

Bill No. 2645-06

No. 17-06-OR

AN ORDINANCE

An Ordinance of the Council of the County of Allegheny authorizing the County of Allegheny to acquire by condemnation, if necessary, from Pittsburgh and Western Mining Company, its successors or assigns, as their interest may appear, all the vein of coal known as the Pittsburgh vein, together with mining rights, underlying that certain one hundred twenty-seven (127) acres, more or less, of surface situate in North Fayette Township, Allegheny County and Commonwealth of Pennsylvania, as more particularly described in the deed dated May 27, 1924, from Pittsburgh Coal Company to Pittsburgh and Western Mining Company as recorded in the Recorder of Deeds of Allegheny County, Pennsylvania in Deed Book Volume 2236, page 97, and to take further action as may be necessary under applicable law, including the Eminent Domain Code of 1964, as amended.

Whereas, the aforesaid one hundred twenty-seven (127) acres, more or less, of the Pittsburgh vein of coal which is owned by Pittsburgh and Western Mining Company, underlies a portion of the surface of Settlers Cabin Park; and

Whereas, the aforesaid one hundred twenty-seven (127) acres, more or less, of the Pittsburgh vein of coal consists of an abandoned coal mine; and

Whereas, the County has determined that it is in its best interest to reclaim the aforesaid abandoned coal mine underlying Settlers Cabin Park through coal removal in accordance with plans approved by the Pennsylvania Department of Environmental Protection.

Whereas, the condemnation herein is authorized by Article IV, Sec. 6 of the Allegheny County Home Rule Charter, Article VII, Sections 701.02 and 703.07 of the Allegheny County Administrative Code, and the Act of 1953 July 28, P.L. 723, Article XXVI, §5601, et seq.

The Council of the County of Allegheny hereby resolves as follows:

Section 1. Incorporation of the Preamble.

The provisions set forth in the preamble to this Ordinance are incorporated by their reference in their entirety herein.

Section 2. Authorization to Acquire 127-Acres, more or less, of the Pittsburgh vein of coal and mining rights by Condemnation.

That Council deems it advisable and necessary to authorize the Law Department to take under the power of eminent domain all the vein of coal known as the Pittsburgh vein, together with mining rights, owned by Pittsburgh and Western Mining Company underlying that certain one hundred twenty-seven (127) acres, more or less, of surface situate in North Fayette Township, Allegheny County, Commonwealth of Pennsylvania, as more particularly described in the deed dated May 27, 1924, from Pittsburgh Coal Company to Pittsburgh and Western Mining Company as recorded in the Recorder of Deeds of Allegheny County, in Deed Book Volume 2236, page 97, a copy of which is attached hereto as Attachment "A".

Section 3. Application to Court and Notice.

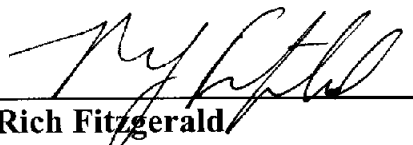
That Council directs that immediate application be made to the Court of Common Pleas of Allegheny County for the purpose of having the value of said Pittsburgh vein of coal and mining rights legally ascertained including the filing of a declaration of taking and such proceedings related thereto under the Pennsylvania Eminent Domain Code. Notice of the filing of the declaration of taking and any other proceeding in connection therewith shall be provided in accordance with the provisions of the Pennsylvania Eminent Domain Code.

Section 4. Severability. If any provision of this Ordinance shall be determined to be unlawful, invalid, void or unenforceable, than that provision shall be considered severable from the remaining provisions of this Ordinance which shall continue in full force and effect.

Section 5. Repealer. Any Resolution or Ordinance or part thereof conflicting with the provisions of this Ordinance is hereby repealed as far as the same affects this Ordinance.

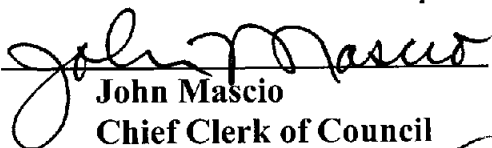
Enacted in Council, this 5th day of July, 2006

Council Agenda No. 2645-06.



Rich Fitzgerald
President of Council

Attest:



John Mascio
Chief Clerk of Council

Chief Executive Office:

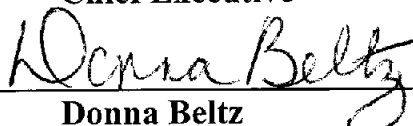
July 11, 2006.

