

**Resolution # TC-16-5-[ ]**

R3 SH 82 Grand Avenue Bridge, FBR 0821-094, Project Code 18158

Authorizing the Chief Engineer to initiate and conduct condemnation proceedings pursuant to articles 1 to 7 of title 38, C.R.S. for the Glenwood Springs Lodging, LLC off-premises freestanding sign property.

**Approved by the Transportation Commission on \_\_\_\_\_, 2017.**

**WHEREAS**, pursuant to Colorado law at Section 43-1-208, C.R.S., the Colorado General Assembly has conferred the power of eminent domain upon the Transportation Commission to acquire private property necessary for state highways purposes; and

**WHEREAS**, on September 26, 2016 the Colorado Supreme Court announced its decision in *Department of Transportation v. Amerco Real Estate Company; U-Haul Company of Colorado; et al.*, 2016SA75; and

**WHEREAS**, the *Amerco Real Estate Company* opinion held that the Transportation Commission must decide that the public interest or convenience will be served by a proposed alteration of a state highway and that the Commission's decision must be made in consideration of the portions of land of each landowner to be taken and an estimate of the damages and benefits accruing to each landowner prior to authorizing condemnation of property; and

**WHEREAS**, the *Amerco Real Estate Company* opinion also held that the Transportation Commission is authorized to either direct the Chief Engineer to make tender to a landowner or the Transportation Commission can proceed in the acquisition of private lands for state highway purposes, according to articles 1 to 7 of title 38, C.R.S., without tender to the landowner; and

**WHEREAS**, the *Amerco Real Estate* opinion further held that the Transportation Commission could delegate to the "legal staff or representatives of the commission or department" the "initiation and conduct of condemnation proceedings." *Amerco Real Estate Company*, 2016SA75, ¶15; and

**WHEREAS**, the Property sought by CDOT may include buildings, structures, or other improvements on the real Property and may also include tenant-owned improvements, personal property, and other real estate; and

**WHEREAS**, on August 12, 2015, prior to the *Amerco* opinion, relying on TC-271 and without Transportation Commission approval, the Chief Engineer and or CDOT staff began negotiations for acquisition of the sign owned by Glenwood Springs Lodging, LLC ("GSL") located on TE-2B (underlying fee of TE-2B owned by third party who disclaimed interest in GSL sign) by tendering an initial offer to acquire the sign – operating off of the prior TC-271 Resolution; and

**WHEREAS**, prior to the *Amerco* opinion, CDOT also initiated condemnation proceedings in the District Court of Garfield County in *Department of Transportation v. Glenwood Springs Lodging, LLC; et al.* 2016CV30037, operating off of the prior TC-271 Resolution, which delegated this authority to CDOT; and

**WHEREAS**, subsequent to the *Amerco* opinion, a stay of proceedings was entered in *Department of Transportation v. Glenwood Springs Lodging, LLC; et al.* 2016CV30037 pending a Transportation Commission Resolution pursuant to Section 43-1-208; and

**WHEREAS**, the Transportation Commission, as part of its non-delegable duties, must now approve and ratify all negotiation and condemnation actions taken by CDOT prior to the *Amerco Real Estate Company* opinion in relation to the below acquisitions and has also reviewed the written report of the Chief Engineer seeking approval to initiate and conduct condemnation proceedings, and the report includes all information and documents required pursuant to Section 43-1-208(1), in relation to the Project and the Property; and

**NOW THEREFORE BE IT RESOLVED**, the Transportation Commission hereby declares that the public interest or convenience will be served by the proposed changes to State Highway No. 82 by virtue of the SH 82 Grand Avenue Bridge, Project Number FBR 0821-094, Project Code 18158. All condemnation proceedings, approvals or other negotiation actions taken by CDOT with respect to the above listed acquisitions prior to September 26, 2016, are hereby affirmed, ratified, and made effective as officially sanctioned actions of the Transportation Commission. The Transportation Commission authorizes CDOT to initiate and conduct condemnation proceedings for the following landowners. Further, if a settlement amount, certificate of ascertainment and assessment, or verdict is reached with respect to the amount of just compensation due to the landowner, the final settlement, certificate of ascertainment and assessment, or verdict amount is subject to approval by the Transportation Commission. If acquisition of the property requires acquisition of buildings, structures, or improvements on real property as well as acquisition of tenant-owned improvements both real and personal property, or other real estate, the Transportation Commission authorizes CDOT to acquire those items through eminent domain proceedings if necessary.

CDOT may move the Court to vacate the stay of condemnation proceedings in *Department of Transportation v. Glenwood Springs Lodging, LLC; et al.* 2016CV30037 and proceed to conduct condemnation proceedings for the following landowners:

1. Landowner Name: Glenwood Springs Lodging, LLC  
Address of Property: 102 W 6<sup>th</sup> St, Glenwood Springs, CO 81601  
Parcels Required: Off-premises freestanding sign located on Parcel TE-2B  
Estimated Property Value, Damages and Benefits (if any): \$10,500

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Herman Stockinger, Secretary  
Transportation Commission of Colorado

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Date




# COLORADO

Department of Transportation

Office of the Chief Engineer  
4201 East Arkansas Ave, Suite 262  
Denver, CO 80222

## MEMORANDUM

**TO:** TRANSPORTATION COMMISSION

**FROM:** JOSH LAIPPLY, CHIEF ENGINEER 

**DATE:** January 3, 2017

**SUBJECT:** REPORT PURSUANT TO COLORADO REVISED STATUTES, §43-1-208 REGARDING PROJECT NUMBER FBR 0821-094, SH 82 GRAND AVENUE BRIDGE, SEEKING APPROVAL TO INITIATE AND CONDUCT CONDEMNATION PROCEEDINGS

