

June 1, 2010

**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, June 1, 2010, 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: Hutchinson, Kottwitz, Manvel, Ohlson, Poppaw, Roy, and Troxell.

Staff Members Present: Atteberry, Krajicek, Roy.

**Citizen Participation**

Holly Carroll, Poudre River Public Library District Director, 201 Peterson Street, thanked Council and the City of Fort Collins for its support and partnership.

Stacy Lynne, 216 Park Street, discussed Plan Fort Collins and opposed Fort Collins' participation in the International Council for Local Environmental Initiatives (ICLEI). She opposed the City's decision to cut funding for water play areas in two of the City's parks.

Vicki Lutz, 1644 Foxbrook Way, thanked Council for its support of Crossroads Safehouse.

Kevin Cross, Fort Collins Sustainability Group, 300 Peterson Street, supported the Climate Action Plan and noted it was accepted by unanimous Council vote. He opposed the recall proceedings of Councilmember Poppaw.

Eric Sutherland, 3520 Golden Currant, discussed abuses of TIF awards and specifically opposed their use in funding the RMI2 building.

Cheryl Distaso, Center for Justice, Peace, and the Environment, 135 South Sunset, supported the Climate Action Plan.

Marlene Gruner, 5225 White Willow Drive, discussed state and local sales tax.

**Citizen Participation Follow-up**

City Manager Atteberry stated two administrative budget reductions early in 2010 were funding for the fountains at Fossil Park and Spring Canyon Park.

Marty Heffernan, Director of Culture, Parks, Recreation, and Environment, discussed Parks and Recreation budget reductions which include keeping the two fountains turned off.

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City Manager Atteberry noted the cuts were not tied to Resourcing Our Future. The Oak Street Plaza fountains were not shut down due to the high volume of visitors to downtown. He noted no major safety incidents have been reported at the Oak Street Plaza fountains.

Councilmember Kottwitz expressed concern regarding the lack of City water features operating on the south side of town and asked about the possibility of turning on one of the south park water features as opposed to the Oak Street Plaza fountain. City Manager Atteberry replied that is a possibility and noted the Courthouse and Old Town fountains are funded by the County and Downtown Development Authority, respectively.

Councilmember Kottwitz asked that the item be brought before Council for further discussion.

Councilmember Troxell agreed with Councilmember Kottwitz and stated efficiencies in other areas could possibly increase funding for these types of desired facilities. He stated there is no effective mechanism to prioritize programs within the City organization.

Councilmember Manvel noted the Parks and Recreation Board recently reviewed the decision and unanimously supported it and stated Council should not micromanage the City budget.

Councilmember Ohlson discussed the large extent of future budget cuts. He discussed ICLEI and communities with memberships thereof.

Councilmember Roy thanked Ms. Lutz and Crossroads Safehouse for services provided to the community.

Councilmember Poppaw thanked Ms. Lutz and Crossroads Safehouse.

Mayor Hutchinson noted the Budgeting for Outcomes process is outlined and discussed on the City's web page.

### **Agenda Review**

City Manager Atteberry rescheduled Item No. 14, *First Reading of Ordinance No. 068, 2010, Making Various Amendments to the City of Fort Collins Land Use Code.*

### **CONSENT CALENDAR**

6. Consideration and Approval of the Minutes of the May 4, 2010, Regular Meeting.
7. Second Reading of Ordinance No. 058, 2010, Appropriating \$200,000 from Prior Year Reserves in the General Fund for the City's Contribution for the Boxelder Overflow Project.

Ordinance No. 012, 2009, adopted on January 20, 2009, appropriated \$1.2 million in the Stormwater Fund and Self-Insurance Fund and irrevocably pledged \$800,000 in the General Fund to be contributed to the Town of Timnath, Colorado for improvements to the Boxelder

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Overflow Project. Ordinance No. 012, 2009 states that the City will make four payments of \$200,000 from the General Fund each year, starting in 2010. Ordinance No. 058, 2010, unanimously adopted on First Reading on May 18, 2010, appropriates the first payment of \$200,000 for fiscal year 2010. Subsequent payments will be appropriated in each of the next three years.

8. Second Reading of Ordinance No. 060, 2010, Extending the Contracts of the City's Medical Service and Benefits Consulting Providers for Employee Benefits Programs.

The vendors providing medical coverage and benefits consulting services for City employee have serviced the City of Fort Collins for many years. This Ordinance, unanimously adopted on First Reading on May 18, 2010, approves an extension of the current agreements with those vendors, Great-West and Mercer, for an additional year to allow for sufficient time and resources for a competitive process to be completed in 2011.

9. Items Relating to the Platte River Power Authority Contracts.

A. Second Reading of Ordinance No. 061, 2010, Authorizing an Amended and Restated Organic Contract for Platte River Power Authority.

B. Second Reading of Ordinance No. 062, 2010, Authorizing an Amended and Restated Contract with Platte River Power Authority For the Supply of Electric Power and Energy.