Approved:



Dan Onorato
Chief Executive

Attest:



Donna Beltz
Executive's Secretary

SUMMARY

The County of Allegheny (hereinafter "County") entered into a Landlease (hereinafter "Lease") with the Horticultural Society of Western Pennsylvania (hereinafter "Horticultural Society") dated April 6, 1998, further identified as Agreement No. 39177, and amended pursuant to Ordinance No. 08-06-0R for approximately 452-acres of land within Settlers Cabin Park for the development of a Botanic Garden. The Lease is for a term of 99-years from March 1, 1998, with the Horticultural Society paying the County the nominal rent of One Dollar and 00/100 (\$1.00) a year, plus building and operating a Botanical Garden for the citizens for Allegheny County which would become a tourist attraction.

The area in Settlers Cabin Park where the Botanic Garden is to be situate is considered abandoned mine lands as it has been extensively mined for coal by both underground and surface mining techniques from the early 1900's to the 1940's. The resulting water pollution, including acid mine drainage and heavy metals from historic mining has created a long term pollution problem for the County as owner of the park.

The Horticultural Society has been granted the mineral rights for a large portion of the area under the park by the mineral owner in support of the Botanic Garden development. The Horticultural Society has developed a plan to reclaim the abandoned mine lands and remediate the pollution and at the same time, assist in financing the development of the proposed Botanic Garden.

Pursuant to Article 1.5 of the Lease, as amended, the County shall cooperate with the Horticultural Society in obtaining clear title to the leased Premises and Mineral Rights in, on or underlying the leased Premises in the County to the extent title is unclear and/or requires an adjudication of title. It has been determined that approximately 127-acres, more or less, of the

Pittsburgh vein of coal underlying the Premises is owned by the Pittsburgh and Western Mining Company and not the County. The current existence of the Pittsburgh and Western Mining Company is unknown as no records of its existence can be found since the mid 1930's.

The purpose of the Resolution is to authorize Allegheny County to condemn via the power of Eminent Domain the 127-acres, more or less, of the Pittsburgh vein of coal and mining rights underlying a portion of Settlers Cabin Park which is owed by the Pittsburgh and Western Mining Company which coal and mining rights after condemned will be leased the Horticultural Society pursuant to the Lease. The Horticultural Society will enter into a contract to remove the coal, and related pollutorial strata, which will abate water pollution and reclaim the surface to a condition suitable for the Botanic Garden.

The Horticultural Society shall be responsible for the entire costs of the condemnation proceeding including damages, if any, payable to the Pittsburgh and Western Mining Company as well as the entire cost of land, reclamation, abatement of the water pollution on the site, and the development and operation of the Botanic Garden with the County having no financial obligation for the same.

BETWEEN MARY A. FOX, widow, of the Borough of Ingram, County of Allegheny and State of Pennsylvania, party of the first part and WESLEY M. ROSSIER and MILDRED H. ROSSIER, his wife, of the same place, parties of the second part:

WITNESSETH, that the said party of the first part, in consideration of One Dollar (\$1.00) and other good and valuable consideration now paid by the said parties of the second part, do grant, bargain, sell and convey unto the said parties of the second part, their heirs and assigns,

ALL that certain lot or piece of ground situate in the Borough of Ingram, Allegheny County, Pennsylvania, bounded and described as follows to wit:

BEING lot number Two Hundred Eighty-four (284) in a plan or sub-division of lot number One Hundred Sixty-two (162) in plan of Crafton, see Plan Book Vol. 5, page 49, said lot number Two Hundred Eighty-four (284) having a frontage of Fifty (50) feet on Chapman Street (40 feet wide) and extending back preserving the same width of Fifty (50) feet to Leslie Street, a distance of One Hundred Twenty (120) feet; having thereon erected a two story frame dwelling:

BEING the same lot of ground which William Rea Campbell, et al. by deed dated October 5, 1921, and recorded in the Recorder's Office of Allegheny County in Deed Book Vol. 2081, page 272, granted and conveyed to the said Mary A. Fox,

WITH the appurtenances: TO HAVE AND TO HOLD the same unto and for the use of said part of the second part their heirs and assigns forever,

AND the said Mary A. Fox for herself, her heirs, executors and administrators covenant with the said parties of the second part their heirs and assigns against all lawful claimants the same and every part thereof to Warrant and Defend.

WITNESS the hand and seal of the said party of the first part.

ATTEST:

HAVEN V. WOLF

MARY A. FOX (SEAL)

\$6.00 U.S.I.R.S. CANCELLED.

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY)

) SS.

On this 31st day of July A.D. 1924, before me, a Notary Public in and for said County and State came the above named Mary A. Fox, widow and

acknowledged the foregoing Indenture to be her act and deed, to the end that it may be recorded as such.

WITNESS my hand and notarial seal.

HAVEN V. WOLF (N.P. SEAL)
NOTARY PUBLIC

My Commission Expires Feb. 19, 1925.

Registered Allegheny County
No. 45410. Recorded July 31, 1924

Written By Bromme Compared By

M. H. H. and *J. H. H.*

PITTSBURGH COAL COMPANY
TO

PITTSBURGH AND WESTERN MINING COMPANY

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THIS INDENTURE

MADE this 27th day of May in the year of Our Lord, One Thousand Nine Hundred and Twenty-

tenths perches and thence North 16 $\frac{1}{2}$ ° East fifty-eight perches to the place of beginning. Containing one hundred and twenty-seven Acres, more or less, of surface.

TOGETHER with the right to enter into mine and carry away all of said coal and to make openings for entries air courses, water courses, drainings and shafts, with right of ingress and egress for the purpose of making shafts over said land, which said Grantee, its successors or assigns, may at any time need for mining said coal; with the perpetual right of way for the taking of this or any other coal in and through all and every the entry and entries which said Grantee, its successors and assigns, may see proper to make and said Grantee, its successors and assigns shall have the right to mine and take away all of said coal free, clear and discharged of and from all liability for any damages which may result or happen to said tract of land or to the buildings, waters and improvements thereon by reason of the mining and taking away of all of said vein of coal.

EXCEPTING AND RESERVING unto the proper owner or owners thereof, their heirs, lessees and assigns, the right to bore and drill for oil and gas through said coal.

THE said Grantee covenants that any water thrown run or pumped on said land shall be carried away to a natural water course in pipes laid one foot under the ground.

EXCEPTING unto the proper owner thereof, one and one-quarter Acres of coal under the buildings.

FOR CHAIN OF TITLE reference is made to Item Seventh in a certain Deed from Francis L. Robbins, et ux. to Pittsburgh Coal Company of Pennsylvania, dated April 6, 1904, and recorded in the Recorder's Office in and for Allegheny County aforesaid in Deed Book Vol. 1359, Page 18, the said Pittsburgh Coal Company of Pennsylvania having been merged as aforesaid.

TOGETHER with all and singular the rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, property, claim and demand whatsoever of the said Grantor, in law, equity or otherwise, howsoever, of, in and to the same and every part thereof.

TO HAVE AND TO HOLD ALL that vein of coal known as the Pittsburg Vein in and underlying said described tract of land, together with the mining rights and all other privileges hereinbefore mentioned, the hereditaments and premises hereby granted or mentioned and intended so to be, with the appurtenances, except as hereinbefore excepted and reserved, unto the said Grantee, its successors and assigns, to and for the only proper use and behoof of the said Grantee, its successors and assigns, FOREVER.

AND the said corporation, Grantor herein, for itself and its successors, does by these presents covenant, grant and agree to and with the said Grantee, its successors and assigns, that said corporation, Grantor herein, and its successors, all and singular, the hereditaments and premises hereinabove described and granted, or mentioned, and intended so to be, with the appurtenances, except as hereinbefore excepted and reserved, unto the said Grantee, its successors and assigns, against said corporation, Grantor herein, and its successors, and against all and every other person or persons whomever lawfully claiming or to claim the same or any part thereof, SHALL AND WILL WARRANT AND FOREVER DEFEND.

MEMORANDUM
OFFICE OF THE COUNTY MANAGER

TO: John Mascio
Chief Clerk

FROM: James M. Flynn, Jr. *JM Flynn*
County Manager

DATE: June 15, 2006

RE: Proposed Ordinance

Attached is an Ordinance authorizing the County of Allegheny to acquire by condemnation, if necessary, from Pittsburgh and Western Mining Company, its successors or assigns, as their interest may appear, all the vein of coal known as the Pittsburgh vein, together with mining rights, underlying that certain one hundred twenty-seven (127) acres, more or less, of surface situate in North Fayette Township, Allegheny County and Commonwealth of Pennsylvania, as more particularly described in the deed dated May 27, 1924, from Pittsburgh Coal Company to Pittsburgh and Western Mining Company as recorded in the Recorder of Deeds of Allegheny County, Pennsylvania in Deed Book Volume 2236, page 97, and to take further action as may be necessary under applicable law, including the Eminent Domain Code of 1964, as amended.

The Allegheny County Law Department has reviewed this legislation prior to submitting it to Council.

Please place this on the next agenda for County Council approval.

Thank you.

ALLEGHENY COUNTY COUNCIL

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