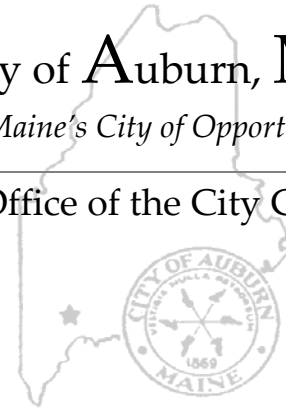


City of Auburn, Maine

"Maine's City of Opportunity"

Office of the City Clerk



Council Meeting Agenda Packet

April 10, 2006

This packet contains the City Council Agenda and supporting documents. The items in this packet are bookmarked in Adobe Acrobat .pdf format. You may need to click on the Bookmark tab on the left to open the Bookmark window. If you do not see a Bookmark tab on the left, you may need to select the Show/Hide Navigation Pane button in your icon toolbar above or update your version of the Adobe Reader. You can download the free Adobe Reader application at www.adobe.com.

Executives Sessions: On occasion, the City Council discusses matters which are required or allowed by State law to be considered in executive session. Executive sessions are not open to the public. The matters that are discussed in executive session are required to be kept confidential until they become a matter of public discussion. In order to go into executive session, a Councilor must make a motion in public. The motion must be recorded, and 3/5 of the members of the Council must vote to go into executive session. An executive session is not required to be scheduled in advance as an agenda item, although when it is known at the time that the agenda is finalized, it will be listed on the agenda.

The only topics which may be discussed in executive session are those that fall within one of the categories set forth in Title 1 M.R.S.A. Section 405. Those applicable to municipal government are:

1. Discussion of personnel issues
2. Discussion or consideration of the condition, acquisition, or the use of real or personal property or economic development if premature disclosure of the information would prejudice the competitive or bargaining position of the body or agency.
3. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators.
4. Consultations between a body or agency and its attorney
5. Discussion of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute.
6. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes
7. Consultations between municipal officers and a code enforcement officer relating to enforcement matter pending in District Court.

City Council

Agenda Information Sheet

Council Meeting Date: April 3, 2006
April 10, 2006

Agenda Item No. 1

SUBJECT: ORDER – Condemnation Order of the Municipal Officers (Property in the Vicinity of 3162 Hotel Road)

INFORMATION:

The Auburn-Lewiston Airport Authority has adopted a resolution requesting that the Auburn City Council take a 8.34-acre parcel of land adjacent to the Airport currently owned by Elmer N. Crossley. The parcel is needed for the Airport to remove a hill that creates a dangerous safety problem. The Airport Board has attempted unsuccessfully to purchase the parcel directly from the landowner offering fair market value based on independent appraisals. Due to the necessity to acquire this land for public safety purposes, the City has been requested by the Airport Board to acquire the parcel by eminent domain and then transfer it to the Airport. This land is necessary to meet safety requirements imposed by the Federal Aviation Administration (FAA). The Airport Board will fund any costs associated with this land acquisition. In order to proceed with eminent domain, the City Council must make a finding of the following:

1. Taking this land, at fair market value, is necessary for public purposes, namely to improve, enlarge, expand and improve the safety of the Auburn-Lewiston Municipal Airport.
2. There is a public need that requires the immediate taking of the property and the owner has been unwilling to sell the property at a price that is a fair market value.

STAFF COMMENTS /RECOMMENDATION:

The Airport Board recommends passage of the Order.

REQUESTED ACTION:

Motion for passage of the Order

VOTE:

**CITY OF AUBURN
CONDEMNATION ORDER
OF THE MUNICIPAL OFFICERS**

The Municipal Officers of the City of Auburn, Maine hereby issue this Condemnation Order and make return of their proceedings under 6 M.R.S.A. §122, 30-A M.R.S.A. §5403(6) and 23 M.R.S.A. §3022 and §3023 in regard to the taking by eminent domain of a certain lot or parcel of land and a certain avigation easement over land located in the City of Auburn and owned by Elmer N. Crossley, Trustee under a Trust named ENC Investment Trust a/k/a E.N.C. Investments, with a mailing address of P.O. Box 1136, Auburn, Maine, as follows:

1. This condemnation is for a public use, namely to improve, enlarge, expand and improve the safety of the Auburn-Lewiston Municipal Airport.