The staff of Platte River and the Municipalities initiated an effort to revise and extend the Organic Contract and the power supply agreements between Platte River and the Municipalities in late 2007. The goals of this process included: (1) extending the term of the Organic Contract and the power supply agreements through 2050; (2) the elimination of the Facilities Agreements between Platte River and each of the Municipalities and the incorporation of the relevant provisions into the new power supply agreements; (3) the creation of a limited exception to the all-requirements nature of the power supply agreements so that the Municipalities could pursue local energy generation options; and (4) general editorial updating. These Ordinances were unanimously adopted on First Reading on May 18, 2010.

10. First Reading of Ordinance No. 063, 2010, Appropriating Prior Year Reserves in the Cultural Services Fund for Transfer to the Capital Projects Fund and Appropriating Unanticipated Revenue in the Capital Projects Fund for the Building on Basics Lincoln Center Renovation Project.

The Lincoln Center Renovation project is funded primarily through the Building on Basics capital tax renewal approved by voters in 2005. Unanticipated grant revenue and prior year reserves in the Cultural Services Fund will be used to complete the full scope of the \$7.3 million project. Approximately \$5.5 million has been appropriated from the Building on

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Basics tax and this ordinance appropriates an additional \$1.4 million from unanticipated grant revenue and prior year reserves in the Cultural Services Fund. The remaining \$400,000 needed will be raised through fund-raising with the Building on Basics dollars being leveraged to complete the full scope of the capital project.

11. Items Relating to the Poudre River Public Library District.

- A. First Reading of Ordinance No. 064, 2010, Amending Chapter 7.5, Article II and Chapter 8, Article III of the City Code to Discontinue the Library Capital Improvement Expansion Fee.
- B. First Reading of Ordinance No. 065, 2010, Repealing Chapter 23, Article VII of the City Code Regarding the Care and Custody of the Library.

Since 1996, the City has imposed an impact fee on residential building permits as a means of funding the increased demand for library services that comes with a growing community. In 2006, voters approved the formation of a new Library District funded primarily by property taxes and a portion of the Building on Basics sales tax. The Intergovernmental Agreement between the City, Larimer County, and the Poudre River Public Library District notes that following the opening of Council Tree Library, the Fort Collins City Council will consider whether to continue imposing a library impact fee.

The Council Tree Library opened in March 2009. Since that time, both Larimer County and the Town of Timnath have chosen not to impose an impact fee for library services. Ordinance No. 064, 2010, will discontinue the current library expansion fee imposed on residential properties in Fort Collins, and eliminate the library capital improvement expansion account within the capital improvement expansion fund.

Ordinance No. 065, 2010 repeals the last remaining City Code reference to the library, dealing with the care and custody of the library, which now belongs to the Library District.

12. First Reading of Ordinance No. 066, 2010 Amending Section 1-15 (g) of the City Code Regarding General Penalty and Surcharges for Misdemeanor Offenses, Traffic Offenses and Traffic and Civil Infractions.

On January 5, 2010, Council adopted the traffic calming surcharge to include bicycle violations that would be added to citations. The traffic calming surcharge is to be assessed to what would be considered a violation where one (1) or more points would be assessed to a motorist. The original ordinance could be interpreted to require the surcharge on all bicycle violations. This is an effort to ensure the surcharge is applied to any moving violation where at least one point is assessed.

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13. First Reading of Ordinance No. 067, 2010, Amending Section 26-279 of the City Code to Allow Additional Means of Determining Wastewater Volume as the Basis for Wastewater Service Fees and Charges.

This proposed Code amendment allows Utilities to establish an alternate means for determining wastewater volume for typical applications used in manufacturing processes by some of the City's industrial and large commercial customers. Examples include cooling towers and other equipment or processes where a measurable reduction in wastewater discharge can be determined and metered. The reduction would generally be established for a specific process rather than facility as a whole.

15. First Reading of Ordinance No. 069, 2010, Amending Section 4 of Ordinance No. 025, 2010, to Change the Meaning of the "Same Ownership" Requirement as Applied to Existing Medical Marijuana Businesses That Wish to Apply for Licensing under Chapter 15, Article XVI of the City Code.

The purpose of this Ordinance is to clarify the licensing process existing for medical marijuana businesses. This Ordinance states that existing businesses applying for a Medical Marijuana Business License must list at least one original name from the City Sales Tax License on the application.

16. First Reading of Ordinance No. 070, 2010, Vacating a Portion of Right-of-way as Dedicated on the Plat Richard's Lake PUD, Filing One.

This site is located south of Douglas Road and west of Turnberry Lane. Prior development proposals dedicated street networks on Hearthfire PUD, First Filing and Richard's Lake PUD, Filing One. A Planning and Zoning Board hearing was held on January 18, 2007, for a development proposal entitled Water's Edge that shows a different street layout than was originally platted. Therefore, a portion of the previously dedicated right-of-way for the streets is no longer necessary and is proposed for vacation at this time. The right-of-way vacation on Hearthfire PUD, First Filing is proposed under a separate ordinance.

