

**ORWIGSBURG BOROUGH  
SCHUYLKILL COUNTY  
COMMONWEALTH OF PENNSYLVANIA**

**ORDINANCE NO. 429**

**AN ORDINANCE AUTHORIZING THE SELECTION AND APPROPRIATION OF LAND CONSISTING OF A PORTION OF THE PROPERTY OF SCOTT D. SOPKO AND SANDRA J. HAYDUK SOPKO, SCHUYLKILL COUNTY UPI NO. 56-09-0039.000, FOR THE PURPOSE OF CONSTRUCTING A WATER PIPELINE, INCLUDING A METER VAULT AND ALL OTHER RELATED AND NECESSARY FACILITIES, FOR RENDERING WATER SERVICE PURSUANT TO THAT CERTAIN SYSTEM INTERCONNECTION AND BULK WATER SUPPLY AGREEMENT, DATED NOVEMBER 18, 2014, WITH THE SCHUYLKILL COUNTY MUNICIPAL AUTHORITY; AND PROVIDING REPEALERS, SEVERABILITY AND THE EFFECTIVE DATE.**

WHEREAS, Scott D. Sopko and Sandra J. Hayduk Sopko, his wife (the "Sopkos"), own real property located at 2008 Ridgeview Drive, Orwigsburg, Schuylkill County, Pennsylvania, being Schuylkill County UPI No. 56-09-0039.000 (the "Sopko Property"), pursuant to a Deed from Forino Co., L.P., dated April 18, 2006 and recorded in the Office of the Recorder of Deeds of Schuylkill County, Pennsylvania (the "Recorder's Office"), in Record Book 2200, Page 1896 (the "Sopko Deed"); and

WHEREAS, the Sopko Deed reserves to Forino Co., L.P. a certain twenty feet wide easement more specifically described in the Sopko Deed for the purpose of constructing, using, maintaining and repairing a proposed waterline or other possible utilities (the "Reserved Easement"); and

WHEREAS, the Borough of Orwigsburg ("Borough") entered into a certain System Interconnection and Bulk Water Supply Agreement, dated November 18, 2014 (the "Interconnection Agreement"), with the Schuylkill County Municipal Authority ("SCMA") pursuant to which the Borough will provide potable water to SCMA through a water pipeline and certain related facilities to be constructed by the Borough for interconnection of the water distribution system of the Borough with the water distribution system of SCMA, including construction of a water pipeline, including a meter vault and all other related and necessary facilities, through the area comprising the Reserved Easement (the "Project"); and

WHEREAS, Forino Co., L.P. transferred and assigned its rights in and to the Reserved Easement to the Borough pursuant to a certain Assignment Agreement, dated August 31, 2016 and recorded in the Recorder's Office in Record Book 2574, Page 401, for use by the Borough in conjunction with the Project; and

WHEREAS, Anthony Forino and Sandra L. Forino, his wife, transferred and assigned their rights in and to the Reserved Easement to the Borough pursuant to a certain Assignment Agreement, dated October 28, 2016 and recorded in the Recorder's Office in Record Book 2585, Page 2921, for use by the Borough in conjunction with the Project; and

WHEREAS, the Sopkos have initiated a suit filed in the Court of Common Pleas of Schuylkill County, Pennsylvania, to No. S-1574-2016, challenging the validity of the Reserved Easement; and

WHEREAS, under the Borough Code, as amended, the Borough has the power of eminent domain to acquire property for construction and operation of the Project; and

WHEREAS, pursuant to Section 2412 of the Borough Code, 8 Pa. C.S.A §2412, the Borough attempted to come to an agreement with the Sopkos as to the damage done or likely to be done by the exercise of eminent domain to acquire the required portion of the Sopko Property for the Project, but could not come to an agreement with the Sopkos; and

WHEREAS, the Borough desires to proceed with the acquisition and construction of the Project including acquisition of a portion of the Sopko Property by virtue of the exercise of the Borough's power of eminent domain.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough as follows:

SECTION 1. In order to enable the Borough to undertake the Project, the Solicitor of the Borough is hereby authorized to appropriate on behalf of the Borough and directed to file a Declaration of Taking of a plot of ground being a portion of the Sopko Property corresponding to the area comprising the Reserved Easement as more specifically described in the Sopko Deed and in accordance with a certain Plan presented to the Borough and on file with the Secretary of the Borough (the "Plan") in accordance with provisions of applicable laws and to take such additional steps as may be necessary to enable the Borough to acquire such property for the Project in accordance with the Plan.

SECTION 2. The proper officers of the Borough are authorized and directed to execute, attest, acknowledge, and deliver such instruments and documents as may be necessary to effect the taking of the foregoing property and to determine upon consultation with the Solicitor to the Borough and such other advisors as may be deemed necessary, the consideration to be paid and the time and manner of such payment to compensate the owners of said property in accordance with the requirements of law and, if possible, to enter into one or more agreements with such owners for delivery of the property.

SECTION 3. The proper officers of the Borough are hereby authorized and directed to execute and deliver such other documents and instruments and to take such other actions as they, in their discretion and upon the advice of the Solicitor to the Borough, shall deem necessary, appropriate or desirable to carry out the intent of these Resolutions, including but not limited to acceptance of deeds, agreements or other instruments granting to the Borough the property and applications, plans and other documents relating to acquisition and construction of the Project.

SECTION 4. That the title to be acquired for the property listed above shall be as fee simple absolute.

SECTION 5. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.


SECTION 6. If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Borough that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 7. This Ordinance shall become effective upon enactment.

ENACTED and ORDAINED into an ordinance this 13<sup>th</sup> day of December, 2017, by the Council of the Borough of Orwigsburg, Schuylkill County, Pennsylvania, in lawful session duly assembled.

BOROUGH OF ORWIGSBURG  
Schuylkill County, Pennsylvania

ATTEST:

  
\_\_\_\_\_  
Sherry Edwards, Borough Secretary

By:   
\_\_\_\_\_  
Buddy Touchinsky, President of Council

EXAMINED and APPROVED this 13<sup>th</sup> day of December, 2017.

  
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Barry J. Berger, Mayor, Borough of Orwigsburg