



Karen Weitkunat, Mayor  
Kelly Ohlson, District 5, Mayor Pro Tem  
Ben Manvel, District 1  
Lisa Poppaw, District 2  
Aislinn Kottwitz, District 3  
Wade Troxell, District 4  
Gerry Horak, District 6

Council Chambers  
City Hall West  
300 LaPorte Avenue

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Darin Atteberry, City Manager  
Steve Roy, City Attorney  
Wanda Nelson, City Clerk

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## **REGULAR MEETING**

### **Tuesday, November 6, 2012**

#### **Proclamations and Presentations**

#### **5:30 p.m.**

- A. Proclamation Declaring November 2012 through November 2013 as Year of the Natural Areas.
- B. Proclamation Declaring November as American Music Month.
- C. Proclamation Declaring November as National Family Caregiver Month.
- D. Proclamation Declaring November as Alzheimer's Awareness Month.
- E. Proclamation Declaring November 10-18 as National Homelessness Awareness Week.

#### **Regular Meeting**

#### **6:00 p.m.**

#### PLEDGE OF ALLEGIANCE

1. CALL MEETING TO ORDER.
2. ROLL CALL.

3. AGENDA REVIEW:

- City Manager Review of Agenda.
- Consent Calendar Review.

This Review provides an opportunity for Council and citizens to pull items from the Consent Calendar. Anyone may request an item on this Calendar be “pulled” off the Consent Calendar and considered separately.

- Council opportunity to pull Consent Calendar items.  
(will be considered under Item No. 34)
- Citizen opportunity to pull Consent Calendar items.  
(will be considered under Item. No. 38)

4. CITIZEN PARTICIPATION

Individuals who wish to make comments regarding items remaining on the Consent Calendar or wish to address the Council on items not specifically scheduled on the agenda must first be recognized by the Mayor or Mayor Pro Tem. **Before speaking, please sign in at the table in the back of the room.** The timer will buzz once when there are 30 seconds left and the light will turn yellow. The timer will buzz again at the end of the speaker’s time. Each speaker is allowed 5 minutes. If there are more than 6 individuals who wish to speak, the Mayor may reduce the time allowed for each individual.

- State your name and address for the record.
- Applause, outbursts or other demonstrations by the audience are not allowed
- Keep comments brief; if available, provide a written copy of statement to City Clerk

5. CITIZEN PARTICIPATION FOLLOW-UP

This is an opportunity for the Mayor or Councilmembers to follow-up on issues raised during Citizen Participation.

## CONSENT CALENDAR

The Consent Calendar consists of Items 6 through 30. This Calendar is intended to allow the City Council to spend its time and energy on the important items on a lengthy agenda. Staff recommends approval of the Consent Calendar. The Consent Calendar consists of:

- Ordinances on First Reading that are routine
- Ordinances on Second Reading that are routine
- Those of no perceived controversy
- Routine administrative actions.

## BUDGET CONSENT ITEMS

6. Second Reading of Ordinance No. 107, 2012, Being the Annual Appropriation Ordinance of the Fort Collins Downtown Development Authority Relating to the Annual Appropriations for the Fiscal Year 2013 and Fixing the Mill Levy for the Downtown Development Authority for Fiscal Year 2013.

Ordinance No. 107, 2012, unanimously adopted on First Reading on October 16, 2012, sets the Downtown Development Authority (DDA) 2013 Operations and Maintenance Budget amount of \$769,440 to be appropriated for fiscal year 2013 for the administrative operations budget; appropriates the 2013 Line of Credit Draw in the amount of \$1,000,000; sets the amount of \$3,197,535 for debt service payments to be appropriated for fiscal year 2013; and sets the 2013 Mill Levy for the Fort Collins DDA at five (5) mills, unchanged since tax year 2002. The approved Budget becomes the Downtown Development Authority's financial plan for 2013.

7. Items Relating to Water and Electric Development Fees and Charges for 2013.

- A. Second Reading of Ordinance No. 113, 2012, Amending Chapter 26 of the City Code to Revise Water Rates and Charges.
- B. Second Reading of Ordinance No. 115, 2012, Amending Chapter 26 of the City Code to Revise Electric Development Fees and Charges.

