



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Agenda Item

File ID: 2017-0867

Substitute

9/14/2017

Public Hearing: YES ☐ NO ☒

Department: GIS Department

SUBJECT:

Commission District(s): 5, 7

PAWS Atlanta Sanitary Sewer Easement

Information Contact: Stacy Grear

Phone Number: 404-371-3619

PURPOSE:

To consider granting a sewer easement to PAWS Atlanta, Incorporated for the purpose of constructing a new sanitary service and sewer line located across vacant County owned property located at 5301 Covington Highway (15 161 02 011).

NEED/IMPACT:

PAWS Atlanta desires to establish a 15'x 160' easement over, under, across and through a portion of DeKalb County owned property located at 5301 Covington Highway in order to connect to DeKalb County's sanitary sewer system. The non-exclusive perpetual easement, if granted, would be used to construct, install, maintain, inspect, operate, repair and replace in and beneath the surface of the Easement Area a sanitary sewer line and related facilities and equipment to connect the PAWS Atlanta facility to the DeKalb County sewer system.

Proposed Easement – 2,414 SF or 0.055 AC

Attached are survey and easement documents. The attached easement is in substantially final form.

FISCAL IMPACT:

Authorize the acceptance of the \$2,400 payment, which is the fair market value of the easement, (plus closing fees if any) by PAWS Atlanta in consideration for the sewer easement. All proceeds will be anticipated in Forfeiture Funds account 62413.332003.210.

RECOMMENDATION:

Recommend approval of an easement in a form acceptable to the County Attorney and authorize the Chief Executive Officer to execute all necessary documents.

Return To:
PAWS Atlanta, Incorporated
5287 Covington Highway
Decatur, Georgia 30035
Attention: Nancy Longacre

Cross Reference:
Deed Book 8093, Page 501
Deed Book 9145, Page 567
DeKalb County, Georgia Records

Space Above This Line for Recorder's Use

STATE OF GEORGIA

COUNTY OF DEKALB

SANITARY SEWER EASEMENT AGREEMENT

THIS SANITARY SEWER EASEMENT AGREEMENT (this "**Agreement**") is made and entered into as of the ____ day of September, 2017, by and between **DEKALB COUNTY, GEORGIA**, a political subdivision of the State of Georgia ("**Burdened Property Owner**"), and **PAWS ATLANTA, INCORPORATED**, a Georgia corporation (successor-in-interest to DeKalb Humane Society, Inc.) ("**PAWS Atlanta**").

WHEREAS, Burdened Property Owner is the owner of real property lying in Land Lot 161, of the 15th District, DeKalb County, Georgia (the "**Burdened Property**"), as described in a deed dated the 4th day of March, 1994 and recorded in Deed Book 8093, Page 501, in the Office of the Clerk of the Superior Court of DeKalb County, Georgia;

WHEREAS, PAWS Atlanta is the owner of real property lying in Land Lot 161, of the 15th District, DeKalb County, Georgia (the "**Benefited Property**"), as described in a deed dated the 4th day of March, 1994 recorded in Deed Book 9145, Page 567, in the Office of the Clerk of the Superior Court of DeKalb County, Georgia;

WHEREAS, Burdened Property Owner and PAWS Atlanta desire to establish easements over, under, across and through a portion of the Burdened Property which easement area is 15'x 160', as more particularly depicted on the drawing attached to this Agreement as Exhibit "A" on such drawing (the "**Easement Area**").

NOW THEREFORE, in consideration of the sum of Two Thousand Four Hundred Dollars (\$2,400.00) cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties agree as follows:

1. **Grant of Easement**. Burdened Property Owner hereby grants and conveys to PAWS Atlanta the following easements, rights and privileges (collectively called the "**Easement**"):

(A) a non-exclusive perpetual easement from time to time to construct, install,

maintain, inspect, operate, repair and replace in and beneath the surface of the Easement Area a sanitary sewer line and related facilities and equipment (collectively, the “**Sanitary Sewer System**”) to connect the Benefited Property to the DeKalb County sewer system.

(B) a non-exclusive perpetual easement from time to time of free access, ingress and egress to and from the Easement Area on, over and through such portions of the Burdened Property as reasonably necessary to access the Easement Area and the Sanitary Sewer System; provided that such ingress and egress on over, over and through the Burdened Property shall be done in such a manner as to minimize, to the extent reasonable, any interruption and interference with the normal use and enjoyment of the Burdened Property by the Burdened Property Owner and others lawfully present there.

