



City Council Approval for Use of Eminent Domain

Brighton Crossing No. 7 Metropolitan District

CITY COUNCIL STUDY SESSION - Jan. 11, 2021

City Staff Representatives: Marv Falconburg, Deputy City Manager, Holly Prather, Community Development Director, and Yasmina Shaush, Assistant City Attorney



Metropolitan Districts and Eminent Domain

Metropolitan districts may exercise eminent domain for limited purposes. See C.R.S. § 38-1-202(1)(f). Such purposes are outlined in C.R.S. § 32-1-1004(4) and include:

- Fire protection
- Sanitation
- Street improvement
- Television relay and translator facilities
- Water
- Water and sanitation



Constitutionality

The Fifth Amendment to the United States Constitution, as made applicable to the states by the Fourteenth Amendment, prohibits the taking of private property for public use “without just compensation.”

Similarly, the Colorado Constitution prohibits the taking or damage of private property “without just compensation.” See Colo. Const. Art. II, § 15.

A taking by eminent domain is appropriate only if it is for “public use.” See *Tanner v. Treasury Tunnel Mining & Reduction Co.*, 83 P. 464 (Colo. 1906).



City Council Approval Required

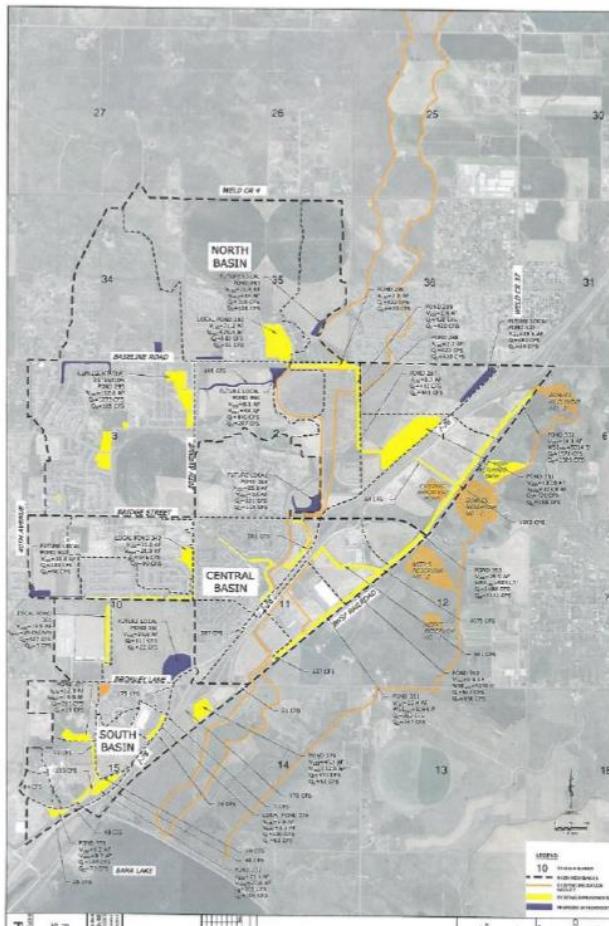
A metropolitan district may not exercise eminent domain within a municipality without a written resolution of the governing body of the municipality approving such exercise. See C.R.S. § 32-1-1004(4).

In other words, if a metropolitan district within the City of Brighton wants to use eminent domain within the boundaries of the City, City Council must approve such use of eminent domain by resolution.



Brighton Crossing Metropolitan District No. 7 (“Brighton Crossing No. 7”)

Brighton Crossing No. 7 seeks City Council approval to use eminent domain to acquire property for a drainage easement and associated improvements located within the City of Brighton and will be presenting to City Council on January 18th the reasons this approval is being requested.

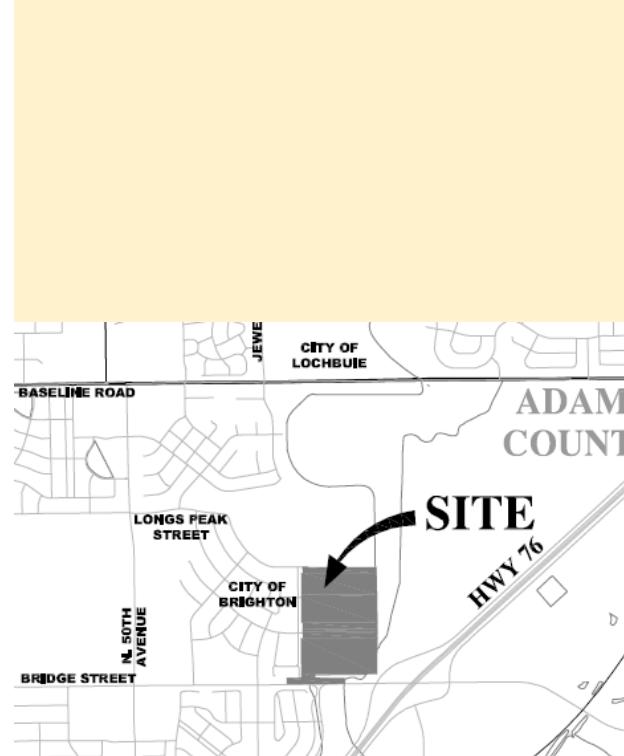




The Proposed Easement

The proposed drainage easement will connect the to-be constructed Pond 308 with a drainage swale to an existing culvert at the Speer Canal on the south side of property owned by United Water and Sanitation District (“UWSD”). Pond 308 will serve as a dedicated regional detention pond.

UWSD has indicated that it might not voluntarily grant the required easements. Thus, it may be necessary to use eminent domain to acquire the property.





Options for City Council

Brighton City Council has the following options on January 18th in this matter:

- Approve the resolution.
- Deny the resolution.
- Amend the resolution and approve as directed.