

OFFICIAL  
TOWN OF MCCANDLESS  
ORDINANCE No. 1451

AN ORDINANCE OF THE TOWN OF MCCANDLESS, COUNTY OF ALLEGHENY, COMMONWEALTH OF PENNSYLVANIA, WHICH AUTHORIZES THE FILING OF A DECLARATION OF TAKING AND CONDEMNATION BY THE TOWN OF MCCANDLESS ON BEHALF OF THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION AS TO THE FOLLOWING PROPERTIES LOCATED WITHIN THE TOWN OF MCCANDLESS FOR ROAD PURPOSES INCLUDING RIGHTS-OF-WAY, PERMANENT DRAINAGE EASEMENTS, TRAFFIC SIGNAL EASEMENTS AND TEMPORARY CONSTRUCTION EASEMENTS, FURTHER DESCRIBED AND DEPICTED ON RIGHT-OF-WAY PLAN DRAWINGS AUTHORIZING ACQUISITIONS OF RIGHT-OF-WAY FOR STATE ROUTE 4086 SECTION A05R/W ATTACHED TO THE ORDINANCE, WHICH ARE NEEDED FOR THE PINE CREEK ROAD AND ROUTE 19 PARTNERSHIP PROJECT BETWEEN THE COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION AND THE TOWN OF MCCANDLESS:

1) APPROXIMATELY 2,937 SQUARE FEET (0.067 ACRES) OF LAND FOR USE AS A PERMANENT RIGHT-OF-WAY IN FEE SIMPLE, APPROXIMATELY 242 SQUARE FEET (0.006 ACRES) OF LAND FOR USE AS A TRAFFIC SIGNAL EASEMENT AND APPROXIMATELY 25,490 SQUARE FEET (0.585 ACRES) OF LAND FOR USE AS A TEMPORARY CONSTRUCTION EASEMENT, ALL OF WHICH ARE PORTIONS OF A PROPERTY NOW OR FORMERLY OWNED BY 9795 PERRY HIGHWAY MANAGEMENT, LLC AND IDENTIFIED AS LOT AND BLOCK 944-F-284 AND ALSO KNOWN AS 9795 PERRY HIGHWAY LOCATED WITHIN THE TOWN OF MCCANDLESS; AND

2) APPROXIMATELY 1,135 SQUARE FEET OF LAND FOR USE AS A TEMPORARY CONSTRUCTION EASEMENT ON PORTIONS OF A PROPERTY NOW OR FORMERLY OWNED BY FIRST COMMONWEALTH BANK, AND IDENTIFIED AS LOT AND BLOCK 944-B-336 AND ALSO KNOWN AS 11 PINE CREEK ROAD LOCATED WITHIN THE TOWN OF MCCANDLESS; AND

3) APPROXIMATELY 2,813 SQUARE FEET (0.065 ACRES) OF LAND FOR USE AS A PERMANENT RIGHT-OF-WAY IN FEE SIMPLE, APPROXIMATELY 24,004 SQUARE FEET (0.551 ACRES) OF LAND FOR USE AS A PERMANENT DRAINAGE EASEMENT, AND APPROXIMATELY 903 SQUARE FEET (0.021 ACRES) OF LAND FOR USE AS A TEMPORARY CONSTRUCTION EASEMENT, ALL OF WHICH ARE PORTIONS OF A PROPERTY NOW OR FORMERLY OWNED BY MM WG MCCANDLESS, LLC, AND IDENTIFIED AS LOT AND BLOCK 944-F-210 AND ALSO KNOWN AS 30 PINE CREEK ROAD LOCATED WITHIN THE TOWN OF MCCANDLESS; AND

4) APPROXIMATELY 2,307 SQUARE FEET (0.053 ACRES) OF LAND FOR USE AS A PERMANENT DRAINAGE EASEMENT AND APPROXIMATELY 660 SQUARE FEET (0.015 ACRES) OF LAND FOR USE AS A TEMPORARY CONSTRUCTION EASEMENT AND, BOTH OF WHICH ARE PORTIONS OF A PROPERTY NOW OR FORMERLY OWNED BY NORMAN W. AND IRMA H. ELLIOT, HUSBAND AND WIFE, AND IDENTIFIED AS LOT AND BLOCK 944-L-377 AND ALSO KNOWN AS 9797-9805 MCKNIGHT ROAD LOCATED WITHIN THE TOWN OF MCCANDLESS

OR, IN THE ALTERNATIVE, THE ACQUISITION OF THE SAME BY DEED OR DEEDS IN LIEU OF CONDEMNATION.

WHEREAS, it is deemed essential for public safety to repair, widen and reconstruct a Pine Creek Road, including a bridge located on Pine Creek Road; and

WHEREAS, the Town of McCandless and the Commonwealth of Pennsylvania, Department of Transportation ("PennDOT") have collaborated to create a traffic improvements project near and around the intersection of Pine Creek Road (S.R. 4068) and Perry Highway (S.R. 0019) which is known as the Pine Creek Road Project, State Route 4086, Section A05 R/W, ("Pine Creek Road Project"); and

WHEREAS, to complete the Pine Creek Road Project, it is necessary for the Town of McCandless to obtain permanent right-of-ways in fee simple, permanent drainage easements, temporary construction easements, and traffic signal easements in, over, through and across various properties located within the Town of McCandless on behalf of PennDOT; and

WHEREAS, all required right-of-ways for this Pine Creek Road Project shall be acquired in fee simple unless otherwise noted. Areas, if any, not to be acquired in fee simple shall be acquired in the lesser estate or interest noted in this Ordinance or the Plan Sheet prepared by Trans Associates and The Gateway Engineers, Inc., ("Plans") as more fully set forth in **Exhibit A**, which is attached, incorporated herein by reference, and made part of this Ordinance. If there is a conflict between the Plans and the Ordinance, the Plan shall control.

WHEREAS, a drainage easement is an easement for the construction, inspection, maintenance, repair, reconstruction and alteration of highway drainage facilities. The easement shall not prevent the property owner from making any legal use of the area which is not detrimental to the necessary flow of water. However, no structure of any kind may be erected in the area, nor may any private pipe or ditch be connected to the a PennDOT or Town pipe or ditch without advanced written approval by PennDOT or the Town Council;

WHEREAS, a temporary construction easement is an easement for the use of land as necessary during the construction of the Pine Creek Road Project. The easement is required only until the construction or work required by the Pine Creek Road Project plans is completed, unless sooner relinquished in writing by PennDOT;

WHEREAS, a traffic signal easement is an easement for the construction, inspection, operation, maintenance, repair, reconstruction and alteration of a traffic signal and appurtenance thereto. The easement shall not prevent the property owner from making any legal use of the area which is not detrimental to its use for traffic signal purposes

WHEREAS, the reasonable means of completing the Pine Creek Road Project, have been identified as the performing of grading, paving, and other construction activities, as shown on the Plans; and

WHEREAS, to complete the Pine Creek Road Project, the Town of McCandless must acquire on behalf of PennDOT approximately **2,937** square feet (0.067 acres) of land for use as a permanent right-of-way in fee simple, approximately **242** square feet (0.006 acres) of land for use as a traffic signal easement and approximately **25,490** square feet (0.585 acres) of land for use as a temporary construction easement, all of which are portions of a property now or formerly owned by **9795 Perry Highway Management, LLC** and identified as Lot and Block **944-F-284** and also known as **9795 Perry Highway** located within the Town of McCandless and identified as **Parcel 7** in the Plans; and

WHEREAS, to complete the Pine Creek Road Project, the Town of McCandless must acquire on behalf of PennDOT approximately **1,135** square feet of land for use as a temporary construction easement on portions of a property now or formerly owned by **First Commonwealth Bank**, and identified as Lot and Block **944-B-336** and also known as **11 Pine Creek Road** located within the Town of McCandless and identified as **Parcel 8** in the Plans; and

WHEREAS, to complete the Pine Creek Road Project, the Town of McCandless must acquire on behalf of PennDOT approximately **2,813** square feet (0.065 acres) of land for use as a permanent right-of-way in fee simple, approximately **24,004** square feet (0.551 acres) of land for use as a permanent drainage easement, and approximately **903** square feet (0.021 acres) of land for use as a temporary construction easement, all of which are portions of a property now or formerly owned by **MM WG McCandless, LLC**, and identified as Lot and Block **944-F-210** and also known as **30 Pine Creek Road** located within the Town of McCandless and identified as **Parcel 9** in the Plans; and

WHEREAS, to complete the Pine Creek Road Project, the Town of McCandless must acquire on behalf of PennDOT approximately **660** square feet (0.015 acres) of land for use as a temporary construction easement and approximately **2,307** square feet (0.053 acres) of land for use as a permanent drainage easement, both of which are portions of a property now or formerly owned by **Norman W. Elliot and Irma H. Elliot**, his wife, and identified as Lot and Block **944-L-377** and also known as **9797-9805 McKnight Road** located within the Town of McCandless and identified as **Parcel 10** in the Plans; and

WHEREAS, the Town Council of the Town of McCandless desires to obtain the above-described permanent right-of-ways in fee simple, temporary construction easements, permanent drainage easements and traffic signal easements on behalf of PennDOT by the power of eminent domain, or, in the alternative, by deed or deeds in lieu of condemnation; and

WHEREAS, the condemnation of the above described properties by the Town of McCandless on behalf of PennDOT is authorized by the power of eminent domain pursuant to the Eminent Domain Code (26 Pa.C.S. §§ 101 et seq.), by the Home Rule Charter of the Town of McCandless and by Section 2003(e) and 2002(a)(6) and (7) of the Administrative Code, as amended, 71 P.S. 513(3), 512(a)(6) and (7).

NOW THEREFORE, the Town Council of the Town of McCandless hereby ordains and enacts by authority of the same, as follows:

**Section 1.** The Town of McCandless desires to acquire approximately **2,937** square feet (0.067 acres) of land for use as a permanent right-of-way in fee simple, approximately **242** square feet (0.006 acres) of land for use as a traffic signal easement and approximately **25,490** square feet (0.585 acres) of land for use as a temporary construction easement, all of which are portions of a property now or formerly owned by **9795 Perry Highway Management, LLC** and identified as Lot and Block **944-F-284**, recorded in the Allegheny County Recorder of Deeds **Deed Book Volume 13382, Page 464** and also known as **9795 Perry Highway** located within the Town of McCandless by the power of eminent domain or, in the alternative, by deed or deeds in lieu of condemnation which land to be acquired is more fully described and identified on **Exhibit A** which is attached hereto and incorporated herein by reference.

**Section 2.** The Town of McCandless desires to acquire approximately **1,135** square feet of land for use as a temporary construction easement on portions of a property now or formerly owned by **First Commonwealth Bank**, and identified as Lot and Block **944-B-336**, recorded in the Allegheny County Recorder of Deeds **Deed Book Volume 14573, Page 61** and also known as **11 Pine Creek Road** located within the Town of McCandless by the power of eminent domain or, in the alternative, by deed or deeds in lieu of condemnation which land to be acquired is more fully described and identified on **Exhibit A** which is attached hereto and incorporated herein by reference.

**Section 3.** The Town of McCandless desires to acquire approximately **2,813** square feet (0.065 acres) of land for use as a permanent right-of-way in fee simple, approximately **24,004** square feet (0.551 acres) of land for use as a permanent drainage easement, and approximately **903** square feet (0.021 acres) of land for use as a temporary construction easement, all of which are portions of a property now or formerly owned by **MM WG McCandless, LLC**, and identified as Lot and Block **944-F-210**, recorded in the Allegheny County Recorder of Deeds **Deed Book Volume 15113, Page 237** and also known as **30 Pine Creek Road** located within the Town of McCandless by the power of eminent domain or, in the alternative, by deed or deeds in lieu of condemnation which land to be acquired is more fully described and identified on **Exhibit A** which is attached hereto and incorporated herein by reference.

**Section 4.** The Town of McCandless desires to acquire approximately **660** square feet (0.015 acres) of land for use as a temporary construction easement and approximately **2,307** square feet (0.053 acres) of land for use as a permanent drainage easement, both of which are portions of a property now or formerly owned by **Norman W. Elliot and Irma H. Elliot**, his wife, and identified as Lot and Block **944-L-377**, recorded in the Allegheny County Recorder of Deeds **Deed Book Volume 3939, Page 588**, and also known as **9797-9805 McKnight Road** located within the Town of McCandless by the power of eminent domain or, in the alternative, by deed or deeds in lieu of condemnation which land to be acquired is more fully described and identified on **Exhibit A** which is attached hereto and incorporated herein by reference.

**Section 5.** The foregoing property interests are being acquired for roadway improvements, specifically the Pine Creek Road Project, pursuant to the Eminent Domain Code (26 Pa.C.S. §§ 101 et seq.) and by the Home Rule Charter of the Town of McCandless.

**Section 6.** The Town Manager, Town Attorneys, Tucker Arensberg, P.C., Town Council President and/or other officers of the Town of McCandless are hereby authorized, directed and empowered to execute all necessary declarations of taking and other documents necessary to condemn said property and to take all other steps necessary and proper under applicable law and the Eminent Domain Code, its supplements and amendments, to condemn said properties and compensate the owners, or reputed owners, according to law.

**Section 7.** In the alternative, the Town Manager, Town Attorneys, Tucker Arensberg, P.C., Town Council President and/or other officers of the Town of McCandless are hereby authorized, directed and empowered to execute all necessary documents to acquire the above-described property interests and compensate the owners, or reputed owners by deed or deeds in lieu of condemnation.

**Section 8.** Should any section, paragraph, clause or phrase of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of said Ordinance shall not be affected thereby and shall remain in full force and effect.

**Section 9.** That any prior ordinances conflicting in whole or in part with any provision of this Ordinance be and the same are hereby repealed to the extent of such conflict.

ORDAINED AND ENACTED into law, this 6<sup>th</sup> day of **July, 2015**, to become effective ten (10) days after proper advertisement hereof.

ATTEST:

TOWN COUNCIL  
TOWN OF MCCANDLESS

  
Secretary

  
Vice President

BUS\_EST:395128-1 024399-165952

