

DATE: September 4, 2012
STAFF: Patrick Rowe, Terry Tyrell
Helen Matson

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

11

SUBJECT

Second Reading of Ordinance No. 080, 2012, Authorizing the Acquisition by Eminent Domain Proceedings of Certain Lands Necessary to Construct Public Improvements Related to the Mason Corridor Bus Rapid Transit Project.

EXECUTIVE SUMMARY

Mason Corridor Bus Rapid Transit (MAX BRT) Project staff recently identified an additional/new Temporary Construction Easement interest which is necessary to construct the MAX BRT Project. As with prior acquisitions, City Council authorization for eminent domain (if necessary) is the first step in the acquisitions process. 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 Statute in the official Notice-of-Interest Letter. Authorization from City Council is needed prior to sending this information to property owners. This letter is the first official step in the acquisition process, which must occur prior to the appraisals. Given the construction schedule for the Project and the fact that acquisitions must be conducted under procedures for federally funded projects, timely acquisition of the required property interests is necessary. This Ordinance, unanimously adopted on First Reading, authorizes the use of eminent domain for the MAX Project, if necessary, and only if good faith negotiations break down.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. Copy of First Reading Agenda Item Summary - August 21, 2012
(w/o attachments)

DATE: August 21, 2012
STAFF: Patrick Rowe, Terry Tyrell
Helen Matson

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

20

SUBJECT

First Reading of Ordinance No. 080, 2012, Authorizing the Acquisition by Eminent Domain Proceedings of Certain Lands Necessary to Construct Public Improvements Related to the Mason Corridor Bus Rapid Transit Project.

EXECUTIVE SUMMARY

Mason Corridor Bus Rapid Transit (MAX BRT) Project staff recently identified an additional/new Temporary Construction Easement interest which is necessary to construct the MAX BRT Project. As with prior acquisitions, City Council authorization for eminent domain (if necessary) is the first step in the acquisitions process.

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 Statute in the official Notice-of-Interest Letter. Authorization from City Council is needed prior to sending this information to property owners. This letter is the first official step in the acquisition process, which must occur prior to the appraisals. Given the construction schedule for the Project and the fact that acquisitions must be conducted under procedures for federally funded projects, timely acquisition of the required property interests is necessary. Therefore, 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 which 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, both as a short-term stimulus and as a long-term development/re-development driver. The schedule calls for a 2014 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 "BSNF") property; however, overall project right-of-way will consist of a combination of property owned by the BNSF, Colorado State University, private land owners, and the City. In addition to property interests from the BNSF, Colorado State University, the Colorado State University Research Foundation, and several ditch companies, the project includes property acquisition from approximately forty-seven (47) distinct property owners. Each acquisition is unique but the typical acquisition needed 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. Additionally, fee simple ownership is also needed in a number of locations to accommodate stations, and other ancillary project improvements. This AIS and Ordinance pertains to a single (newly identified) Temporary Construction Easement interest.

Significant public outreach has occurred on this long standing project in many forms, including numerous open houses and direct communication with impacted property owners.

To ensure the integrity of the project schedule, maintain certain project efficiencies, and to 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. In addition, since this is a federally funded project, City Council must have eminent domain authorization (only to be used if necessary) before staff is able to send out the required Notice of Interest Letter.

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. It is

important to note that City staff has taken great effort to minimize impacts to property owners, and will continue to do so as the project progresses.

FINANCIAL / ECONOMIC IMPACTS

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

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

PUBLIC OUTREACH

The affected property owner has been contacted via certified mail and personally contacted by the City's Real Estate Services Department.

ATTACHMENTS

1. Location map

COPY

COPY

COPY

ORDINANCE NO. 080, 2012
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

WHEREAS, construction for the Mason Corridor Bus Rapid Transit Project (the "Project") recently commenced; 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, the Project recently identified an additional property interest that is necessary to acquire (the "Property"), hereinafter described on Exhibit "A", attached hereto and incorporated herein by this reference (the "Exhibit"), for the purpose of constructing the Project; and

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

WHEREAS, the acquisition of the Property 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 Property 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 Property described on the Exhibit 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 right for the City by eminent domain.

Section 3. The City Council hereby 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 21st day of August, A.D. 2012, and to be presented for final passage on the 4th day of September, A.D. 2012.

Mayor Pro Tem

ATTEST:

City Clerk

Passed and adopted on final reading on the 4th day of September, A.D. 2012.

Mayor

ATTEST:

City Clerk