

Issue Analysis Form



Date: September 14, 2021
Public Hearing for Eminent Domain
for Deed of Dedication of Right-of-
Way

Item:

Lead Department(s): County Attorney

Contact Person(s): Dan Whitten

Description and Current Status

The County of Prince George needs a right-of-way for road improvements along Middle Road in anticipation of the construction of the new elementary school. The necessary right-of-way is shown on the enclosed plat. The County has been unable to get the necessary signatures from the property owners. One of the property owners, Herbert Phillingane passed away April 8, 2021. His wife/other property owner, Nancy Phillingane, has not been able to finish probating his Will due to the size of his Estate. Our office has been in touch with Mrs. Phillingane and she has advised us that it would be at least October before this could be done.

The Board must have a public hearing before the quick take procedure can begin. Our office has properly advertised the public hearing and has sent a notice to the property owner regarding this public hearing. If the quick take procedure is approved by the Board after a public hearing, our office will file a certificate of quick take with the Circuit Court and also post a certificate of deposit for the value of the property. Before the certificate is filed, our office must give a 30 notice to the property owners. Our office will then have 180 days to file the petition for condemnation with the Circuit Court to determine the just compensation. However, construction can immediately begin within the Right-of-Way after the certificate of quick take is filed with the Circuit Court.

Sample Motion: I move that the Board adopt a Resolution allowing for the quick take of a portion of property on Middle Road known as Tax Map No.: 230(OA)00-014-0

The Government Path

- | | | |
|--|---|--|
| Does this require IDA action? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Does this require BZA action? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Does this require Planning Commission action? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Does this require Board of Supervisors action? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Does this require a public hearing? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| If so, before what date? | | |

Fiscal Impact Statement

The Court or a jury will determine the fair market value of the right-of-way.

Prince George County Impact

Eminent Domain procedures will enable the construction of the necessary road improvements on Middle Road.

Notes

Board of Supervisors
County of Prince George, Virginia

Resolution

At a regular meeting of the Board of Supervisors of the County of Prince George held in the Boardroom, Third Floor, County Administration Building, 6602 Courts Drive, Prince George, Virginia this 14th day of September, 2021:

Present:

Vote:

Floyd M. Brown, Jr., Chairman
Marlene J. Waymack, Vice Chair
Alan R. Carmichael
Donald R. Hunter
T. J. Webb

On motion of _____, seconded by _____, which carried _____, the following Resolution was adopted:

**RESOLUTION TO ACQUIRE BY CONDEMNATION, IF
NECESSARY, A RIGHT-OF-WAY ON TAX MAP PARCEL
NUMBER 230(0A)00-014-0**

WHEREAS, the County of Prince George, Virginia (the "County") is making road improvements to Middle Road; and

WHEREAS, the proposed improvements are planned, designed and located in a manner which will be most compatible with the greatest public good, the safest engineering design and the least private property injury; and

WHEREAS, the proposed improvements will be situated across a certain number of privately owned parcels in the aforementioned area, including the parcel identified by the Commissioner of Revenue for the County as Tax Map Number 230(0A)00-014-0 (the "Property")

WHEREAS, a search of the land records in the Prince George Circuit Court Clerk's Office has revealed that the owners of the Property are Herbert A. & Nancy B. Phillingane (the "Owners") and a substantial description of the Right-of-Way necessary for the improvements are as follows:

All that right-of-way for public use over and across Tax Map Parcel 230(0A)00-014-0, said right-of-way comprising an area of 0.323 acres, and being situated on a plat entitled "PLAT SHOWING RIGHT OF WAY DEDICATION ACROSS THE PROPERTY OF HERBERT A. & NANCY B. PHILLINGANE LOCATED ON THE SOUTH SIDE OF STATE ROUTE 646, MIDDLE ROAD BLAND DISTRICT PRINCE GEORGE COUNTY, VIRGINIA" prepared by Gregory G. McGlothlin, Land Surveyor, and dated March 10, 2021, a copy of which is attached hereto and to which reference is made for a more particular description."

IT BEING a portion of the same property conveyed to Herbert A. & Nancy B. Phillingane by Deed dated May 15, 2000 and recorded May 22, 2000, of record as Instrument #000002078, in the Clerk's Office in the Prince George County Circuit Court.