17. First Reading of Ordinance No. 071, 2010, Vacating a Portion of Right-of-way as Dedicated on the Plat Hearthfire PUD, First Filing.

This site is located south of Douglas Road and west of Turnberry Lane. Prior development proposals dedicated street networks on Hearthfire PUD, First Filing and Richard's Lake PUD, Filing One. Since that time a development proposal, Water's Edge, for which a Planning and Zoning Board hearing was held on January 18, 2007, was submitted which shows a different street layout than was originally platted. Therefore, a portion of the previously dedicated right-of-way for the streets are no longer necessary and are proposed for vacation at this time.

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8. Resolution 2010-031 Adopting the Northern Colorado Regional Hazard Mitigation Plan.

This Resolution will adopt the updated and revised All Hazard Mitigation Plan, as required by the Federal Emergency Management Agency (FEMA).

19. Routine Easements.

A. Easement for Construction and Maintenance of Public Utilities from Functional Forms, LLC, to install secondary electric vault at 720 Maple Street. Monetary consideration: \$10

B. Deed of Easement and Temporary Construction Easements for the Downtown Alley Improvement Project - Montezuma Fuller Alley. From:

Kissock '91 Partnership, monetary consideration: donation.

Gerald W. and Barbara R. Jackson, monetary consideration: \$1,164.

Walter J. Frick, monetary consideration: \$89.

Downtown Development Authority, monetary consideration: donation.

K&M Company, LLLP, monetary consideration: \$102.

John F. Arnolfo (2), monetary consideration: \$325 (each)

Marilyn Roberts and Mitchell A. Busteed, monetary consideration: \$305

Wallace J. Walberg, monetary consideration: \$305.

K. Douglas Genetten, monetary consideration: \$185.

John D. And Mary Anne Motte, monetary consideration: \$138.

Dorothy I. Asmus, monetary consideration: donation.

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

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

7. Second Reading of Ordinance No. 058, 2010, Appropriating \$200,000 from Prior Year Reserves in the General Fund for the City's Contribution for the Boxelder Overflow Project.

8. Second Reading of Ordinance No. 060, 2010, Extending the Contracts of the City's Medical Service and Benefits Consulting Providers for Employee Benefits Programs.

9. Items Relating to the Platte River Power Authority Contracts.

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25. Second Reading of Ordinance No. 059, 2010, Amending Chapter 23 of the City Code Pertaining to Excavations, Obstructions and Encroachments.

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

10. First Reading of Ordinance No. 063, 2010, Appropriating Prior Year Reserves in the Cultural Services Fund for Transfer to the Capital Projects Fund and Appropriating Unanticipated Revenue in the Capital Projects Fund for the Building on Basics Lincoln Center Renovation Project.
11. Items Relating to the Poudre River Public Library District.
  - A. First Reading of Ordinance No. 064, 2010, Amending Chapter 7.5, Article II and Chapter 8, Article III of the City Code to Discontinue the Library Capital Improvement Expansion Fee.
  - B. First Reading of Ordinance No. 065, 2010, Repealing Chapter 23, Article VII of the City Code Regarding the Care and Custody of the Library.
12. First Reading of Ordinance No. 066, 2010 Amending Section 1-15 (g) of the City Code Regarding General Penalty and Surcharges for Misdemeanor Offenses, Traffic Offenses and Traffic and Civil Infractions.
13. First Reading of Ordinance No. 067, 2010, Amending Section 26-279 of the City Code to Allow Additional Means of Determining Wastewater Volume as the Basis for Wastewater Service Fees and Charges.
15. First Reading of Ordinance No. 069, 2010, Amending Section 4 of Ordinance No. 025, 2010, to Change the Meaning of the "Same Ownership" Requirement as Applied to Existing Medical Marijuana Businesses That Wish to Apply for Licensing under Chapter 15, Article XVI of the City Code.
16. First Reading of Ordinance No. 070, 2010, Vacating a Portion of Right-of-way as Dedicated on the Plat Richard's Lake PUD, Filing One.
17. First Reading of Ordinance No. 071, 2010, Vacating a Portion of Right-of-way as Dedicated on the Plat Hearthfire PUD, First Filing.
24. First Reading of Ordinance No. 072, 2010, Rescinding the Designation of the Henry Jessup/Cal Johnson Farm Buildings, 2902 Rigden Parkway, Fort Collins, Colorado, as a Historic Landmark Pursuant to Chapter 14 of the City Code.

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Councilmember Manvel made a motion, seconded by Councilmember Poppaw, to adopt and approve the Consent Calendar as amended. Yeas: Hutchinson, Kottwitz, Manvel, Ohlson, Poppaw, Roy and Troxell. Nays: none.

THE MOTION CARRIED.

### **Consent Calendar Follow-up**

Councilmember Ohlson stated he would like Platte River Power Authority (PRPA) to broaden its memberships beyond the organizations that are continually lobbying against all appropriate environmental regulations being proposed on a variety of levels. He requested a progress report to the PRPA-Board and the participating City Councils regarding Climate Action Plan progress and a follow-up to a chart regarding plant pollution. Mayor Hutchinson noted the chart does reference a "per unit of energy produced" measurement.

