

ORDINANCE NO. _____

**AN ORDINANCE PROVIDING FOR THE ACQUISITION THROUGH
CONDEMNATION OF CERTAIN PROPERTY
KNOWN AS THE BELMONT/BURLINGTON GRADE SEPARATION
AND TRANSPORTATION SAFETY PROJECT/GRAF/KEYTONE PARCEL**

WHEREAS, the Village of Downers Grove is an Illinois Municipal Corporation and a Home Rule Unit pursuant to the Constitution and laws of the State of Illinois; and

WHEREAS, as a Home Rule Unit, the Village of Downers Grove may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to acquire real property to acquire property to utilize for the construction and development of transportation facilities including but not limited to right of way for streets, parking and related infrastructure; and

WHEREAS, the Constitution of the State of Illinois, Article VII, Section 10, provides that units of local municipalities and special districts may contract among themselves in any manner not prohibited by law or by ordinance; and

WHEREAS, the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, authorizes local municipalities and special districts in Illinois to exercise jointly with any other municipality or special district any power, privilege or authority which may be exercised by a unit of local government, individually, and to enter into contracts for the performance of governmental services, activities, and undertakings; and

WHEREAS, on October 15, 2002 in order to facilitate the free flow of traffic, and to ensure the safety of the people of Downers Grove, the Village Council of the Village of Downers Grove adopted Resolution No. 2002-89 authorizing the execution of an Intergovernmental Agreement with the State of Illinois, the County of DuPage, the Burlington Northern and Santa Fe Railway Company, and the Commuter Rail Division of the Regional Transportation Authority (METRA) providing for the design, engineering, acquisition, and long term maintenance responsibility for the grade separation right of way, and related infrastructure (hereinafter "IGA") for the Belmont/Burlington Grade Separation and Transportation Safety Project (hereinafter "Project"); and

WHEREAS the Village of Downers Grove Department of Engineering has reviewed the published feasibility studies and design proposals for the Project, including but no limited to documentation detailed within the:

- A. URS Feasibility Study (1998);
- B. The September 13, 2002 and May 1, 2002 URS Environmental Assessment Reports;

- C. Design configuration as verified in "Exhibit 2 Proposed Project Improvements" within the URS Environmental Assessment Report dated May 1, 2002;
- D. December 7, 2004 letter sent by William K. Tupper of METRA to the Village Engineer recommending acquisition of the properties identified on Exhibit 2 (subparagraph C herein) referenced above, in order to complete the needed improvements and infrastructure for the Project;
- E. Belmont Road Grade Separation Public Comment Forms and METRA Responses;
- F. Belmont Road Grade Separation Project Report Published at The Illinois Commerce Commission Meeting of October 7, 2003;
- G. Topography for area based upon the 1991 topographic mapping supplied by DuPage County Maps and Plats.

WHEREAS, under the terms of the IGA, the Village of Downers Grove contracted to have the staff and consultants of METRA procure valuation advice, and to negotiate all voluntary real estate purchases of parcels within the Project; and

WHEREAS, METRA, pursuant to the IGA, METRA retained the services of the Polach Appraisal Group, Patricia L. Beaver-McGarr & Associates, Inc., and Real Estate Analysis Corporation to prepare appraisals and review appraisals to estimate the fair cash market value of all twenty-two (22) properties located within the area of the Project, including the property described in **Exhibit A** and depicted in **Exhibit B** and known as the Graf/Keytone property; and

WHEREAS, in accordance with the appraisal information obtained, METRA presented written offers to purchase all twenty-two (22) parcels identified as necessary for acquisition for completion of the Project; and

WHEREAS, sixteen (16) of the property owners of land within the Project area have agreed with the written offers of just compensation to be paid by METRA pursuant to the IGA; and

WHEREAS, six (6) of the property owners of land within the Project disagree with the just compensation offered by METRA pursuant to the IGA, and have refused to accept the offers to purchase; and

WHEREAS, under the terms of the IGA, in the event of unsuccessful negotiations undertaken by METRA, the Village of Downers Grove is responsible for completion of all acquisitions through eminent domain to ensure that, consistent with the Illinois Civil Practice Act, the Illinois Constitution and the Circuit Court of the Eighteenth Judicial Circuit of the State of Illinois, the property owners are guaranteed receipt of the full just compensation due and owing for acquisition of their property for the Project; and

WHEREAS, the Graf/Keytone property, as described in Exhibit A and depicted in Exhibit B, is one of the six (6) parcels on which no voluntary agreement for purchase has been achieved; and

WHEREAS, the Village of Downers Grove has reviewed the negotiation logs and all correspondence related to the negotiations undertaken by METRA in accordance with the IGA, and, as concluded by METRA in correspondence dated February 7, 2006, the Village Council of the Village of Downers Grove concurs and finds that a legal impasse in negotiations has been reached and the compensation to be paid for, or in respect of, the Graf/Keytone property described in Exhibit A and depicted in Exhibit B, and sought to be acquired as part of the Project, cannot be agreed upon by the parties interested; and

WHEREAS, the Village Council of the Village of Downers Grove has determined that the construction and completion of the Project is critical to address the general health, welfare, and safety of the public and people of Downers Grove, and, as concluded by METRA, the Village Council of the Village of Downers Grove concurs and finds that the acquisition of the Graf/Keytone property described in Exhibit A and depicted in Exhibit B attached hereto and incorporated herein is necessary for the construction and completion of the Project; and

WHEREAS, as directed by METRA, and in accordance with the Village of Downers Grove's obligations under the IGA, the Village Council of the Village of Downers Grove has determined that the Graf/Keytone property as described in Exhibit A and depicted in Exhibit B be acquired by eminent domain.

NOW, THEREFORE, BE IT ORDAINED by the Village Council of the Village of Downers Grove, DuPage County, Illinois as follows:

SECTION 1. That the recitals set forth above are hereby adopted and incorporated into this Ordinance.

SECTION 2. That it is hereby determined that the Graf/Keytone property located in the Village of Downers Grove, DuPage County, Illinois, as legally described and depicted in Exhibits A and B attached hereto and incorporated herein, be acquired for the purpose of construction, maintenance and completion of the Belmont/Burlington Grade Separation and Transportation Safety Project, and related infrastructure.

SECTION 3. That it is hereby determined that it is necessary and desirable that the Village of Downers Grove acquire title to, and possession of, the Graf/Keytone property as legally described and depicted in Exhibits A and B attached hereto and incorporated herein, which property is necessary, required and needed for the purposes set forth in this Ordinance:

SECTION 4. That the Village Manager of the Village of Downers Grove, or his designee, and the Village of Downers Grove attorneys be, and hereby are, authorized, empowered and directed to take the necessary steps, by

condemnation, to acquire title to the real estate described and depicted in Exhibits A and B attached hereto and incorporated herein for, and on behalf of, the Village of Downers Grove.

SECTION 5. That all prior Ordinances or Resolutions, or parts thereof, in conflict with the provisions of this Ordinance be, and are, hereby repealed.

SECTION 6. That this Ordinance shall be in full force and effect from and after its passage as provided by law.

Mayor

Attest: _____
Village Clerk

Passed:
Published:

LOTS 444 AND 445 IN BRANIGAR BROS' WOODED HOMESITES, BEING A SUBDIVISION IN THE NORTH HALF OF SECTION 7, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND THE NORTH HALF OF SECTION 12, THOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 2, 1920 AS DOCUMENT 144598, IN DUPAGE COUNTY, ILLINOIS.

EXHIBIT A

