

*City of Falls Church*

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Meeting Date: 01-08-18	Title: <b>(TR18-01)</b> RESOLUTION TO INITIATE EMINENT DOMAIN PROCEEDINGS AGAINST APPROXIMATELY 1.9537 ACRES OF LAND, INCLUDING 301 FELLOWS COURT, 306 PARKER AVENUE, 304 PARKER AVENUE, 302 PARKER AVENUE, 502 S. OAK ST., 302 FELLOWS COURT, AND 304 FELLOWS COURT (REAL PROPERTY CODE NUMBERS 52-206-090, 52-206-091, 52-206-092, 52-206-093, 52-206-094, 52-206-095, AND 52-206-096), TOGETHER FORMERLY KNOWN AS 604 S. OAK STREET	Agenda No.:  10.a.	
Proposed Motion: <b>MOVE to adopt (TR18-01).</b>			
Originating Dept. Head: Carol W. McCoskrie, City Attorney <b>CWM 01-04-2018</b>		Disposition by Council:	
City Manager: Wyatt Shields 703.248.5004 <b>FWS 1-4-18</b>	City Attorney: Carol McCoskrie 703.248.5010 <b>CWM 01-04-2018</b>	CFO: Kiran Bawa 703.248.5092 <b>KB 1-4-18</b>	City Clerk: Celeste Heath 703.248.5014 <b>CH 1-4-18</b>

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**REQUEST:** Consider the attached resolution, (TR18-01), for Condemnation of Lots 1 through 7 of the Oak Park Subdivision, SECTION III, formerly known as 604 South Oak Street (“Property”), and shown on the plat that is Attachment A hereto.

**RECOMMENDATION:** Adopt the attached resolution to indicate the Council’s intent to acquire the Property through eminent domain, and authorize and direct the City Attorney, working with the City Manager, to acquire the Property, including by condemnation.

**BACKGROUND:** City Council has been considering for some time whether to acquire the Property, which is owned by Lydia E. Fellows, Trustee for the Lydia E. Fellows Trust. Although the City has approached the owner about buying the Property, she has been reluctant to sell it in the past. Ms. Fellows is no longer residing in the house on the Property, and a relative has been making plans to redevelop the land.

In 2016, City Council approved revisions to the future land use map to show the City’s vision for the Property as being potential open space or park land, with possible school use. See, Attachment D. In addition, the Open Space Map was changed to show the subject Property. If the City Council wishes to preserve the land for open space or possible later school use, the City should act to acquire it before any further actions are taken to reduce the open space on the Property.

26 The City has had title searches done on the property, and has obtained an appraisal,  
27 which valued the seven lots, together, at three million, three hundred twenty five  
28 thousand dollars (\$3,325,000.00). The City has made a bona fide offer to purchase the  
29 property for that amount, but has received no response. The City also made offers in the  
30 spring of 2017, and in prior years. The City Manager has followed up with telephone  
31 calls, and there has been no response to the City's offer.

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33 If the City desires to acquire the property, Council should adopt the attached resolution,  
34 which includes, among other things, the following findings:

- 35 • The City, due in part to increasing population, has a need for increase land for  
36 open space and park purposes, and for schools;
- 37 • The Property is ideally situated for park space, and that the attached plan for that  
38 use, Attachment B hereto, is approved for such park;
- 39 • Acquisition of the entire property is needed for park purposes;
- 40 • The acquisition is for the possession, ownership, occupation, and enjoyment of  
41 the property by the public, for the purposes of installation and construction and  
42 maintenance of the public facilities, including public park and school facilities,  
43 and other related improvements;
- 44 • The City has made a *bona fide* but ineffectual effort to purchase the Property  
45 from the owner as required by Section 25.1-204 of the Virginia Code (1950),  
46 including delivery of a written offer to acquire the Property to the owner's last  
47 known address; and
- 48 • A public necessity exists for the fee simple acquisition of the above-described  
49 Property for the construction, installation, and maintenance of parks and/or  
50 school purposes, all of which are for the public purposes of providing sufficient  
51 open space and environmental amenities for public use, along with providing for  
52 the general health, safety, peace, good order, comfort, convenience, morals and  
53 welfare of the City

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55 FISCAL IMPACT: Funds have been approved for this purchase in the FY18-FY22  
56 CIP. The upcoming bond issues will include money for it, and in the meantime, the  
57 reimbursement resolution permits the City to use the funds in advance of a resolution.

