

T&E COMMITTEE #5
July 20, 2009

MEMORANDUM

July 16, 2009

TO: Transportation, Infrastructure, Energy and Environment Committee
FROM: Glenn Orlin, ^{Go} Deputy Council Staff Director
SUBJECT: Resolution to authorize advance taking for White Oak Transit Center

On June 18 the County Executive requested authority to condemn, by the advance taking procedure, fee simple acquisition of 1,459sf from three parcels, 5,029sf of perpetual easements from four properties, and 13,335sf of temporary easements from seven parcels for the construction of the White Oak Transit Center project. A total of eight parcels and five owners are affected. The Executive's letter transmitting this request is attached as ©1-3 and the draft resolution is on ©4-6. He is requesting the Council approve this request by July 31. The full Council is tentatively scheduled to take action on July 21.

The Director of the Department of Transportation (DOT) wrote the affected property owners notifying them of the Executive's request and when the Committee and Council would meet on the matter. An example of one such letter is on ©7.

DOT staff will be present to answer any questions about the Executive's request.

Advance taking - Wm. Clark



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

June 18, 2009



2009 JUN 23 AM 11:24

TO: Phil Andrews, President
Montgomery County Council

FROM: Isiah Leggett, County Executive *(Signature)* (Acting)

SUBJECT: White Oak Transit Center
CIP Project No. 500602

Pursuant to Executive Order No. 077-09 dated March 30, 2009, the County Executive has authorized the construction of improvements to the White Oak Transit Center located along Lockwood Drive in Silver Spring within the Fifth Election District. The proposed limit of work begins at the first entrance to the White Oak Shopping Center and extends 810 feet to the east.

The proposed project is the result of a feasibility study for a transit center at the White Oak Shopping Center. The feasibility study was a collaborative effort among the Department of Transportation, a professional transportation consultant, other County agencies, and the White Oak Master Plan Citizens Advisory Committee. The study identified the purpose and need for a transit center in the White Oak area, evaluated various potential sites inside as well as outside the shopping center, and analyzed bus operations needs. As a result of the study, the proposed site, adjacent to the shopping center, proved to be the best alternative.

The improvements include:

Six bus shelters, passenger queuing areas, and bus queuing areas along Lockwood Drive east of New Hampshire Avenue

Speed table (raised roadway) at two locations

Proposed four-foot wide concrete median at three locations of Lockwood Drive

A six-foot sidewalk on the south side and an eight-foot sidewalk on the north side of Lockwood Drive

Mill and overlay bituminous concrete along the limits of work

Retaining walls at three locations

Storm drain system improvements for removal of storm water runoff from the roadway surface and the abutting properties

Landscape improvements, streetlights and pavement markings

The planned construction affects eight businesses along Lockwood Drive. Negotiations with the five property owners for the necessary right of way acquisitions began May 20, 2008 and are continuing. In order to maintain the County's construction schedule, however, it has become necessary for the County to seek authorization from the Council to obtain immediate possession of portions of those properties which are necessary for the project and which the County has not yet been able to negotiate an amicable resolution with the Property Owners. Accordingly, the Council is being requested to authorize the County to proceed with its Advance Taking procedures under Montgomery County Code §49-50 in order to take immediately possession of the remaining properties.

Authorization to commence Advance Taking procedures will not end the County's efforts to continue to negotiate toward an amicable agreement with the subject Property Owners. However, due to construction time constraints, formal authorization to commence Advance Taking procedures is being requested at this time.

The following is a status report of the Department of Transportation's negotiation efforts to date with the owners of the properties subject to the proposed Advanced Taking.

1. Claudia H. Clark et al Trustees---The acquisition consists of 501 square feet for a temporary construction easement. Contacts with the representative of the six property owners have included four letters, six telephone conversations, and six emails. The property owners are considering dedicating the easement to the County.
2. Rona E. Kramer, Trustee---The acquisition consists of 544 square feet for a perpetual easement and 338 square feet for a temporary construction easement. Contacts with the Property Owner include three letters, one field visit and three telephone conversations. Negotiations with the Property Owner are ongoing and staff has not yet reached an amicable agreement.
3. White Oak Private Storage Limited Partnership--- The acquisition consists of 391 square feet for a temporary construction easement. Contacts with the Property Owner include five letters, two telephone calls, and one email. The law firm of Linowes and Blocher, LLP represents the property owner. Negotiations with the Property Owner are ongoing and staff has not yet reached an amicable agreement.
4. Hutchison Family Limited Liability Company- The acquisition involves portions of three properties and consists of 55 square feet in fee simple, 684 square feet for perpetual easements,

Phil Andrews, President
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and 704 square feet for temporary construction easements. Contacts with the Hutchison Family include two letters, two telephone conversations, and thirteen email transmittals. Negotiations with the Property Owners are ongoing and staff has not yet reached an amicable agreement.