The proposed water increase is a flat 4% across the board to all customer classes. Electric development fees are proposed to decrease an average of 2.4% for residential and decrease an average of 1.6% for commercial development. There are no changes in the monthly rates for wastewater or stormwater services being proposed for 2013. Both Ordinances were unanimously adopted on First Reading on October 16, 2012.

## NON- BUDGET CONSENT ITEMS

8. Consideration and Approval of the Minutes of the October 16, 2012 Regular Meeting and the October 23, 2012 Adjourned Meeting.

9. Second Reading of Ordinance No. 108, 2012, Appropriating Unanticipated Grant Revenue from Colorado Parks and Wildlife in the Conservation Trust Fund for the Fossil Creek Trail at East Trilby Road.

This Ordinance, unanimously adopted on First Reading on October 16, 2012, appropriates a \$200,000 trail grant received from Colorado Parks and Wildlife for the completion of the Fossil Creek Trail at East Trilby Road.

10. Second Reading of Ordinance No. 109, 2012, Appropriating a Grant from Great Outdoors Colorado for the City's Portion of Larimer County's Poudre River Corridor and Regional Trail Initiative Grant.

This Ordinance, unanimously adopted on First Reading on October 16, 2012, appropriates a grant received from Great Outdoors Colorado in the amount of \$737,597. The funds will be used as part of Fort Collins' portion of the Poudre River Corridor & Regional Trail Initiative project. The grant request includes open space acquisitions, trail easements, and trail development along the Poudre River from Fort Collins to Greeley. The total grant project cost is \$8,074,826, with the Great Outdoors Colorado grant being in the amount of \$5,098,150. The City of Fort Collins portion of the project is \$1,558,880, with the Great Outdoors Colorado grant amount being \$737,597.

11. Second Reading of Ordinance No. 110, 2012, Approving a Fourth Amendment to the Fort Collins-Timnath Intergovernmental Agreement Regarding Cooperation on Annexation, Growth Management, and Related Issues, Eliminating Original Terms Related to the Boxelder Overflow Project and Establishing the Terms of Cost Sharing for Design Engineering of Substituted Improvements in the Boxelder Basin.

On February 17, 2009, the City of Fort Collins (City) and the Town of Timnath (Timnath) entered into an intergovernmental agreement (IGA) regarding annexations, growth management, and related issues. The IGA resolved certain differences that had arisen between the City and Timnath

concerning a variety of planning and growth management issues. The IGA sets forth provisions for the funding, design and construction of the Boxelder Overflow Project. The IGA has been amended three times since for items such as the extension of deadlines for approval of the respective growth management areas and the deletion of all references to Timnath's possible purchase of the Vangbo property.

The parties have determined that development of the Boxelder Overflow Project originally contemplated by Timnath as described in the Intergovernmental Agreement is neither feasible nor desirable, and have further identified a mutually beneficial alternative approach to address flood impacts in the Boxelder Creek Basin as it impacts Timnath and Fort Collins, referred to as the Boxelder Creek Flood Mitigation Projects. In order to move forward cooperatively to further investigate, conceptually plan and preliminarily design the Boxelder Creek Flood Mitigation Projects, the parties desire to apply toward those Projects a portion of the funds previously paid into an escrow account by Fort Collins in accordance with Article 7 of the Intergovernmental Agreement. This Ordinance, unanimously adopted on First Reading on October 16, 2012, approves the Fourth Amendment to the Intergovernmental Agreement in order to clarify and document the City and Timnath's intentions and mutual rights and responsibilities with respect to the Boxelder Overflow Project and Boxelder Creek Flood Mitigation Projects.

Between First Reading and Second Reading the proposed Amendment has been revised to specifically allow for Timnath to carry out the funding of the Boxelder Creek Flood Mitigation Projects through the Timnath Development Agency.