WHEREAS, Herbert A. Phillingane died testate, April 8, 2021, but his Last Will and Testament has not been probated; and

WHEREAS, the County has been unable to come to an agreement with the Estate of Herbert A. Phillingane since the Last Will and Testament of Herbert A. Phillingane has not been probated; and

WHEREAS, the County is authorized to acquire private property for public use through the exercise of eminent domain through §§ 1-219.1; 15.2-1800 and 15.2-1904 *et seq.*, Code of Virginia (1950), as amended; and

WHEREAS, after holding a public hearing on this matter, the County has determined that a public necessity exists for the acquisition of the right-of-way for the improvements to Middle Road, which is for the public purpose of providing better road access and travel for public use, along with providing for the safety, peace, good order, comfort, convenience, morals and welfare of the County; and

WHEREAS, due to the deadlines imposed in conjunction with the road improvements, the County must enter upon and take possession of the right-of-way prior to conclusion of the condemnation proceedings, as set forth in Chapter 2 (§ 25.1-200 *et seq.*) of Title 25.1 of the Code of Virginia (1950), as amended; and therefore, the County has determined that it must utilize its statutory "quick take" authority under §§ 15.2-1902(1)(i), 15.2-1904, and 15.2-1905(C) of the Virginia Code (1950), as amended, to acquire the necessary property rights in order to commence and construct the road improvements within the construction deadlines; and

WHEREAS, a public hearing was held, pursuant to §§ 15.2-1903(B) and 15.2-1905(C) on September 14, 2021.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Prince George, Virginia, that:

1. The acquisition of the Dedication of Right-of-Way for road improvements on Middle Road is declared to be a public necessity and to constitute an authorized public undertaking pursuant to § 15.2-1901.1 of the Code of Virginia (1950), as amended; and it is further declared that the acquisition and use of the right-of-way by the County as described herein will constitute a public use as defined by § 1-219.1 of the Code of Virginia (1950), as amended, and that said public use is hereby approved.

2. That a public necessity exists for the acquisition of the right-of-way for the aforesaid public use for reasons set forth in the preamble of this Resolution.
3. The County hereby elects to use the procedures set forth in § 25.1-300 *et seq.*, as authorized by §§ 15.2-1904 and 15.2-1905(C) and the procedures and provisions of §§ 33.1-91 through 33.1-94, 33.1-96 and 33.1-117 of the Virginia Code (1950), as amended, as authorized by § 15.2-1902(4).
4. A public necessity exists that the County enter upon and take possession of the aforesaid portion of and rights in the Dedication of Right-of-Way for the purposes described above before the conclusion of the condemnation proceeding, and the County declares its intent to so enter and take the right-of-way under those powers granted pursuant to §§ 15.2-1904, and 15.2-1905(C) of the Virginia Code (1950), as amended.
5. That the County Administrator and County Attorney may utilize the procedures set forth in § 15.2-1905(C) of the Code of Virginia (1950), as amended, to initiate and conduct condemnation proceedings.
6. The County Administrator and County Attorney be, and they hereby are, authorized and directed to acquire the Easement by condemnation if necessary and in the manner provided by Titles 25.1, including, but not limited to, Chapter 3 (§ 25.1-300 *et seq.*) Title 33.1 to the extent made applicable to localities by § 15.2-1902(4) of the Code of Virginia (1950), as amended.
7. That in the event the above described Property has been conveyed, the County Administrator and the County Attorney are hereby authorized to institute proceedings against the successors in title.

A Copy Teste:

Percy C. Ashcraft
County Administrator

**NOTICE OF PUBLIC HEARING
COUNTY OF PRINCE GEORGE**

Notice is hereby given to all interested persons that the Prince George Board of Supervisors will hold a public hearing on September 14, 2021 beginning at 7:30 p.m. in the Board of Supervisors Meeting Room, Third Floor of the County Administration Building, 6602 Courts Drive, Prince George, Virginia, (located at the intersection of Laurel Springs Road and Courts Drive in the County Government Complex) pursuant to § 15.2-1427, Code of Virginia (1950), as amended, to consider:

A Resolution to permit eminent domain procedures for a necessary Right-of-Way for road improvements to Middle Road across the property of Herbert A. and Nancy B. Phillingane known as Tax Map No. 230(0A)00-014-0.

A copy of the Deed of Dedication of Right-of-Way is available for review in the County Administrator's Office (Tel. 722-8600), Third Floor, County Administration Building, 6602 Courts Drive, Prince George, Virginia, Monday through Friday from 8:30 a.m. until 5:00 p.m. All interested persons shall be given an opportunity to be heard.

Percy C. Ashcraft
County Administrator