

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 16

DATE: April 20, 1999

STAFF: Dennis Bode/
Tom Shoemaker

SUBJECT:

First Reading of Ordinance No. 52, 1999, Appropriating Prior Year Reserves in the Water Fund for the Purchase of Water Rights and Water Storage Capacity.

RECOMMENDATION:

The Water Board, Natural Resources Advisory Board and staff recommend adoption of the Ordinance on First Reading.

FINANCIAL IMPACT:

The cost of purchasing this land, gravel pits, and associated water rights is estimated to be \$1,083,000. Of this, \$637,000 would be appropriated from prior year reserves in the Water Fund. The remaining \$446,000 would come from existing appropriations in the Natural Areas budget.

EXECUTIVE SUMMARY:

Utilities staff and Natural Resources Department staff have been negotiating with H. W. Rogers and Associates for the possible acquisition of land, several gravel pits, and water rights along the Poudre River between Shields Street and Overland Trail. If purchased, the development and use of the area would be a joint effort by Utilities and the Natural Resources Department. The gravel pits would be developed into local storage ponds to help regulate the City's raw water supplies. The land would also serve as open space or natural areas along the river. The purpose of the Ordinance is to appropriate funds from the Water Fund in order to have sufficient appropriations to make a firm offer for the purchase. The actual purchase is subject to a first right of refusal by a third party.

BACKGROUND:

The Proposal

This item regards the potential purchase of land, gravel pits, and water rights along the Poudre River between Overland Trail and Shields Street. The property (see attached map) that may be purchased includes:

1. Approximately 220 acres of land in the Poudre River corridor.
2. Approximately 1,800 acre feet of water storage capacity.
3. Water rights in the John Brown Ditch.
4. Up to 26 shares in the Arthur Irrigation Company.

The offer being made to the present owners would cost the City \$757,000. This cost would be split between Utilities and the Natural Resources Department as follows:

	<u>Utilities</u>	<u>Natural Resources</u>
Land and storage capacity	\$361,000	\$361,000
John Brown Water Rights	\$ 35,000	\$ --
<hr/>		
Total	\$396,000	\$361,000

Lafarge Corporation (formerly Western Mobile) holds a first right of refusal for this property. Once the City makes a formal offer to the present owners, Lafarge will have 30 days to match the offer. After this option period, whether the City will actually be able to purchase the Property will be known. If the Property is purchased by the City, Lafarge will have the right to continue to mine the Property under existing mining leases until November 2003, and will continue to pay royalties under the leases to the current owner.

Use of the Property

The land and gravel pits were initially considered for acquisition by the City about ten years ago but an acceptable agreement was never finalized. Utilities' interest in the purchase is primarily for the use of the gravel pits to create some regulating storage capacity upon completion of the mining. The most likely sources of water to fill the ponds would be from City-owned water rights in the Arthur, New Mercer, and Larimer County No. 2 irrigation systems. Other water, such as from the City's Michigan Ditch or Joe Wright Reservoir, could also be stored in the ponds. There are several potential ways the Utility could use the water in the ponds. Water could be released to the river for exchange of Colorado-Big Thompson (CBT) water in Horsetooth Reservoir or for exchange of water diverted upstream at the City's pipeline. Water could also be released to the river to meet return flow obligations or augmentation requirements of the City.

The Natural Resources Department is interested in using these lands along the Poudre River for open space and/or natural areas. Another use is for the extension of the Poudre Trail to the west toward Overland Trail.

Acquisition Costs

If the City is able to purchase this property, it may also want to purchase two small parcels that are adjacent to the property and up to 26 shares in the Arthur Irrigation Company. The gravel pits and ponds presently extend into these two small areas. It is estimated that it could cost an additional \$170,000 to purchase these parcels and for miscellaneous legal and appraisal fees. Utilities and the Natural Resources Department anticipate that this cost would be shared half and half. In addition, the Utilities' cost in purchasing shares in the Arthur Irrigation Company is estimated to be \$156,000.

Combining the initial purchase cost of \$757,000 with the purchase of the additional two parcels (\$170,000), and the Arthur Irrigation Company shares (\$156,000), the total cost is estimated to be \$1,083,000. The Utilities share of this is \$637,000. In order to proceed with a firm offer to the present owners, the Utilities need additional appropriations to complete its portion of the transaction. These funds will remain in the Water Fund reserves if the transaction is unable to be completed. As mentioned above, the Natural Resources Department's share is estimated to be \$446,000 which amount has been previously appropriated.