2. The Municipal Officers of the City of Auburn have determined that public exigency requires the immediate taking of the property interests described herein. In addition, the Municipal Officers have determined that the City is unable to purchase the property at what the Municipal Officers deem reasonable valuation.

I. PARCEL TAKEN IN FEE SIMPLE ABSOLUTE

A certain parcel of land situated in the City of Auburn, the County of Androscoggin and the State of Maine, lying northwesterly of the intersection of Hotel Road and Route 122 and adjoining the so called Christian Hill Quarry, said quarry now or formerly owned by the Cities of Auburn and Lewiston, said parcel being bounded and described as follows:

Commencing at the Point of Beginning, an existing #5 rebar monument found near the base of a 4 foot tall 3 inch diameter pipe, said rebar monument marking the northwesterly corner of the land now or formerly of Elmer N. Crossley, Trustee under a Trust named ENC Investment Trust, a/k/a E.N.C. Investments, said land being described in a deed recorded at the Androscoggin County Registry of Deeds in Book 1626 Page 140 (the "Crossley Parcel"), said corner also being S37°02'39"W 479.89 feet from an existing #5 rebar monument found near the base of a 4 foot tall 3 inch diameter pipe, said rebar monument marking the southwesterly corner of the land now or formerly of Corrine Berwick;

Thence S1°30'15"E 512.77 feet along the land of the Cities of Auburn and Lewiston to an iron pipe found marking the northeasterly corner of land now or formerly of Kurt R. Youland, said land being described in a deed recorded at said Registry of Deeds in Book 5289 Page 140;

Thence S56°30'11"E 399.10 feet along the aforesaid land now or formerly of Kurt R. Youland to the southerly corner of the parcel of land herein described;

Thence N5°11'37"E 1360.37 feet through other land of Crossley to the land now or formerly of Corrine Berwick;

Thence S37°02'39"W 299.31 feet along the land now or formerly of Corrine Berwick to an existing #5 rebar monument found near the base of a 4 foot tall 3 inch diameter pipe, said rebar monument marking the southwesterly corner of the land now or formerly of Corrine Berwick;

Thence S37°02'39"W 479.89 feet to the Point of Beginning;

Containing 8.34 acres more or less.

The bearings in this description are based on grid north of the Maine Coordinate System of 1983 West Zone.

Subject to an avigation easement and right of way described in that certain deed from Robert W. Spencer to the Cities of Lewiston and Auburn dated March 23, 1979 and recorded at the Androscoggin County Registry of Deeds in Book 1407 Page 315.

Said parcel is shown on a plan entitled "Standard Boundary Survey, Elmer Neil Crossley, Trustee, E.N.C. Investments," prepared by Dufresne-Henry, Inc., dated April ____, 2006, which is to be recorded at said Registry of Deeds.

Being a portion of the parcel of land granted to Elmer N. Crossley, Trustee under a Trust named ENC Investment Trust, by deed from Robert W. Spencer dated March 7, 1983, recorded at the Androscoggin County Registry of Deeds in Book 1626, Page 140.

The foregoing parcel is taken in fee simple absolute.

II. AVIGATION EASEMENT

Also including an avigation easement and related rights over the land conveyed to Elmer N. Crossley, Trustee under a Trust named ENC Investment Trust, by deed from Robert W. Spencer dated March 7, 1983, recorded at said Registry of Deeds in Book 1626, Page 140 (the "Crossley Parcel") appurtenant to the land owned by the Cities of Lewiston and Auburn for the benefit of the public and operated as the Auburn-Lewiston Municipal Airport (the "Airport") for the unobstructed flight and passage of all aircraft ("aircraft" being defined for the purpose of this instrument as any contrivance now known or hereafter invented, used or designed for navigation or flight in the air) above an imaginary plane consisting of the Approach, Transitional and Horizontal Surfaces more particularly described as follows:

APPROACH SURFACE

The Approach Surface is a regular trapezoidal-shaped inclined plane. The inner width of the plane is 1,000 feet long and the outer width of the plane is 16,000 feet long. The inner width of the plane is at the same elevation as the southwesterly end of the Runway 04 at the Airport (the "Runway"), and its mid-point is 200 feet from the southwesterly end of the Runway. The plane extends outward in a southwesterly direction a horizontal distance of 50,000 feet from its inner width, is centered on an extension of the centerline of the Runway and is inclined at a slope equal to 1 foot vertically for each 50 feet horizontally (so-called 50 to 1 slope) for the first 10,000 horizontal feet, then at a slope equal to 1 foot vertically for each 40 feet horizontally (a so-called 40 to 1 slope) for the remaining 40,000 horizontal feet

TRANSITIONAL SURFACES

The Transitional Surfaces are inclined planes beginning at the northerly and southerly edges of the Approach Surface and are inclined at a slope equal to 1 foot vertically for each 7 feet horizontally, a so-called 7 to 1 slope, measured perpendicular to the centerline of the extended Runway centerline, extending up to an elevation 438 feet above mean sea level.

HORIZONTAL SURFACE

The Horizontal Surface is a horizontal plane at an elevation of 438 feet above mean sea level being of said horizontal extent so as to be above all portions of the above described land.

The Crossley Parcel is deemed to be wholly encompassed within the boundaries of the aforementioned Approach, Transitional and Horizontal Surfaces.

The avigation or easement hereby taken includes the right:

1. to cause in all airspace above the surface of the Crossley Parcel such noise, vibrations, fumes, dust, fuel particles, and all other effects that may be caused by the operation of aircraft landing at, or taking off from, or operating at or on the Airport, or other use of the airspace;
2. to prevent the erection or growth upon the Crossley Parcel of any building, structure, tree or other object, extending into the air space above the aforesaid imaginary plane or any tree that is within fifteen (15) feet of the aforesaid imaginary plane, and to remove trees or top trees that extend into or are within fifteen (15) feet below the aforesaid imaginary plane, or as an alternative, at the sole option of Cities of Auburn and Lewiston or the Airport, to mark and light as obstruction(s) to air navigation, any such building, structure, tree or other objects

now upon, or which in the future may be upon the Crossley Parcel;

3. to prevent any use of the Crossley Parcel for any purpose which will interfere with the use, operation, maintenance and further development of the Airport;
4. to prevent any use of the Crossley Parcel and of structures thereon for purposes which will create or result in a hazard to flight such as, but not limited to, purposes which will (a) produce electrical interference with radio communications, (b) make it difficult for pilots to distinguish between airport lights and others, (c) project glare to the eyes of pilots, (d) impair visibility in the vicinity of the Airport, or (e) otherwise endanger the landing, taking off, and maneuvering of aircraft;

together with the right of ingress to, egress from, and passage over the Crossley Parcel for the above purposes.

The easement and rights taken and covenants imposed by this instrument shall be binding on the owner of the Crossley Parcel and his/its heirs and assigns, and shall run with the land, burdening the above described Crossley Parcel which shall be the servient tenement, and benefiting the land now and hereafter owned by the Cities of Lewiston and Auburn comprising the Airport, which shall be the dominant tenement.

4. Said Municipal Officers have determined that the record owners of the property, so far as they can be reasonably determined, are as follows:

Elmer N. Crossley, Trustee under a Trust named ENC Investment Trust, a/k/a E.N.C. Investments, with a mailing address of P.O. Box 1136, Auburn, Maine

5. The proposed date of taking possession of the property is the date this Condemnation Order and the accompanying Certificate of the Clerk of the City of Auburn are recorded in the Androscoggin County Registry of Deeds following the filing of this Order with the Auburn City Clerk.

6. Said Municipal Officers gave due and legal notice to all parties interested in their intention to take said property by posting a Notice of Proposed Condemnation at least seven (7) days previous to the date of said hearing, said postings being on March _____, 2006, in two public places within the City of Auburn and at a third location within the immediate vicinity of the property to be taken, all as set forth on the Return filed with the City Clerk.

