Legislation Text

File #: 19699, **Version:** 1

Fiscal Note

Funding for this settlement of $312,000 is available in the following capital project accounts:
CS53-58130-810375-00-53W0348 (Bikeways) $200,000
CS53-58130-810508-00-53W0348 (West Branch Starkweather Paths) $112,000

Title

Authorizing the City Attorney to settle the pending litigation arising out of the City's condemnation of Access Rights and Temporary Limited Easement Rights at 3051 East Washington Avenue between the City of Madison and McDonald's Corporation for $312,000.

Body

WHEREAS, on May 16, 2006, as part of the Starkweather Creek Bike Path Project (No. 53B0963) and Darbo Frontage Road Project (No. 53W0348), the Common Council adopted a relocation order (RES 06-443) for acquiring Access Rights and Temporary Limited Easement Rights from Franchise Reality Interstate Corp. (n/k/a McDonald's Corp.) at the existing McDonald's restaurant location at 3051 East Washington Avenue (the "Property"); and,

WHEREAS, in constructing the Starkweather Creek bike path pedestrian and bicycle bridge over East Washington Avenue, it was necessary to close a portion of Clyde Gallagher Avenue and the East Washington Avenue frontage road, thereby requiring that McDonald's driveway be relocated and resulting in a change in the internal traffic circulation pattern at the Property; and,

WHEREAS, in May 2006, the City's real estate appraiser determined that the loss of access caused by the Projects could be cured by internal modifications to the Property, and based upon this appraisal the City of Madison recorded an award of compensation on October 5, 2006 for $56,000 as compensation to McDonald's for the loss of Access Rights and the Temporary Limited Easement. The City was not provided an appraisal of the value of the takings by McDonald's until December, 2009; and,

WHEREAS, on September 12, 2008, McDonald's appealed the amount of the compensation award to the Dane County Circuit Court in Dane County Circuit Court, Case No. 08CV4210; and,

WHEREAS, as a result of the City's construction of the new pedestrian and bicycle overpass, McDonald's has indicated that its restaurant at the Property, in its current configuration, is no longer sufficiently visible to eastbound traffic on East Washington Avenue and the internal circulation pattern is not conducive to use as a viable drive-thru restaurant, and therefore, as a result of the City's actions regarding the Property, the building is no longer best suited for use as a fast-food restaurant; and,

WHEREAS, based upon a mediated settlement agreement between the City of Madison and McDonald's Corp., the parties have agreed to settle all disputes relating to the award of compensation and litigation costs in this case, by payment to the owners, McDonald's Corp., of a total of $312,000; and,

WHEREAS, McDonald's Corp. has agreed to release any and all claims against the City of Madison relating to this action.

NOW, THEREFORE, BE IT RESOLVED that the City hereby accepts the settlement to pay the total amount of $312,000 to the owners, McDonald's Corp; and,

BE IT FURTHER RESOLVED that the City Attorney is authorized to execute a Settlement Agreement as described in this Resolution, and any related documents, all in a form subject to the approval of the City Attorney.