Development of Site

If the site is acquired by the City, Utilities and the Natural Resources Department will work together to develop the site to meet the needs of the City. The Utilities' primary purpose would be to develop some regulation storage capacity to more fully utilize the City's water rights. By having some capacity at this location, it is anticipated that the firm yield of the City's supplies to meet treated water demands will increase by the approximate active storage capacity of the ponds. Because of this, the site becomes very valuable and attractive to the Utilities.

There will be additional costs to develop the site for use as operating storage ponds. If acquired, additional analyses will be conducted to determine the best way to convert it over to a useful storage reservoir and also meet the needs of the Natural Resources Department. It is estimated that the cost of developing it for a regulating storage reservoir will be about \$1,000 per acre foot of capacity.

Review by Boards

The Natural Resources Advisory Board and the Water Board discussed this proposal on March 17 and March 25, respectively. Both Boards support the purchase of this property to meet the needs of the City and recommend that the City Council approve measures necessary to pursue the purchase of this property.

ORDINANCE NO. 52, 1999
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES IN THE
WATER FUND FOR THE PURCHASE OF WATER RIGHTS AND
WATER STORAGE CAPACITY

WHEREAS, City staff has been negotiating for the possible acquisition of land, several gravel pits, and water rights along the Poudre River between Shields Street and Overland Trail; and

WHEREAS, the gravel pits could be developed into some local storage ponds to help regulate the City's raw water supplies; and

WHEREAS, the estimated cost of the acquisition to the Water Fund is \$637,000 and funds are available in the form of prior year reserves in the Water Fund for the acquisition of water rights and storage capacity; and

WHEREAS, upon purchase of the land, gravel pits, and water rights, and completion of the existing mining operation, the City would develop the site to provide storage and increase capacity to more fully utilize the City's water rights; and

WHEREAS, Article V, Section 9, of the Charter of the City of Fort Collins permits the City Council to appropriate by ordinance at any time during the fiscal year such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that there is hereby appropriated from prior year reserves in the Water Fund the sum of SIX HUNDRED THIRTY-SEVEN THOUSAND DOLLARS (\$637,000) to be used for the acquisition of water rights and water storage capacity.

Introduced and considered favorably on first reading and ordered published this 20th day of April, A.D. 1999, and to be presented for final passage on the 4th day of May, A.D. 1999.

Mayor

ATTEST:

City Clerk

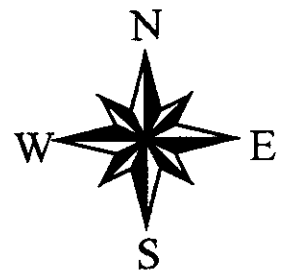
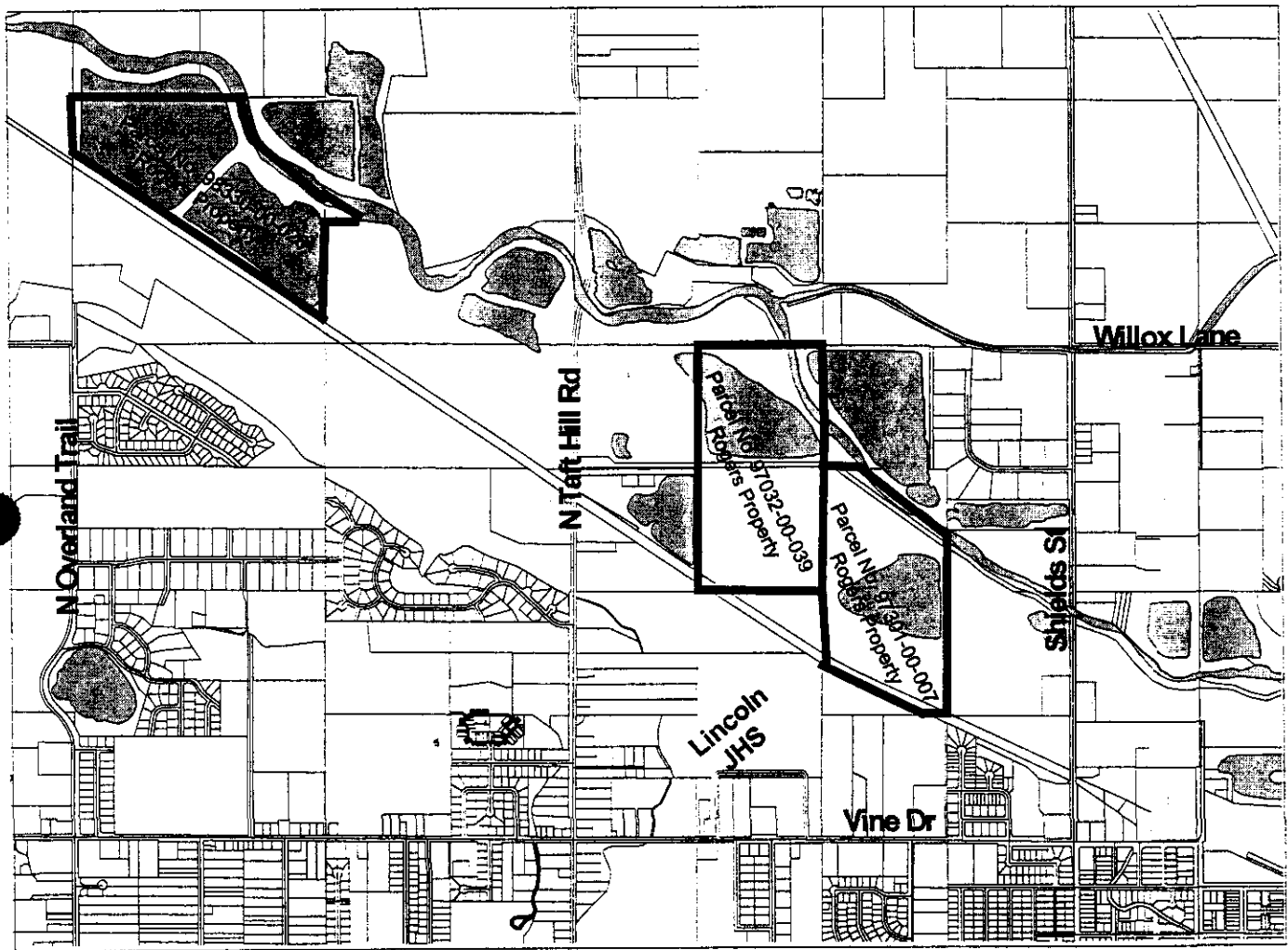
Passed and adopted on final reading this 4th day of May, A.D. 1999.

Mayor

ATTEST:

City Clerk

Natural Areas/Utilities Rogers Purchase



EXCERPT FROM WATER BOARD MINUTES

POTENTIAL ACQUISITION OF GRAVEL PITS

Dennis Bode said that Utilities staff and Natural Resources Department staff have been discussing the possible acquisition of several gravel pits and the associated land along the Poudre River between Shields Street and Overland Trail. He indicated the location on a map attached to the agenda summary. He said Board members may recall about 10 years ago this same property was considered for purchase by the City and the Water Board. "For various reasons that deal never went through. Over the last year or so there has been renewed interest from that party to sell that property."

Proposal

The proposal includes purchase of the following:

- 273 acres of land in the Poudre River corridor (of which 52.7 acres are to donated to Poudre School District).
- Approximately 1,800 acre feel of water storage capacity
- Water rights in the John Brown Ditch
- 26 shares of Arthur Irrigation Company

The offer being made to the present owners would cost the City \$913,000. This cost would be split between the Utilities and the Natural Resources Department as follows:

	<u>Utilities</u>	<u>Natural Resources</u>
Land and storage capacity	\$361,000	\$361,000
John Brown Water Rights	\$ 35,000	
<u>26 shares of Arthur Ditch</u>	<u>\$156,000</u>	
Total	\$552,000	\$361,000

Mr. Bode said that Lafarge Corporation (formerly Western Mobile) holds first right of refusal for this property. Once the City makes a formal offer to the present owners, Lafarge will have 30 days to match the offer. "We will not know until after this option period whether the City will actually be able to purchase the property."

If Western Mobil purchases it, Mr. Bode understands there have been other discussions, particularly with Natural Resources and Western Mobile about working together on some of their property. "I'm not sure where it would go in that case," he acknowledged. "Basically this would get us lined up to make the offer and move forward."

Use of Property

Mr. Bode went on to say that the Utility has recognized for the last 10 years, that it would be desirable to have some local storage along the River. He pointed out on the map that these sites are close to the Larimer No. 2 and New Mercer Ditches, and also the Arthur Ditch. "It creates a place where we could divert water through any of those ditches and get it to the ponds quite easily. Other water, such as from the Michigan Ditch or Joe Wright Reservoir, could also be stored in the ponds.

