certain Warranty Deed from Mary E. Jordan, Wyatt Hugh Dorsey, and Juanita Bridges to J. D. Dorsey, dated September 13, 1963 and filed for record on September 18, 1983, recorded in Deed Book 113, page 231, Coweta County, GA records. A certain Warranty Deed from Dorothy Smith Dorsey to **Juanita Bridges Glover**, dated September 15, 2003 and recorded in Deed Book 2321, page 382, Coweta County, GA records, is outside the indexed chain of title as Dorothy Smith Dorsey is never shown as an owner of record of said property. A Warranty Bill of Sale from Juanita Bridges Glover to **Juanita Dorsey Bridges**, dated May 5, 2005 and recorded July 29, 2005 in Deed Book 2785, page 889, Coweta County, Ga records, is also outside the chain of title and improperly indexed. Taxes for 2018 and prior years were returned and paid by Juanita Dorsey Bridges, c/o Juanita Bridges Glover. No probate or administration was found in Coweta County, GA for any Estate of J. D. Dorsey.
- e. **Estate of Lula V. Dorsey** – Lula V. Dorsey is believed to be the owner of record by virtue of that certain Deed from M. H. Couch and L. L. Hutchison to Lula V.

Dorsey, dated October 3, 1905 and recorded December 12, 1907 in Deed Book 3, page 608, Coweta County, GA records. Taxes for 2018 and prior years were returned and paid by Juanita Dorsey Bridges, c/o Juanita Bridges Glover. No probate or administration was found in Coweta County, GA for any Estate of Lula V. Dorsey.

- f. **VIRGINIA FAMBRO and DILLARD H. FAMBRO, JR. as joint tenants with full right of survivorship, as to an undivided 1/3 interest, and SUSIE GRICE and DANIEL GRICE, as to an undivided 2/3 interest** – Owner(s) of record are believed to be VIRGINIA FAMBRO and DILLARD H. FAMBRO, JR. as joint tenants with full right of survivorship, as to an undivided 1/3 interest, and SUSIE GRICE and DANIEL GRICE, as to an undivided 2/3 interest, by virtue of Executor's Deed from Mrs. Alma C. Nolan and Mrs. Virginia Methvin, as Executrices of the Last Will and Testament of B. A. Nolan to Susie Grice, Jessie Grice, and Daniel Grice, dated February 18, 1961, recorded February 21, 1961 in Deed Book 100, page 160, Coweta County, GA records, and that certain Deed from Jessie Grice to Virginia Fambro and Dillard H. Fambro, Jr., as joint tenants with full right of survivorship, dated July 30, 1981 and recorded August 1, 1981 in Deed Book 100, page 160, Coweta County, GA records. Taxes for 2018 and prior years returned and paid by Virginia Fambro and Dillard H. Fambro, Jr. No probate or administration proceedings found in Coweta County, GA for either Susie Grice or Daniel Grice.
  - g. Persons, if any, in actual possession of any of the real properties lying north of the subject property that may use the prescriptive easement for ingress and egress are unknown.
  - h. State of Georgia, Department of Revenue - State Tax Execution - Georgia Department of Revenue vs. William F. Harris and Aneta K. Harris, dated July 13, 2016, entered of record June 7, 2018 at 11:47 a.m., recorded in Lien Book 206, Page 224, aforesaid Records; in the amount of \$1,365.62, plus penalty and interest, if any.
  - i. State of Georgia, Department of Revenue - State Tax Execution - Georgia Department of Revenue vs. William F. Harris and Aneta K. Harris, dated July 2, 2018, entered of record September 5, 2018 at 1:18 p.m., recorded in Lien Book 210, Page 204, aforesaid Records; in the amount of \$3,137.29, plus penalty and interest, if any.
  - j. Tommy Ferrell, as Tax Commissioner of Coweta County, Georgia, for the collection of State, County and City of Senoia ad valorem taxes as due and owing.
7. The Mayor and Council find, conclude and declare the public purpose to be served by the filing of this condemnation proceeding is (a) opening, lay out, and construction of a public street, and (b) improving the safety and welfare of motorists on State Route 16 by relocation of Dorsey Road and elimination of the present driveway access.

8. Authorization is hereby given to pay \$100 into the registry of the Clerk of Court as compensation for the taking and acquisition of right of way, in fee simple, to Shops of Senoia, LLC, based upon the Appraisal Report, prepared by Bass and Associates, dated August 30, 2019, as previously established in the resolution adopted September 16, 2019; there being no consequential damages to the remainder of the subject property. Since all persons who use the prescriptive easement as the means of ingress and egress to the properties lying north of the subject property will have their access rights improved by construction of the new paved street, and the prescriptive easement will not be closed until construction of the new street is complete and open to the public, no compensation shall be tendered into the Court's registry upon filing of the condemnation petition for these persons.
9. Mayor Jeff Fisher is hereby authorized and directed to execute a Declaration of Taking, and the Petition for Condemnation, for and on behalf of the municipal governing authority, as required by law.
10. The City Manager, City Clerk and City Attorney are hereby authorized and directed to do all things reasonable, necessary or expedient to accomplish the foregoing in a timely manner.

**SO RESOLVED**, this 4<sup>th</sup> day of November, 2019.

City of Senoia, Georgia

By: \_\_\_\_\_  
Jeff Fisher, Mayor

Attest: \_\_\_\_\_  
Debra J. Volk, City Clerk

(SEAL)