### Background

This written report to the Transportation Commission is pursuant to Colorado Revised Statutes ("C.R.S."), Section 43-1-208(1). This matter involves acquisition of a sign owned by Glenwood Springs Lodging, LLC ("GSL"). The sign was located on Parcel TE-2B. Prior to the Amerco opinion, CDOT completed the acquisition of Parcel TE-2B, a Temporary Easement, from the owner of the underlying fee simple estate. The acquisition of Parcel TE-2B required the acquisition and removal of a sign owned by GSL. The owner of the underlying fee simple estate has disclaimed any interest in the sign. Removal of the sign was necessary to complete the installation of improvements associated with the Project, including the construction of a curb and retaining wall. Although the GSL sign will not be physically affected by the Project improvements, the sign would be obscured from view upon completion of the Project. Therefore, CDOT has endeavored to compensate the owner of the sign for this acquisition.

Prior to the Amerco opinion and relying on TC-271, CDOT staff began negotiations for acquisition of the GSL sign. Those negotiations were unsuccessful and the Attorney General initiated condemnation proceedings in the District Court of Garfield County in *Department of Transportation v. Glenwood Springs Lodging, LLC, et al.*, Case No. 2016CV30037. On June 24, 2016 the parties stipulated to CDOT's possession of the sign and the Court quickly approved the parties agreement. The GSL sign was removed from TE-2B. CDOT offered to sell the sign to GSL at salvage value, but GSL declined to buy it. On October 17, 2016 the Court appointed Commissioners to determine just compensation at the valuation trial. On November 15, 2016, after the publication of the Amerco opinion, the Court entered a stay of proceedings pending a Transportation Commission Resolution pursuant to Section 43-1-208, C.R.S.

I respectfully request that the Transportation Commission review this report and corresponding documentation to determine that the public interest or convenience will be served by the proposed changes to State Highway 82 by virtue of the SH 82 Grand Avenue Bridge Project, Project Number FBR 0821-094, Project Code 19158 ("Project"). I also request that the Transportation Commission affirm, ratify, or make effective all actions related to the stayed condemnation proceedings or other negotiation actions taken by CDOT with respect to this matter. Finally, I request that the Transportation Commission authorize CDOT to continue and conduct condemnation proceedings for the GSL sign.

On May 16, 2013, the Transportation Commission, by and through the Bridge Enterprise Board of Directors, entered Resolution No. BE-130, which approved the initial Right-of-Way budget for this Project.

As you may recall, the Project, which spans the Union Pacific Railroad, the Colorado River and Interstate 70, serves as a vital transportation link connecting the cities and towns of Glenwood Springs, Carbondale, El Jebel, Basalt, Snowmass and Aspen. The goals of the Project are to: (1) improve multimodal connectivity between downtown Glenwood Springs, Interstate 70, and the historic Hot Springs Pool Area, and (2) address the functional and structural deficiencies of the existing bridge to improve public safety and reliability as a critical transportation route. In addition to replacing the SH 82 Grand Avenue Bridge, the Project will convert the signalized intersection at 6<sup>th</sup> Street and Laurel Street to a roundabout, and install a new pedestrian bridge between downtown Glenwood Springs and the Hot Springs Pool area. The Project is necessary to improve public safety and reliability as a critical transportation route, and is therefore desirable.

#### Overview of Property

Address: 102 W. 6<sup>th</sup> Street, Glenwood Springs, CO 81601

Owner's Name: Glenwood Springs Lodging LLC

Current Size of Property: N/A

Proposed Size of Acquisition: N/A

Purpose of Parcels Necessary for Project:

- TE-2B GSL Sign: CDOT completed the acquisition of Parcel TE-2B, a Temporary Easement, from the owner of the underlying fee simple estate. The acquisition of Parcel TE-2B required the acquisition and removal of a sign owned by Glenwood Springs Lodging LLC. The owner of the underlying fee simple estate has disclaimed any interest in the sign. Removal of the sign was necessary to complete the installation of improvements associated with the Project, including the construction of a curb and retaining wall. Although the sign will not be physically affected by the Project improvements, the sign would be obscured from view upon completion of the Project. Therefore, CDOT has endeavored to compensate the owner of the sign for this acquisition.

Estimated Property Value, Damages and Benefits (if any): \$10,500

Method to Determine Property Value, Damages and Benefits (if any): CDOT obtained an independent eminent domain real property appraisal, updated on July 12, 2016, to estimate the fair market value of and just compensation to be offered for the various parcels required from the underlying fee simple estate and for the separately owned sign. The value of the sign was determined based on information provided to the appraiser by a local sign contractor. The sign contractor provided a written estimate to completely fabricate and install a comparable sign. This estimate and resultant value was included as a separate line item in the appraisal.

Date of Initial Offer: August 12, 2015

Summary of Counteroffers: Prior to filing a condemnation action, CDOT presented multiple offers to GSL. GSL failed or refused to provide a counteroffer to CDOT. On or about November 10, 2016, the owner of the sign verbally presented a counteroffer in the range of \$200,000 to \$250,000. The counteroffer is in the range of \$189,500 to \$239,500 above CDOT's estimate of fair market value and offer of just compensation. The owner of the sign did not obtain an appraisal or other expert opinion to substantiate the November 10, 2016 counteroffer. The counteroffer submitted by the owner is deemed unsatisfactory to CDOT because there is no valid evidence supporting a value above CDOT's appraised value of \$10,500.

Attachments  
Proposed Resolution