12. Items Relating to the I-25/SH 392 Interchange Project.

- A. Second Reading of Ordinance No. 117, 2012, Establishing a Special Fee to Be Paid by the Owners of Property Within Close Proximity to the Reconstructed Interchange at the Intersection of Interstate 25 and State Highway 392.
- B. Second Reading of Ordinance No. 118, 2012, Approving the First Amended Intergovernmental Agreement Pertaining to the Development of the Interstate 25/State Highway 392 Interchange.

On December 21, 2010, the City Council approved an Intergovernmental Agreement (IGA) with the Town of Windsor pertaining to the development of the I-25 interchange at the intersection of State Highway 392. The IGA states that, by March 31, 2011, the City and Windsor will take certain actions to implement the fee requirements identified in the IGA. City Council has adopted several resolutions extending this deadline, the most recent extension being to October 16, 2012.

Ordinance No. 117, 2012, will establish the specifics of a special fee to be paid by the Property Owners near the interchange. The fee includes two parts and is summarized as follows:

- The first part of the fee is in proportion to the anticipated appreciation in property value as a result of the interchange improvements. This amount has been determined from an appraisal report prepared by a licensed MAI appraiser (the "Foster Study").
- The second part of the fee is based on the relative impacts that the development or redevelopment of the properties will have on the Interchange, as measured by the estimated number of additional vehicular trips that will be generated by the developed use of the properties.

Based on negotiation with the Property Owners, the City and Town have created a second option for Property Owners. Property Owners signing an agreement with the City would be permitted to defer payment of the entire amount of the fee until their properties are developed or redeveloped, the amount of their fee would be capped at the amount estimated in the agreement, and no interest would accrue on their fee for a period of two years from the date of execution of the agreement.

Ordinance No. 118, 2012, adopts the modified IGA first approved by City Council on December 21, 2010, now revised to be consistent with the implementation of the fees as described above. Both Ordinances were unanimously adopted on First Reading on October 23, 2012.

13. First Reading of Ordinance No. 119, 2012, Appropriating Unanticipated Revenue in the General Fund to the Fort Collins Housing Authority to Fund Affordable Housing and Related Activities.

The Fort Collins Housing Authority paid the City of Fort Collins \$15,457 as the 2010 and 2011 payments for public services and facilities. The Authority requests that the City refund the Payment in Lieu of Taxes (PILOT) to fund sorely needed affordable housing-related activities and to attend to the low-income housing needs of Fort Collins residents.

Resolution 1992-093 reinstated the requirement that the Authority make annual PILOT payments to the City. The City may spend the PILOT revenues as it deems appropriate in accordance with law, including remitting the funds to the Authority if the Council determines that such remittal serves a valid public purpose. The Council has remitted the PILOT payment to the Authority since 1992.

14. First Reading of Ordinance No. 120, 2012, Appropriating Unanticipated Grant Revenue from Great Outdoors Colorado in the Conservation Trust Fund for the Fossil Creek Trail at County Road 38E Project.

The City has received the grant payment from Great Outdoors Colorado for the construction of the Fossil Creek Trail at County Road 38E project. Great Outdoors Colorado had awarded the City a Special Opportunity Grant for the completion of the Fossil Creek Trail from north of Cathy Fromme Prairie to the Spring Canyon Community Park. Construction of the project was completed this past spring.

15. First Reading of Ordinance No. 121, 2012, Amending the City Code to Increase the Amounts of the Capital Improvement Expansion Fees Contained in Chapter 7.5 of the City Code so as to Reflect Inflation in Associated Costs of Services.

The City Code requires annual adjustments to certain building permit related fees. Capital Improvement Expansion fees and Neighborhood Parkland fees are to follow the changes in the Denver-Boulder-Greeley Consumer Price Index (CPI). Street Oversizing fees are adjusted by the changes posted in the Engineering News Record (ENR). The CPI has increased 1.8% and the ENR has increased 1.6%. Additionally the Code is being updated to reference to the most recent amended manual, *The ITE Trip Generation Manual, 8<sup>th</sup> Edition, 2008*.

Staff is working with a consultant who specializes in capital impact fees to re-evaluate the underlying assumptions and formulas used to calculate the City's fees. A presentation is scheduled for a work session on February 12, 2013 and formal consideration on March 5, 2013.