2. Relocation Right. Burdened Property Owner may, at its cost, at any time or times, cause the Sanitary Sewer System to be relocated within the Burdened Property provided such relocation: (i) does not diminish the capacity of the Sanitary Sewer System or result in any unreasonable interruption of service or use to the Benefitted Property; (ii) is completed in a good and workmanlike manner using materials and design standards which equal or exceed those originally used; and (iii) is performed in compliance with all applicable governmental laws, regulations and requirements. Notwithstanding the foregoing, any such relocation shall be performed only after Burdened Property Owner provides PAWS Atlanta at least thirty (30) days' prior written notice of its intent to relocate the Sanitary Sewer System. Upon the relocation of the Sanitary Sewer System, the Easement Area shall automatically and without further act of any party be relocated to the new location of the Sanitary Sewer System; provided, however, Burdened Property Owner and PAWS Atlanta shall, at the request of either party, execute and deliver an amendment to this Agreement evidencing the new location of the Easement Area.

3. Use of Easement Area; Work. PAWS Atlanta agrees to provide advance written notice to Burdened Property Owner of any construction or maintenance or other work to be performed by, or on behalf of, PAWS Atlanta on the Burdened Property pursuant to this Agreement. If such advance notice is not practicable under the circumstances for reasons of safety or emergency, PAWS Atlanta shall notify Burdened Property Owner as soon as reasonably practicable. In connection with any work performed by or on behalf of PAWS Atlanta pursuant to this Agreement, (a) all work shall be performed in such a manner as not to unreasonably interfere with the use or operation of the Burdened Property, including, without limitation, any interruption to any utility service to any improvements located on the Burdened Property, (b) upon the completion of the work, the Burdened Property, including the Easement Area, shall be restored to the condition which existed prior to the work and PAWS Atlanta shall remove from the Easement Area and/or the surrounding land all equipment, materials and debris from or used in connection with such construction or maintenance or other work, (c) all necessary licenses and permits required for the work shall be obtained prior to the commencement thereof, (d) all work shall be performed in accordance with all laws, ordinances, codes, rules and regulations of all governmental authorities having jurisdiction over such work, and (e) all work shall be done in a good and workmanlike manner and free and clear of all liens of contractors, subcontractors, laborers and materialmen and all other liens. In the event any such lien or claim of lien is levied against the Burdened Property, PAWS Atlanta shall bond or discharge such lien or claim of lien within fifteen (15) days following PAWS Atlanta's receipt of written notice from Burdened Property Owner that such lien has been filed.

4. Insurance. At all times during the life of this Agreement, PAWS Atlanta agrees to maintain comprehensive general liability insurance covering PAWS Atlanta's activities within the Easement Area in commercially reasonable amounts and types required by Burdened Property Owner from a reputable, financially solvent insurance company or companies qualified to do business in the State of Georgia.

5. Reservation of Rights; Condemnation. Burdened Property Owner hereby reserves and retains

for itself and its successors-in-title all rights and privileges incident to the ownership of the fee simple estate of the Burdened Property, including the Easement Area, for any and all purposes not inconsistent with PAWS Atlanta's use of the Easement Area as expressly permitted herein. No estate or interest in any portion of the Burdened Property is herein conveyed or granted to PAWS Atlanta, other than the Easement granted herein, subject to all terms and conditions of this Agreement. PAWS Atlanta shall not claim or declare any fee interest in and to the Easement Area, and in the event of eminent domain proceedings or settlement pursuant thereto, PAWS Atlanta shall make no claim against the award or compensation resulting from such event, except for any payment made to PAWS Atlanta for damage to the Sanitary Sewer System or with respect to removing or relocating the same.

6. **Maintenance.** PAWS Atlanta shall maintain the Sanitary Sewer System in a good and safe condition in compliance with all applicable rules, regulations and requirements.

7. **Subject to Encumbrances.** PAWS Atlanta agrees that it is accepting the Easement and rights conveyed herein without any further warranty or representation regarding the Easement Area, and subject to all matters of record and conditions affecting the Burdened Property as of the date hereof.

8. **Governing Law.** This Agreement shall be construed, enforced and interpreted in accordance with the laws of the State of Georgia.

9. **Binding Effect.** This Agreement shall be binding upon and enforceable against, and shall be for the benefit of, the parties hereto and their respective heirs, legal representatives, successors and assigns.

