

January 15, 2008

**COUNCIL OF THE CITY OF FORT COLLINS, COLORADO**

**Council-Manager Form of Government**

**Regular Meeting - 6:00 p.m.**

A regular meeting of the Council of the City of Fort Collins was held on Tuesday, January 15, 2008, at 6:00 p.m. in the Council Chambers of the City of Fort Collins City Hall. Roll Call was answered by the following Councilmembers: Brown, Hutchinson, Manvel, Ohlson, Poppaw, Roy, and Troxell.

Staff Members Present: Atteberry, Krajicek, Roy.

**Citizen Participation**

Vivian Armendariz, 820 Merganser Drive, showed photos demonstrating snow removal issues and urged Council and the community to clear sidewalks and curb cuts.

Eric Sutherland, 631 LaPorte Avenue, spoke about renewal energy credit purchases by Platte River Power Authority on behalf of rate payers in Fort Collins. He did not believe the policy of purchasing renewable energy credits as a strategy to combat climate change and resource depletion was an effective use of funds.

Joe Rowan, 621 Gilgalad Way, stated transportation issues did not seem to be a high priority for Council and should be addressed on a regular basis. He was disappointed Council did not act on the Resolution that would have approved the I-25/392 IGA with Windsor.

Brian Schumm, 5807 Ballina Court, had concerns regarding the South College Corridor Plan as he had met with staff to talk about possible changes to the Plan and felt staff had already predetermined the outcome of a review of the Plan. He believed the rezoning of East Skyway justified the rezoning of other property on the east side of Aran Street.

Clint Skutchan, 719 Great Plains Court, stated his concern about transportation issues that have not been addressed, either on the local level or regionally. He asked why the I-25 Gateways discussion was moved from a regular work session time to a retreat setting.

Cheryl Distaso, 135 South Sunset, thanked the Mayor for reading the proclamation for MLK Day and urged Council to adopt a resolution calling for withdrawal of troops from the war in Iraq.

Nancy York, 130 South Whitcomb, stated the public participation process should be improved. Council should prioritize on the main issues of the City and stay focused to be more efficient.

Ben Schrader, 928 Pioneer Avenue, quoted Dr. Martin Luther King, Jr and asked Council to adopt a resolution calling for withdrawal of troops from the war in Iraq.

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### **Citizen Participation Follow-up**

Mayor Hutchinson stated a special retreat is planned for February 8 to focus on transportation issues. A retreat provides an opportunity for Council to focus on certain topics and to decide how to proceed.

Councilmember Manvel stated one topic discussed at a recent Metropolitan Planning Organization meeting was formation of a continuing committee to examine RTAs and other possibilities for regional transportation cooperation. He has been appointed to that committee.

Councilmember Poppaw stated the six-month planning calendar has four different topics concerning transportation that Council will consider. Regional cooperation means community separators, open space and good land use planning as well as considering an RTA.

City Manager Atteberry stated his intention to schedule another retreat in March for Council to focus on the "price of government," including transportation funding, health and safety funding, pavement management and parks maintenance.

Councilmember Troxell encouraged the citizen concerned about renewable energy credits to become involved in the Fort ZED process through UniverCity Connections. This process is examining ways to turn renewable energy credits into a source of profit to help fund items internally. The Electric Board's work plan for 2008 also addresses this issue. He noted the Governor was silent about transportation issues in his "State of the State" address which indicates local governments have to do more to improve transportation problems and interchanges. He asked that the Aran Street zoning be included in the South College Corridor Plan.

Councilmember Brown asked if the February 8 retreat would be taped and televised at a later date. City Manager Atteberry noted the retreat would be held at an off-site location to provide room to examine maps and other exhibits. Since the retreat will be off-site, Cable 14 cannot broadcast the retreat live, but will tape it for televising.

Councilmember Ohlson asked for a follow-up on the snow removal from curb cuts. He noted the retreats would provide additional time to focus on transportation issues and to discuss ways to provide funding for those issues. He asked for a memo explaining renewable energy credits and options for their use and suggested the Electric Board study this issue further.

### **Agenda Review**

City Manager Atteberry withdrew Item #16 *First Reading of Ordinance No. 006, 2008, Designating Grandview Cemetery, 1900 West Mountain Avenue, as a Fort Collins Landmark Pursuant to Chapter 14 of the City Code* to be presented to Council at a later date.

Patrick Reeves withdrew Item #13 *First Reading of Ordinance No. 003, 2008, Amending Chapter 2, Division 3 of the City Code Pertaining to Appeals to the City Council*.

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Brian Schumm withdrew Item #7 *Second Reading of Ordinance No. 146, 2007, Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the East Skyway Rezoning.*

## **CONSENT CALENDAR**

6. Consideration and Approval of the Minutes of the November 20, 2007, December 4, 2007 and December 18, 2007 Regular Meetings and the November 27, 2007 Adjourned Meeting.
7. Second Reading of Ordinance No. 146, 2007, Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the East Skyway Rezoning.

The land along Skyway Drive, east of College Avenue, was annexed into the City as part of Phase I of the Southwest Enclave Annexation in April 2007, under a Structure Plan designation of Urban Estate (U-E). The original intent of designating U-E for these properties was to acknowledge the existing large-lot County parcels zoned Farming in the County; U-E is the City's zoning that is most similar to the County's zoning.

Staff has since considered the situation along this part of East Skyway in much more detail, in extensive discussions with owners, neighbors, and the County. These discussions have been prompted by issues related to an existing business at 209 East Skyway and by the recent annexation process in 2007. Staff finds that the properties along Skyway do not reflect the character of the Farming or Urban Estate designations, but bear closer resemblance to both the commercial uses in the area and the existing residential neighborhood (which is more dense than Urban Estate) to the north and east. This Ordinance, unanimously adopted on First Reading on December 18, 2007, rezones the property located at 209 East Skyway to a combination of Commercial on the west 2/3 of the property and Low Density Residential on the east 1/3 of the property. It also rezones 225 East Skyway Drive to Low Density Mixed-Use Neighborhood and the City-owned parcel east of Claire Court to the Open Lands, Parks and Stream Corridor designation.

8. Second Reading of Ordinance No. 151, 2007, Amending City Code Sections 23-127 and 23-130 Pertaining to Disposition of Stolen, Found or Abandoned Personal Property.

The Recycled Bike Project enables the partnership between the City of Fort Collins and the FC Bike Co-op to collect, store, and repair found, abandoned/donated bicycles, and to place these refurbished bicycles back into the community, rather than being shipped to California for auction. Refurbished bicycles will be used in an Earn-a-Bike program, the future Bike Library, and/or given to those who qualify as financially challenged or "at risk." Bicycle frames and parts that cannot be repaired or reused will be recycled. This Ordinance, unanimously adopted on First Reading on December 18, 2007, will amend the City Code to allow the processing of the abandoned/donated bicycles.

9. Second Reading of Ordinance No. 152, 2007, Authorizing the Lease of a Residence on City-Owned Property at Reservoir Ridge Natural Area to the Facility Attendant for Up to Five Years.

This Ordinance, unanimously adopted on First Reading on December 18, 2007, authorizes the lease of a residence, located on the Reservoir Ridge Natural Area, to the Facility Attendant of Primrose Studio.

10. Second Reading of Ordinance No. 153, 2007, Designating the Hoel House, 616 Locust Street, Fort Collins, Colorado, as a Fort Collins Landmark Pursuant to Chapter 14 of the City Code.

Ordinance No. 153, 2007, unanimously adopted on First Reading on December 18, 2007, designates the Hoel House, 616 Locust Street, as a Fort Collins Landmark. The owners of the property, Ellen Richey and Douglas Simons, are initiating this request.

11. First Reading of Ordinance No. 001, 2008, Appropriating Unanticipated Grant Revenue in the General Fund for the Fort Collins Police Services Victim Services Team.

The Fort Collins Police Services Victim Services Team has been awarded a 12-month grant in the amount of \$33,150 for the period from January 1, 2008 through December 31, 2008, by the Eighth Judicial District Victims Assistance and Law Enforcement (V.A.L.E.) Board to help fund services provided by this team. These funds will be used for a part-time, paid victim advocate who provides crisis intervention services during weekday hours and is housed in the Victim Services office. These funds will also pay for some of the operational expenses needed to provide 24-hour a day, 7-day a week services to victims of crime in the community.

12. First Reading of Ordinance No. 002, 2008, Appropriating Unanticipated Revenue in the Street Oversizing Fund for Transfer to the Capital Projects Fund - Harmony Road and Ziegler Road Improvements - Front Range Village Development Capital Project and Authorizing the Transfer of Appropriations Between Funds to Construct Sidewalk Improvements on the North Side of Harmony Road from Ziegler Road to Lady Moon Drive.

Since Transfort has re-established the Harmony transit route, staff has been working on sidewalk improvements for Harmony Road to support pedestrian accessibility. Working with private development and the Pedestrian Access Program, several gaps of missing sidewalk have been installed along Harmony Road. Staff began working with Avago Corporation and Hewlett Packard Company as adjacent property owners to explore the feasibility of installing an eight-foot wide sidewalk on the north side of Harmony, from Ziegler Road to Lady Moon Drive (approximately 3900 linear feet). Both companies have agreed to contribute their local street portion for the construction of the improvements. The Street Oversizing Program will contribute for the oversized portion of the sidewalk and install a bus stop at Lady Moon, in accordance with normal program policies.

13. First Reading of Ordinance No. 003, 2008, Amending Chapter 2, Division 3 of the City Code Pertaining to Appeals to the City Council.

This Ordinance would amend Chapter 2, Division 3 of the City Code pertaining to appeals to the City Council in two respects. First, the Ordinance would clarify which parties-in-interest, as defined in the Code, are entitled to seek judicial review of the Council's determination of an appeal. Second, the Ordinance would explicitly authorize Councilmembers to inspect the site of development project plans or other proposals that are the subject of a Council appeal and would prescribe the terms and conditions under which such site inspections may occur.

14. First Reading of Ordinance No. 004, 2008, Authorizing the Acquisition by Eminent Domain Proceedings of Certain Lands Necessary to Construct Public Improvements and Widen West Harmony Road from South College Avenue to Seneca Street.

West Harmony Road is a major east-west arterial route in the City of Fort Collins. Numerous sections of this corridor have been widened, but there are some portions that remain two lanes. As a result, the roadway generally functions as a two-lane between College Avenue and Seneca Street. The Harmony/Shields intersection produces long delays and has one of the highest accident rates in the City. For these reasons, improvements to this corridor have been prioritized by the City of Fort Collins. To meet the proposed construction schedule for the Project, timely acquisition of the property interests along West Harmony Road is necessary.

15. First Reading of Ordinance No. 005, 2008, Authorizing Conveyance of an Easement for Two Pedestrian Bridges to Poudre Valley Health Care, Inc., d/b/a Poudre Valley Health Systems ("PVH").

PVH has a project development plan known as "Poudre Valley Hospital Parking Structure and Medical Office Building" ("the Project"). The plan was approved by the Planning and Zoning Board on September 20, 2007. This plan includes the construction of a new employee parking structure and a new medical office building. Also as part of the plan, PVH desires to construct two pedestrian bridges. One of the proposed bridges will span Garfield Street and the proposed second bridge will span Lemay Avenue. PVH is still working getting the final plans approved.

16. First Reading of Ordinance No. 006, 2008, Designating Grandview Cemetery, 1900 West Mountain Avenue, as a Fort Collins Landmark Pursuant to Chapter 14 of the City Code.

The owner of the property, the City of Fort Collins, is initiating this request for Fort Collins Landmark designation for the property. Having outstanding historical significance, Grandview Cemetery is unusual in that it is eligible for designation as a Fort Collins Landmark under all four designation standards. Established in 1887, Grandview is the oldest operating cemetery in the city. The cemetery is associated with events significant to the founding and early growth of Fort Collins. People interred at this site include some of the

city's, and indeed, Colorado's, most influential politicians, business people, and pioneers. The property's historic structures and landscape features, such as its unique moss rock bridge, circular gravel drive layout, moss rock planters, marble, granite, flagstone, sandstone, and cast iron grave markers, and the historic New Mercer Ditch which bisects the cemetery grounds, embody distinctive characteristics of design and construction. Furthermore, the historic office building built by the Civilian Conservation Corps in the 1930s, is important both architecturally and historically. Finally, the cemetery serves as a record of the city's past and will continue to provide important information for future researchers.

17. Resolution 2008-001 Finding Substantial Compliance and Initiating Annexation Proceedings for the Thorland Annexation No. 1.

The applicants and property owners, Miles and Jennifer Thorland, have submitted a written petition requesting annexation of 1.66 acres located on the north side of Kechter Road approximately 800 feet east of South Timberline Road. It is the northerly portion of Lot 1 of the Blehm Subdivision in Larimer County. The other portion of Lot 1 of the Blehm Subdivision is adjacent to the south of the property. The Stetson Creek residential development is adjacent to the north of the property. The property is undeveloped and is in the FA1 - Farming District in Larimer County. The requested zoning for this annexation is UE - Urban Estate. The surrounding properties are currently zoned RL - Low Density Residential in the City to the north and FA1 - Farming in Larimer County to the west, east, and south.

18. Resolution 2008-002 Finding Substantial Compliance and Initiating Annexation Proceedings for the Thorland Annexation No. 2.

The applicants and property owners, Miles and Jennifer Thorland, have submitted a written petition requesting annexation of 5.18 acres located on the north side of Kechter Road, approximately 800 feet east of South Timberline Road. It is the southerly portion of Lot 1 of the Blehm Subdivision in Larimer County. The other portion of Lot 1 of the Blehm Subdivision is adjacent to the north of the property. The property is partially developed (with one single-family residence and outbuildings) and is in the FA1 - Farming District in Larimer County. The requested zoning for this annexation is UE - Urban Estate. The surrounding properties are currently zoned FA1 - Farming in Larimer County to the west, north, east, and south.

19. Resolution 2008-003 Approving Expenditures from the Art in Public Places Reserve Account in the Cultural Services and Facilities Fund to Commission an Artist to Create Art Elements for the Southeast Branch Library Project.

This Resolution would approve expenditures of \$51,480 for design, materials, installation and contingency for a project with the artist Barbara Baer to create sculptural elements for the Southeast Branch Library Project.

20. Resolution 2008-004 Approving Expenditures from the Art in Public Places Reserve Account in the Storm Drainage Fund to Commission an Artist to Create Art Enhancements for the Red Fox Meadows Natural Area Project.

This Resolution would approve expenditures of \$190,000 for design, materials, installation and contingency for a project with the artist Barb McKee of Surface Strategy to create artistic enhancements for the stormwater structures at the Red Fox Meadows Natural Area.

21. Resolution 2008-005 Authorizing the Grant of a License to Enter on City Property to Verizon Wireless.

The City of Fort Collins and Verizon Wireless are in the process of negotiating a possible lease of City property which would include future cell tower improvements to be located on the Senior Center building, 1200 Raintree Drive. Verizon Wireless has requested that the City grant permission to enter the Senior Center property to conduct preliminary engineering and architectural surveys within the next six months in order to draft plans for the proposed cell tower location.

22. Resolution 2008-006 Authorizing the Execution of Intergovernmental Agreements Between the City and the Colorado Department of Transportation for the Grant of Congestion Mitigation and Air Quality Improvement Funds for the FC Bikes Program and the FC Bike Library.

The Federal Highway Administration's CMAQ program awarded the City's FC Bikes program two grants for the 2008 and 2009 budget cycle. The CMAQ grants fund 82.79% of two separate programs, the existing FC Bikes program and the new FC Bike Library Project. In order to initiate Federal funding, the 2008 contracts must be signed by the City Manager. These contracts are for 2008 only. The 2009 CMAQ contracts will be resubmitted to City Council in early 2009.

23. Resolution 2008-007 Adopting the Sixth Amendment to the City for Fort Collins General Employees' Retirement Plan as Amended and Restated December 31, 2001.

The City of Fort Collins General Employees' Retirement Plan (the Plan) provides retirement benefits for approximately 143 retirees and beneficiaries and covers approximately 274 active employees and approximately 124 vested former employees as of the last valuation report.

Recent changes in federal legislation and Internal Revenue Service regulations have required changes to the Plan. Also, clarification changes have been recommended. Outside legal counsel and the City Attorney's Office have prepared changes to the plan to comply with these changes.

None of the changes will result in an increased cost to the City or the Plan.

24. Routine Deed.

Deed of Dedication for Right-of-Way, for public street purposes, located East Harmony Road. Monetary consideration: \$10.

**\*\*\*END CONSENT\*\*\***

Ordinances on Second Reading were read by title by City Clerk Krajicek.

7. Second Reading of Ordinance No. 146, 2007, Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the East Skyway Rezoning.
8. Second Reading of Ordinance No. 151, 2007, Amending City Code Sections 23-127 and 23-130 Pertaining to Disposition of Stolen, Found or Abandoned Personal Property.
9. Second Reading of Ordinance No. 152, 2007, Authorizing the Lease of a Residence on City-Owned Property at Reservoir Ridge Natural Area to the Facility Attendant for Up to Five Years.
10. Second Reading of Ordinance No. 153, 2007, Designating the Hoel House, 616 Locust Street, Fort Collins, Colorado, as a Fort Collins Landmark Pursuant to Chapter 14 of the City Code.

Ordinances on First Reading were read by title by City Clerk Krajicek.

11. First Reading of Ordinance No. 001, 2008, Appropriating Unanticipated Grant Revenue in the General Fund for the Fort Collins Police Services Victim Services Team.
12. First Reading of Ordinance No. 002, 2008, Appropriating Unanticipated Revenue in the Street Oversizing Fund for Transfer to the Capital Projects Fund - Harmony Road and Ziegler Road Improvements - Front Range Village Development Capital Project and Authorizing the Transfer of Appropriations Between Funds to Construct Sidewalk Improvements on the North Side of Harmony Road from Ziegler Road to Lady Moon Drive.
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Councilmember Manvel made a motion, seconded by Councilmember Poppaw, to adopt and approve all items not withdrawn from the Consent Calendar. Yeas: Brown, Hutchinson, Manvel, Ohlson, Poppaw, Roy and Troxell. Nays: none

THE MOTION CARRIED.

### **Staff Reports**

City Manager Atteberry recognized Sergeant Dan Murphy of Police Services, who received an award from the Downtown Rotary Club for his dedication and leadership in providing training for Fort Collins police officers in safe tactical operations and emergency service.

Mike Freeman, Chief Financial Officer, introduced Kelly Peters who will serve half-time as the City's economic and policy advisor.

### **Councilmember Reports**

Councilmember Poppaw stated one topic presented to the Poudre School District/City/Larimer County meeting was "Teen Safe Driving" and she asked if a link to "Teen Safe Driving" campaign could be added to the City's website as a way to provide more information to parents about programs that promote safe driving habits for teens.

Councilmember Troxell stated the improvements proposed for Harmony Road west of College are long overdue. He asked if the power line located west of Front Range Community College could be located underground. He also asked if any changes were planned for the retention pond located east of Seneca Street so that overflow would be directed onto Harmony and not into the neighborhood.

### **Ordinance No. 146, 2007, Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the East Skyway Rezoning, Adopted on Second Reading**

The following is staff's memorandum on this item.

#### ***"EXECUTIVE SUMMARY***

*The land along Skyway Drive, east of College Avenue, was annexed into the City as part of Phase I of the Southwest Enclave Annexation in April 2007, under a Structure Plan designation of Urban Estate (U-E). The original intent of designating U-E for these properties was to acknowledge the*

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existing large-lot County parcels zoned Farming in the County; U-E is the City's zoning that is most similar to the County's zoning.

Staff has since considered the situation along this part of East Skyway in much more detail, in extensive discussions with owners, neighbors, and the County. These discussions have been prompted by issues related to an existing business at 209 East Skyway and by the recent annexation process in 2007. Staff finds that the properties along Skyway do not reflect the character of the Farming or Urban Estate designations, but bear closer resemblance to both the commercial uses in the area and the existing residential neighborhood (which is more dense than Urban Estate) to the north and east. This Ordinance, unanimously adopted on First Reading on December 18, 2007, rezones the property located at 209 East Skyway to a combination of Commercial on the west 2/3 of the property and Low Density Residential on the east 1/3 of the property. It also rezones 225 East Skyway Drive to Low Density Mixed-Use Neighborhood and the City-owned parcel east of Claire Court to the Open Lands, Parks and Stream Corridor designation."

Councilmember Ohlson asked if citizens who spoke under the "Citizen Participation" portion of a meeting regarding an item on the Consent Calendar should then be able to pull an item off the Consent Calendar and speak again on that item. The idea of allowing comment on Consent items during "Citizen Participation" was to permit citizen comments without the necessity of pulling the item. City Attorney Roy agreed the intent was not to allow opportunity to speak twice on an issue.

Brian Schumm, 5807 Ballina Court, stated his concern with rezoning the property at 209 East Skyway as Council did not have the history of issues with the property. The property owners could continue their business with the current zoning and did not need the rezoning. He urged Council to reject the rezoning proposal.

Councilmember Roy made a motion, seconded by Councilmember Troxell, to adopt Ordinance No. 146, 2007 on Second Reading. Yeas: Brown, Hutchinson, Manvel, Ohlson, Poppaw, Roy and Troxell. Nays: none

THE MOTION CARRIED.

**Ordinance No. 003, 2008,  
Amending Chapter 2, Division 3 of the City Code Pertaining to  
Appeals to the City Council, Adopted as Amended on First Reading**

The following is staff's memorandum on this item.

***"EXECUTIVE SUMMARY***

*This Ordinance would amend Chapter 2, Division 3 of the City Code pertaining to appeals to the City Council in two respects. First, the Ordinance would clarify which parties-in-interest, as defined in the Code, are entitled to seek judicial review of the Council's determination of an appeal. Second, the Ordinance would explicitly authorize Councilmembers to inspect the site of development*

*project plans or other proposals that are the subject of a Council appeal and would prescribe the terms and conditions under which such site inspections may occur.*

## **BACKGROUND**

*The City Code, in Chapter 2, Division 3, establishes a procedure under which the decisions of certain boards and commissions and other decision makers of the City can be appealed to the City Council. The Ordinance proposes two amendments to the provisions of those Code sections.*

## **STANDING TO SEEK JUDICIAL REVIEW**

*The first of the amendments would clarify which of the "parties-in-interest," as that term is defined in Section 2-46 of the Code, have standing not only to file appeals with the Council and to address the Council at the hearings held on those appeals but also to seek judicial review of the Council's determination of an appeal. The Code defines the following as parties-in-interest; however, it is silent as to which of the parties-in-interest may appeal Council's decision to the district court.*

- (1) The applicant;*
- (2) Any party holding a proprietary or possessory interest in the real or personal property which was the subject of the decision of the board, commission or other decision maker whose action is to be appealed;*
- (3) Any person to whom or organization to which the City mailed notice of the hearing of the board, commission or other decision maker;*
- (4) Any person who or organization which sent written comments to the board, commission or other decision maker prior to the action which is to be appealed;*
- (5) Any person who appeared before the board, commission or other decision maker at the hearing on the action which is to be appealed;*
- (6) The City Council as represented by the request of a single member of the City Council.*

*In 2005, the City Council heard an appeal of a hearing officer's denial of a proposed project development plan to be located at the intersection of College Avenue and Cherry Street. At the conclusion of the appeal hearing, the Council overturned the decision of the hearing officer and approved the plan. The Council's decision was appealed to court by Patrick Reeves, a resident of the City. Mr. Reeves qualified as a party-in-interest under the provisions of the City Code because he had submitted comments to the hearing officer regarding the development proposal and had appeared at the appeal hearing. However, Mr. Reeves' property is not located in close proximity to the site of the development project and he did not assert any damages that he would sustain as a property owner as a result of the Council's approval of the project. Instead, the injury he asserted was aesthetic in nature and had to do with his use of the Poudre River, the Poudre River Trail,*

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*College Avenue and other public facilities and amenities located near the project. Essentially, he asserted that his enjoyment of these facilities would be diminished by construction of the project.*

*The City moved to dismiss Mr. Reeves' appeal on the grounds that he lacked legal standing to appeal the Council decision. The test for legal standing is twofold. First, a party must have a legally protected interest in the decision. Second, he or she must allege some "injury in fact" that would result from the decision. The trial court granted the City's motion to dismiss because of a lack of standing. However, the Colorado Court of Appeals reversed the trial court's decision and reinstated the complaint. In doing so, the Court of Appeals held that, in adopting the City's Land Use Code and the appeals provision of the City Code, the City Council had given all parties-in-interest under Section 2-46 the same rights of participation and appeal as applicants for development approval and had conferred on those parties-in-interest a legal interest in the Council's determination of the appeal that they might not otherwise have under the law. Thus, the Court found that all such parties-in-interest have standing to such judicial review of the Court's decision*

*City staff is recommending that Council amend the Code to limit the right of judicial review to those parties-in-interest who have a direct stake in the outcome of the appeal, that is, those who fall within the first three categories of the definition of parties-in-interest; the applicant; persons or entities that hold a proprietary or possessory interest in the real property that is the subject of the appeal; and any person to whom or organization to which the City mailed notice of the hearing before the original decision maker (those within the "notice zone" of the affected property).*

*Staff makes this recommendation because it believes that, while the input of all parties-in-interest is helpful to the Council in deciding an appeal and the opportunity for such input should be extended to all interested parties who have participated in the original hearing, the right of judicial appeal should be limited to those who are most directly affected by the outcome of the appeal, both because of the expense incurred by the City in defending such court actions and because of the considerable delay that generally results from judicial review of these kinds of decisions. This expense and delay could very likely thwart the approval and construction of development proposals that meet all the City requirements and that may be important to the economic well-being of the City.*

*Accordingly, the amendment would still allow all persons to participate in the administrative proceedings related to development proposals but would limit those who can pursue judicial review.*

### SITE INSPECTIONS

*The second proposed amendment is being presented at the request of several Councilmembers, and it would amend the Code so as to expressly permit Councilmembers to inspect the real property that is the subject of an appeal. At present, the Code limits Council's consideration of an appeal to the record of the proceedings before the decision maker, the relevant provisions of the Code and Charter, and the grounds for appeal cited in the notice of appeal. New evidence is not to be considered on appeal except when offered in support of or in opposition to an allegation that the decision maker considered evidence that was substantially false or grossly misleading or when offered by City staff or parties-in-interest in response to questions presented by Councilmembers.*

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*The proposed amendment would allow Councilmembers to obtain additional information related to the appeal by inspecting the site of the development project plan or other proposal that is the subject of the appeal, and to take that information into consideration when determining the appeal. Staff is offering several guidelines as to how these site inspections can occur, while still protecting the due process rights of the parties-in-interest involved in the appeal.*

*Those proposed guidelines are as follows:*

- 1. If a Councilmember wishes to inspect the site of a project development plan or other proposal that is the subject of an appeal, he or she could, no later than ten days prior to the date of the hearing on the appeal, request that the City Manager schedule such inspection. Upon receipt of such a request, the City Manager would forthwith schedule the inspection for a date and time when he or she believes that the majority of Council will be able to attend.*
- 2. No less than five (5) days prior to the date of the hearing on the appeal, the City Clerk would mail notice of the proposed site inspection to the appellant and to all parties-in-interest to whom notice of the appeal hearing was sent by the City Clerk under Section 2-54(a).*
- 3. The appellant and such parties-in-interest would be entitled to attend the inspection, along with any members of City staff whose presence is requested by the City Manager.*
- 4. Any Councilmembers conducting a site inspection under this provision would be required to state for the record, at the time of the hearing on the appeal, any observations they made or conversations they had at the site which they believe may be relevant to their determination of the appeal.*
- 5. The requirements of this provision would not apply to observations made of the site by Councilmembers during the course of their travels within public rights-of-way adjacent to the site, but only to site inspections conducted for the express purpose of gathering additional information that may assist them in determining the appeal."*

City Attorney Roy stated the ordinance contains two parts that could be divided into separate ordinances. (Secretary's note: referred to in these minutes as Ordinance No. 003A and No. 003B.) The ordinance addresses proposed amendments to the same chapter and division of the City Code that refers to appeals to City Council from the decisions of certain other boards, commissions or decision-makers. The first amendment would differentiate between various parties-in-interest and their ability to seek judicial review of Council's decision on appeal. The second amendment addresses the ability of Councilmembers to inspect the site of a project development plan or other proposal that is the subject of an appeal. The first amendment arises from a decision by the Colorado Court of Appeals in a recent law suit in which the City was involved in which Patrick Reeves sought to overturn a Council decision approving a local development project in court in a Rule 106 (4)(a) action. The City filed a motion to dismiss for lack of standing. Standing is a principle by which the courts screen cases to determine if a plaintiff (a) has a legally protected interest in the outcome of the decision and (b) has suffered some injury, in fact. When those two requirements are met, the

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court decides it is not interjecting itself into administrative affairs inappropriately and it is not deciding a purely academic issue. The Court granted the City's motion to dismiss and the Court of Appeals overturned that decision. The City did not appeal that decision to the Colorado Supreme Court. Instead, a provision is now presented to Council that would recognize the applicant, those who have a legal interest in the site where the development project is proposed and those to whom the City mailed notice and considered to be directly impacted by the proposal as parties-in-interest who would receive a legally protected interest so they could seek judicial review to challenge the legality of the Council's decision. Other parties-in-interest who had chosen to appear before the decision maker or to send written comments would have the full right to participate in the entire administrative process, including the Council appeal, but, unless they had a right under common law, would not be allowed to seek judicial review of Council's decision.

Patrick Reeves, 810 Maple Street, stated the proposed change to the City Code seeks to limit the access of ordinary citizens to the courts in the event of an erroneous Council decision. He asked how many times judicial review had been requested by citizens. The City defines the extent of the notice zone so the City would have the sole authority to specify who does or does not have the right to seek judicial review. He urged Council to vote against this amendment to the City Code.

Councilmember Poppaw asked how many times had judicial review had been requested by citizens. City Attorney Roy stated Mr. Reeve's case was the only time he could recall that litigation was brought about by someone outside the notice zone or was not the applicant or had a legal interest in the project. He noted the Court's opinion stated the City's definition of parties-in-interest was different from many state statutes. The Court has said the Land Use Code and the Municipal Code, in combination, include a class of individuals who otherwise might not have a legally protected interest under common law as well as expands the class beyond those who have such common law protected interest. Council has the ability to expand the notice zone and to determine, through Code provisions, who should be able to test the legality of decisions. If Council believes certain situations required a larger notice zone, it could require additional notice which would expand the group of people who would be eligible to seek judicial review. The number of lawsuits filed by people who might not even be residents of the city would probably be quite low.

Councilmember Poppaw asked if expanding the notice zone would need approval from the entire Council. Cameron Gloss, Current Planning Director, stated a change was made to the Code two years ago that expanded the notice zone from 500 feet to 800 feet from the application. Some notice zones are as large as 1000 feet. Staff has the discretion, depending on the situation, to enlarge the notice zone. He stated staff is diligent about contacting the public when development applications are received. There is a standard notification area with potential to expand that area. Signs are posted on the subject property. Neighborhood meetings are required prior to development and staff often meets with neighborhood groups that are in close proximity to a site. In Mr. Reeve's case, his neighborhood was far outside the notice zone but staff met with the neighborhood to provide information. He supported the proposed Code change that was before Council.

Councilmember Poppaw asked under whose direction could the notice zone be expanded and she questioned how this amendment would not limit citizen participation. City Attorney Roy stated the Ordinance did limit the category of citizens whom the City believes should be able to challenge a Council decision in court. It is not limiting the category of persons who can participate in the

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administrative process. The Council could only change the size of the notice zone through changing the Code requirement. Council could change the requirement to a set number of feet or to set criteria when the notice zone should go beyond the requirement. Under the current Code, staff has the discretion to change the size of the notice zone.

Councilmember Manvel asked why participation from citizens outside the notice zone is allowed. City Attorney Roy stated Council believes the original decision maker and the Council are interested in hearing a community perspective on site-specific proposals.

Councilmember Manvel noted a citizen bringing forward a lawsuit against the City would seem to indicate a serious interest and involvement in a project, even if they live far from the project as it is not easy to bring a lawsuit. City Attorney Roy stated a person who pursues litigation is seriously interested in the outcome. The question for Council to consider is if a serious interest is the measure Council should use to confer a legally protected interest on those individuals. Consideration must be given to the potential delay and possible detriment to the City and the particular developer as well as the rights of the entire community and perhaps people outside the community who are interested in the outcome.

Councilmember Manvel stated a lawsuit could not be brought by any citizen, but must be brought by one who participated in the process. City Attorney Roy stated one issue in the litigation brought by Mr. Reeves was whether or not purely aesthetic interest sufficed for the purposes of injury in fact. The proposed project was a building that was allegedly taller than should have been approved and the height of the building would have diminished the desirability of other facilities in the area for certain citizens, including the plaintiff. The City argued that the Court generally required a more direct and tangible kind of injury in fact. The Court decided the City had conferred a legally protected interest on the plaintiff and went on to say the injury in fact is that the decision may have been arbitrary. It then creates the opportunity for someone, by reason of being a party-in-interest, to take the City to court, irrespective of the nature of the more tangible injury to a property such as dust, noise, and traffic, primarily by solely alleging the decision failed to conform to the criteria. It widens the group of people who can challenge a decision because the Court inflated the two prongs of criteria. The Court has said that if the City intends to confer legally protected interest on this group, the Court would not look at whether the injury was economic or aesthetic injury, but would say the injury criteria was satisfied because the alleged was an unlawful decision. The Court decision does widen the group of people. While it probably will not open the floodgates of litigation against the City, if there is a critical development Council has decided is important to the economic development of the City and Council supports, should that development, or any other development legitimately be put on hold for a considerable period of time pending the outcome of a suit brought by someone who does not have a direct stake in the outcome.

Councilmember Manvel noted there has only been one case where someone outside the notice zone or was not the applicant or had a legal interest in the project brought a lawsuit and he did not believe it likely there would be others brought in the future.

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Mayor Hutchinson asked if citizen participation would be compromised in any way with this Code change. City Attorney Roy stated the Code change would not limit anyone's right to address Council or the lower body. It would limit the right to file a lawsuit.

Mayor Hutchinson stated citizen participation would not be limited in the process but it was logical to place some restraints on who can bring a lawsuit after an appeal. This limitation is not a violation of the concept of open government. District voting is one example of limitations placed on voters. While the entire city may be affected by the vote for a Councilmember in one District, only those living in the District can actually vote for that Councilmember. City Attorney Roy stated the policy decision before Council was to determine the balance between encouraging widespread participation in City decision making and expressing an intent that any and all of those persons can challenge those decisions in court.

Mayor Hutchinson asked in the case cited by the City Attorney, how far did the plaintiff live from the proposed project. City Attorney Roy stated the plaintiff lived about eight blocks away.

Councilmember Poppaw stated her belief that citizens should be allowed the opportunity to participate, even to bring a lawsuit, if they have such compelling interest in ensuring the decision making is done in a way that is fair.

Councilmember Troxell stated citizen participation should be balanced with property rights. The Code change before Council does correct that balance as it does provide the legally protected interest for those parties who are the applicant, those who have an interest in the site of development and those within a defined area around the development. That limitation is important to protect property rights. The proposed change is a balance between open government and the open process. All things can be heard, but limiting the ability to bring a lawsuit to those who actually have a protected interest is an important balance reached by the proposed ordinance.

Councilmember Troxell made a motion, seconded by Councilmember Brown, to adopt Ordinance 003A, 2008, on First Reading, which would place limits on parties-in-interest seeking judicial review.

Councilmember Ohlson stated citizens should be able to take whatever actions they deem necessary to change a decision they view as damaging to the community, no matter whether they live in close proximity to a project or not. The ability of citizens to bring lawsuits provides a checks and balances on local government and on what is or is not approved and he did not consider that ability should be limited. He noted the lawsuit that prompted this proposed change concerned a property that had no residences nearby. He requested that the new Director of Planning, Development and Transportation examine the notification policy to determine if more notification should be done.

Councilmember Manvel stated the lawsuit that has brought this proposed Code change is a rare occurrence. He did not want to send the message that Fort Collins, having been sued, wants to close the door to the rare instance of a person who wants to question a decision. He did not believe there was a serious barrier to development with the current process and Code. He did not support the



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motion as he did not believe it would stop someone who truly wanted to bring a lawsuit against the City.

Mayor Hutchinson stated this Ordinance did not close avenues for open government and it is in the best interest of the City to have these protections.

The vote on the motion was as follows: Yeas: Brown, Hutchinson, Troxell. Nays: Manvel, Ohlson, Poppaw and Roy.

THE MOTION FAILED.

City Attorney Roy stated the second part of the Ordinance is a proposed amendment to establish a procedure whereby the Council as a whole or Councilmembers individually, could inspect the site of project development plan or other kind of proposal that is the subject of an appeal by providing notice to the City Manager of his/her interest in seeing the site and submitting that notice no less than ten days before the date of the hearing on the appeal. At that point, the City Manager would schedule the site inspection for a date and time when he thinks most Councilmembers can attend. There could be more than one site visit if the date and time could not accommodate everyone. Notice would be given by the City Clerk to the parties-in-interest who were involved in the appeal so they, too, could attend. After the inspection, if Councilmembers believed they had seen or heard something during the inspection that did not appear on the record and they thought it was important to their deliberations, they would disclose that on the record at the hearing and give the parties-in-interest an opportunity to respond to what they had seen or heard.

Councilmember Roy made a motion, seconded by Councilmember Poppaw, to adopt Ordinance No. 003B, 2008, on First Reading.

Councilmember Manvel asked if more than one visit could be scheduled if one Councilmember was unable to attend the proposed site visit. City Attorney Roy stated a second request could be submitted. The arrangements need to be made as far in advance as possible. City Manager Atteberry stated it is possible two or three site visits could be planned.

Councilmember Manvel asked if such formal planning and notification was necessary. City Attorney Roy stated language is included in the proposed amendment that allows anyone to drive by the site during their regular travels in the city but the formal planning and notification in this amendment is necessary to protect the due process rights of the parties-in-interest so that Councilmembers are not making decisions about appeals based upon observations or conversations unknown to others. Quasi-judicial decisions are to be based on the record, and other information made available to everybody in the process. Certain criteria are to be applied. The proposed amendment tries to ensure that everyone who has an interest in the proposal will know and have an opportunity to speak to the grounds upon which the Council makes its decision.

Councilmember Manvel asked if the notification requirements were necessary or would submitting any observations made during a random site visit into the record be sufficient. City Attorney Roy stated some parties-in-interest might want to see what Councilmembers are seeing and they should

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have an opportunity to be present when Councilmembers make a site visit. The proposed amendment gives parties-in-interest the same opportunity so they do not have to be concerned at the hearing of the appeal whether all Councilmembers are remembering and recounting everything they might have seen or heard that is entering into their decision. The parties-in-interest have an opportunity to be present when Councilmembers are present and see and hear what Councilmembers see and hear.

Mayor Hutchinson stated the ten-day notification from Councilmembers is necessary so to allow time for arrangements to be made and notifications sent and he requested the City Manager ensure that Councilmembers be made aware of upcoming appeals. City Manager Atteberry stated the City Clerk will put a notice in Council materials well before the ten day notification deadline that will remind Councilmembers of the deadline to file a notice of request for a site visit.

The vote on the motion was as follows: Yeas: Brown, Hutchinson, Manvel, Ohlson, Poppaw, Roy and Troxell. Nays: none

THE MOTION CARRIED.

#### Other Business

Councilmember Roy stated he received a complaint from a citizen regarding violations of the leash law in Overland Park. He noted the complaint was unsigned and asked that the citizens identify themselves so that he can address their concerns. City Manager Atteberry indicated he would request a follow up on the issues in the complaint.

Councilmember Ohlson stated asked for interim solutions for disposal of compact fluorescent lights as most citizens will not transport used CLFs to the hazardous materials waste site at the landfill. Alternative disposal solutions need to be discussed.

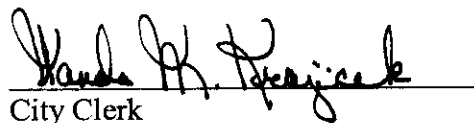
Councilmember Ohlson asked if it was possible for municipalities to give themselves 1041 regulatory powers, as was suggested in an article in the *Coloradoan*. If the City had 1041 regulatory powers, then it could regulate easements on natural areas. He requested a work session on 1041 regulations and what controls can the City exercise over power poles, water lines and easements.

#### Adjournment

The meeting adjourned at 8:00 p.m.

  
Mayor

ATTEST:

  
City Clerk