

DATE: July 20, 2010
STAFF: Patrick Rowe, Helen Matson
Steve McQuilken

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

13

SUBJECT

Second Reading of Ordinance No. 086, 2010, Authorizing the Acquisition by Eminent Domain Proceedings of Certain Lands Necessary to Construct Public Improvements Related to the Mason Corridor Bus Rapid Transit Project, Phase III-A.

EXECUTIVE SUMMARY

The Mason Express ("MAX"), Bus Rapid Transit Project is presently in the right-of-way acquisition phase of the project. Phase III-A is required to proceed with a small acquisition necessary for the planned South Transit Center facility. Phases I, II, and III were adopted by City Council last year, and acquisitions are underway on these phases.

As a federally funded transportation project, acquisitions will conform to the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended (Public Law 91-646). In accordance with this act, property owners must be informed about the possible use of eminent domain and their rights pursuant to Colorado State Statutes in the official Notice-of-Interest Letter. This letter is the first official step in the acquisition phase and must occur in advance of the appraisals. Authorization from City Council is needed prior to sending this letter to property owners. The recommended construction schedule and use of federal funds requires the timely acquisition of the necessary property interests. This Ordinance, unanimously adopted on First Reading on July 6, 2010, authorizes the use of eminent domain proceedings, if necessary.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. Copy of First Reading Agenda Item Summary - July 6, 2010
(w/o attachments)

DATE: July 6, 2010
STAFF: Patrick Rowe, Helen Matson
 Steve McQuilken

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

19

SUBJECT

First Reading of Ordinance No. 086, 2010, Authorizing the Acquisition by Eminent Domain Proceedings of Certain Lands Necessary to Construct Public Improvements Related to the Mason Corridor Bus Rapid Transit Project, Phase III-A.

EXECUTIVE SUMMARY

The Mason Express ("MAX"), Bus Rapid Transit Project is presently in the right-of-way acquisition phase of the project. Phase III-A is required to proceed with a small acquisition necessary for the planned South Transit Center facility. Phases I, II, and III were adopted by City Council last year, and acquisitions are underway on these phases.

As a federally funded transportation project, acquisitions will conform to the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended (Public Law 91-646). In accordance with this act, property owners must be informed about the possible use of eminent domain and their rights pursuant to Colorado State Statutes in the official Notice-of-Interest Letter. This letter is the first official step in the acquisition phase and must occur in advance of the appraisals. Authorization from City Council is needed prior to sending this letter to property owners. The recommended construction schedule and use of federal funds requires the timely acquisition of the necessary property interests. City staff requests authorization to utilize eminent domain for the MAX Project, if necessary, and only if good-faith negotiations break-down.

BACKGROUND / DISCUSSION

The Mason Corridor Bus Rapid Transit Project, branded Mason Express or "MAX", is a five mile, north-south byway that extends from the Downtown Transit Center on the north to the planned South Transit Center, south of Harmony Road. MAX will link major destinations and activity centers along the City's primary transportation and commercial corridor including, Old Town, Colorado State University, Foothills Mall, and South College retail areas. In addition to greatly enhancing the City's north-south transportation movement, MAX will be a significant catalyst for economic growth as a short-term stimulus and a long-term development/re-development driver. The City is targeting a Winter 2012 operation date for the corridor.

The project is predominately located within the outside twenty-five feet of the east half of the Burlington Northern Santa Fe Railway (the "BNSF") property. However, overall project right-of-way will consist of a combination of property owned by the BNSF, Colorado State University, private landowners, several ditch companies, and the City. The project will involve property acquisition from forty-two distinct property owners. Each acquisition is unique, but the typical acquisition need for the Project can be characterized as a five-foot permanent easement and a twenty-foot temporary construction easement along the rear of properties adjacent to the Project. Fee simple ownership is also needed in a number of locations to accommodate stations and other ancillary project improvements. City staff has taken great effort to minimize impacts to property owners, and will continue to do so as the project progresses.

To accommodate workflow and timing, and to progress with those properties that are prepared for acquisition, Project staff has broken the properties into a number of acquisition phases. Phase III-A is a newly created phase which is necessary to proceed with a small acquisition required for the planned South Transit Center facility. This phase consists of two properties, one located south of Harmony directly adjacent to the proposed South Transit Center, and one located north of Prospect Road along the Mason Corridor alignment (see attached location map). This phase includes fewer properties than desired, but one of these acquisitions is critical for the South Transit Center facility planned for construction Winter 2010/Spring 2011. The remaining ten property ownerships will come later as separate agenda items (likely in two additional phases).