Councilmember Ohlson asked if PRPA Board meetings were going to be televised. Mayor Hutchinson replied the topic has been broached with PRPA's General Manager.

Councilmember Ohlson noted the impact fee for library services for the Poudre River Public Library District has been discontinued as Larimer County and the Town of Timnath have chosen not to impose their own impact fees, thereby eliminating the regional aspect of the Library District. He requested follow-up regarding TIF financing in Timnath.

Councilmember Troxell thanked staff for including comments relating to Fort Zed in the discussion of the Organic Agreement with Platte River Power Authority.

### **Councilmember Reports**

Councilmember Manvel stated he attended the Convention and Visitor's Bureau (CVB) annual awards luncheon and Councilmember Ohlson received the Founder's Award for his participation regarding the CVB and Lodging Tax.

Councilmember Ohlson discussed the Old Town Square 25th Anniversary celebration.

### **Resolution 2010-032**

### **Declaring the Intent of the City of Fort Collins, Colorado to Issue Economic Development Revenue Bonds to Provide Financing for a Manufacturing Facility for Palladius, Inc. D/B/A Integware, Inc.; Prescribing Certain Terms and Conditions of Such Bonds; and Containing Other Provisions Relating to the Proposed Issuance of Such Bonds, Adopted**

The following is staff's memorandum for this item.



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**“EXECUTIVE SUMMARY**

*The primary reason for the City adopting an inducement resolution for this project is found in federal tax law. If a municipal borrower or private activity bond beneficiary (e.g., Integware, Inc) desires the ability to reimburse itself out of the tax exempt bond proceeds for expenditures that accrue before the issuance of the bonds, the Internal Revenue Service Code will permit such reimbursement, provided that the public issuer adopts an inducement resolution and the expenditure is accrued no earlier than 60 days prior to the date such resolution was adopted. Accordingly, inducement resolutions are often adopted very early in the bond process to maximize the project costs to which the tax exempt proceeds can be applied. However, as made clear in the resolution, adoption does not create an obligation on the part of the City to authorize the bonds.*

**BACKGROUND**

*Palladius, Inc., doing business as Integware Inc., has requested that the City help in expanding its business in Fort Collins and facilitating the construction of a new headquarters facility at the Harmony Technology Park on Harmony Road.*

*The recommendation is to allocate the City’s 2010 Private Activity Bond (PAB) allocation (just over \$6 million) along with Larimer County’s allocation (just over \$4 million) to help facilitate the expansion of this important business in the community. The total project cost is around \$10 million for a 60,000 to 70,000 square foot headquarters building. The firm currently employs 128 people. The company expects to add employees and have 185 staff by 2013 (two years post construction). The construction milestones are as follows:*

<i>Vacant Land Purchase and Sale Agreement Execution:</i>	<i>April 2010</i>
<i>Project Design/Entitlement Start:</i>	<i>May 2010</i>
<i>Project Construction Start:</i>	<i>October 2010</i>
<i>Project Certificate of Occupancy:</i>	<i>September 2011</i>

*The action tonight begins the overall process of allocating and issuing the Private Activity Bonds. The Action recommended does not, at this time, commit the City to issue the bonds.”*

Mike Freeman, Chief Financial Officer, stated this Resolution declares the intent of the City to issue Private Activity Bonds in the name of Integware, Inc., for the purpose of expanding the software company. Integware, Inc. has recently opted to purchase property at Harmony Technology Park. The recommendation is to allocate the City’s 2010 Private Activity Bond (PAB) allocation of just over \$6 million, along with Larimer County’s allocation of just over \$4 million, to help facilitate the expansion of this business. The item will go before the Economic Advisory Commission and Council Finance Committee as well.

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Mayor Hutchinson noted this Resolution declares intent and asked for clarification regarding the remaining parts of the process. Freeman replied the first action regarding Private Activity Bonds is the inducement resolution, which declares intent. The decision to issue the bonds will come in July or August and will require formal action by Council at that time. The bonds will be issued in the City of Fort Collins' name although there is no obligation to repay the debt.

Mayor Hutchinson asked how long ago the City last used Private Activity Bonds. Freeman replied the last project using these bonds for employment projects was two years ago for Custom Blending, a manufacturing company which recently moved to Harmony Technology Park, as well.

Councilmember Roy asked how frequently Private Activity Bonds are allocated. Freeman replied this project would account for the City's entire allocation for fiscal year 2010. The State of Colorado retains 50% of the total Private Activity Bond allocation so other qualified projects could go through the state to receive financing.

Councilmember Ohlson asked how much this project specifically, and the Private Activity Bond program in general, is costing the Federal Treasury. Freeman replied debt issued privately would have a higher interest rate and the bondholder will benefit from the bonds being tax-exempt. Private Activity Bonds fund many affordable housing projects and manufacturing businesses throughout the country. Software companies qualify through the end of 2010. Demand for these bonds in Fort Collins is low due to the lack of a core manufacturing community and the level of difficulty in qualifying. Private financing is also involved in these projects.

