

ORDINANCE NO. 1,287, Series of 2006

TITLE: A BILL FOR AN ORDINANCE CONCERNING THE INTENT OF THE TOWN OF PARKER TO ACQUIRE REAL PROPERTY FOR THE PURPOSE OF SECURING OPEN SPACE, PARKLAND AND OPEN SPACE VIEW CORRIDORS THROUGH THE UTILIZATION OF THE TOWN'S POWER OF EMINENT DOMAIN, AND DIRECTING THE TOWN'S STAFF AND TOWN ATTORNEY TO NOTIFY ALL PERSONS AFFECTED THEREBY OF THE ABOVE-STATED INTENT OF THE TOWN, AND THEREAFTER TO COMPLY WITH ALL PERTINENT PROVISIONS OF C.R.S. § 38-1-101, ET SEQ., RELATING TO GOOD FAITH NEGOTIATIONS

WHEREAS, the Town of Parker, Colorado possesses the power of eminent domain pursuant to the provisions of Article XX, § 1 of the Colorado Constitution, Section 15.5 of the Town of Parker Home Rule Charter, C.R.S. § 38-1-101, *et seq.*, and C.R.S. § 38-6-101, *et seq.*; and

WHEREAS, the Town of Parker wishes to acquire the parcel of property more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Subject Property"), for the purpose of securing open space, parkland and open space view corridors;

WHEREAS, the Town Council of the Town of Parker is cognizant of the existence of C.R.S. § 38-1-101(4), as added to the Colorado Revised Statutes by HB04-1203, which purports to limit the authority of the Town of Parker as a home rule municipality to condemn property extraterritorially for the proposes provided herein;

WHEREAS, the Town Council of the Town of Parker finds and determines that notwithstanding the provisions of C.R.S. § 38-1-101(4), the constitutionally derived condemnation powers of a home rule municipality may not be limited by the General Assembly, and that the courts of the State of Colorado have consistently held that home rule eminent domain authority extends to extraterritorial condemnation for public and municipal use as set forth in, by way of example, *City of Thornton v. Farmers Reservoir and Irrigation Co.*, 575 P.2d 382, 389 (Colo. 1978); *City and County of Denver v. Board of County Commissioners of Arapahoe County*, 156 P.2d 101 (Colo. 1945); and *Town of Parker v. Norton*, 939 P.2d 535, 537 Colo. App. 1997);

WHEREAS, the only court that has thus far addressed the applicability of the restrictions contained in C.R.S. § 38-1-101(4) to a home rule municipality, the San Miguel County District Court in *Town of Telluride v. San Miguel Valley Corporation*, 04 CV 22, in a decision dated October 6, 2004, held that the constitutionally derived condemnation authority of a home rule municipality may not be limited by the General Assembly as attempted by HB04-1203;

WHEREAS, the Town Council of the Town of Parker wishes to comply with all applicable provisions of C.R.S. § 38-1-101, *et seq.*, including, but not limited to, the notice and negotiation requirements and provisions thereof.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. Notice is hereby given pursuant to C.R.S. § 38-1-121(1) that the Town of Parker, Colorado, intends to acquire parcels of property more particularly described in **Exhibit A** (collectively, the "Subject Property").

Section 2. The acquisition of the Subject Property serves a public purpose and is necessary and essential to the Town's ability to provide public open space, parkland and open space view corridors for the residents of the Town of Parker.

Section 3. The Town Attorney is hereby directed to provide a copy of this Ordinance to all persons who presently own or maintain an ownership interest in the Subject Property notifying them of the intent of the Town of Parker to acquire such property through the use of the Town's power of eminent domain.

Section 4. The staff of the Town, together with the Town Attorney, and any and all persons retained or employed by the Town of Parker in the prosecution of this matter, are directed to comply with all notice and good faith negotiation requirements set forth in C.R.S. § 38-1-101, *et seq.*, in the conduct of the within authorized eminent domain actions.

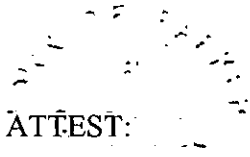
Section 5. In the prosecution of the within authorized eminent domain actions, the Town shall retain all rights and powers lawfully delegated to it by the Colorado Constitution, the Town of Parker Home Rule Charter, and C.R.S. § 38-1-101, *et seq.*, to the extent applicable.

Section 6. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the publication of an agenda that contains the title to this ordinance in a newspaper of local circulation prior to first and second reading of this ordinance creates a financial burden on the Town and that the title to this ordinance was posted in two public places two days before the Town Council meeting as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 7. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 8. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this 19th day of June, 2006.



ATTEST:

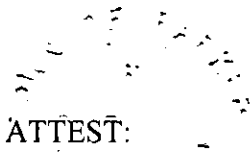
A large, stylized cursive signature of David Casiano.

David Casiano, Mayor

A cursive signature of Carol Baumgartner.

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this 10th day of July, 2006.



ATTEST:

A large, stylized cursive signature of David Casiano.

David Casiano, Mayor

A cursive signature of Carol Baumgartner.