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59 TIMING: Standard  
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(TR18-01)

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65 RESOLUTION TO INITIATE EMINENT DOMAIN PROCEEDINGS  
66 AGAINST APPROXIMATELY 1.9537 ACRES OF LAND,  
67 INCLUDING 301 FELLOWS COURT, 306 PARKER AVENUE, 304  
68 PARKER AVENUE, 302 PARKER AVENUE, 502 S. OAK ST., 302  
69 FELLOWS COURT, AND 304 FELLOWS COURT (REAL  
70 PROPERTY CODE NUMBERS 52-206-090, 52-206-091, 52-206-092,  
71 52-206-093, 52-206-094, 52-206-095, AND 52-206-096), TOGETHER  
72 FORMERLY KNOWN AS 604 S. OAK STREET  
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74 WHEREAS, the future needs of the City of Falls Church, Virginia (“City”) and its  
75 citizens include an increase in the amount of open space to be used for  
76 parks and school uses; and  
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78 WHEREAS, the City is densely developed, and there is a lack of available open-space  
79 land that can be used to provide for future parks or schools for the City;  
80 and  
81

82 WHEREAS, the property formerly known as 604 South Oak Street, which has now  
83 been subdivided into, and includes the following lots:  
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<u>Address</u>	<u>RPC Number</u>
85 301 Fellows Court	52-206-090;
86 306 Parker Avenue	52-206-091;
87 304 Parker Ave	52-206-092;
88 302 Parker Avenue	52-206-093;
89 502 S. Oak Street	52-206-094;
90 302 Fellows Court	52-206-095; and
91 304 Fellows Court	52-206-096

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94 (together “Property”) is shown as open space on the City’s Future Land  
95 Use Map, a part of the City’s comprehensive Plan, and is designated with  
96 the School Symbol, indicating that it may be subject to future use for  
97 schools’ purposes; and  
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99 WHEREAS, the Property is ideally situated for park use, with mature trees, and  
100 surrounded by quiet streets in a residential area, and for School use, as it  
101 is located directly adjacent to an existing school that will likely need to  
102 be expanded through additional building or playground space in the  
103 future as student populations increase; and  
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105 WHEREAS, the City Council of the City of Falls Church (“Council”) approves the  
106 plan attached hereto, showing the proposed use of the Property for park  
107 and school purposes; and  
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109 WHEREAS, the increasing population in the City, and in particular the increasing  
110 number of school-age students, creates a need for more open space that  
111 can be used for parks and recreation and schools; and  
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113 WHEREAS, the Property is almost two acres in size, and is one of the few remaining  
114 undeveloped properties of that size in the City that is suitable for open  
115 space, park and school use, and  
116

117 WHEREAS, the proposed open space to be acquired is the minimum necessary to  
118 achieve the goals of the City to increase open space and parks and  
119 schools; and  
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121 WHEREAS, the City has reviewed the acquisition for purposes of complying with  
122 Section 1-219.1 of the Virginia Code (1950), as amended, and has  
123 certified that the acquisition is for the possession, ownership, occupation,  
124 and enjoyment of the property by the public, for the purposes of  
125 installation and construction and maintenance of the public facilities,  
126 including public park and school facilities, and other related  
127 improvements; and  
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129 WHEREAS, the City has caused to be conducted an examination of title to the  
130 Property, and a copy of such examination has been provided to the  
131 Owner; and  
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133 WHEREAS, the City has been trying to acquire the Property through communications  
134 with the owner and her relatives and attorneys over the past several  
135 years, and they have refused all efforts and offers to purchase the  
136 property; and  
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138 WHEREAS, the City has made a *bona fide* but ineffectual effort to purchase the  
139 Property from the owner as required by Section 25.1-204 of the Virginia  
140 Code (1950), including delivery of a written offer to acquire the Property  
141 to the owner's last known address; and  
142