WHEREUPON, IT IS ORDERED, AS FOLLOWS:

A. That the Municipal Officers do hereby take and condemn by eminent domain, the above described parcels of land for public purposes pursuant to 6 M.R.S.A. §122, 30-A M.R.S.A. §5403(6), 23 M.R.S.A. §3022 and §3023. Title to the property taken by this Condemnation Order is hereby vested in the City of Auburn, of Androscoggin County, State of Maine.

B. Said Municipal Officers do hereby determine, based on assessment evidence that damages should be awarded as just compensation for the property being taken in the amount of \$180,000.00. This award of condemnation damages shall be considered an appropriation for that purpose.

C. That the original of this Order shall be filed with the City Clerk who shall thereupon cause an attested copy of this Order to be served upon the aforementioned record owners of said property, together with a check in the amount of the damages awarded.

D. The City Clerk is further ordered to prepare the certificate required by 23 M.R.S.A. §3024 and record said Certificate in the Androscoggin County Registry of Deeds.

Dated at Auburn, Maine, this ____ day of _____, 2006.

Municipal Officers

_____	_____
_____	_____
_____	_____
_____	_____

April 3, 2006 – Councilor Matzen moved for acceptance of first reading. Seconded by Councilor Mennealy. Vote: 6 Yeas, No Nays.

City Council

Agenda Information Sheet

Council Meeting Date: April 3, 2006 **Agenda Item No. 2**
April 10, 2006

SUBJECT: ORDER – Authorizing the City Manger to transfer all of the real property interests in a certain parcel of land located at 3162 Hotel Road in Auburn, Maine (Tax Map 107, Lot 1) from the City of Auburn to the Cities of Auburn and Lewiston.

INFORMATION:

This Order authorizes the City to transfer the land that is the subject of the Condemnation Order (Item # 1 on the agenda), if the Council approves the eminent domain of the property. The land will be conveyed to the Cities of Auburn and Lewiston which are the owners of the Auburn--Lewiston Airport.

STAFF COMMENTS /RECOMMENDATION:

Staff recommends passage of the Order.

REQUESTED ACTION:

Motion for acceptance of second reading and final passage.

VOTE:

CITY OF AUBURN

CITY COUNCIL, AUBURN, MAINE

DATE: April 3, 2006

TITLE: ORDER – Authorizing the City Manger to transfer property all of the real property interests in a certain parcel of land located at 3162 Hotel Road in Auburn, Maine (Tax Map 107, Lot 1) from the City of Auburn to the Cities of Auburn and Lewiston.

Be It Ordered by the Auburn City Council, that under and pursuant to the Maine Revised Statutes, as amended, and the Charter of the City of Auburn, Maine, the City Manager is hereby authorized to convey the property described in Exhibit A attached hereto and made a part hereof from the City of Auburn to the City of Auburn and the City of Lewiston.

Motion for passage:

Seconded by:

Vote:

ACTION BY COUNCIL:

DATE:

ATTEST:

CITY CLERK

EXHIBIT A

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2. to prevent the erection or growth upon the Crossley Parcel of any building, structure, tree or other object, extending into the air space above the aforesaid imaginary plane or any tree that is within fifteen (15) feet of the aforesaid imaginary plane, and to remove trees or top trees that extend into or are within fifteen (15) feet below the aforesaid imaginary plane, or as an alternative, at the sole option of Cities of Auburn and Lewiston or the Airport, to mark and light as obstruction(s) to air navigation, any such building, structure, tree or other objects now upon, or which in the future may be upon the Crossley Parcel;
3. to prevent any use of the Crossley Parcel for any purpose which will interfere with the use, operation, maintenance and further development of the Airport;
4. to prevent any use of the Crossley Parcel and of structures thereon for purposes which will create or result in a hazard to flight such as, but not limited to, purposes which will (a) produce electrical interference with radio communications, (b) make it difficult for pilots to distinguish between airport lights and others, (c) project glare to the eyes of pilots, (d) impair visibility in the vicinity of the Airport, or (e) otherwise endanger the landing, taking off, and maneuvering of aircraft;

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