Councilmember Roy asked if the City's bond rating would be affected, should the bonds go into default. Freeman replied in the negative and noted the bondholder is aware the City is under no obligation to repay the debt.

Councilmember Troxell asked for information regarding Integware and its history in Fort Collins.

Chris Kay, Integware Chief Executive Officer, stated the company began in 1993 and currently focuses on assisting medical device manufacturers with FDA regulatory compliance. The company has added 35 employees as of this year and intends to remain in Fort Collins.

Councilmember Ohlson made a motion, seconded by Councilmember Poppaw, to adopt Resolution 2010-032.

Mayor Hutchinson stated the City can work as a catalyst for encouraging successful business expansion.

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

THE MOTION CARRIED.

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**Ordinance No. 072, 2010,  
Rescinding the Designation of the Henry Jessup/Cal Johnson Farm Buildings,  
2902 Rigden Parkway, Fort Collins, Colorado, as a  
Historic Landmark Pursuant to Chapter 14 of the City Code, Defeated on First Reading**

The following is staff's memorandum for this item.

***“EXECUTIVE SUMMARY***

*At its May 12, 2010 Regular Hearing, the Landmark Preservation Commission considered a request for removal of the Henry Jessup/Cal Johnson Farm, a Fort Collins landmark property, from the Fort Collins landmark list. The Landmark Preservation Commission considered testimony from the applicants, the public and staff, and unanimously recommends that Council deny the application for removal of 2902 Rigden Parkway from the Landmark List.*

**BACKGROUND**

**1. Previous Decisions/Actions**

*On May 12, 1999, the Landmark Preservation Commission determined that the farm structures associated with Jessup/Johnson farm property would be eligible, as per Chapter 14 of the City Code, as local landmarks, even when relocated to the middle of the new subdivision at the Rigden Farm community center.*

*A notarized application requesting landmark designation, dated September 6, 2000, and signed by Felix Rojas as owners' representative, was filed with the City.*

*On September 13, 2000, upon finding compliance with Chapter 14 of the City Code, the Landmark Preservation Commission passed Resolution 10, 2000, recommending to City Council local landmark designation of the Henry Jessup/Cal Johnson Farm Buildings at their new location - 2902 Rigden Parkway.*

*On October 17, 2000, City Council unanimously adopted on First Reading Ordinance No. 141, 2000 designating the Henry Jessup/Cal Johnson Farm Buildings, 2902 Rigden Parkway, as a Historic Landmark Pursuant to Chapter 14 of the City Code.*

*On November 7, 2000, City Council unanimously adopted on Second Reading Ordinance No. 141, 2000, designating the Jessup/Johnson Farm Buildings as a landmark, in recognition of the buildings' architectural importance to our community. The ordinance was recorded with the County on November 30, 2000.*

**2. Background**

*Established in 1919, Henry and Edna Jessup's historic farm consists of a distinctive Craftsman-style masonry farmhouse, a large gambrel roof barn, a historic garage, a wood chicken coop, and a bunk*

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house. The property was owned and occupied by the Jessups through 1961. Calvin and Lois Johnson purchased the farm in that year.

Calvin, and his brother Glen Johnson, operated the farm under the name Spring Creek Farms, LLC. Their local business consisted of alfalfa and feed corn crops along with a cattle operation.

In 1999, Calvin sold the farm to Rigden Farm LLC. The farm and the outbuildings were moved to 2902 Rigden Parkway in the spring of 2000, to make way for the widening of Timberline Road, Drake Road, and their intersection.

Timberline Road is designated on the City's Master Street Plan as a major arterial (six lanes) and Drake Road is designated as a standard arterial (four lanes). Since the Rigden Farm subdivision adjoined these two section line roads, and since new development would add a significant number of traffic to the roads, it was the obligation of the Rigden Farm LLC to improve these roadways to their full designation and pay for their local street portion. Without these improvements, the Rigden Farm development would have failed to comply with the City's Land Use Code requiring that adequate public facilities be constructed to mitigate the impact of new growth on the edge of the urban area where existing infrastructure is not fully improved.

On May 12, 1999, the Landmark Preservation Commission determined that the farm structures associated with the Jessup/Johnson farm property would be eligible, as per Chapter 14 of the City Code, as a local landmark, even when relocated to the middle of the new subdivision at the Rigden Farm community center. The Commission agreed that the original setting of the farm at the Timberline and Drake intersection would be gone, regardless of whether the farm buildings were relocated or not, due to the road and intersection widening.

After May 12, 1999, the farmhouse and surrounding outbuildings were moved and placed in their same orientation and relative configuration at the center of the Rigden Farm development.

A notarized application requesting landmark designation, dated September 6, 2000, and signed by Felix Rojas as owners' representative, was filed with the City.

On September 13, 2000, upon finding compliance with Chapter 14 of the City Code, the Landmark Preservation Commission passed Resolution 10, 2000, recommending to City Council local landmark designation of the Henry Jessup/Cal Johnson Farm Buildings at the new location - 2902 Rigden Parkway.

