

**Town of Basalt, Colorado  
Resolution No. 10  
Series of 2009**

**RESOLUTION OF THE TOWN COUNCIL OF BASALT, COLORADO, AUTHORIZING  
THE CONDEMNATION OF AN ACCESS AND UTILITY EASEMENT FOR  
SOUTHSIDE WATER TANK**

**RECITALS:**

A. The Town Council has previously determined that the construction of a new water storage tank on the southside of Basalt is a necessary public use to increase water storage to serve the Town's residents with water for domestic use and fire protection purposes.

B. The Town of Basalt has, at the direction of Town Council, submitted an application to the U.S. Bureau of Land Management ("BLM") to locate the water storage tank on BLM property. The application is now pending.

C. The BLM has informed the Town that a prerequisite to approval of the application is the acquisition of an access and utility easement from the proposed tank site to connect it with the terminus of the Town's existing water lines at the Basalt High School.

D. The Town has determined that the most practicable, environmentally responsible, and cost-effective location for the access and utility easement is across the property located between the BLM property and the Basalt High School known as the Downey Property. Acquisition of this easement is for a public use and is a necessity.

E. The Town Council previously directed staff to acquire the easement by agreement with the owners of the Downey Property, if possible. Failing that, the Town directed its staff and Town attorney to file a condemnation action in order to acquire the easement.

F. Based on the foregoing, with the knowledge and direction of the Town Council, a civil action entitled *Town of Basalt v. Downey, et al*, Pitkin County District Court, Case No. 2009-CV-75, was filed on April 7, 2009, after the Town was unsuccessful in securing a counteroffer from the owners to the Town's February 5, 2009, offer to purchase the easement.

G. It has been brought to the attention of the Town Council that one of the owners of the Downey Property has asserted that the case should be dismissed because the Town Council has not adopted a formal resolution authorizing the condemnation.

H. While it is not clear that a formal resolution is required by law, the Town Council has determined to address this issue by adopting this resolution, which memorializes the Town Council's previous authorization of the above-referenced condemnation action.

I. This resolution is necessary for the immediate preservation of the health, welfare and safety of the residents of the Town of Basalt, because a hearing on the Town's motion for immediate possession is scheduled for August 28, 2009, at which time it may be necessary to provide evidence to the Court of the Town Council's formal determination that there is a public use and a necessity for the acquisition of the easement over the Downey Property.

J. Pursuant to the Basalt Home Rule Charter, Article IV, this action may be taken by resolution of the Town Council.

**NOW THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, as follows:**

1. The construction of a water storage tank on the southside of Basalt is necessary for the health, welfare, and safety of the residents of the Town of Basalt and is a public use.

2. The water storage tank is proposed to be located on BLM property and it is necessary to acquire an access and utility easement to connect the water storage tank to the Town's existing service lines.

3. The best location for this easement is across the Downey Property, and the condemnation of this easement, which is the subject of a condemnation action, *Town of Basalt v. Downey, et al*, Pitkin County District Court Case No. 2009-CV-75, was filed at the direction of the Town Council.

4. The condemnation of the easement described in the above-referenced action is immediately necessary for the preservation of the health, welfare, and safety of the residents of the Town of Basalt and constitutes a public use.

READ AND ADOPTED BY A VOTE OF 5 to 0 ON August 25, 2009.



TOWN OF BASALT, COLORADO

By: Leroy Duroux  
Leroy Duroux, Mayor

ATTEST:

Pamela Schilling  
Pamela Schilling, Town Clerk