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

A cursive signature of James S. Maloney.

James S. Maloney, Town Attorney

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

A PARCEL OF LAND LYING WITHIN THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 27 AND THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 28, FROM WHICH THE NORTHEAST CORNER OF SAID SECTION 28 BEARS NORTH 00°21'46" WEST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28 SOUTH 89°16'33" WEST 238.61 FEET TO THE WEST LINE OF SALISBURY EQUESTRIAN PARK;

THENCE ALONG SAID WEST LINE NORTH 01°09'55" WEST 629.41 FEET TO THE NORTHWEST CORNER OF SALISBURY EQUESTRIAN PARK

THENCE ALONG THE NORTH LINE OF SAID SALISBURY EQUESTRIAN PARK SOUTH 89°59'24" EAST 55.35 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 00°21'46" EAST 845.69 FEET;

THENCE NORTH 89°59'24" WEST 526.46 FEET TO THE EASTERLY RIGHT-OF-WAY OF MOTSENBOCKER ROAD (COUNTY ROAD NO. 43);

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY THE FOLLOWING 2 COURSES:

- 1) NORTH 01°06'31" WEST 293.83 FEET;
- 2) NORTH 10°36'04" WEST 430.40 FEET;

THENCE DEPARTING SAID EASTERLY RIGHT-OF-WAY NORTH 88°20'31" EAST 629.58 FEET;

THENCE NORTH 00°32'23" WEST 220.00 FEET TO THE SOUTHERLY BOUNDARY OF THAT PARCEL OF LAND DESCRIBED IN RULE AND ORDER RECORDED IN BOOK 958 AT PAGE 811 IN THE OFFICE OF THE CLERK AND RECORDED OF THE SAID COUNTY OF DOUGLAS;

THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID PARCEL OF LAND THE FOLLOWING 6 COURSES:

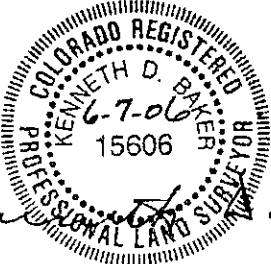
- 1) SOUTH 85°05'58" EAST 190.73 FEET TO THE EASTERLY LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28;
- 2) SOUTH 77°10'53" EAST 532.75 FEET;
- 3) SOUTH 79°40'53" EAST 492.74 FEET;

- 4) SOUTH 83°52'21" EAST 173.05 FEET;
- 5) SOUTH 75°43'46" EAST 91.46 FEET;
- 6) SOUTH 51°53'45" EAST 82.76 FEET TO THE EASTERLY LINE OF THE WEST ONE HALF OF THE NORTHWEST QUARTER OF SAID SECTION 27;

THENCE ALONG SAID EASTERLY LINE SOUTH 00°17'05" EAST 1486.25 FEET TO THE NORTHERLY LINE OF SAID SALISBURY EQUESTRIAN PARK;

THENCE ALONG SAID NORTHERLY LINE NORTH 89°59'24" WEST 1548.76 FEET TO THE POINT OF BEGINNING,

CONTAINING 68.059 ACRES (2,964,649 SQUARE FEET), MORE OR LESS.



Kenneth D. Baker

KENNETH D. BAKER, LICENSED PROFESSIONAL LAND SURVEYOR
COLORADO P.L.S. No. 15606
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.

PARCEL 2:

A PARCEL OF LAND LYING WITHIN THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 27, FROM WHICH THE WEST QUARTER CORNER OF SAID SECTION 27 BEARS SOUTH 00°21'46" EAST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE ALONG THE NORTHERLY LINE OF SAID WEST HALF OF THE NORTHWEST QUARTER NORTH 89°32'51" EAST 1325.89 FEET TO THE EASTERLY LINE OF THE WEST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 27;

THENCE ALONG SAID EASTERLY LINE SOUTH 00°17'05" EAST 458.46 FEET TO THE NORTHERLY LINE OF THAT PARCEL OF LAND DESCRIBED IN RULE AND ORDER RECORDED IN BOOK 958 AT PAGE 811 IN THE OFFICE OF THE CLERK AND RECORDED OF THE SAID COUNTY OF DOUGLAS;

THENCE ALONG SAID NORTHERLY LINE THE FOLLOWING 5 COURSES:

- 1) NORTH 51°53'45" WEST 42.88 FEET;
- 2) NORTH 75°43'46" WEST 110.58 FEET;
- 3) NORTH 83°52'21" WEST 175.47 FEET;
- 4) NORTH 79°40'53" WEST 488.65 FEET;
- 5) NORTH 77°10'53" WEST 546.68 FEET TO THE WESTERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 27;

THENCE ALONG SAID WESTERLY LINE NORTH 00°21'46" EAST 166.71 FEET TO THE **POINT OF BEGINNING**,

CONTAINING 9.472 ACRES (412,584 SQUARE FEET), MORE OR LESS.



Kenneth D. Baker

KENNETH D. BAKER, LICENSED PROFESSIONAL LAND SURVEYOR
COLORADO P.L.S. No. 15606
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.