143 WHEREAS, the City is authorized to acquire private property for purposes of parks  
144 and schools through the exercise of eminent domain by Sections 1-219.1,  
145 15.2-1800, and 15.2-1900 *et seq.* of the Code of Virginia (1950) as  
146 amended and by Section 18.03 *et seq.* of the Charter of the City of Falls  
147 Church; and  
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149 WHEREAS, after the hereinafter recited public hearing on this matter, the City has  
150 determined that a public necessity exists for the fee simple acquisition of  
151 the above-described Property for the construction, installation, and  
152 maintenance of parks and/or school purposes, all of which are for the  
153 public purposes of providing sufficient open space and environmental  
154 amenities for public use, along with providing for the general health,

155 safety, peace, good order, comfort, convenience, morals and welfare of  
156 the City; and  
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158 WHEREAS, a public hearing following proper legal notice was held, pursuant to  
159 Section 15.2-1903(B) of the Code of Virginia (1950), as amended, on  
160 January 8, 2018.  
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162 NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of  
163 Falls Church, Virginia, that:  
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165 1. The parcel of land formerly known as 604 South Oak Street, which  
166 Has now been subdivided into the following lots:  
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168	<u>Address</u>	<u>RPC Number</u>
169	301 Fellows Court	52-206-090
170	306 Parker Avenue	52-206-091
171	304 Parker Ave	52-206-092
172	302 Parker Avenue	52-206-093
173	502 S. Oak Street	52-206-094
174	302 Fellows Court	52-206-095
175	304 Fellows Court	52-206-096

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177 (together, the “Property”) and being the same property that is the subject of a Deed of  
178 Subdivision, Dedication, Easement and Vacation, dated February 16, 2017 and recorded  
179 as Instrument Number 20170100003424 (“Deed”) among the land records of the Clerk  
180 of the Circuit Court of Arlington County, Virginia, and was shown on the plat attached  
181 to that Deed, which Plat was prepared by James A. Madson of Walter L. Phillips  
182 Incorporated and dated May 27, 2015 (Plat). A copy of the Deed and attached Plat are  
183 attached hereto as Attachment A. The Property is to be acquired for public open space,  
184 park and school purposes; and  
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186 2. The City Council determines and declares these uses to constitute an  
187 authorized public undertaking pursuant to Section 15.2-1901.1 of the Code of Virginia  
188 (1950); and  
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190 3. The City determines and declares that the acquisition described in  
191 the Preamble of this Resolution and uses of the Property by the City as described herein  
192 will constitute public uses as defined by Section 1-219.1 of the Code of Virginia (1950)  
193 as amended, and that said public uses are hereby approved; and  
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195 4. The City Council determines and declares that the acquisition of the  
196 Property is necessary for public uses and is an authorized public undertaking; and  
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198 5. The City hereby elects to use the procedures set forth in Section

199 25.1-300 *et seq.* of the Code of Virginia (1950), as amended, and as authorized by  
200 Sections 15.2-1902 and 15.2-1904 of the Code of Virginia (1950), as amended, and as  
201 further authorized by Section 18.02 of the Charter of the City of Falls Church, Virginia;  
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203 6. The City Council determines and declares that no more private property  
204 will be acquired than that which is necessary to achieve the stated public use; and  
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206 7. The City Council authorizes and directs the City Attorney, working  
207 together with the City Manager, to take all actions necessary to acquire the property on  
208 behalf the City, including, without limitation, the filing of a Petition for Condemnation  
209 in Court, and all actions reasonable and necessary to pursue that action.  
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211  
212 Adoption: \_\_\_\_\_  
213 (TR18-01)  
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