On October 17, 2000, City Council unanimously adopted on First Reading Ordinance No. 141, 2000 designating the Henry Jessup/Cal Johnson Farm Buildings, 2902 Rigden Parkway, as a Historic Landmark Pursuant to Chapter 14 of the City Code.

On November 7, 2000, City Council unanimously adopted, on Second Reading, Ordinance No. 141, 2000, and the ordinance was recorded with the Larimer County Clerk and Recorded on November 30, 2000.

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3. *Applicant's Request for Delisting and Staff Response*

*The applicant has provided three reasons for the de-listing of 2902 Rigden Parkway from the landmark list (see attached). The applicant's points are summarized and are followed by Staff's response:*

- A. *On September 6, 2000, the application for Local Landmark Designation Nomination Form for designating 2902 Rigden Parkway was signed by Mr. Felix Rojas who was not a representative of Rigden Farm LLC. Felix Rojas did not have the authority to sign for Rigden Farm LLC, the owner of the property.*

*In response, staff notes that Mr. Felix Rojas did indeed sign the application, dated September 6, 2000, and further, under his signature, Mr. Rojas stated that he was doing so as "Owners Representative." (See attached.) Staff can only assume that Mr. Rojas was acting properly, was duly authorized, and was not committing fraud by misrepresenting his association with the owner.*

*Staff further notes that at the Landmark Preservation Commission meeting of May 12, 1999, the public record indicates that the owners were represented by Mr. Scott Griffin.*

*In addition, at the September 13, 2000 Landmark Preservation Commission public hearing, Resolution 10, 2000 of the Landmark Preservation Commission (see attached) states:*

*"WHEREAS, the owner of the property has consented to such landmark designation."*

*Staff also notes that at City Council First Reading of Ordinance No. 141, 2000, the Agenda Item Summary – Executive Summary states:*

*"The owner of the property, Rigden Farm, LLC, is initiating this request for Fort Collins Landmark designation for the Henry Jessup/Cal Johnson Farm Buildings."*

*At the December 9, 2009 Landmark Preservation Commission public hearing, the Rigden Farm Masters Owners Association was represented by Mr. Mike Schwab.*

*The application for removal of designated property from the landmark list, dated May 12, 2010, was signed by Mike Schwab, Manager, Rigden Farm Master Owners Association.*

*Rigden Farm LLC is on record as being represented by Mr. Scott Griffin and Mr. Felix Rojas, and the Rigden Farm Master Owners Association as being represented by Mr. Mike Schwab.*

*At no time in the ten-year period between May 12, 1999 and March 2, 2010 was the issue of an improper representation or an improper signature ever raised.*

- B. *Rigden Farm LLC was forced to accept this designation in order to move ahead with this development. The development was held up for apx. (sic) 18 months while Rigden Farm*

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*LLC and the City fought over what to do the buildings. Rigden Farm LLC risked losing the main anchor King Soopers if an agreement was not reached. In addition at this same time, something had to be done with the house as it stood in the way of the widening of Timberline.*

*In response, staff notes that there is no evidence in the public record to indicate that the landmark designation was nonconsensual. Further, there is no evidence in the record with regard to the status of securing King Soopers as an anchor tenant. At the May 12, 2010 Landmark Preservation Commission hearing, Mr. Schwab stated that they did make an error in the Application for Removal from the Landmark List, regarding King Soopers. After Mr. Schwab met with the developer again, the developer noted that King Soopers had not signed a contract with them at the time to buy that property, but that they were in negotiations.*

- C. *In designating the structures, the City and LPC ignored national criteria on historic landmarks. The main decision to add these structures was based on a compromised (sic) reached between the developer and the city. The decision did not take into consideration the actual national historic standards that the landmark listing should be based. The only factor that the LPC could cite in their decision was the architectural significance. In doing so, they ignored a plethora of other factors that should have been considered.*

*In response, staff notes that the public record indicates that the merits of eligibility pursuant to Chapter 14 of the City Code were thoroughly discussed at the May 12, 1999 Landmark Preservation Commission public hearing. At this hearing, the Commission determined that the buildings and structures associated with the Jessup/Johnson farm have sufficient architectural significance and that they would retain their eligibility for designation as a Fort Collins Landmark, even if they were moved to their new location at the center of the Rigden Farm development. Further, the City's standards for landmark designation mirror the national standards, so the National Park Service Standards were indeed considered. While there are, in fact, four different standards for determining eligibility for designation, only one of the four is needed for a proper designation.*

*At the September 13, 2000 LPC public hearing, the Commission found that after the buildings were moved, the arrangement of the buildings, the surrounding open space, and, with minimal damage from the move, the buildings retained their eligibility for Landmark status.*

*Consequently, at the September 13, 2000 public hearing, the LPC determined that the farm buildings have architectural importance to the City in sufficient compliance with Section 14-5 of the City Code.*