City staff had initial communications with all the property owners along the corridor, in addition to hosting a number of public forums on various aspects of the project. Staff also had property specific communications with the two

ownerships in this phase. Furthermore, both Phase III-A ownerships have been notified by certified mail, of staff's intention to request authorization to use eminent domain, if necessary, to acquire project property interests. In all communications, staff strongly emphasizes the City's desire to cooperatively work towards achieving a voluntary agreement.

To ensure the integrity of the project schedule, maintain certain project efficiencies, and remain a viable Federal Transit Administration funded project, it is critical that the City have the ability to acquire the property interests in a timely manner. Since this is a federally funded project, City Council must authorize eminent domain (only to be used if necessary) before appraisals and negotiations can take place.

Staff has a high degree of respect and understanding for the sensitivity of the acquisition process and commits to utilizing eminent domain only if absolutely necessary, and only if good-faith negotiations are not successful.

FINANCIAL / ECONOMIC IMPACTS

COPY

Property acquisition costs will be covered by available project funds, whether or not eminent domain is required.

ENVIRONMENTAL IMPACTS

Due to federal funding requirements (under the National Environmental Policy Act), the City has prepared an environmental assessment to analyze the project's social, economic, and environmental impacts. This report is available from the Engineering Department.

COPY

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

PUBLIC OUTREACH

Staff had specific in-person communications regarding the project and the acquisition process. Furthermore, both Phase III-A ownerships have been notified by certified mail of staff's intention to request authorization to use eminent domain, if necessary, to acquire project property interests.

COPY

ATTACHMENTS

1. Location map

COPY

ORDINANCE NO. 086, 2010
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE ACQUISITION BY EMINENT DOMAIN PROCEEDINGS
OF CERTAIN LANDS NECESSARY TO CONSTRUCT PUBLIC IMPROVEMENTS
RELATED TO THE MASON CORRIDOR BUS RAPID TRANSIT PROJECT, PHASE III-A

WHEREAS, the Mason Corridor Bus Rapid Transit Project (the "Project") is scheduled for construction in 2011; and

WHEREAS, the Project involves the construction of a five mile, north-south byway which extends from Cherry Street on the north to a point south of Harmony Road (the site of the new South Transit Center); and

WHEREAS, the Project will include a 24-foot wide traffic lane for buses with concrete paving, retaining walls, curb and gutter, and drainage and utility improvements; and

WHEREAS, the Project will greatly enhance north-south transportation through the City and is expected to serve as a catalyst for economic growth and long-term development; and

WHEREAS, it is necessary for the City to acquire certain property rights (the "Properties") hereinafter described on Exhibits "A" through "B", attached hereto and incorporated herein by this reference (the "Exhibits"), for the purpose of constructing the Project; and

WHEREAS, the City will continue to negotiate in good faith for the acquisition of the Properties from the landowners; and

WHEREAS, the acquisition of the Properties is desirable and necessary for the construction of the Project, is in the City's best interest and enhances public health, safety, and welfare; and

WHEREAS, the acquisition of the Properties may, by law, be accomplished through eminent domain.

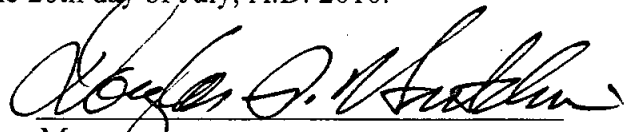
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby finds and determines that is necessary in the public interest to acquire the Properties described on the Exhibits for the purpose of the Mason Corridor Bus Rapid Transit Project.

Section 2. That the City Council hereby authorizes the City Attorney and other appropriate officials of the City to acquire the Property rights for the City by eminent domain.

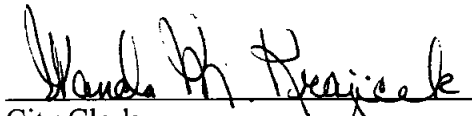
Section 3. The City Council finds, in the event that acquisition by eminent domain is commenced, that immediate possession is necessary for the public health, safety and welfare.

Introduced, considered favorably on first reading, and ordered published this 6th day of July, A.D. 2010, and to be presented for final passage on the 20th day of July, A.D. 2010.



Mayor

ATTEST:



City Clerk

Passed and adopted on final reading on the 20th day of July, A.D. 2010.

Mayor

ATTEST:

City Clerk