There are a number of possibilities for using this water. First of all, it provides a place for us to use some of the peak flows from our water rights from the Southside Ditches. "We could store some of that and smooth it out so we could use it later in the season. We could release water to the River for exchange of CBT water in Horsetooth Reservoir or for exchange of water diverted upstream at the City's pipeline. Water could also be released to the River to meet return flow obligations or augmentation requirements of the City.

It was mentioned that the Natural Resources Dept. is interested in using these lands along the Poudre River for open space and/or natural areas. Another use is for the extension of the Poudre Trail to the west toward Overland Trail.

Acquisition Costs

Mr. Bode pointed out that these ponds have some area that is owned by two other parties. On Pond No. 1 the northern part is owned by another party. On pit No. 3 the northwest corner is owned by another party. It is anticipated that if this deal went through, the City may also want to acquire the two small parcels that are adjacent to the property. "If we purchase it, there would be some added costs to put a dike across there or work out something with the other property. It is estimated that it could cost an additional \$170,000 to purchase these parcels and for miscellaneous legal and appraisal fees. Utilities and Natural Resources anticipate that this cost would be shared half and half.

Combining the initial purchase cost of \$552,000 with the purchase of the additional two parcels (\$85,000), the cost to the Utilities is estimated to be \$637,000. In order to proceed with a firm offer to the present owners, the Utilities need to have an ordinance adopted by the City Council to appropriate funds from the Utilities' water rights reserve fund.

Development of the Site

If the site is acquired by the City, Utilities and Natural Resources would work together to develop the site to meet the needs of the City. The Utilities' primary purpose would be to develop some regulation storage capacity to more fully utilize the City's water rights. By having some capacity at this location, it is anticipated that the firm yield of the City's supplies to meet our treated water

demands will increase by the approximate active storage capacity of the ponds. Because of this, the site becomes very valuable and attractive to the Utilities.

There will be additional costs to develop the site for use as operating storage ponds. If acquired, additional analysis will be conducted to determine the best way to convert it over to a useful storage reservoir and also meet the needs of the Natural Resources Dept. "We'll probably want to line the pits to make them watertight so we wouldn't have problems with augmentation requirements," Mr. Bode said. He also said there would be some cost to get water into the pits. If water was brought down from Larimer No. 2, for example, it may require a small pipeline. "There would be some costs to get water back out with some kind of outlet and some way to get it into the river," he explained. It is estimated that the cost of developing it for a regulating storage reservoir will be about \$1,000 per acre foot of capacity. "There would be some fairly substantial costs, but I think it would be worth it," Mr. Bode concluded.

"Are you talking about building pipelines? They aren't in existence now, are they?" Mr. Lauer asked. "There would certainly have to be some kind of outlet from the ponds," Mr. Bode responded, "whether it was a pipe or even an open ditch; or maybe even pump the water somehow from the pit back into the River. There are several alternatives we would need to look at," he added. "Is that included in the \$1,000 per acre foot of capacity?" Tom Sanders asked. "Potentially, yes," Mr. Bode replied. "That's a little rough at this point, but it's probably a pretty good ball park figure." "What was the asking price 10 years ago?" Mr. Lauer asked. "Considerably less, I think, but I'm not sure of the number," Mr. Bode answered; "it was something like \$265-300,000."

Dr. Sanders asked who else would want to buy the ponds and this property other than Lafarge. "I think there are other entities, such as Thornton---entities to the south," Mr. Bode said. "There are many municipalities that are turning to gravel pits to get a little added storage. It is relatively cheap compared to some of the big storage projects." "But you would have to pump it out and get it running in through gravity," Dr. Sanders noted. "Maybe," Mr. Bode replied. "We would probably look first at a gravity option. Also, with Natural Resources, we will probably look at some options of trying to preserve the natural areas to the extent we could. We probably would not want to drain it completely either," he stated. "That's the other issue," Dr. Sanders pointed out. "I think if we are going to get into this, we want to have the flexibility to work this like a reservoir and do augmentation which might be dropping it 10-20 feet. Would Natural Resources be willing to go along with that?" "We would certainly have to work out the arrangements," Mr. Bode answered, "so it is usable to us, and at the same time, if they are participating, to get some benefit from their viewpoint. In talking to Tom Shoemaker, I think we can work out some arrangements," he assured the Board.