5. BF Saul Real Estate Investment Trust and Saul Subsidiary I Limited Partnership – The acquisition consist of two parcels. From the parcel in the mane of BF Saul Real Estate Investment Trust (Outlot A), the acquisition consists of 948 square feet in fee simple and 668 square feet for a temporary construction easement. From the parcel in the name of Saul Subsidiary I Limited Partnership (Lot 1), acquisition consists of 456 square feet in fee simple, 3,801 square feet for perpetual easements, and 9,811 square feet in temporary easements. Contacts with the Property Owner include three letters, two meetings, four telephone calls, and twenty-two emails. Negotiations with the Property Owner are ongoing and Staff has not yet reached an amicable agreement.

cc: Kathleen Boucher, ACAO

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By County Council

SUBJECT: Optional Procedure for Condemnation of Land, Advance Taking
CIP Project No. 500602

In accordance with Article III, § 40A, Maryland Constitution and § 49-50, 2004
Montgomery County Code, as amended.

BACKGROUND

I. The Council has been requested to authorize the condemnation of the portion of land necessary to improve the road facilities for the White Oak Transit Center in accordance with § 49-50 of the 2004 Montgomery County Code, as amended.

1. The purpose of the White Oak Transit Center project is to improve the effectiveness of transit service in the White Oak area of Silver Spring. Heavy transit ridership and future needs demonstrate the need for the transit center. The proposed transit center will provide convenient access to bus routes and other transit for nearby residents, employees, and shoppers, thus forming part of Montgomery County's strategy to provide opportunities to use transit. The White Oak Transit Center offers substantial potential for such a facility as it will provide convenient transfers between routes on US Route 29 and New Hampshire Avenue. Use of the center would also increase with major transit improvements along US Route 29. Special design treatments such as special paving and lighting, increased landscaping, benches, and other amenities will create a safe and pleasant atmosphere for the community.

The County's project will also provide the following:

1. Speed tables (two raised humps) to reduce speed on Lockwood Drive
 2. A traffic signal at the first entrance to the Shopping Center on Lockwood Drive
 3. Restrictive vehicular movement exiting the shopping center at the signaled entrance
 4. More lighting for increased safety
 5. Center islands for traffic calming
 6. Improved storm drainage
2. Acquisition needs to take place prior to July 31, 2009 in order to prepare for construction by August 2009.
3. The County has been unable to negotiate an Option Contract with the property owners listed below:

RIGHT OF WAY IN SQUARE FEET

PROPERTY OWNERS	ACCOUNT NO.	LIBER FOLIO	LOT/BL PARCEL SUB.	FEE SIMPLE	PERP. EASE.	TEMP. EASE.
Claudia H. Clark And John R. Clark III Successor Trustees of the John R. Clark, Jr. Revocable Trust, etal	05-255503	36020/320 36020/312 35489/119 25509/089	P348 JQ61	0	0	501
Hutchison Family Limited Liability Company	05-264121	23695/634	Lot 1 Plat 6735	0	0	922
Hutchison Family Limited Liability Company	05-281023	3695/634	Lot 1 Plat 6165	0	414	704
Hutchison Family Limited Liability Company	05-3635797	35168/142	Parcel L Plat 23836	55	270	0
Rona E. Kramer Trustee	05-260214	14247/056	Parcel G Plat 11277	0	544	338
BF Saul Real Estate Investment Trust	05-260340	4177/51	Outlot A Plat 5254	948	0	668
Saul Subsidiary I Limited Partnership	05-260362	11710/607	Lot 1 Plat 5254	456	3,801	9,811
White Oak Private Storage Limited Partnership	05-1506400	30663/091	P299 JQ61	0	0	391