10. **Entire Agreement; Severability.** This Agreement supersedes all prior discussions and agreements between the parties and contains the entire agreement between the parties with respect to the Easement and the other matters described herein. If any of the provisions of this Agreement are hereinafter expressly declared by a court of competent jurisdiction to be invalid or unenforceable, then any such provision shall be canceled and severed from this Agreement and the other provisions of this Agreement shall continue in full force and effect.

11. **Indemnity.** PAWS Atlanta shall indemnify, defend and hold harmless Burdened Property Owner from and against any and all liens, loss, costs, claims or damages of any nature whatsoever resulting from or relating to the use or occupancy of the Easement Area and/or the exercise of the easement rights and all other rights herein granted to PAWS Atlanta by PAWS Atlanta or any of PAWS Atlanta's employees, agents, contractors or subcontractors, except to the extent such liens, loss, costs, claims or damages result from the negligence of Burdened Property Owner, its employees, agents, contractors or subcontractors. The indemnity obligations set forth in this section shall survive any termination of this Agreement.

12. **Running with the Land.** This Agreement and the terms and provisions hereof shall run with and bind title to the Burdened Property and Benefited Property and shall be binding upon and inure to the benefit of Burdened Property Owner and PAWS Atlanta and their respective successors, assigns, and successors-in-interest with respect to the Burdened Property and Benefited Property, respectively.

13. **Enforcement.** PAWS Atlanta and Burdened Property Owner shall have the right to take any action, whether at law or at equity, to enforce or prevent the interference with, as the case may be, the obligations, easements, rights and privileges granted by and contained within this Agreement.

14. **Headings.** The headings of this Agreement are for convenience only, shall in no way

define or limit the scope or content this Agreement, and shall not be considered in any construction or interpretation of the provisions of this Agreement or any part of this Agreement.

15. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

16. **Construction.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by reason of such party having or being deemed to have prepared or drafted such provision.

17. **Exhibits.** Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and shall be construed to be a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time such terms are used.

18. **Authority.** The parties warrant and represent one to the other that they have full power and authority to enter into this Agreement.

19. **Notices.** Any notice given hereunder shall be sufficient if in writing and hand delivered, sent by U.S. Certified Mail, postage prepaid, by fax transmission, or by overnight delivery to the party being given such notice at the address set forth below each party's signature on this Agreement. Notice given as hereinabove provided shall be deemed received by the party to whom it is addressed on the date on which said notice is hand delivered, the date two days after deposited in the U.S. Certified Mail, return receipt requested with proper postage affixed thereto, the date sent by fax transmission (with confirmation of receipt), or the date one day after deposited with an overnight delivery service.

20. **Time of the Essence.** TIME IS OF THE ESSENCE HEREOF.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, this Agreement is signed and sealed as of the day and year first above written.

BURDENED PROPERTY OWNER:

DEKALB COUNTY, GEORGIA, a political
subdivision of the State of Georgia:

Signed, sealed and delivered in the presence of:

Unofficial Witness

Kathie Gannon
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

Notary Public

My Commission Expires:

[NOTARY SEAL]

Signed, sealed and delivered in the presence of:

Unofficial Witness

Michael L. Thurmond
Chief Executive Officer
DeKalb County, Georgia

Notary Public

My Commission Expires:

[NOTARY SEAL]

ATTEST:

BARBARA H. SANDERS, CCC
Board of Commissioners and
Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

STACY GREAR
Director, GIS Department
DeKalb County, Georgia

APPROVED AS TO FORM:

NICOLE W. AIGNER
Assistant County Attorney
DeKalb County, Georgia

Initial Address for Notices:

GIS Department, DeKalb County Government
330 W. Ponce de Leon Ave., 4th Floor
Decatur, Georgia 30030
Attn: GIS Director

With a Copy To:

DeKalb County Law Department
1300 Commerce Drive, 5th Floor
Decatur, GA 30030
Attention: County Attorney

Signed, sealed and delivered in the presence
of:

Unofficial Witness

Notary Public

My Commission Expires:

[NOTARY SEAL]

PAWS ATLANTA:

PAWS ATLANTA, INCORPORATED,
a Georgia corporation

By: _____
Name: _____
Title: _____

Attest: _____

Name: _____

Title: _____

Initial Address for Notices:

PAWS Atlanta, Incorporated
5287 Covington Highway
Decatur, Georgia 30035
Attn: Nancy Longacre

EXHIBIT "A"

DESCRIPTION OF THE EASEMENT AREA

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