16. First Reading of Ordinance No. 122, 2012, Amending Chapter 15 of the City Code Pertaining to Contractor Licenses.

Community Development and Neighborhood Services is responsible for the enforcement of the contractor licensing requirements found in Chapter 15 of the City Code. The changes proposed will update the current Code by:

- clarifying minimum experience and qualification requirements at the application stage
- creating license categories that better align with the adopted residential and commercial building codes
- streamlining the application and project verification process
- establishing registration requirements for the currently non-licensed category of workers
- increasing minimum liability amounts to recognized industry levels.

17. Items Relating to the Naming of Arterial and Collector Streets.

A. First Reading of Ordinance No. 123, 2012 Amending Section 24-91 of the City Code Regarding the Naming of Arterial and Collector Streets.

B. Resolution 2012-100 Updating the List of Names for Arterial and Collector Streets.

This Ordinance amends the City Code relating to naming new arterial and collector streets so that City Council, rather than the developer, would select the name of the new street. The Resolution will update the current list of names for arterial and collector streets.

18. First Reading of Ordinance No. 124, 2012, Amending Section 2-427 of the City Code Relating to Membership of the Transportation Board.

The Transportation Board currently consists of eleven members appointed by the City Council, and is one of the larger advisory boards. At the end of 2012, the terms of four members will expire. One of those members is not eligible for reappointment because that member has met the Council-adopted two term limit. Another member is eligible but is not interested in reappointment. This provides an opportunity for Council to consider changes to the size of the Board without negatively impacting any current members. This opportunity was presented to the Board by staff, and the Board voted to recommend that the Council reduce the size from eleven to nine members. This Ordinance amends the City Code to reduce the size of the Board to nine members.

19. First Reading of Ordinance No. 130, 2012, Amending the Land Use Code by Designating Certain Types of Multi-family Housing Development Projects as Being Subject to Planning and Zoning Board Review.

On October 9, 2012, Council directed staff to draft an ordinance amending the Land Use Code (LUC) to require larger multi-family housing developments (50 dwelling units, or 75 bedrooms) to be reviewed by the Planning and Zoning Board (Type 2). A Type 2 review requires that the developer hold a pre-submittal neighborhood meeting. The benefit to the neighborhood meeting is that the public is given an opportunity to provide input on a project while it is still in the early stages of development. In recent months a large amount of multi-family housing developments have been appealed by concerned citizens to Council based on the assertion that the projects are not compatible with adjacent neighborhoods. This proposed procedural change seeks to provide more opportunity for the public to participate in the development review process for multi-family housing projects.

20. First Reading of Ordinance No. 125, 2012 Amending Section 26-543 of the City Code to Update the Stormwater Master Drainage Plans to Include Basin-Specific Water Quality Best Management Practices and Stream Restoration.

The City of Fort Collins' Stormwater Master Plan has been updated to include stormwater quality and stream restoration projects, alongside the already identified stormwater flood control projects. The Master Plan update utilizes results and information obtained from the Stormwater Utility Repurposing program in conjunction with basin and stream specific recommendations obtained from the following two program efforts:

- A. Basin-Specific Stormwater Quality Best Management Practices (BMP) Selected Plans; and,
- B. Stream Restoration and Stability Study and Prioritization with the Multi Criteria Decision Analysis (MCDA) Tool.

The BMP Selected Plans include recommendations for the treatment of stormwater within portions of the City that developed prior to the adoption of stormwater quality criteria. The majority of the BMP projects include the retrofit of existing stormwater detention ponds to include water quality treatment facilities. Funding for the construction of the identified BMP and stream restoration projects will be drawn from existing stormwater fees. This funding request is included in the current 2013/2014 Budgeting for Outcomes (BFO) process for Environmental Health.

21. First Reading of Ordinance No. 126, 2012, Authorizing the Conveyance of City-owned Property Known as the Maxwell Farm and Related Water Rights Subject to a Conservation Easement and Authorizing a Related Raw Water Transfer Agreement.

The Natural Areas Department (NAD) purchased the 137-acre Maxwell Farm, along with 12 shares of North Poudre Irrigation Company (NPIC) water, with the intent of placing it under a conservation

easement to help conserve a buffer between Fort Collins and Wellington; protect the open space and scenic values adjacent to I-25; and, sell it as an agricultural property with limited development rights. These purposes are supported by the *Natural Areas Land Conservation and Stewardship Plan*, the Council-adopted master plan for the Department. The land has been leased to Larry Maxwell, the previous owner, for farming and livestock feeding since the initial purchase in 2009.

Natural Areas and Utilities have worked out an agreement for the NAD to sell eleven of the twelve NPIC shares to Utilities for approximately 50% of the estimated market value, which is \$14,000 per share (based on recent sales information from NPIC). In exchange, Utilities will enter into a raw water transfer agreement with the buyer of Maxwell Farm, and per the terms of the agreement, Utilities will transfer the equivalent of eleven shares of NPIC water on an annual basis to the Maxwell Farm in perpetuity. The advantage to Utilities is that water decreed solely for agricultural use derived from other Utilities-owned NPIC shares, can be substituted for water decreed for municipal use derived from the eleven NPIC shares, which Utilities can use. The buyer will purchase the remaining share of NPIC water as it is a NPIC policy that a farm must own at least some NPIC water in order to receive any rented or transferred water. The single NPIC share to be owned by the buyer will also be tied to the land by the conservation easement agreement.

The funds received from the sale of the land and water will be used to conserve additional land and water.

22. First Reading of Ordinance No. 127, 2012, Authorizing the Conveyance of City-owned Property Known as the Vangbo Property Subject to a Conservation Easement.

The Vangbo Property was purchased by the Natural Areas Department (NAD) in 2005 with the intent to place a conservation easement on the property to conserve the open space and scenic values along the I-25 corridor and then sell it as an agricultural property with limited development options. These purposes are supported by the *Natural Areas Land Conservation and Stewardship Plan*, the Council-adopted master plan for the Department. The land is currently leased to Alison Person, a neighboring landowner, for grazing. Staff recommends selling the 105-acre Vangbo property and associated ditch and water rights with a reserved conservation easement to Alison Person for \$300,000. The conservation easement does not allow any future development, but does give the landowner the option to request the purchase of one building envelope on the property from a future City Council. The undeveloped portion would remain in agricultural use.

23. First Reading of Ordinance No. 128, 2012, Authorizing the Conveyance of a Non-Exclusive Drainage Easement on City Property to Cloud Peak Ranch, LLC.

Cloud Peak Ranch, LLC is planning a 39.53 acre residential development called Mail Creek Crossing PLD/PD located just north of Bacon Elementary School on South Timberline Road. This development will require the construction of off-site stormwater outfall improvements on adjacent property to the north in order to connect with a stormwater pipe in Kechter Road. The alignment of these improvements will cross the northwest corner of a property owned by the City's Social Sustainability Department. The City's 16-acre property was purchased in 2006 as a Land Bank property and is currently leased as a residential/horse property. In order to facilitate the installation of the planned improvements, the developer has requested a 2,346 square foot non-exclusive drainage easement from the City in the northwest corner of the City property adjacent to Kechter Road.

24. First Reading of Ordinance No. 129, 2012, Authorizing the Conveyance of a Non-Exclusive Utility Easement on City Property to the Nunn Telephone Company.

Nunn Telephone Company (NTC) currently provides telephone and internet services to portions of northwest Weld County and northeast Larimer County. With an increase in demand from their customers for broadband services, NTC has begun upgrading copper based telephone lines to fiber optic broadband lines. NTC has requested a utility easement from the City of Fort Collins across a portion of Meadow Springs Ranch in order to install approximately 7.0 miles of fiber optic line as part of this upgrade project. The proposed easement alignment would follow an abandoned state highway now used by the City as an access road to the City's property.

25. Resolution 2012-101 Authorizing a Revocable Permit for Brinkman Construction, Inc. to Access City Property to Complete Mitigation Activities for the Construction of Tilden Street.