ACTION

- I. The County Council finds that there is an immediate need to take possession of a portion of the properties listed above and approves the Resolution authorizing the condemnation of land under the optional method for condemnation of land for streets or roads specified in Section 49-50 2004 Montgomery County Code for the construction of road improvements for the White Oak Transit Center. In furtherance of these actions, the County Council hereby:
1. Guarantees the payment of any amount above the estimated fair market value later awarded by a jury; and
 2. Appoints Melville E. Peters, Maryland Certified General Appraiser, to appraise the fair market value of the properties.
 3. Orders the County Attorney to acquire the listed properties under this procedure.
- II. Montgomery County will take immediate possession of the listed properties upon filing petitions of advance taking in the Circuit Court for Montgomery County, Maryland and depositing with the Court the fair market value of the properties, as determined by the appraiser appointed above. The County may abandon these proceedings at any time prior to payment of the fair market value of the listed properties into the Court.
- III. The County Attorney is hereby directed to take all necessary steps to acquire the properties.

THIS IS A CORRECT COPY OF COUNCIL ACTION

Linda M. Lauer
Clerk of the Council



DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Arthur Holmes, Jr.
Director

July 1, 2009

Ms. Rona E. Kramer
c/o Kramer Enterprises
49 Randolph Road
Silver Spring, Maryland 20904

RE: CIP Project No. 500602
White Oak Transit Center
At Lockwood Drive
Account No. 5-260214
Address: 11311 Lockwood
Drive

Dear Ms. Kramer:

Pursuant to Executive Order No. 077-09, the County Executive authorized construction of improvements to the White Oak Transit Center. The improvements include bus shelters, speed tables, medians, sidewalks, retaining walls, improved storm drainage system, and landscaping. The proposed project initiates at the first entrance to the White Oak Shopping Center and extends 810 feet eastward. The Council appropriated funds to acquire the property needed to construct the improvements.

Over the two years, the Department of Transportation has been working with you to acquire the necessary right-of-way, but we have been unable to reach an amicable result. In order to prevent the delay of the construction of this project, we have asked the Council for the authority to take a portion of your property under the County's advance taking procedure.

If the Council approves our request, then the County will file an Advance Take Petition to take immediate possession of that portion of your property needed for the project and the County will deposit funds with the Circuit Court that corresponds to the fair market value of the property rights taken by the County as determined by a licensed appraiser. If an Advance Take Petition is filed, further information will be provided to you regarding how to withdraw those funds deposited with the Circuit Court. The funds deposited with the Circuit Court do not limit the amount you may ultimately receive as a result of further negotiations of a jury trial, if one is necessary. If that amount is higher, you will receive the difference; if it is lower, you will pay the difference to the County. We will continue negotiations to try to reach an agreement for the acquisition of your property.

Division of Transportation Engineering

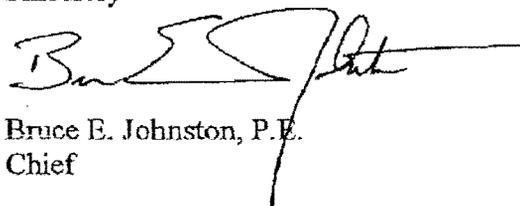
100 Edison Park Drive, 4th Floor • Gaithersburg, Maryland 20878 • 240-777-7220 • 240-777-7277
www.montgomerycountymd.gov

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Ms. Rona E. Kramer
July 1, 2009
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The request will be addressed by the Transportation, Infrastructure, Energy, and Environmental Committee on July 20, 2009, at 9:30 a.m. and by the full Council on July 21, 2009. Please send to the Council any comments you may have, either by mail or e-mail so that they are received no later than July 14, 2009. If you address your correspondence to Council President Phil Andrews it will automatically be made available to all nine councilmembers. The Council's address is: 100 Maryland Avenue, Fifth Floor, Rockville, Maryland 20850; or county.council@mongtomerycountymd.gov. There will not be an opportunity to speak at the Council session, but you are welcome to attend and listen to the debate which will be held in the Council's Seventh Floor Hearing Room. Please call the Council Office on July 20, 2009, at 240-777-7900 to learn of any change in time.

Sincerely



Bruce E. Johnston, P.E.
Chief

BEJ/rg

bcc: Glen Orlin