#### **4. Staff Findings**

*In consideration of an Application for Removal of the Henry Jessup/Cal Johnson Farm Buildings, at 2902 Rigden Parkway, from the Landmark List, staff makes the following findings:*

- A. *Staff finds that the public record indicates that the owners, Rigden Farm LLC, were properly represented by individuals who indicated they were acting as bona fide owner's representatives.*

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- B. *There is no evidence in the record that designation as a Landmark was improper, coerced or nonconsensual.*
- C. *In designating the Jessup/Johnson farm buildings, the LPC and City Council acted properly in accordance with Section 14 of the City Code.*
- D. *Staff finds that delisting the farm buildings would violate the provisions of Section 14 of the City Code and thus jeopardize the protected status of the buildings.*

## **ACTION OF THE LANDMARK PRESERVATION COMMISSION**

### **1. Findings of Fact and Conclusions**

*At the May 12, 2010 regular meeting of the Landmark Preservation Commission, the Commission heard the Application for Removal of the Henry Jessup/Cal Johnson Farm Buildings, at 2902 Rigden Parkway, from the Landmark List. After considering testimony from the applicants, the public and staff, the Commission made the following findings of fact and conclusions:*

*In regards to the applicant's first point, that on September 6, 2000, the application for Local Landmark Designation Nomination Form for designating 2902 Rigden Parkway was signed by Mr. Felix Rojas who was not a representative of Rigden Farm LLC. Felix Rojas did not have the authority to sign for Rigden Farm LLC, the owner of the property:*

***Mr. Sladek moved that whether or not Felix Rojas had authority to act on behalf of Rigden Farm LLC, it does appear that Rigden Farm LLC knew about the designation of the property for a long enough period of time that it had an opportunity to object to that designation. Mr. Albright seconded the motion. Motion approved unanimously, 5-0.***

*In regards to the applicant's second point, that Rigden Farm LLC was forced to accept this designation in order to move ahead with this development. The development was held up for apx. (sic) 18 months while Rigden Farm LLC and the City fought over what to do the buildings. Rigden Farm LLC risked losing the main anchor King Soopers if an agreement was not reached. In addition at this same time, something had to be done with the house as it stood in the way of the widening of Timberline:*

***Mr. Albright moved that the Commission find that Rigden Farm LLC was not coerced, but discussed and compromised on this designation and that there was no coercion involved. Mr. Sladek seconded the motion. Motion approved unanimously, 5-0.***

*In regards to the applicant's third point, that in designating the structures the City and LPC ignored national criteria on historic landmarks. The main decision to add these structures was based on a compromised (sic) reached between the developer and the city. The decision did not take into consideration the actual national historic standards that the landmark listing should be based. The*

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*only factor that the LPC could cite in their decision was the architectural significance. In doing so, they ignored a plethora of other factors that should have been considered:*

***Mr. Albright moved that the Commission find that the criteria for designation was adequately and properly addressed, and so found by the Board in 1999. Ms. Hummel seconded the motion. Motion approved unanimously, 5-0.***

## ***2. Recommendation of the Landmark Preservation Commission to City Council***

*In regards to the Application for Removal of the Henry Jessup/Cal Johnson Farm Buildings, at 2902 Rigden Parkway, from the Landmark List, the landmark preservation made the following motion:*

***Mr. Albright moved that the Commission recommend that the Council not approve the request for delisting that has been made for the Jessup/Johnson buildings at 2902 Rigden Parkway. Mr. Sladek seconded the motion. Motion approved unanimously, 5-0."***

Karen McWilliams, Historic Preservation Planner, discussed the Henry Jessup/Cal Johnson Farm buildings and stated the buildings were moved and adapted as amenities for the Rigden Farm subdivision. In September 2000, an application was submitted to the City requesting landmark designation of the five farm buildings. The Landmark Preservation Commission found the farm structures would still be eligible as local landmarks when relocated as proposed. Council unanimously adopted the Ordinance designating the Henry Jessup/Cal Johnson Farm buildings as an historic landmark in November 2000. A request was made in March 2010 to have the buildings removed for the landmark designation list. The Historic Preservation Commission recommended Council not approve the request for delisting the buildings at its May 12, 2010 regular meeting.

Mike Schwab, Rigden Farm HOA manager and owner's representative, stated the original document requesting landmark designation was not signed by a representative of Rigden Farm, LLC and Rigden Farm, LLC was unaware of the landmark designation until recently.

Councilmember Kottwitz asked if the historical designation is part of the HOA contract. Steve Dush, Current Planning Director, replied the document declaring historical designation was recorded with Larimer County in November 2000 and would have been noted with any property conveyance.

Councilmember Poppaw asked how long Mr. Schwab had been the Rigden Farm HOA manager. Mr. Schwab replied he has been the manager for three years.

Councilmember Roy made a motion, seconded by Councilmember Manvel, to adopt Ordinance No. 072, 2010, on First Reading.

Councilmember Manvel stated he would not support the motion as it appears the historical designation process was followed legitimately.