"What is happening in the area that is not included? Is that being mined now?" Mr. Bergquist wanted to know. "I'm not sure what the plans are for the piece in the middle," Mr. Bode said. "There is some land south of the railroad tracks too that I think is still being farmed. Some of you may recall that the

existing trail ends at Taft Hill right now. There has been a lot of interest to get that trail through there somewhere, and this would provide a possible opportunity to do that.”

“Have you bumped into the I. C. Woods Drain?” Mr. Frick asked. He said there is apparently some conflict between Lafarge and the owners of that drain which has to go east of Shields and extends almost right through the middle of one of the pits. I don’t know what’s going on with that, but are there any legal complications that we could get ourselves into?” “I haven’t had any recent discussions with anybody about this, but, at one time, I think the owners had approached the City about buying it.” Mr. Bode replied. “Those kinds of issues may come up and we will have to deal with them. I think we could work something out.” He added that there would be some other water rights issues that we would have to deal with, particularly in terms of legally storing water in the pits. “For the most part the Southside Ditches water rights have been set up in a way that they can be used for augmentation to meet return flow obligations, and in a variety of other ways,” he stated.

“By doing this are we essentially restricting the River channel in that area?” Mr. Frick asked. “Do we want to move high flows into the ponds at some point and have we factored that into our thoughts?” Mr. Frick wondered. “Not much right now, but that will need to be addressed when we get into the design of the ponds,” Mr. Bode responded. “You may need to design it for a big flood to go through that area.” “I know there are some soft spots; we would probably have to factor that in,” Mr. Frick said. “Whether Natural Resources would like to tame the River down is the question.” Mr. Bode repeated that he thinks it really is a design issue, “but I think Natural Resources recognizes that if we are going to do this, we are going to have to get the benefit to use it for storage.”

“Does the City own any other land in this area?” Robert Ward asked. “There are a lot of parcels up and down the River, but I don’t think there is too much in this area,” Mr. Bode replied. “I thought Natural Resources owned some of it between Shields and Taft,” Susan Hayes said. Mr. Bode pointed out on a map the ponds in question. “The brown areas are natural areas. Downstream Natural Resources owns a lot of that land. The green is parks.” “Is there any potential for getting any of the ponds down below?” Mr. Frick asked. “Maybe some of them,” Mr. Bode replied. “Some of you may recall a gravel lands study that was done by the City about a year ago. They tried to include some areas that could be used for reservoirs and other areas that could be left as natural habitat. There may be one area downstream that could be used for a reservoir.”

“How did you arrive at a price for the Arthur Ditch?” Tom Brown asked. “The Southside Ditch shares are going for somewhere around \$1800 per acre foot, based on our conversion factors,” Mr. Bode responded, “and with Arthur we have 3.4 acre feet per share; it’s roughly \$6,000 per share, which makes it \$6,000 x 26. “What’s the donation to the school district?” Mr. Brown continued. Mr. Bode said he hasn’t been involved in that part of it. “That’s a Natural Resources issue. The owner was interested in making some kind of a donation to help this sale. “Who is the owner?” Mr. Lauer asked. “The owner is Garth Rogers, and I think he may have a partner who is involved,” Mr. Bode answered. “He owns roughly 273 acres.”

"Are there any concerns about mineral rights?" George Reed asked. "I don't know of any mineral right concerns," Mr. Bode answered. "Most of the gravel has been mined out; I was wondering if they would be looking at any other mining" Mr. Reed continued. "The ponds that we are looking at for the Utility's use are already mined," Mr. Bode related. "So there should be no reason why we can't retain the mineral rights when we purchase the property just to prevent someone from coming in later claiming they have mineral rights," Dr. Sanders pointed out. "You might have to ask that," he added.

Tom Sanders asked about the water rights for the Arthur Ditch and the John Brown Ditch. "Would that money come out of the water fund and the \$361,000 come out of another fund?" "They would come out of the same water fund," Mike Smith replied.

Mr. Bergquist asked about the price of the land. "This price was based more on a value of the storage capacity rather than land," Mr. Bode explained. "In some of the negotiations there was discussion about whether this land could be developed or not. I think the City was making the argument that it wouldn't be land that could be developed, and therefore the price should be based on the storage capacity which is less than the value of land that potentially could be developed in the area. If it is developable, I think the price is more in the range of \$7-10,000 an acre," Mr. Bode said. "This price turns out to be quite a lot less than that."

"Is there water in the ponds now?" Mr. Ward asked. Mr. Bode said he thought there was water in the west ponds. "Also, there is water in Pond No. 3 near the bike trail. "On the south side, the ponds are basically all dry and mostly mined out." "Has the current owner purchased water rights to cover the evaporation from those ponds?" Mr. Ward continued. "Some of these were grandfathered in; that happened before 1980-81," Mr. Bode answered. "That was the cut-off date for the augmentation requirements." "So we wouldn't be purchasing liability on that end?" Mr. Ward wondered, "and if you turned this into a storage facility, you wouldn't have to purchase rights for that?" "If we purchased the property and made the pits watertight, so they wouldn't be collecting water from the groundwater or the River adjacent to it, then those requirements should go away," Mr. Bode explained. "Would others kick in?" Mr. Ward continued. "If you used water that was reusable then you wouldn't have the augmentation requirements. You would continue to have evaporation, but that would come from whatever water you put in there. You wouldn't have to augment the River for that," Mr. Bode responded.

"Can we separate the water rights from the property and just buy them and not the property?" Tom Sanders asked. "They probably want to do this package, although, if it falls through, there may be some potential to buy the 26 shares of Arthur," Mr. Bode replied. "Do the gravel companies have to buy that water when they are doing their gravel operations?" Dr. Sanders asked. "They need to be able to meet any augmentation requirements," Mr. Bode answered.

"If all of these pits have been mined already, and there isn't anything of value to Lafarge as far as gravel goes, what would be their motivation to take the first right of refusal," David Lauer asked. "They may have some other operations where they have some mining going on and where they need

to provide some augmentation water," Mr. Bode replied. "So they would use the pits for water storage too?" Mr. Lauer asked. "They could," Mr. Bode answered.

Mr. Frick asked about the 57 acres that would be donated to the school district. "My understanding is that they are looking at the parcel of land that is on the north side of the River," Mr. Bode said. "Are they getting a hole in the ground too, or are they getting usable land?" Dr. Sanders asked. "I don't know much about that piece," Mr. Bode said.

There were a couple of questions about access and easements. Mr. Bode acknowledged there are some access issues that need to be resolved.

Dr. Sanders was concerned about the next issue the Board was going to discuss which is the out-of-City service request for connecting to City sewer for an RV park. "Should we keep the two separate?" he asked. "I'm not sure that I see them tied together," Mr. Bode said. "I think the sewer line would come down Taft Hill and I don't see that it would interfere with this piece of it." Dr. Sanders was concerned that a sewer line connection would make this area prime real estate. "You would have to change the zoning; it's all ag. right now," Mr. Lauer pointed out. Dr. Sanders also pointed out that with the land development, the price of the land we are talking about is bound to go up in a couple of years.

Staff Recommendation

Staff recommends that the Utilities work cooperatively with the Natural Resources Department to acquire the identified gravel pits and associated land for development as a regulating reservoir for the Utilities and for other uses as identified by Natural Resources. It is recommended that Utilities' staff prepare an appropriate resolution and/or ordinance for City Council consideration to appropriate \$637,000 from the water rights reserve fund for the possible purchase of this property.

ACTION: Motion and Vote

Robert Ward moved that the Board accept staff's recommendation. After a second from Alison Adams, the Board voted unanimously in favor of the motion.

Natural Resources Advisory Board
March 17, 1999

EXCERPT FROM NRAB MINUTES (DRAFT)

Natural Areas Acquisitions, Tom Shoemaker

Shoemaker told the board he wanted to discuss two different acquisition proposals. The first is a piece of property that Randy Fischer mentioned a few weeks ago, located at the intersection of Shields and Trilby. It is a 170-acre semi-working farm that is mostly irrigated pasture land. On the southern end of the property there is a prairie dog colony. The concept of a joint acquisition is being considered that would involve the potential for future development of affordable housing. Susan Hazaleus, the land owner, likes that concept and has reduced the asking price to approximately \$10,000 per acre.

Motion: *Kelly Ohlson made a motion to go into executive session to discuss this land acquisition.* The motion was seconded by Nate Donovan and unanimously approved.

The second potential acquisition is north along the Poudre River at Taft Hill Road, and is outside of the UGA. This piece of property has been a high priority for a long time. In the past it has been looked at as a strictly natural areas deal. Tonight we're looking at the possibility of a joint acquisition with Utilities, with the idea being that the property has water storage potential.

The owner's price expectations on the NE corner of the Lamb farm are not being met by the City. If the price is not met he is considering donating the land to Poudre School District. Shoemaker stated unless we are confident that PSD's values are compatible with natural area values we should go ahead and pay the extra \$160,000. Bill Miller and Nate Donovan expressed their agreement.