

ORDINANCE NO. 2595

AN ORDINANCE APPROVING THE DESCRIPTION AND SURVEY OF LANDS NECESSARY FOR ACQUISITION BY CONDEMNATION OF REAL PROPERTY INTEREST IN FEE SIMPLE FOR THE USE OF THE CITY OF GARDNER, KANSAS, FOR PUBLIC USE ASSOCIATED WITH THE CITY'S USE AND OPERATION OF THE GARDNER MUNICIPAL AIRPORT DESIGNATED IN RESOLUTION 2003, PASSED AND APPROVED BY THE GOVERNING BODY ON THE 19TH DAY OF NOVEMBER, 2018.

WHEREAS, the City of Gardner, Kansas owns and operates a municipal airport commonly referred to as the Gardner Municipal Airport ("Airport");

WHEREAS, pursuant to regulatory direction received from the Federal Aviation Administration ("FAA") the City is required to and has been requested by the FAA to obtain real property in fee simple at the end of and to the South of the east-west runway for airport improvements and for purposes of securing air rights and specifically air rights associated with the present and future runway protection zone and/or approach slope;

WHEREAS, the City is authorized to exercise eminent domain for the purpose of acquiring such real property pursuant to Article 12, Section 5 of the Kansas Constitution, K.S.A. § 26-201 and K.S.A. § 3-711 for the purposes herein stated;

WHEREAS, on November 19, 2018 the Governing Body of the City adopted Resolution No. 2003 declaring it necessary to acquire by condemnation the aforementioned real property and directing that a survey and description of the lands or interests to be acquired be prepared by the City Engineer and filed with the City Clerk;

WHEREAS, surveys describing the real property to be acquired by eminent domain in fee simple have been completed and filed as directed by Resolution No. 2003.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:

SECTION ONE: The description and survey of lands necessary to acquire real property in fee simple for the purpose of airport improvements and for purposes of securing air rights and specifically air rights associated with the present and future runway protection zone and/or approach slope as prepared by the City Engineer or designee and filed with the City Clerk pursuant to Resolution No. 2003, adopted by the Governing Body of the City of Gardner, Kansas, on the 19th day of November, 2018, is hereby approved.

SECTION TWO: The action of the Governing Body of the City of Gardner, Kansas in acquiring such real property in fee simple as herein described has been declared necessary by the Governing Body.

SECTION THREE: The acquisition of the such real property in fee simple is all in accordance with and under the provisions of Chapter 26 of the Kansas Statutes Annotated.

SECTION FOUR: That there is hereby declared to be public necessity to acquire by eminent domain proceedings for the purposes herein stated the lands hereinafter described:

BAKER TRUST – TRACT NO. 1

OWNERSHIP: The Commerce Trust Company, Trustee of the Dale Q. Baker Trust for Shirley K. Harley as to and undivided 1/2 interest, and Carole Dale Grube, Trustee of the Carole Dale Grube Revocable Trust dated August 26, 2010 as to an undivided 1/2 interest.

AND

Lorin A. Clark, holder of oil and gas lease.

AND

City of Gardner, Kansas, easement holder.

AND

The unknown heirs, executors, administrators, devisees, trustees, creditors and assigns of such parties as may be deceased, the unknown spouses of such parties and the unknown guardians and trustees of such parties as are minors or in anywise under legal disability, the unknown officers, successors, trustees, creditors and assigns of such parties as are existing, dissolved or dormant corporations, the unknown executors, administrators, devisees, trustees, creditors, successors and assigns of such defendants as are or were partners or in partnership, and all known persons who claim any interest in and to the aforementioned real estate.

PARTIES IN POSSESSION: Same.

SITUS ADDRESS: Southwest Corner of 175th Street and Waverly Road in Gardner, Kansas

JOHNSON COUNTY PARCEL ID NUMBER: 2F221427-3006

LIENHOLDER: None.

EASEMENT HOLDER: City of Gardner

LEGAL DESCRIPTION: That part of the North Half of the Northeast Quarter of Section 27, Township 14 South, Range 22 East of the sixth principal meridian, City of Gardner, Johnson County, Kansas being described as follows:

Beginning at the Northeast corner of said Section; thence S02°08'41"E (assumed bearing) along the East line of said Quarter a distance of 849.36 feet; thence S88°14'48"W parallel to the south line of the North Half of the North Half of said Quarter a distance of 2095.90 feet to the southeasterly line of a tract of land described in Deed Book 211 page 377 recorded in

Office of the Recorder in said County; thence along said line N31°58'41"E a distance of 228.96 feet to the Northwest corner of the Southeast Quarter of the Northwest Quarter of said Quarter; thence N88°14'48"E along the south line of the North Half of the North Half of said Quarter a distance of 1311.64 feet to the Southwest corner of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter said Quarter a distance of 658.56 feet to the Northwest corner of the Northeast Quarter of the Northeast Quarter of said Quarter; thence N88°12'49"E along the north line of the Northeast Quarter of said Section 27 a distance of 655.22 feet to the Point of Beginning.

The above described contains 18.79 acres, more or less.

SECTION FIVE: The City Attorney for the City of Gardner, Kansas is hereby directed, authorized and instructed to make proper application to a Judge of the District Court of Johnson County, Kansas, for the acquisition of the aforementioned real property in fee simple, praying for condemnation thereof and the appointment of three disinterested residents of the County to assess and to determine the damages and compensation resulting from such compensation and for such other proceedings as may be required by law.

SECTION SIX: This Ordinance shall take effect and be in force from and after its passage and publication as provided by law.

PASSED by the Governing Body this 3rd day of December, 2018.

SIGNED by the Mayor this 3rd day of December, 2018.

Steve Shute, Mayor

ATTEST:

Amy Nasta, City Clerk

(SEAL)

APPROVED AS TO FORM:

Ryan B. Denk, City Attorney