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Mayor Hutchinson asked what types of City Code violations would occur should the property be delisted. Dush replied delisting the structure would keep it from being subject to any requirements that would preserve the integrity of the buildings.

Councilmember Ohlson stated he would not support the motion.

Councilmember Troxell stated he would not support the motion as there is no justification for delisting the property.

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

THE MOTION FAILED.

(\*\*Secretary's note: The Council took a brief recess at this point in the meeting.)

**Ordinance No. 059, 2010,  
Amending Chapter 23 of the City Code Pertaining to  
Excavations, Obstructions and Encroachments, Adopted on Second Reading**

The following is staff's memorandum for this item.

***“EXECUTIVE SUMMARY***

*This Ordinance, adopted on First Reading on May 18, 2010, by a vote of 4-2 (Nays: Roy, Troxell) amends City Code to require anyone with an excavation permit to restore an excavated area to its original condition when the excavation is complete. The Ordinance clarifies the circumstances for issuance of the special event permit, the obstruction permit, and the encroachment permit. It also amends the Code pertaining to the obstruction permit to allow the permit to be issued for non-construction-related purposes.”*

Randy Hensley, Parking Services Manager, stated the current Code allows parking spaces to be used for construction activities and for special events for which roads have been closed and a special event permit has been pulled. The Code currently does not have any mechanism to allow the use of parking spaces for reasons other than construction. Proposed fees for the use of parking spaces for non-construction related activities are limited by City Code, which directs fees to be based on cost. Rather than focus on making a list of all possible acceptable uses, staff has opted to focus on controls such as safety and environmental soundness, to make certain requested uses are appropriate. Consent of adjacent business owners is also required.

Councilmember Roy asked how priority would be given to multiple requests for use of parking spaces. Hensley replied most businesses would not want to use a parking space in front of their business as it would eliminate a space for customer parking and he has yet to receive multiple requests for a certain day.

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Councilmember Manvel asked why parking spaces would not be allowed to be obstructed overnight. Councilmember Poppaw asked for the definition of overnight. Hensley replied the overnight restriction does not apply to the construction related permit but does apply to the non-construction related permit as staff does not want any semi-permanent structures to be erected on a parking space. Overnight begins when the business closes; therefore, the parking space permit would conclude at that time.

Mayor Hutchinson asked for a characterization of the opinions of downtown businesses. Hensley replied he receives many requests per year for this service which, up to this point, have had to be denied. Formally, the proposal went before the Downtown Business Association Board, Transportation Board, and General Membership Board of the Downtown Business Association and received overall support.

Councilmember Poppaw made a motion, seconded by Councilmember Roy, to adopt Ordinance No. 059, 2010, on Second Reading.

Councilmember Roy expressed concern relating to the disparity between the economic value of a parking space and its value based on cost. He stated he would support the motion.

Councilmember Ohlson stated he would support the motion as it has the support of downtown businesses. He noted the parking statistics are available for the Downtown Business Association both including and excluding the shopping center at the northeast corner of Mulberry and Lemay, which is also part of the Downtown Business Association.

Councilmember Troxell stated he would support the motion but expressed concern regarding the lack of a comprehensive downtown parking policy. City Manager Atteberry replied Council will receive information regarding the policy and staff will schedule a work session should questions remain.

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

THE MOTION CARRIED.

#### **Executive Session Authorized**

Councilmember Ohlson made a motion, seconded by Councilmember Roy, to go into Executive Session as permitted under Section 2-31(2) of the City Code, to meet with attorneys for the City, as well as the City Manager, and other affected members of City staff, regarding potential litigation involving the City, which has to do with the handling of certain water storage projects and the effect that such projects may have on the City's water supply and other areas of interest and concern to the City. Yeas: Hutchinson, Kottwitz, Manvel, Ohlson, Poppaw, Roy and Troxell. Nays: none.

THE MOTION CARRIED.

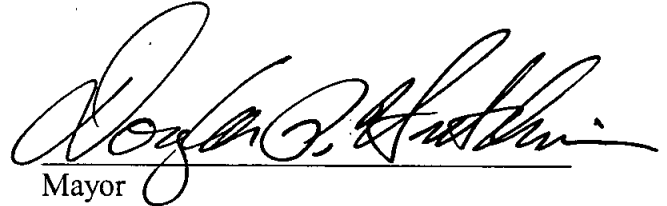
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**Adjournment**

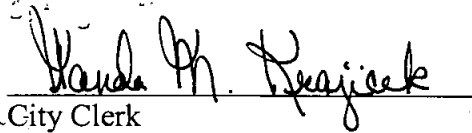
Councilmember Ohlson made a motion, seconded by Councilmember Poppaw, to adjourn until June 8, 2010, at 6:00 P.M. so that the Council may then consider going into Executive Session to review and discuss the performance of the City Manager, City Attorney and Municipal Judge. Yeas: Hutchinson, Kottwitz, Manvel, Ohlson, Poppaw, Roy and Troxell. Nays: none.

THE MOTION CARRIED.

The meeting adjourned at 8:50 p.m.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk