

**IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA**

THE CITY OF SMYRNA
Condemnor,

VS.

The hereinafter described lands
and rights in lands; JAMES D. CUNNINGHAM
CARLA JACKSON, as Tax Commissioner;
KELLI WOLK, as Probate Judge and any and all
others having or claiming any interest in the
described lands,
Condemnees.

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CIVIL ACTION FILE
NO. _____

DECLARATION OF TAKING

WHEREAS, the City Of Smyrna, by and through its Mayor and Council, has made a finding and determination that the circumstances in connection with acquiring property to construct improvements to a public transportation system, are such that it is necessary to acquire the title, estate or interest in the lands as fully described in this Declaration of Taking, by condemnation through the exercise of the power of eminent domain. A copy of the resolution making such finding is attached hereto as Appendix "1" to this Exhibit "A" and made a part hereof; and

WHEREAS, said property is for public transportation purposes upon, across, and over the tract of land in said City, as fully described in the attachment hereto identified as Appendix "2" to this Exhibit "A" and made a part hereof; and

EXHIBIT "A"

WHEREAS, the City Of Smyrna has caused an investigation and report to be made by a competent land appraiser, upon which to estimate the sum of money to be deposited in the Court as just and adequate compensation for the property, if any, above referred to, a copy of the appraiser's sworn statement being attached hereto, identified as Appendix "3" to this Exhibit "A" and made a part hereof; and

WHEREAS, in consequence of such sworn statement, Appendix "3" to Exhibit "A", The City Of Smyrna estimates the sum of \$1,800 as just and adequate compensation to be paid for said property, as fully described in Appendix "2" to Exhibit "A", attached hereto, and now deposits said sum in the registry of the Court, to the use of the persons entitled thereto; and

WHEREAS, in order to maintain a projected schedule of construction it is necessary that the property for the construction of said project be acquired without delay; and

WHEREAS, the parcel of property as herein described and listed in the Petition, attachments, or below, are essential for the construction of said project;

NOW THEREFORE, the premises considered, The City Of Smyrna, under authority of the laws of Georgia, Official Code of Georgia Sections 22-3-140 and 32-3-1 through 32-3-19, declares that it is necessary that the property interest as described in annexes hereto, be acquired by condemnation, and that said property or interest therein as described in appendices hereto and in the petition, is taken for public and governmental purposes, subject to the order of the court provided for in O.C.G.A. 32-3-12, specifically for upgrades to an existing public sewage collection and disposal system, and that the same is necessary for the construction of a such upgrades. The City Of Smyrna has authorized the acquisition of the title, estate or interest in the lands described by condemnation under the provisions of law, has exercised its power of eminent domain, and has authorized the filing of condemnation proceedings, to acquire said title, estate or interest in said lands and to deposit in

the Court the sum estimated as just compensation, all in accordance with law. Let there be attached hereto as Appendix "1" to this Exhibit "A" a copy of the Resolution of the City of Smyrna finding that circumstances are such that it is necessary to proceed in the particular case under the provisions of Article 1, Chapter 3, Title 32, Official Code of Georgia Annotated.

This ___ day of _____, 2014.

THE CITY OF SMYRNA

By: _____
A.Max Bacon, Mayor

ATTEST:

Terri Graham, City Clerk

APPENDIX "1"
TO EXHIBIT "A"

RESOLUTION NO.

A RESOLUTION AND ORDER OF THE CITY COUNCIL OF THE CITY OF SMYRNA, GEORGIA AUTHORIZING CONDEMNATION OF A TRACT OF LAND CONSISTING OF A PORTION OF PROPERTY KNOWN AS 2756 STONE CREEK DRIVE, SMYRNA, GEORGIA AND LOCATED IN LAND LOT NO. 377 OF THE 17TH LAND DISTRICT OF COBB COUNTY, GEORGIA BY DECLARATION OF TAKING METHOD PURSUANT TO THE PROVISIONS OF O.C.G.A. § 32-3-4 *et seq.*

WHEREAS, Section 22-3-140 authorizes a municipality to utilize the declaration of taking method of eminent domain in order to acquire property necessary for sewage collection, treatment or disposal systems; and

WHEREAS, Article 1 of Chapter 3 of Title 32 of the Official Code of Georgia Annotated sets forth the procedures for the declaration of taking and authorizes the City to file a condemnation proceeding in Cobb County Superior Court to acquire private property interests for public purposes upon payment of just and adequate compensation therefore to the person or persons entitled to such payment upon the Council's finding that circumstances are appropriate for the use of said method; and

WHEREAS, the City Council of the City of Smyrna, Georgia ("Council") finds and believes that circumstances are appropriate for the use of the declaration of taking method to acquire property for upgrades to existing public sewage collection, treatment or disposal systems. Said tract is owned by JAMES D. CUNNINGHAM and is acquired for one or more of the reasons set forth in O.C.G.A. § 22-3-140.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, by the Council that circumstances are such that it is necessary to proceed with condemnation proceedings by Declaration of Taking method on that tract of land known as a portion of 2756 Stone Creek Drive, Smyrna, Ga owned by James D. Cunningham, located in Land Lot 377 of the 17th Land District in Cobb County, Georgia.

BE IT FURTHER RESOLVED AND ORDERED, that legal counsel for the City of Smyrna, Georgia is authorized and directed to file such proceedings and the Mayor is authorized to execute this Resolution and Order on behalf of the Council, a declaration of taking, and any other documents necessary to effectuate same.

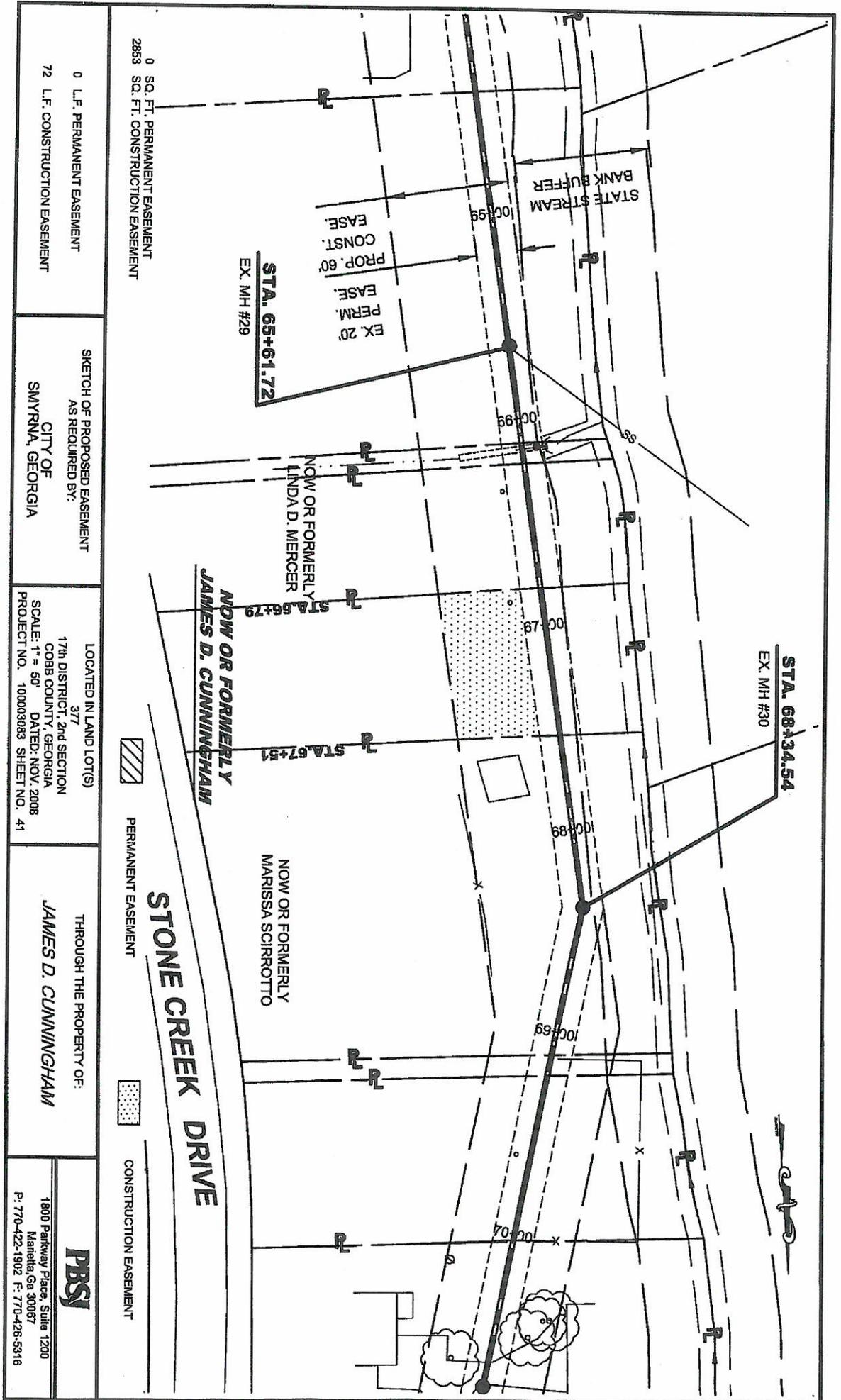
SO RESOLVED this ____ day of April 2014

The City of Smyrna

By: _____
Max Bacon, Mayor

ATTEST BY: _____
Terri Graham, City Clerk

Appendix 2
to Ench B



0 SQ. FT. PERMANENT EASEMENT
2853 SQ. FT. CONSTRUCTION EASEMENT

0 L.F. PERMANENT EASEMENT
72 L.F. CONSTRUCTION EASEMENT

SKETCH OF PROPOSED EASEMENT
AS REQUIRED BY:
CITY OF
SMYRNA, GEORGIA

LOCATED IN LAND LOT(S)
377
17th DISTRICT, 2nd SECTION
COBB COUNTY, GEORGIA
SCALE: 1" = 50' DATED: NOV. 2008
PROJECT NO. 100003083 SHEET NO. 41

THROUGH THE PROPERTY OF:
JAMES D. CUNNINGHAM

PBSJ
1800 Parkway Place, Suite 1200
Marietta Ga 30067
P: 770-422-1902 F: 770-426-5316



PERMANENT EASEMENT



CONSTRUCTION EASEMENT

STONE CREEK DRIVE

NOW OR FORMERLY
JAMES D. CUNNINGHAM

NOW OR FORMERLY
MARISSA SCIRROTTO

NOW OR FORMERLY
LINDA D. MERCER

STA. 65+61.72
EX. MH #29

STA. 68+34.54
EX. MH #30

APPENDIX "3" TO EXHIBIT "A"

AFFIDAVIT OF BRUCE R. PENN

Personally, comes Bruce R. Penn, of Penn Hastings & Associates,
5165 Tucker, Ga 30084 ,who after being sworn, deposes and states as follows:

1. Affiant was employed by the City of Smyrna to appraise a portion of 2756 Stone Creek Drive, Smyrna for said City and makes this sworn statement to be used in connection with condemnation proceedings under the Official Code of Georgia Annotated Sections 32-3-4 through 32-3-19, for the acquisition of said property.
2. Affiant is familiar with real estate values in said city and in the vicinity where said property is located. Affiant has personally inspected the property and rights to be acquired. In appraising said property affiant took into consideration the Fair Market Value of said property to be acquired, as well as any consequential damages to any remaining property of the Condemnees, and other damages resulting from the construction of said project, and any consequential benefits which may result to said parcel by reason of such taking and use (consequential benefits not, however, considered except as offsetting consequential damages). After said investigation and research, affiant has thus estimated the just and adequate compensation for said temporary construction easement to be acquired by the City of Smyrna, and any consequential damages or benefits considered, is in the amount of \$1,800.

Bruce R. Penn
Certified General Appraiser
Certification CG000228

Sworn to and subscribed before me
this _____ day of August, 2014.

Notary Public