In 2008, Council adopted Ordinance No. 030, 2008, authorizing the dedication of a portion of City property located at 2313 Kechter Road as Tilden Street. The property located west of the City property has been planned as the Kechter Crossing development. Tilden Street is located along the property boundary between the two properties. The developer of Kechter Crossing, Brinkman Construction, Inc., plans to begin construction of its development soon, including work within the new right-of-way of Tilden Street. This work will require the relocation of a number of site improvements in the right-of-way areas that are owned by the City. City staff has asked the Developer to relocate and replace a number of these site improvements elsewhere on the City property. The revocable permit will allow the developer access to the City property to perform the requested mitigation activities.

26. Resolution 2012-102 Naming Three Alleys Within the Block Bounded by South College Avenue, West Laurel Street, South Mason Street and West Myrtle Street.

The Downtown Development Authority has completed a capital improvement project to enhance three public alleys in the aforementioned block. In conjunction with this project, the City of Fort Collins is preparing to name these three alleys. The three proposed names are "Dalzell Alley," "Corbin Alley," and "Wattles Alley." If approved, the alley naming will simplify way-finding for pedestrians, bicyclists, drivers, delivery personnel and emergency responders.

27. Resolution 2012-103 Making Findings of Fact and Related Determinations Regarding the Appeal of the August 7, 2012 Administrative Hearing Officer's Decision Regarding the Aspen Heights PDP.

On August 16, 2012, the City of Fort Collins Hearing Officer issued a written decision approving Aspen Heights PDP, with one condition ensuring proper landscaping associated with the clubhouse. On August 30, 2012, Mr. Tom Lawton filed a Notice of Appeal seeking redress of the Hearing Officer's decision.

On October 30, 2012, City Council voted 5 - 0 to modify the Hearing Officer's decision by requiring the following:

1. It shall be a condition of approval of the PDP that the applicant provide a shuttle bus for use of project residents, with the understanding that if there is insufficient ridership demand to sustain such shuttle bus, then the applicant may apply for a minor amendment to the approved Final Plan to reduce or eliminate the shuttle bus requirements of this condition.
2. It shall be a condition of approval of the P.D.P. that the applicant shall, at the time of submittal of the Final Plan and in consultation with City staff, enhance the design of the naturalized drainage channel transecting the property in such a manner as to provide an increased width and vegetation diversity; and to enhance the regional stormwater detention pond through variation in grading patterns and vegetation diversity, to the extent reasonably feasible.

In order to complete the record regarding this appeal, Council should adopt a Resolution making findings of fact and finalizing its decision on the Appeal.

28. Postponement of Resolution 2012-099 Adopting a Water Supply and Demand Management Policy to November 20, 2012.

At the October 30, 2012 Adjourned Meeting, Council voted to postpone consideration of this Resolution to November 6 to allow time for staff to revise the Water Supply and Demand Management Policy, based on Council's input. There is not adequate time to make these revisions and provide supporting material before the publication of the November 6 agenda. Staff requests postponement of consideration of this Resolution to November 20, 2012.

29. Routine Deeds.

Three quit claim deeds, encompassing 105 easements within the Southwest Enclave Annexation from Poudre Valley REA. These easements were transferred to the City along with the purchase of Poudre Valley REA's electric systems in the annexation.

30. Routine Easement.

Easement for construction and maintenance of public utilities from TAV Property Management, Inc., to install an electric transformer at 504 South College Avenue.

**END CONSENT**

31. Consent Calendar Follow-up.

This is an opportunity for Councilmembers to comment on items adopted or approved on the Consent Calendar.

32. Staff Reports.

33. Councilmember Reports.

34. Consideration of Council-Pulled Consent Items.

**DISCUSSION ITEMS**

The method of debate for discussion items is as follows:

- Mayor introduces the item number and subject; asks if formal presentation will be made by staff
- Staff presentation (optional)
- Mayor requests citizen comment on the item (five-minute limit for each citizen)
- Council questions of staff on the item
- Council motion on the item
- Council discussion
- Final Council comments
- Council vote on the item

**Note:** Time limits for individual agenda items may be revised, at the discretion of the Mayor, to ensure all citizens have an opportunity to speak. **Please sign in at the table in the back of the room.** The timer will buzz when there are 30 seconds left and the light will turn yellow. It will buzz again at the end of the speaker's time.

35. Consideration of the Appeal of the August 9, 2012 Zoning Board of Appeals Decision to Approve a Variance to Allow the Existing Off-premise Sign (Billboard) Located in the BNSF Railroad Right of Way at 190 West Prospect Road to Be Removed and Reinstalled at a New Location Within the Same Railroad Right of Way at 190 West Prospect Road. (staff: Peter Barnes; 10 minute staff presentation 90 minute discussion)

On August 9, 2012, the Zoning Board of Appeals (ZBA) considered Appeal #2714, submitted by the City of Fort Collins Engineering Department. This Appeal was for a variance to Section 3.8.7(P) of the City of Fort Collins Land Use Code (LUC), which prohibits the construction of new off-premise signs. The variance was requested in order to allow the existing off-premise sign in the BNSF

way 70 feet west of its current location. The sign's current location is in direct conflict with the guideway alignment for the MAX BRT (Bus Rapid Transit) project. The ZBA unanimously approved the variance request as authorized by Section 2.10.1 of the LUC.

On August 23, 2012, Richard L. Anderson (the Appellant) filed a Notice of Appeal with the City Clerk. The Appellant alleges that the ZBA:

- A. Failed to conduct a fair hearing in that:
  - 1. The Board considered evidence relevant to its findings which was grossly misleading;
  - 2. The Board substantially ignored its previously established rules of procedure;
  - 3. The Board exceeded its authority and jurisdiction.
- B. The Board failed to properly interpret and apply relevant provisions of the Land Use Code.

36. Second Reading of Ordinance No. 114, 2012, Amending Chapter 26 of the City Code to Revise Electric Rates, Fees and Charges. (staff: Brian Janonis, Lance Smith; no staff presentation; 5 minute discussion)

The 2013 electric rate increases which average 4.33% are proposed to vary by customer class from 3.35% to 5.33%. The proposed changes will impact individual electric customers more or less than the customer class averages and will vary by season. This Ordinance was adopted on First Reading on October 16, 2012, by a vote of 6-1 (Nays: Kottwitz).

37. Resolution 2012-104 Accepting Advisory Opinion and Recommendation No. 2012-2 of the Ethics Review Board. (staff: Steve Roy; 5 minute staff presentation; 30 minute discussion)

Under City Code Section 2-569, City Councilmembers may present to the Council Ethics Review Board inquiries regarding the application of state or local ethical rules to actual or hypothetical situations involving potential conflicts of interest. On October 22, 2012, and October 30, 2012, the Ethics Review Board met for the purpose of responding to an inquiry submitted to the Board by Mayor Weitkunat. The question submitted by the Mayor is whether, in the Board's opinion, she would have a conflict of interest in participating in upcoming decisions of either the City Council or the Urban Renewal Authority regarding the possible redevelopment of the Foothills Mall. The Mayor has presented the question because of the proximity of her residence to the redevelopment site. As required by the Code, the Board has forwarded its opinion and recommendations to the full Council for its consideration. Adoption of the Resolution would indicate that the majority of the Council agrees with the Board's opinion and recommendations.

38. Consideration of Citizen-Pulled Consent Items.

39. Other Business.

40. Adjournment.

- a. Motion to adjourn to 6:00 p.m., Thursday, November 8, 2012.

Every Council meeting will end no later than 10:30 p.m., except that: (1) any item of business commenced before 10:30 p.m. may be concluded before the meeting is adjourned and (2) the City Council may, by majority vote, extend a meeting until no later than 12:00 a.m. for the purpose of considering additional items of business. Any matter which has been commenced and is still pending at the conclusion of the Council meeting, and all matters scheduled for consideration at the meeting which have not yet been considered by Council, will be continued to the next regular Council meeting and will be placed first on the discussion agenda for such meeting.